

LM – 3019

LAW AND SOCIETY

OBJECTIVE OF THE COURSE

This course focuses on problems, of Law as an instrument of social change. Some areas from Indian Social setting will be selected and an attempt will be made to study the effectiveness of law and legal measure in bringing about desired attitudinal, structural, behavioral changes in the society.

Not all topics on the course can be discussed in the class despite extra-sessions that may need to be held from time to time. Hence a couple of topics will be by way of self-learning.

Essay: The presentation of the class essays by the students shall be scheduled from October 15, onwards – All students are required to settle the topic of their essay with us latest by the third week of September.

Topic: 1 Law as a means of social change: A theoretical Perspective

What is the relationship of law with social change? Can law change the society? Do you think that legal system is conditioned by the structure of society? What is the relationship between law and material conditions and how do they act on each other? Are the social movements one of the most powerful means of social change? Can you identify various characteristics of social movements?

1. G. Frank and Marten Frentres, Nine thesis on Social Movements, EPW, August 29, 1987 p. 1503-10.
2. D. Balbus “Commodity Form and Legal Form” 11, Law and Society Review 571 (1977)
3. Y. Dror “Law and Social Change” in Aubert (ed) Sociology of Law p. 90.
4. V.K. Dixit, “Personal Liberty and Social Relatives” 15 Marxist Miscellany 85-104 (1979).
5. Allen Essay on Jeremy Bentham, ‘Function of the judiciary in modern society, 1971 pp. 181-191.
6. R.D. Yadav, ‘Law Social change and communal harmony 1971 pp 11-16.
7. I.C. Sexena, ‘Consumer Legislation Law and Social Change 1993 Law Social change and communal harmony pp. 77-80.
8. D.D. Sharma, ‘Some Glimpses of Judicial responses to social change legislation in Rajasthan in Law Social change and communal harmony pp. 81-95.
9. Satyendra Tripathi, ‘Anomic and Social change in India 1985 pp. 37.
10. Upendra Bakshi the rule of Law in India, International Journal on Human Right No. 6 year for – 2007 pp 7-25.
11. W. Friedmann, Law in a Changing Society (2003) Universal Part-I and Part-VI.

Topic: 2 Non – State Law

Usually we understand that State alone creates Law. We are not prepared to concede any Law creating role to non-state groups of people. We would see that Caste Panchayats and Lok Adalats and caste panchayats. Are the Courts or state sponsored adjudicatory system only forums setting disputes?

1. Marc Galanter, ‘Justice in Many Rooms; Courts, Private order in and indigenous Law’ 19 Journal of Legal Plural 1-47 (1981).

2. U. Baxi, "Form Takrar to Karar" 10 Journal of Constitutional and Parliamentary Studies 52 (1979).
3. M.M. Fealey "The concept of law in Social Science", 10 Law and Society Review 497 (1976).
4. L.C. Dhingra, 'Constitutional Intrusion into personal Law a critical judicial appraisal in Law Social change and communal harmony pp. 29.
5. Upendra Bakshi, 'The Nyaya Panchayat' towards sociology of Indian Law 1986 pp. 95-108.
6. Aubert (ed.) Sociology of Law pp. 161-170.

Topic: 3 Women and the Law

A. Violence Against Women : What are the social factors responsible for violence against women? How far is law in its normative, institutional and cultural dimensions responsible for this? How and to what extent law can control violence against women with specific reference to offenses of dowry, Sati, Domestic Violence and Female Foeticide.

1. Ram Ahuja 'Crime and Women' (1987) Rawat Publication, Jaipur.
2. Law Commission of India 84th Report on Rape and Allied Offences 1980.
3. Women march towards dignity edited Kusum 1993 Regency New Delhi.
4. Vina Mazumda, 'Towards equality – status of women in India' Women & the Worlds 1978 pp. 17.
5. R.M. Sharma, 'Judicial attitude on the problem of working women' in Law Social change and communal harmony pp. 41-52.
6. S.S. Khara, 'Culpability of Sati – Adequacy of IPC and in adequacy of the commission of Sati Prevention Act in Law Social change and communal harmony pp. 53-58.
7. Priti Mishra, 'Domestic violence against women legal control and judicial response (2007) DEEP & DEEP New Delhi.
8. Towards equality – the unfinished agenda – status of women in India – 2001 NCW 2002.
9. Upendra Bakshi, 'From Human Rights to the right to be a woman' Engendering Law, Essays in honors of Lotika Sarkar (EBC) 1999 pp. 117-138.
10. Kirti Singh, 'Violence against women and the Indian Law' in Violence, Law and Women rights in South Asia (ED) Savitri Goonesekere (2004) sage pp. 77-147.
11. Sex – selective Abortion in India, (ed) Tulsi Patel (2007) Sage.

B. Dowry and Bride Price : What is meant by dowry and bride price? Can you associate these practices with different classes and castes of people? What are the Social causes of these practices? How far can law control these practices?

1. V.K. Dixit – Sociology and Economics of Dowry and Bride Price International Journal of the Sociology of Law 1992 London.
2. V.K. Dixit, "Concept and Function of Dowry and Bride Price", XIV (3) Indian Bar Review 418-427 (1987).
3. Virendra Kr., "An Evaluation of Dowry Prohibition Law", Social Policy and Protection of Weaker Sections, (ed.) D.N. Saraf 325-42 (1987).
4. Shalini Baneia and Leela Visaria 'Sociology of Bride Price and Dowry' EPW Vol. XIX pp. 648 April 15, 1984.

Topic: 4 Law and the Liberation of bonded Labour

Who are the bonded labourers? What are the sociological, historical and structural causes for the bonded labour system? What steps have been taken by the government for eliminating bonded labour systems? How far the law has been effective?

1. Parmanand Singh “Bandhua Mukti, Social Action and the Supreme Court” XII (2) Indian Bar Review 228-41 (1989).
2. _____. K. Pande Bonded Labour in India.
3. Bonded Labour System (Abolition) Act, 1976.
4. Sivaramayya “Bonded Labour” in Law and Poverty (ed.) Upendra Baxi 237-48 (1988).
5. N.D. Kamble, ‘Bonded Labour in India 1982.
6. S.S. Prakash, ‘Bonded Labour and Social Justice 1990 (DEEP & DEEP)

Topic: 5 Caste System, Untouchability and the Law

What is meant by the Caste System? Who are the SCs? Movements for the emancipation of the untouchables during nationalist movement. Avenues of changes in the post-independence India. Indian Social policy, constitutional commitment and judicial responses. Effectiveness of the device of reservation as a means of change among the SCs. Is reservation a guaranteed fundamental right enforceable in a court of law?

What is meant by Untouchability? What steps have been taken by the government to eradicate the practice of untouchability? How far the anti-untouchability law has been effective? What are the social, structural or institutional causes for atrocities on the weaker sections of the society?

1. Mata Din “Supreme Court on Reservation”, (1988).
2. Mata Din “Constitutional Safeguards For SC/ST” Delhi Law Review 42(1974).
3. Upendra Baxi : “Political Justice : Legislative Reservation for SC and ST and Social Change” Ambedkar Memorial Lectures 1978.
4. Parmanand Singh : “Some Crucial Problems of Tension between Equality and Compensatory Discrimination” Comparative Constitutional Law (ed) M.P. Singh 336-52.
5. Ghanshyam Shah et al, ‘Untouchability in Rural India (2006) Sage.
6. Joshi, Barbara R., ‘Democracy in search of equality: Untouchable politics and Indian Social change (1982).
7. Arvind Sharma, ‘The caste system (Varna, Jati) and Human Right in Hinduism & Human Rights. A conceptual approach (2006) Oxford pp. 50-76.
8. B.R. Ambedker, ‘Caste in India: Their mechanism, Genesis and development’ in Class, Caste Gender (ed) Manoranjan Mohanty (2004) Sage pp. 131-153.
9. Class, Caste, Gender (ed) Manoranjan Mohanty (2004) Sage.
10. Law and Poverty, ‘Cases and Material (ed) Dr. L.M. Singhvi (1973) pp. 45-101.
11. Upendra Baxi “Untouchability: Constitutional, Law and Plan” Law and Poverty (ed) Upendra Baxi 165-75 (1988).
12. Upendra Baxi, “The Protection of Civil Rights Act, Pitfalls in Implementation” Law and Poverty (ed) U. Baxi – 175-85 (1988).
13. Protection of Civil Rights Act 1955.
14. M.D. Kamble, Atrocities on Scheduled Castes in post-independence India.

Topic: 6 Social Action Litigation and Social Change

Do you think that SAL/PIL is slowly emerging as an effective medium of struggle against domination and Victimization? What according to you is the sociology of PIL/SAL? Can this strategy be effectively used as a means of social change? What has been the response of the government to the judicial initiatives? To what extent the victim groups (Bonded Labour, Undertrials, Untouchables, Landless Labourers) have been liberated through SAL/PIL?

1. Upendra Baxi "Taking suffering seriously: Social Action Litigation in the Supreme Court of India" Law and Poverty (ed) U. Baxi 387-415 (1988).
2. Upendra Baxi "Law Struggle and Social Changes: An Agendum for Social Activities" 35 Social Action 118-25 (1985).
3. Parmanand Singh "Access to Justice: Public Interest Litigation and the Indian Supreme Court" 10-11, Delhi Law Review 156-73 (1981-82).
4. Parmanand Singh, "Judicial Socialism and Promises of Liberation", 28, J.I.L.I. 336-47 (1986).
5. Sampat Jain, Public Interest Litigation 2002 (DEEP & DEEP).
6. Mamta Rao, Public Interest Litigation 2004 (EBC).
7. Vidheh Upadhyay, Public Interest Litigation 2007 (Lexis Nexis).
8. I.P. Massey, Public Interest Litigation or Social Action Litigation Administrative Law pp. 358-375.

NOTICE: The synopsis is not to be treated as exhaustive of the scope of the paper and the students are expected to read other materials covered by the title of the paper.

Question Paper 2007

Attempt any FOUR questions. All questions carry EQUAL marks.

1. India made various attempts to reform personal laws to suit the changing dimensions of concept of justice. Critically examine the constitutional intrusions made into personal laws in the pretext of social change.
2. Critically comment on the following observations made by the Supreme Court of India in State of U.P. v. Jeet S. Bisht, (2007) 6 S.C.C. (Cri) 586 at 616-617.

"With the advent of globalizations, we are witnessing a shift from formalism to a value-laden approach to law. In the contemporary scholarship, especially with the decimation of law as purely an autonomous discipline (with the emergence of cross-cutting realms such as law and Economics, Law and philosophy, Law and Society, I.P.r. et. al), we see that laws embodying a goal which may have its provenance in science other than law as well."
3. Examine in the light of statute law and case law whether we have achieved success in abolishing bonded labour in India. Give reasons for your views.
4. Do you think the device of reservations is an effective tool in achieving social justice? Examine the tension between equality and compensatory discrimination in the light of the decisions of the Supreme Court.

5. Analyse the institution of Public Interest Litigation in the context of wide interpretation given to Article 21 of the constitution so as to include various rights under Part IV. Explore whether the strategy of public interest litigation could be employed as an instrument of social change.
6. Write notes on any two of the following:
 - (a) Protection of Civil Right Act, 1955;
 - (b) Law and Morality;
 - (c) Nyayapanchayats;
 - (d) Dowry Prohibition Act, 1951.

Question Paper 2008

Attempt any FOUR questions. All questions carry EQUAL marks.

1. The Classical Marxian Theory rejects the possibility of law being used to bring about social change. Regarding law as a superstructure on technology and the economy, that theory admitted the possibility of a lag of law behind social change and fully conceived that it might take sometime for changes in technology and economy to be reflected in the law; but it would be inconceivable for law to bring about changes in the basic technology and economy of society.
Critically evaluate the above argument using Indian experience to illustrate and to substantiate your view.
2. How would you explain the concept of 'Non-State law'? How is it in its essential characteristics different from the 'state law'? What alternative models can you suggest to replace/supplement the state law and state centric administration of justice? Discuss.
3. The analytic frames of patriarchal law are not the spaces within which to create visions of feminist future. Accordingly, it is not enough to know what happens to women in the world shaped by law, law language and legal institutions, but necessary to challenge even the structure of legal thought as contingent and in same culturally specific sense 'male' implying the need for radical changes.
Examine and evaluate the above view in the context of violence against women and the impact of law response in India.
4. Unsociability was abolished by the Constitution of India but the Caste hierarchies continued. Caste infact gained currency in social and political mobilization reinforcing and expanding the hegemonic control of the high castes leading to phenomenal increase in atrocities against the schedule castes and the scheduled tribes.
Based on your assessment of the success or failure of the legal strategies employed in dealing with such atrocities thus far, what in your opinion needs to be done to effectively challenge the structural basis for such violence?
5. How would you evaluate the government's endeavours to identify, release and rehabilitate bonded labour over the past three decades since the Bonded Labour System (Abolition) Act was passed?
6. Critically examine the following:
 - (a) PIL/SAL movement in India.
 - (b) Legal response to the menace of Dowry