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ROLE OF LAW AND JUDICIARY IN SOCIAL TRANSFORMATION IN INDIA

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1.0 Abstract :

Any deviation from the accepted or established way of life is referred to as social transformation. The phrase 'social change' describes alterations to society as a whole. According to Maclver, society is a "network of social interactions." These social interactions alter as a result of social change. Law and social transformation are two very different ideas that place a strong emphasis on social problem studies, changes in those problems, and their resolution through judicial and legislative processes. According to the adage "Law Changes Society," society must adapt to the law's requirements. When an anomaly occurs, it is taken before the judiciary, which then applies the principle of the rule of law to alter the current practice of law. Law has historically been seen as a vehicle for enacting social change.

1.1 Introduction:

Introduction Every school of law has an underlying tenet or myth, and the myth of sociological jurisprudence is that it recognises, conciliates, and strikes a balance between conflicting social and private interests in society.¹ However, the issue is that there is no standard by which one interest may be chosen above another. In addition, no other school of legal thought can be utilised to explain and speed the process of change that is unavoidable. Indian society has changed over time from a culture ruled by Smrithi, Sruti, Dharma, and other customary law to a society that during the colonial period adopted western concepts of law and authority.² Moreover, the Constitution is built on rights and progressive legislation. Indian society has changed since the end of colonialism, including the codification of religious laws and affirmative action. By considering the law as a tool of social engineering, it is possible to examine and comprehend the sociological jurisprudence's contribution to India's social transformation. The significance of researching the sociology of law in the Indian context has been emphasised by Professor Upendra Baxi. ³

One of the key tools that could affect social transformation has long been considered to be the law.

1 O. Chinnappa Reddy, “A Need for a Socialist Jurisprudence” SCC 4 (1987).

2 Ishwara Bhat P, Law and Social Transformation 83 (Eastern Book Publication 1st Edn. 2009)

3 Baxi Upendra. (1986) Towards a Sociology of Indian Law Satvahan Publication.

Many academics have endorsed the idea that the rule of law has unifying potential and can be used to improve social cohesiveness, as a method for achieving uniformity among a diverse population with sociocultural differences. Although there are many ways to change and reform society, changing society through the law is perhaps one of the most efficient and secure ways to do so.

2.0 Definition of Law and Social Change:

2.1 Law

According to **Blackstone**, “Law is a rule of conduct, prescribed by the supreme power in the State, commanding which is right and prohibiting what is wrong. Jurisprudentially law consists of rules prescribed by the society for the governance of human conduct”. Law of any civilized country is not definite, but changes according to the demand and circumstances of the society. **Roger Cotter** views “Social change is held to occur only when social structure - patterns of social relations established social norms and social roles changes”.

B.N. Cardozo says “Law is a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the Courts if its authority is challenged.”

According to **Max Weber** ‘Law is an order, the validity of which is guaranteed by the probability that deviation will be met by a physical or psychic sanction by a staff specially empowered to carry out this Sanction”

According to **Roscoe Pound**, “Law is an authoritative canon of value laid down by the force of politically organised society.”

Austin defined law as “the Command of the sovereign, having sanction behind it.”

2.2 Social Change:

Lundberg defines “Social Change refers to any modification in established patterns of inter-human relationship and standards of conduct.”

Vidya Bhushan and D.R. Sachdeva observed, “Change is the law of nature what is today shall be different from what it would be tomorrow. The social structure is subject to incessant change ... Society is an everchanging phenomenon, growing, decaying, renewing and accommodating itself to changing conditions and suffering vast modifications over time.”

4 Fitzpatrick Peter. (2001) Modernism and the Grounds of Law Cambridge University Press.

According to **Mazumdar, H.T.**- “Social change may be defined as a new fashion or mode, either modifying or replacing the old, in the life of a people, or in the operation of a Society.”

According to **Davis**, “Social change is meant only for such alterations as occur in social Organisation, that is, structure and functions of Society.”

M.D. Jenson, “Social change may be defined as modification in ways of doing and thinking of people.”

Anderson and Parker, “Social Change involve alteration in the structure or functioning of social forms or processes themselves.”

Before we move on to the in-depth analysis, a functional definition of social transformation must be reached. It's important to distinguish between social change and social transformation for this reason. Social change is defined as a non-repeatable change in the accepted social norms of behaviour.⁵ The established social norms, social roles, and social relationship patterns should ideally shift in order to further develop social transformation.⁶ But only a significant social change that affects many people would be considered a social transformation.⁷

The transformation in technology, agriculture, dairy, farming, science etc. might not be enclosed within the term ‘social change.’ Social change is proscribed to alterations in the field of social relationships. Social relationships are social processes, social patterns and social interactions.

2.3 Law and Social transformation

Except for the rule of change, everything changes in this world. This rule does not apply to the life of a nation or a socio-political system. They are fundamentally live, organic, and dynamic

systems. Political, social, and economic factors are always changing. Social mores and values shift with time, causing new issues and changing the face of old ones. This shift is not always in a positive direction; there are always going to change that is unwelcome and generally negative in nature.

That does not appear to be the case based on how law and government have been organised during the last two centuries. The law, in its broadest meaning, and the entire legal system with

5 Supra Note 2 at 14.

6 Roger Cotterrell. (2007) *The Sociology of Law: An Introduction* Oxford: University Press

7 Singh Yogender. (1993) *Social Change in India: Crisis and Resilience* South Asia Books.

its institutions, rules, procedures, and remedies, is society's attempt to manage and direct this transformation process through the state. This logic places the state and legal institutions at the centre of all social discipline. In theory, the sovereign legal authority, can legislate on any subject and exert control over any transformation process within the state. Indeed, it is assumed that legal innovation can effect social change under a highly centralised political system with superior technology and communication apparatus.⁸ The law, according to **Roscoe Pound**, was a tool for social engineering. This viewpoint is based on the assumption that social processes are subject to conscious human control, and that the instrument through which this control is to be achieved is the law.

Theorists of the 19th century emphasised the importance of legislation in explaining social transformation. Henry Maine explained how society changed by switching from the status to the contract. According to Durkheim, the kind of law is an indicator of the type of society, and changes in the law are a reflection of the way society is changing and its nature. Marx perceived the law as an impediment to class struggle and revolutionary social transformation since it was inextricably linked to capitalist economic relations and thus inevitability, according to Weber's typology of law and legal theory.⁹

3.0 Role of law in social transformation

The impact of British colonial rule on Indian society is prominent in any discussion or discourse on social transformation. British control, Christian Missionaries, and English education all contributed significantly to the transformation of Indian society. At this point, it's important to distinguish between the effects of pre-capitalism colonialism/imperialism and colonialism throughout the capitalist era. Because British colonial power was founded on the capitalist system, it was able to make fundamental changes to the economic systems of its colonies, allowing it to expand.

During the colonial period, Anglo-Saxon rules were imposed on Indian society. As a result, Smriti, Sruti, Dharma, and other forms of customary law have eroded. Though acceptance of

8 Falk Moore Sally. (1993) *Law as a Process: An Anthropological approach* Routledge and Kegan Paul, London.

9 L. Roach Anleu Sharyn. (2010) *Law and Social Change* SAGE: Publication.

personal laws was the colonial administration's policy, it was done out of respect for India's

culture and tradition, as well as a conflict-avoidance mechanism, due to the unexpected application of an alien law. However, with the employment of justice, equity, and good conscience as a residuary source of law, British law had a backdoor entry into the Indian legal system.¹⁰

Furthermore, many customaries practises could not be proven and were not enforced due to the colonial court's stringent standard of proof.¹¹ Another element that has been suggested as a reason for the invasion of British law into India is the colonial court's consultation with pundits and maulvis, as well as the severe implementation of the stare decisis. The colonial administration also imposed legal codification in India, both criminal and civil, based on the Anglo-Saxon paradigm.¹² The Penal Code, the Criminal Procedure Code, the Code of Civil Procedure, and the Evidence Act are all examples of this. An essential aspect to note here is that all of these statutes introduced English legal notions into India.

The colonial legal system cannot be divided into a consensus or conflict model because the people's participation, perception, or need was not a major issue for the legal system at the time. However, it is also impossible to exclude any laws enacted during colonial rule from the scope of sociological jurisprudence. The British administration was primarily concerned with enacting legislation that would aid in the formation of a pan-India governance system.¹³ However, certain laws were enacted as a result of public opinion.¹⁴ This includes issues such as sati and laws against child marriage. This shows that people's needs are reflected in public opinion.

3.1 Abolition of slavery and bonded labour system:

The Indian Slavery Act was passed in 1843 to abolish slavery in India, and sections 370, and 371 of the Indian Penal Code 1860 made it a felony. As part of fundamental rights, India's constitution protects human trafficking and forced labour under Article 23. Despite numerous attempts to address the issue of bonded labour, the Act was the only way to do so effectively.

10 Galanter Marc. (1989) Law and Society in Modern India Oxford: University Press, India.

11 Ibid.

12 Supra note 3 at 23

13 Ibid at 24.

14 Supra note 2 at 101.

3.2 Abolition of Sati System:

Sati refers to a widow's life being burned or buried beside her husband's body. Since ancient

times, becoming a sati has been regarded as a high honour among Hindus. Raja Ram Mohan Roy, an Indian social reformer, began fighting these practices in 1812. Because the behaviour was deemed part of their rituals and traditions, society was powerless to stop it. On the 4th of December 1829, there existed a law that might govern it. Governor Lord William Bentick legally outlawed the practice in Bengal presidency areas by issuing a rule proclaiming Sati and the burning or burying of Hindu widows, as illegal and punishable by the criminal courts.¹⁵ Sati was not adequately controlled in post-independence India.

Under the Commission of Sati Act, 1987, the legislature took severe steps by enacting a unique law for the handling of those who abet Sati, making it exemplarily penalised up to the death sentence.¹⁶ It is now a forgotten system in most parts of India. Due to public opinion, these regulations relating to sati, widow remarriage, and child marriage were implemented. The laws enacted during colonial rule fell outside the scope of social jurisprudence. They were only interested in these laws because of social reformers and public opinion.

3.3 Widows Remarriage:

Widows were not allowed to remarry in Hindu society to maintain their family's honour and possessions. Ishwar Chandra Vidyasagar was instrumental in persuading the British to pass legislation permitting Hindu women to remarry. The Hindu Widow Remarriage Act was passed in 1856. Legalizing Hindu widow remarriage,¹⁷ and offering legal protection against the loss of certain types of inheritance if a Hindu widow remarries. As a result, it enabled a Hindu widow to continue life.

3.4 Prohibition of Child Marriage:

The practice of child marriage was widely accepted in Indian society, even though it was frowned upon by numerous religious sects. Despite the efforts of many reformers, it was futile

¹⁵ Section 2 of The Bengal Sati Regulation, 1829,

¹⁶ Section 4 The Commission of Sati (Prevention) Act, 1987.

¹⁷ Section 1 of the Hindu Widow's Re-Marriage Act, 1856 .

until a law was adopted. The prohibition of the Child Marriage Act 2006 replaced the Hindu Child Marriage Restraint Act. It established a child marriage prohibition officer and expanded

the family court's authority to rule on the topic under the Act. The measure also increased the penalty to two years of solitary confinement, a fine of up to Rs 1 lakhs, or both.¹⁸

3.5 Elimination of Child Labour:

It is a serious crime to prevent a youngster from enjoying his youth. The Factories Act of 1881 was the first of its type, prohibiting the employment of children under the age of seven, as well as limiting working hours. Many laws have been enacted, and the most recent is the Child Labour (Prohibition and Regulation) Act 1986, as amended in 2016, which prohibits minors under the age of 14 from working.

4.0 Codification of Hindu Law

The codification of Hindu law was one of the initiatives made by the Indian government in the mid-1950s to further the idea of women's equality and legitimise it in Indian society.¹⁹ Reform of Hindu law was seen as the first step in this direction. The Hindu Marriage Act of 1955,²⁰ the Hindu Minority and Guardianship Act of 1956,²¹ the Hindu Succession Act of 1956,²² and the Hindu Adoptions and Maintenance Act of 1956.²³ are among the codified laws known as the Hindu code.

The Hindu Marriage Act of 1955 made significant reforms, such as removing the need for both husband and wife to be of the same caste, which was formerly a requirement. Furthermore, the critical idea of monogamy was included, as well as a consistent provision for the dissolution of marriage. Academic writings have criticised Hindu law reform for not introducing uniform practises, which are in some ways more procedural and inflexible than existing practices in some parts of India, but they have largely accepted that Hindu law codification has led to gradual

18 Section 10 of the Prohibition of Child Marriage Act, 2006.

19 Madhu Kishwar. (1994) "Codified Hindu Law: Myth and Reality" Economic and Political Weekly (29) 2145.

20 The Hindu Marriage Act, 1955 ACT NO. 25 OF 1955 came into force on 18th May 1955.

21 The Hindu Minority And Guardianship Act, 1956 ACT NO. 32 OF 1956 came into force on 25th August 1956.

22 Hindu Succession Act of 1956 Act 30 of 1956 came into force on 17th June 1956.

23 Hindu Adoptions and Maintenance Act of 1956 ACT NO.78 of 1956 came into force on 21st December 1956.

reform and social transformation in Indian society.²⁴ According to sociological jurisprudence, the Hindu law reform does not reflect the needs of society, as it was the leaders who were involved in the nationalist movement and later governed the country who thought of the need for such a codification and uniform law to be applied to the Hindu community.

5.0 Constitution and Social Transformation:

India was liberated from political enslavement in 1947. Whether or not independence brought liberty to Indian society was a point of debate among academicians at the time. According to them, political freedom does not guarantee social change, and society cannot be liberated without dynamic social change. As a result, the years 1947-1950 might be characterised as a period of “issue development,” a time when issues of national importance were in their nascent stages. However, it is important to note that India has been experiencing two parallel revolutions, social and political, since World War I, and the process is still ongoing.²⁵

The Constitution of India was enacted on January 26, 1950, to give birth to a new India. Part III of the Constitution enshrines a set of fundamental rights that provide citizens with specific rights that must be regulated to bring about sociological change throughout the country. Because Indians had been oppressed for many years before independence, the Constitution was enacted as a fundamental law that would control the movement of all other laws in the country.

It is also possible to argue that the Constitution was enacted to accelerate India’s social and material rebirth as a step toward social change and nation-building. As a result, the Constitution should be interpreted in light of future generations’ wishes as well as changing social, political, and economic values and demands.²⁶

5.1 Public Interest Litigation and Social Change in India

Any society must experience social change. In India, this is accomplished through the Public Interest Litigation. An attempt of social change to assess the impact of PIL in Indian society. PIL jurisprudence is required to comprehend the nature of PIL in India. The state’s formal legal

24 Narendra Acharya Dev. (1946) Socialism and National Revolution, Padma publications, Bombay.

25 Dr. Gajendragadkar P.B. (1976) Law, Lawyers and Social Change National Forum of Lawyers and Legal Aid, New Delhi.

26 Kashyap, S. C. (1978) Human Rights and Parliament Metropolitan, New Delhi.

system has become so disappointed that it is no longer required by law to do justice, and if justice is done by chance, we congratulate ourselves on our good fortune. In these circumstances, the process of social reform through Public Interest Litigation or Social Action Litigation is one of the best things that has emerged in the country in recent years.

PIL is a crucial tool for enacting social change. People from all walks of life benefit from its

efforts to better their lives. It belongs to everyone and is only ever used to administer justice. Developing nations like India profited from the creation of this legal tool. PIL has been employed as a tactic in the fight against societal evils. It is an institutional effort to help the less fortunate members of society. The Supreme Court in **Bandhua Mukti Morcha v. Union of India**,²⁷ ordered the release of bonded labourers. The court in **Murli S. Dogra v. Union of India**,²⁸ prohibited smoking in public places. The Supreme Court issued guidelines for rehabilitation and compensation for rapes of working women in the landmark case of **Delhi Domestic Working Women's Forum v. Union of India**.²⁹ In **Vishaka v. State of Rajasthan**,³⁰ the Supreme Court established detailed guidelines for preventing sexual harassment of working women in the workplace. The researcher in the next point will discuss some recent judgments of the Supreme Court in concern of social transformation and providing social justice.

5.2 Right to Free and Compulsory Education:

From the commencement of the Indian Constitution, the Right to Education was the Directive Principle of State Policy incorporated in Part IV under Article 45. But the Hon'ble Supreme Court in 1992 declared the right to free and compulsory education as a fundamental right which directly flows from the "Right to Life and Personal Liberty" under Art 21 of the constitution. In 2002 parliament took the historical step and amended the constitution by inserting Article 21A.³¹ to implement the right to free and compulsory education for every child from 6 to 14

27 (1984) 3 SCC 161)

28 (2001) 8 SCC 765

29 (1995) 1 SCC 14

30 (1997) 6 SCC 241

31 "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

years of age as a fundamental right and also inserted clause (k) of Article 51A.³² as a fundamental duties of the parent and guardian. In 2009 the parliament enacted "The Right of Children to Free and Compulsory Education Act 2009" which came into force from 1st April 2010 to provide free and compulsory education from 1st to 8th standard to every child. This act is a social revolution in Indian society for the welfare of children. Thus it can be seen that the law protects the life of the children.

5.3 Role of the Judiciary as an institution of social change:

Through its liberal and pro-active interpretation of the constitutional provisions, the Supreme Court has been a crucial institution for social transformation. According to sociological legal theory, the Supreme Court of India has contributed significantly to social change by making justice accessible to the general public. There are three traditional roles for the Indian judiciary: adjudication rule³³ and conflict settlement; rule interpretation³⁴ and interorgan control; and regulatory functions³⁵ over the legislative and government. According to the constitution, rule interpretation is the most essential instrument in the hands of the judiciary for bringing and accelerating social change. With the advent of 'Judicial Activism'⁶² in the realm of judicial functions in modern times, the judiciary may give more liberal and progressive interpretations of constitutional provisions and this is surely one of the 62 "Judicial activism is the extended version of the judicial review power to overturn government actions. In general, the phrase is used to identify undesirable exercises of that power, but there is little agreement on which instances are undesirable."

32 "who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

33 "An adjudication is a final legal judgement or judgement, but it can also refer to the process of settling a legal issue or claim through the court or justice system, such as a decree between the defendant and the creditors in the bankruptcy process."

34 "It is the process of determining the true meaning of a statute's language. The Court is not expected to interpret arbitrarily, and as a result, certain principles have emerged as a result of the Court's ongoing work. These ideas are also referred to as "interpretation rules."

35 "The Apex Court as the final arbitrator of the law, the Court is responsible for assuring the people of different countries of the promise of equal justice under the law, as well as serving as the Constitution's custodian and translator."

The Supreme Court of India has rendered several decisions in various cases that have a large impact on Indian society. Some of these cases are discussed below:

In **I.C. Golaknath v. State of Punjab**,³⁶ the Supreme Court ruled that Parliament could not amend any of the fundamental rights incorporated in part III of the constitution. The main issue, in this case, was that the Golaknath family owns about 500 acres of farmland in Jalandhar, Punjab. The state government, however, cited the Punjab Security and Land Tenants Act, 1953 which said that the Golaknath brothers could only keep thirty acres apiece, a few acres would be given to tenants, and the remainder would be considered excess. The Golaknath brothers appealed the ruling in court, and the case was eventually referred to the Supreme Court in 1965. The Golaknath

family challenged the 1953 Punjab Act in a petition filed under Article 32,³⁷ which is a fundamental right to constitutional remedies. They claimed that the Act violated their constitutional rights to acquire and keep the property and practise any profession [Article 19 (1) (f)⁶⁵ and (g)],³⁹ as well as the fundamental right to equality and equal protection of rights (Article 14).⁴⁰ The question, in this case, was whether the amendment was a law, as defined by Article 13(2)⁴¹ of the constitution, and whether or not the Fundamental Rights may be changed.

In 1967, the Supreme Court held that the Parliament could not limit any of the fundamental rights guaranteed by India's constitution.

Regarding the basic structure of the Constitution, the Supreme Court in the **State of Madras v.**

36 AIR 1967 SC 1643

37 "Individuals have the ability under Article 32 of the Indian Constitution to petition the Supreme Court for justice if they believe their rights have been "unduly deprived."

38 "This article was omitted by the 44th Constitutional Amendment Act 1978. It guaranteed the Indian citizens a right to acquire, hold and dispose of property which was not possible due to economic differences."

39 "This article guarantees any citizen of India to practice any profession or to carry out any occupation, trade or business. This article is however subjected to Article 19(6) which states the reasons for restriction imposed by the state upon the above right of the citizens."

40 "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

41 "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Champakam Dorairajan,⁴² held that "the Directive Principle and Fundamental Rights should be in harmony and balance. The Court also stated that Article 46 is the Directive Principle and cannot be used to override fundamental rights."

In **Sarla Mudgal v. Union of India**,⁴³ When determining the issue related to 'marriage,' the Supreme Court held that "such matters are handled by personal laws and that one's personal law cannot be overcome by another's personal law. In this case, the Court also followed Pound's interpretation of sociological jurisprudence, which states that where there are conflicts among the interests, the interests on a similar level must be weighed together."

In **Ashok Kumar Gupta & Ors. v. State of U.P. & Ors**,⁴⁴ The Court's perspective regarding social change is heavily influenced by the observations made therein. The case was a challenge to specific respondents' promotion within the State of Uttar Pradesh's Public Works Department. The obiter of the Court complete to justify the posture it took while defending the destitute and underprivileged is relevant for our analysis, not the consequence of the case.

Justice K.S. Puttaswamy (Retd) v. Union of India,⁴⁵ In this landmark judgment, a 9-judges bench of the Supreme Court upheld “the right to privacy as a fundamental right derived from Article 21 of the Indian Constitution. The right to privacy is an essential and integral part of the Constitution, which protects fundamental rights. The key point of contention in this area is between an individual’s right to privacy and the government’s legitimate goal of enforcing its regulations, and a balance must be maintained while continuing to do so.”

In **Common Cause (A Registered Society) v. Union of India**,⁴⁶ a constitution of the Supreme Court comprising (Chief Justice Dipak Misra and Justices A K Sikri, A. M. Khanvilkar, D Y Chandrachud and Ashok Bhushan) held that the right to a dignified death is a fundamental right. The right to execute advance medical directives is a statement of a person’s right to bodily integrity and self-determination that is independent of any state acknowledgement or regulation. The Court said that:

“The right to live with dignity also includes the smoothening of the process of dying in case

42 AIR 1951 SC 226

43 AIR 1995 SC 1531

44 (1997) 5 SCC 201

45 (2017) 10 SCC 1

46 (2018) 5 SCC 1

of a terminally ill patient or a person in PVS with no hope of recovery. A failure to legally recognize advance medical directives may amount to non-facilitation of the right to smoothen the dying process and the right to live with dignity.”

In **Navtej Singh Johar v. Union of India**,⁴⁷ the Supreme Court unanimously held that “section 377⁴⁸ of the Indian Penal Code is unconstitutional because it violates fundamental rights incorporated under Articles 14, 15, 19, and 21 of the Indian Constitution. Furthermore, the Apex Court overruled the decision in **Suresh Kumar Koushal and others v. Naz Foundation and others**.⁴⁹ It further stated that section 377 of IPC will only apply to non-consensual sexual happenings done against adults or minors.”

In the case of **Joseph Shine v. Union of India**,⁵⁰ the Supreme Court also decided “on the constitutional legality of Section 497⁵¹ of the Indian Penal Code, which criminalised adultery.” The court stated that “any system that treats a woman with indignity, unfairness, inequality, or discrimination invokes the wrath of the Constitution,” and that Sections 497⁵² IPC and 198(2)⁵³ CrPC are in violation of Articles 14, 15 (1), and 21 of the Indian Constitution, and so ultra vires the Constitution.

47 (2018) 10 SCC 1

48 “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

49 (2014) 1 SCC 1

50 (2018) 2 SCC 189

51 “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such a case the wife shall not be punishable as an abettor.”

52 Ibid

53 “For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by an offence punishable under section 497 or section 498 of the said Code: Provided that in the absence of the husband, some person who had the care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.”

Shafin Jahan v. K.M. Ashokan, 54 in this case, the Supreme Court overruled a Kerala High Court decision declaring Hadiya and Shafin Jahan's marriage null and void. The Supreme Court upheld “the marriage, ruling that the NIA's investigation into the marriage and any other criminality should continue, but that there should be no interference with the marriage. The ruling was delivered by a three-judge bench consisting of Chief Justice Deepak Misra, Justice A.M. Khanwilkar, and Justice DY Chandrachud, and Hadiya was removed from her parents custody against her will. After she declared her desire to continue her education, the judge ordered her to return to college.”

The constitution of India provides liberty and freedom of choice to every individual. In the case of **Lata Singh v. State of Uttar Pradesh**, 55 it was observed by the Supreme Court that “the right to marry is a component of the Right to life enshrined under Article 21 of the Indian Constitution. The court further held that India is a free and democratic country and a person is free to marry whosoever he/she likes after attaining the age of majority which is 21 for boys and 18 for girls. Parents of the boy or girl do not have any right to harass or instigate acts of violence against them. Therefore, we can say that a person can marry whomsoever he/she likes irrespectively of the caste and it is the fundamental right to marry guaranteed under the constitution of India.”

The Supreme Court in **Laxmibai Chandaragi v. The State of Karnataka**, 56 observed that educated younger boys and girls are choosing their life partners, which is contrary to societal standards. When two mature persons choose to marry, the consensus of their family, community,

or society is not required, and their consent must be given priority.

In this case, **Indian Young Lawyers Association v. State of Kerala**,⁵⁷ the Supreme Court with the majority ruled that Rule 3(b)⁵⁸ violates the Constitution, Section 393 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, and Section 494 of the 1965 Act, which states that the regulations/rules enacted in this act shall not discriminate at all way against any Hindu on the base of his/her membership in a specific section or class. The Supreme Court considered this prohibition as “hegemonic patriarchy” (hegemonic patriarchy means that

55 (2006) 5 SCC 475)

56 (2021) 3 SCC 360

57 (2019) 11 SCC 1

58 The Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry Rules, 1965 (Rules 1965) states that “Women at such time during which they are not by custom and usage allowed to enter a place of worship” was the basis of the practice of excluding women of the age group of 10 through to 50 years to enter the temple.

patriarchy has become such an overarching concept that discrimination based on it seems to be common sense to the point that not only males but also women become supporters and perpetrators of the discriminatory concept).

It stated that discrimination based on biological and physiological characteristics such as menstruation was unconstitutional. It amounted to inequality based on a biological trait unique to men and women. It was an affront to women’s rights to equality and dignity. According to the Supreme Court, a ban into the temple based on the belief that menstruation women are “polluted and impure” is a type of untouchability, because purity and pollution stigmatised women. The Apex Court further held that Ayyappa followers do not create a separate religion solely because of their devoutness to Lord Ayyappa, but slightly as part of Hindu worship.⁵⁹

The Supreme Court overruled a 1951 Bombay High Court decision in the case of State of Bombay v. Narasu Appa Mali,⁶⁰ which concluded that personal law is not ‘law’ or ‘law in force’ under Article 13 and that immunising customs takes away the constitution's priority. Customs and personal law have a profound impact on people’s civil status, and no customs or usages can entitle the sovereignty over the Constitution and its vision of protecting the sanctity of self-respect, liberty, and equality.

6.0 Conclusion :

The researcher comes to the conclusion that societal problems are interconnected rather than isolated, and that the law serves as a mirror for understanding how individuals are connected to

one another. The effectiveness of law and other devices for social transformation should be coordinated with India's social and cultural life. It is unavoidable to transform a social structure in accordance with the needs of the times and the people's modes and mores. An outstanding balance between the instrumentality of law and people's folkways and mores would cover the path for actual justice in action, resulting in societal empowerment. The law and the Judiciary could be used as a tool for social change.

59 Ibid

60 AIR 1952 Bom 84

