

Law as a means of Social Control & Change in India

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Abstract: Marxism is a radical philosophy that advocated revolutionary social change as a method of reversing the exploitations and trfranny of the strong over the weak. Karl Marx and Frederic Engels believed that law was a superstructure built on the economic foundations and essentially reflected the implications of class struggle. Democratic socialist- the second group of Marxists is formed by liberal socialist thinkers like Jayaprakash Narayan, Ram Manohar Lohia and M.N. Roy. Jayaprakash Narayan Considered socialism as a new civilisation rather than mere school of thought. Another Indian socialist who gathered great inspiration from Marx, was Ram Manohar Lohia. He developed a social transformation through socialist ideologies by protecting women and workers. The third group of Marxist in India comprises of violent groups like CPI (Marxist- Leninist), People's War Group (PWG), Maoist Communist Centre (MCC) and People's Unity (PU). Naxalism is a set of vevolutionary thoughts and strategies developed by leaders under the influence of Marxism Originally to resolve the problems of exploited peasants. Jayaprakash Narayan's Solution to Naxalism problem in 1970. According to him Naxalism is primarily a social, economic, political and administrative problem and only secondarily a law and order question. Naxalism continues to pose a serious challenge to internal security in the counting. Marxism is a humanist reaction to economic and social exploitations.

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1. Introduction:

Each religion is a social phenomenon, and each has its own community. Religion has both individual and collective or rational and emotional dimensions. Religion contains rules of spiritual and ethical discipline for attaining perfection in individual and collective life.

According to max weber, religion responds to the human need for dealing with the question of how the extraordinary power of a divine good may be reconciled with the imperfection of the world that he has created and rules over and seeks answers that provide opportunities for salvation relief from suffering and reassuring meaning. Karl Marx considered religion as the illusory happiness of the people and appealed to abolerb it to assert their real happeners. Jesus by pronouncing that the Kingdom of God is durling in each human being, appealed to moral perfection and tolerance. Unlike the west, intellectual enlightment in India has assisted the task of revitalising the Society and through the religious reconstruction, as can be seen from the mission of Buddhism, Bhakti movement and the 19th century renaissance spearheaded by Raja Ram Mohan Roy. Dayanand saraswati, Vivekanand and others.

2. Secularism: significantly enables to build up a larger belief in the worthiness of religious tolerance and of will or duty of all the concerned to cooperate with all religions. According to D.E. Smith, a secular state is a state which guarantees individual and

corporate freedom of religion, deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular religion. Kazanic Law and Islamic Jurisprudence are known for universal brotherhood, humanitarian approach and reverence to life and justice , in practice some Muslim rulers disregarded there injunctions during medieval period. The Implications of inserting the term 'seeular' into the preamble was considered by the supreme court in M.P. Gopal Krishnan Nair vs state of Kerala (2005) 11 SCC 45. Secularism, according to the court prohibited establishing of a state religion and favouring of any particular religion. Article 25(1) says all persons are equally entitled to freedom of conscience and the right freely to practice and propagate religion. The Directive Principle of State Policy in Article 49 obligates the state to protect every monument or place or object of artistic or historic interest from spoliation, disfigurement, destruction, removal, disposal and export. Uniform civil code contemplated in Article 44, because of its emphasis on equality and social justice has some dimension of equalitarian approach towards all religions. Under Articles 51-A(e) and (t) it shall be the fundamental duty of every citizen of India, to promote harmony and the spirit of common brotherhood among all the people of India transcending religious , linguistic and regional or sectional diversities. Chapter XV of the IPC, 1860 contains five important sections dealing

with offences relating to religion. There are sec. 295-A, 159-A, 296-297 and 298. Sociological debate about definition of secularism has veered between two matrices, the separationist approach and the non discrimination type approaches. In traditional societies, religions were more deeply influencing than the laws. Both Hinduism and Islam had prescribed detailed regulations of human actions and relations. Because of all pervasive influence of religion, changes were slow and not directly through state. The legislatures in India have shown activism in bringing personal law reforms when the community showed signs of accepting the changes. Series of Hindu Law reforms and amendments emerged as a result of this development ever since 1950s. But regarding Muslim personal law's reform, they have acted with self restraint waltzing for initiative by the community. Judiciary has consistently emphasised the need to incorporate the values of equality and personal liberty into the family law. India is an abode for many religions. Each religion is a social phenomenon and each has its own community.

Religion as an inward transformation, as a spiritual change as the overcoming of discards within our own nature that has been the fundamental feature of it from the beginning of our history. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme is our constitution. According to professor G.S. Sharma, the social expectations of a non-discriminatory and egalitarian treatment of religious reformulate the concept of secularism.

3.M.C. Setalvad: was of the view that considering the presence of several minority groups in India, it became inevitable to have a secular constitution of India under which all religions could enjoy equal freedom and all citizens equal rights and which could will together into one nation. Different sections of the religious communion. Minorities bodies are numerically smaller groups having common features and a sense of distinctness from the majority. One of the greatest problems that the multi religious societies have been facing is occurrence of communal riots and collective violence. The perpetrators of communal riots come under the purview of provisions of IPC such as seating 142, 143, 144, 146, 147, 148, 150, 153, 153A, 159 and 295 to 298. Under sec. 144 to Cr.P.C. the District Magistrate or Sub-Divisional Magistrate is vested with the power of issuing written order directing any person to abstain from certain acts in order to danger to human life, health or safety or disturbance of the public tranquility or a riot. In order to preserve the country's secular traditions, to promote national integration and to remove any feeling of inequality and discriminating amongst

these sections of people the Govt. of India constituted a minorities commission in 1978 through administrative order. The problem of religious minorities need to be resolved with the help of law and social action. The Sachar Committee findings and Minority Commission recommendations emphasis the need of long term measures for the welfare of minorities. Caste provides primordial of forming and perpetuating social groups and sender rigid social division. It emerges from subjective factors like birth or affiliation and is justified on the basis of religion or social practice. Anti untouchability approach attained considerable attention is the course of nationalist movement for freedom. In late 1920s, Dr. B.R. Ambedkar emerged as the champion of the cause of depressed classes by his speeches and writings on the wrongs inflicted upon them. During the intellectual renaissance of the 19th century the trend setting thoughts of Raja Ram Mohan Roy, Dayanand Saraswati, Gopal Hari, Jyotiba Phule and M.C. Ranade appealed for abandoning class distinctions.

Regarding vote of social change, there is variation from society to society. Gandhiji has great relevance in the methodology of social change. A.P.J. Abdul Kalam says Nations are built by imagination and untiring enthusiastic efforts of generations. Amartya Sen- in the field of economic reform said - The central issue is to expand the social opportunities open to people. Law as an instrument of social change includes - (1) People's aspiration (2) Determinations (3) Democracy and development (4) public good and society. (5) Co-operation and harmonisation (6) human life and human community.

4.Views of Jurists: 1 Austin says laws is the command of sovereign.

2 Bentham- social utilitarian the greatest happiness of the greatest number.

3 Duguit- Social solidarity - to prevent social disorder- social interdependence.

4 Roscoe pound - social engineering- satisfaction of maximum of wants with minimum of friction and waste. He classified interests into - (1) individual interest (b) public interest (c) social interest.

5 W. Freedmann- Legal system is a purposeful enterprise.

6 Kelsen- Maturity of legal system.

7 H.L.A. Hart- Primary rule of obligation and secondary rule of recognition.

8 Karl Marx- without conflict no progress, conflict is a part of socialisation. Conflict types - Use of force, collective violence, armed assertion, Better social cohesion, Custom as a source of law, Social change and group activities.

Regionalism and language and Women and children and the law. Modernisation and the law mediating prison reforms, democratic decentralization

and local self government, plea-bargaining, awareness of Indian Approaches to social and economic problems in the context of law as a means of social control and change. A spirit of inquiry to explore and exploit law and legal institutions as a means to achieve development within the frame work of law. The purpose is to make the students aware of the sole of law in Indian society. Law as the product of traditions and culture criticism and evaluation in the light of colonization and the introduction of common law system and institutions in India and its impact on further development of law and legal institutions in India. The Jurisprudence of sarvodaya- Gandhiji, Vinobabhave, Jayaprakash Narain- surrender to dacoits, concept of grama nyayalayas. Socialist thought on law and justice. An enquiry through constitutional debates on the right to property. Law as an instrument of social change and of course People's aspiration. Determinations about the extent, level and modality of change through law. Law enjoys and uses unifying power to contribute towards better social cohesion. Austin considers law as a command of the sovereign. Custom as a source of law. Social change connotes a change in the society arising from different types of group activities. Change is the basic rule of nature. Gandhi's thought of social life inclusive of moral, political, economic, individual and collective percepts and actions. According to him social revolution is more difficult than political revolution. By revolution he means that society has to change fundamentally. Gandhiji wanted to establish in India a democratic order free from political, economic and social exploitation in addition to removal of foreign rule. He said real Swaraj will come not by acquisition of the capacity by all to resist authority when it is abused by educating the masses to a sense of their capacity to regulate and control authority. Gandhian economics laid clear focus on philosophy and practice of simple life, satisfaction of basic needs of all, economic self reliance and non-concentration of wealth. He considered untouchability as cruel and inhuman institution, born out of poverty of the oppressed and arrogance of the advanced and going against the spirit of democracy, which makes no distinction among citizens. He favoured communal harmony and resolution of communal problems exclusively by the local panchayats on the basis of give and take approach by public opinion.

5. Discussion: Gandhiji's concept of gram Swaraj stood for composite ideas of self sufficiency, co-operation and access to sanitation, health facilities, education, and cultural activities. Concept of sarvodaya means rising of all living beings. Jayaprakash Narayan said A real revolution is a revolution in the values of life. Vinoba Bhave viewed that Sarvodaya stood for making all happy by

eliminating suffering from all and for bringing a world state based on equality. Jayaprakash Narayan explains about sarvodaya thus what we desire is the establishment of a society in which there will be no exploitation, there will be perfect equality and each individual will have equal opportunities for development. Jayaprakash Narayan considered establishing internal peace at all levels and external peace with foreign countries. Vinoba Bhave and Bhoodan movement. Jayaprakash Narayan's idea of total revolution. Surrender of dacoits of Chambal valley was a development in 1960's and 1970's initiated by veteran Gandhians as a part of the application of sarvodaya principle. The issue had gathered legal, moral and harmonist dimension in addition to delicate matters of penology. In 1972, a large number of dacoits (511) surrendered in the Chambal Valley and Rajasthan owing to an important role played by Gandhian organisations under the leadership of Jayaprakash Narayan. No amounts of arrests, imprisonments and shootings put down Naxalism or any other kind of revolutionary violence unless at the same time the remedy was applied at the roots.

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