

LAW AND SOCIAL TRANSFORMATION IN INDIA (2011). By Krishna Pal Malik and Kaushik C. Raval. Allahabad Law Agency, Law Publishers, 16/2 Mathura Road, Plot No. 33, Faridabad, Haryana. Pp. XL + 572. Price Rs. 365/-.

LAW, IN the opinion of Roscoe Pound, is “a social institution to satisfy social wants”, and an instrument of social engineering. It is inextricably connected with society, both regulating and maintaining order and bringing about reform and progress. The book under review focuses on the inter-relationship between law and society, examining the role of law as an instrument of social transformation and reform. The book, as its ‘preface’ points out, has been specially designed for the LL.M course of the same name. The book, which is in its third edition, contains 27 chapters classified into five parts covering a wide range of areas of interaction between law and society and the impact of each on the other.

The five chapters of part I, titled “Law and Social Change”, provide an introduction and background to the subject, which seeks to study prevalent social problems and their solutions through a ‘legal approach’. Chapter 1 considers law as an instrument of social change noting that law must be alive to social change and must be adapted in tune with it. Though the Constitution, or the ‘law of the land’, needs to be a permanent and solid law, provisions have been made for amendment thereof as it must also be flexible to provide for the needs of the future. The role of the judiciary in the process of social transformation and application of the law in accordance with the need of the times is also emphasized. Some important instances of social change brought about through legislation and judicial pronouncements in the Indian context are discussed (for instance, the abolition of polygamy, evolution of public interest litigation to provide a voice to people of the poor and deprived classes, and more recent changes such as admissibility of evidence through video-conferencing, recognition of live-in relationships, *etc*). Chapters 2 and 3 look into the influences of society and historical developments on law, specifically the role of tradition and culture (chapter 2) and of English law (chapter 3) in the codification and reform of Indian laws and judicial institutions. These chapters note that law interacts with tradition and culture at several levels with tradition and culture being both the ‘origin’ or source of guidance for the development of law (for instance, family laws in India, and the traditional system of dispute settlement) as well as a ‘hindrance’ with some traditions having to be reformed/eliminated through law (for instance, sati, child marriage, *etc*). English law has also exercised a great influence on the Indian legal system shaping its judicial institutions systematically and introducing codification. It thus notes that Indian law is a product of numerous sources from Vedic texts to Islamic laws to common law adapted to local conditions.

Chapters 4 and 5 deal with social institutions of religion, community, regionalism, language, and discrimination considering both the relationship between law and these social institutions (chapter 4) and the responses of law towards these institutions (chapter 5), including treatment of these issues under the Constitution and statutes, judicial responses and developments in these areas.

Parts II and III of the book, focus on the social position, issues, and problems faced by two vulnerable groups in Indian society, namely women and children, and the efforts undertaken by law to address them. Part II, “Women and the Law” discusses the issue of gender injustice and its various forms (chapter 7) highlighting that gender injustice is not an issue peculiar to India but a global problem. Constitutional provisions for the protection of women in India and specific types of injustice faced by them in the form of pre-natal abortions, malnutrition, powerlessness, denial of education, and sexual harassment at the workplace, among others are discussed. Chapter 6 considers in detail crimes against women including matrimonial and dowry related offences, sexual offences, trafficking, and offences related to termination of pregnancy, with the concepts, major provisions of the relevant legislations, their interpretation/application by courts, and recent amendments thereto, being discussed. Efforts towards the empowerment of women have been made internationally through various human rights instruments as well as at the domestic level through constitutional provisions and numerous legislation, addressing various issues from basic human rights such as equality and non-discrimination, to property rights, issues relating to employment such as equal pay for equal work and maternity benefits, termination of pregnancy and others including the more recent 2005 Protection of Women from Domestic Violence Act. These instruments and legislation form the subject of chapter 9. The authors conclude that while numerous provisions for empowerment exist, they can be called ‘empowerment’ only if strictly implemented. They are of the opinion that offences against women should be dealt with by the exemplary theory and maximum punishments prescribed by law awarded, instead of only nominal punishments as are seen in many cases. Chapter 8 of the book provides an overview of the National Commission for Women (NCW), its composition, powers, and functions and some important cases of crimes against women in which the NCW has conducted inquiries or made interventions.

Part III focuses on “Children and the Law” and addresses specific areas in which children face exploitation in society and the measures that have been taken to combat the same. Chapter 10, dealing with the issue of child labour sets out the concept and magnitude of the problem in the country and across the globe, and looks into the international conventions including those of the ILO to which India is party and the major legislative provisions in this regard. An overview of the legislative measures to combat the worst forms that child labour may take including

trafficking and the sale of children, debt bondage, forced labour, and commercial sexual exploitation is also provided and judicial directions relating to child labour with regard, *inter alia*, to compensation by employers and creation of a corpus fund as well as other issues in this context expounded on by the court such as liabilities of employers engaging children for labour, *etc.* are also discussed. One of the most heinous crimes in society, sexual exploitation of children, is dealt with by chapter 11, which takes note of the international, regional, and national legal framework on this issue. It also highlights the opinion and directions given by the judiciary. It points out in the context of prostitution that, persons in prostitution are not criminals but many times victims lured into the situation because of traffickers, procurers, *etc.* and it is through training on this issue, that functionaries such as the police can be sensitized to deal with it in an appropriate manner. Other forms of exploitation of children including pornography which has assumed new dimensions in the internet age, and sex tourism are also looked into, as is the issue of child marriages, another problem facing our society, and the provisions of the Prohibition of Child Marriage Act, 2006. Recommendations in various studies for an overhaul of legislation for protection of children from exploitation have also been discussed, which include properly defining violations and providing clear guidance on procedures for implementation.

Another area discussed in the book in which children may face abuse is that of adoption which is considered in chapter 12. The chapter discusses the concept and objects of adoption and highlights some of the problems in this context in India such as lack of a uniform law, absence of statutes on inter-country adoptions, abuse of adoption, lack of international statutes, and property distribution issues. The provisions of the Convention on the Rights of the Child, personal laws and statutes are discussed and the guidelines of the Supreme Court on inter-country adoptions are elaborated upon. The 2004 Government Policy for the Welfare of Children is considered detailing the eligibility criteria, process, and agencies with regard to adoption. The position of education and literacy in India and issues relating thereto including commitments under international law, constitutional provisions, the Right of Children to Free and Compulsory Education Act, 2009, judicial responses and problems are examined in chapter 13. Chapter 14 sets out the salient features of the Commission for Protection of Child Rights Act, 2005 and the mechanisms established thereunder.

Law is an instrument not only to provide order in society but also an important means of social reform and progress. Modernization of the Constitution, laws, and reform of social institutions are some of the issues taken up in the six chapters of part IV, "Modernization and the Law". Chapter 15 discusses the fundamental duties introduced in the Constitution in 1976, which in the authors' view represent the modernization of the Constitution. The specific duties, statutory provisions which

address their violation, and judicial responses thereto are examined. Chapter 16 studies reform in three areas, family law (through codification, restriction of child marriage, abolition of polygamy, provisions on maintenance, and introduction of family courts, among others); the agrarian system (measures such as commercialization of agriculture and involvement of the World Bank, introduction of cooperative banks, establishment of NABARD, *etc.*) and industry (reforms in areas such as environmental protection, liability in respect of hazardous enterprises, and prohibition of child labour). Reforms in processes in the criminal court (through introduction of plea bargaining, compounding of offences and compensation to victims) and in the civil court (by means of application, *inter alia*, of alternative dispute resolution mechanisms) are looked into in detail in chapters 17 and 18. These mechanisms address the issues of mounting arrears in courts, provision of speedy and inexpensive justice, and protection of victims. Chapter 19 sets out the history of prison reforms in the country, recommendations of various committees appointed in this regard, statutory provisions, the concept of open prisons and their introduction in the country, and judicial pronouncements on issues such as rights of prisoners including their rights to read and write, prohibition on leg-irons, number of family interviews, parole, and bail. The last chapter of this part examines the changes brought about through the 73rd and 74th Constitutional Amendments which introduced decentralization and local self government through *panchayats* and municipalities, training local leadership and assigning them higher responsibilities to serve the people efficiently.

The final part of the book, entitled “Alternative Approach of the Law” considers a number of theories, approaches, and issues not often discussed when studying the inter-relationship between law and society. Chapter 21 explains the ‘Sarvodaya Movement’ headed by Acharya Vinoba Bhave, its history, the ‘Bhoodan’ or Voluntary Land Gift Movement which also took the form of statutes (Bhoodan Yajna Acts passed by various states), and their impact on tenancy and agricultural land legislation. The right to property in India, eminent domain and land acquisition are examined and socialist thought, which seeks, *inter alia*, to eliminate inequalities in income and status, is discussed in chapter 24. The chapter also looks into Constitutional provisions of articles 14, 16 and 39 (d) which are important in the context of socialism.

The contributions of some schools of thought to our understandings of society, law and justice are studied in chapters 25 and 27. Chapter 25 evaluates Marxism, its objectives, philosophy, central themes, its adoption in India and its major contributions while chapter 27 looks into the approaches of important thinkers during the freedom struggle including Mahatma Gandhi (stateless society, ten principles, *satya* and *ahimsa*, *etc.*); Mahatma Phule (education of women, women’s empowerment, and untouchability in society); Ambedkar (fight against untouchability

and elimination of discrimination, *etc.*); Bal Gangadhar Tilak (promotion of nationalism and equipping the young through education, among others); Nehru (contributions to nationalism, and the civil disobedience movement, *etc.*) and Dayanand Saraswathi (education of women and establishment of educational institutions, abolition of practices such as sati, casteism, *etc.*).

The problem of dacoity faced in the Chambal region, surrender of dacoits and legal provisions in this regard are examined in chapter 22 which also considers issues such as morality prevalent among these groups. The Naxal movement and related issues are highlighted in chapter 26 which looks into measures to address this serious problem including efforts toward rehabilitation.

*Nyaya panchayats* and *gram nyayalayas* introduced through the Gram Nyayalaya Act, 2008 and which supplement the former, provide speedy, transparent, and inexpensive justice at the village level providing access to justice to the disadvantaged sections of society. Their role and salient features are examined in chapter 23.

The book covers a wide range of issues in the context of law and social transformation in various areas ranging from family and personal laws, to the impact of and on social institutions of community, language and religion to civil and criminal processes, mechanisms for alternative dispute resolution, and local government in all of which areas, law has attempted to address the problems afflicting society and bring about transformation. Despite the broad range of topics covered, the authors have discussed each issue fairly comprehensively. However, the scope itself prevents in-depth coverage. An overview of the important legal provisions and judicial pronouncements has been provided and in most chapters, an international law perspective has also been included. The authors have also included discussions of concepts, statistics, historical perspectives and recommendations made by various committees and studies which would help readers in understanding the issues clearly. The book has also been updated with the legislative developments and judicial pronouncements till the date of publication (2011). The fact that the book is already in its third edition testifies that it has been well received.

However, there are some areas in which improvement can be brought about. The arrangement of chapters is one such area. For instance, the chapter 'Crimes against Women' has been placed before the more general chapter on 'Gender Injustice' and the chapter on 'Empowerment of Women' has been placed after the chapter on the 'Women's Commission'. Further, reforms in the area of family law have been placed in the same chapter as agrarian and industrial reform with which there is no connection. Also, the discussion on abolition of the *devdasi* system would be better placed under the head 'Trafficking' in the chapter on 'Crimes against Women' rather than 'Family Law'. The chapters in the final section could also be better arranged. While the book deals with topics set out for the LL.M course on Law and Social Transformation in India comprehensively, it may be suggested that

besides the discussion of women and children to which two parts of the book have been devoted, a chapter may be added focussing on other vulnerable social groups such as older persons, persons with disabilities, *etc.* which would make the book more comprehensive. Also, in the chapters on 'Children and the Law', some discussion may be included of the provisions of the Juvenile Justice Act with regard to juveniles in conflict with the law on which the Act has brought about many important changes. In the chapter on 'Indian Marxism and Justice', while the salient features and tenets of Marxist thought and its adaptation in India are examined, the Marxist view of justice is not clearly brought out. Moreover, the book requires careful editing to remove the typographical errors that have crept in.

The book would prove useful not only for students of LL.M for whom it has been specifically designed, but also for students at the undergraduate level in law, and graduate and undergraduate levels of other disciplines dealing with issues related to law and society. With its comprehensive coverage, it provides a ready reference on the subject.

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