

LEGAL FRAMEWORK OF SOCIAL DEVELOPMENT IN INDIA

I. LAW AND SOCIAL DEVELOPMENT

One of the major involvements of the state in today's times is directing social and economic development. This is perhaps one of the most natural expectations of citizens from those who rule over their lives. The United Nations General Assembly acknowledges that "the right to development is an inalienable human right." Three sets of rights have been envisaged by it: "the first generation rights" (i.e. the individual, civil and political rights); the "second generation rights" (i.e. economic, social and cultural rights); and the "third generation of solidarity rights" (i.e. collective rights). The UN General Assembly Declaration on the Right to Development, adopted on 4th December, 1986 views the human person as the centre of all development processes and development policy and also the main participant and beneficiary of development. The Preamble to the Declaration charges the states to exercise their primary responsibility for the creation of conditions favourable to the realization of the right to development.

In the Declaration on Right to Development of the UN development has been defined as follows:

A comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom (emphasis added).

A perusal of this definition would reveal that it is narrow to view development only in the economic sense or in the sense of the Gross Domestic Product (GDP). Rather economic development should be viewed as a means to an overall conception of human development. Therefore, development has to be looked into in the holistic context. The collective aspects of development involve participation by people as individual, groups, and collectives in general as a way of life. How far this is provided for in a social system is a matter that differs from country to country. The basic starting point, however, is that social development would involve individual and collective opportunity to people "to participate in the national development decision-making process" and "implementing and monitoring of such plans" (Verma , 1998: 219).

In order to facilitate this notion of social development, it is important that the Government plays an important role in creating consciousness and interest in people to effectively participate in the

governance process. Societies often demonstrate restlessness and signs of protest if this most natural need of people participation is not attended to. Development would not just involve substantive development but procedural as well. The means are as important as the ends. Thus a developmental process which involves democratic and participatory means with a clear delineation of responsibility and accountability will perhaps be the most desirable form of developmental model. In order to promote such a model the state has to develop a set of conscious value choices depending on what kind of life its people want to lead.

This would involve effecting social change by legal means or otherwise. Modernizing states have traditionally used bureaucratic models of change, which led law and society scholars to study the "gap" between expected and actual change. But these models made "government and bureaucracy as central to the whole process of change" (Dhavan, 1989: lxiv). When bureaucratic indifference and delays subvert the people's agenda of social and economic entitlements, individuals and groups rely on the higher judicial set up to seek its activation. Thus, lately courts have been viewed as important institutions in affecting change through techniques such as public interest litigation (PIL) or proactive decision-making by them otherwise.

What model of social development and change a country adopts depends upon several considerations. Modernization discourse is known to be on the low ebb in today's post-modern world. Therefore, each country is looking for its own solution, even as globalization agenda is leading to a convergence thesis in several spheres i.e. solutions are also likely to be similar for similar problems occurring in different countries. Surely, however, one can learn immensely from appreciation of cross-cultural arrangements so as to devise suitable adjustment on the basis of others' experience.

II. **ELEMENTS OF INDIAN SOCIETY AND LAW**

India is a large country divided into 28 states and 8 union territories. Linguistically speaking, it has a variety of languages, dialects, and cultures. In a way, it can be said to be a cluster of nations. The cultural diversity is the hallmark of Indian society. More than 85 percent population consists of Hindus. Other major religions practiced are Islam, Christianity and Sikhism. Interestingly, in the plural Indian society there are strong feelings of regionalism and casteism. The former is not necessarily harmful, but the latter has always been a major cause of concern.

Hindu Indian society is divided into four broad varnas: brahmins, kshatriyas, vaishyas, and shudras. Especially the first two are known to be the upper castes, the third as intermediate caste, and the shudras as lower castes. Shudras are further divided into close to 4000 castes. Out of these are dalits which are also known as Scheduled Castes (A classification by the Indian Constitution for proactive state action). Most of the Scheduled Castes (SCs) have traditionally been the victims of the practice of untouchability by the upper castes as also the remaining castes in the shudra varna. This kind of dichotomization led to utterly inhuman treatment which SCs have been undergoing. In fact, a good

number of social development problems in India relate to the caste categorization of the Indian society. They are the issues related to abolition of untouchability, bonded labour, positive discrimination in favour of SCs/STs and other backward classes, political reservations for deprived caste groups, issues in primary education, hegemonic local governance by upper castes, etc..

Another issue requires attention. The model of development that we followed has resulted in emergence of distinct economic groups. It is estimated that about 150 to 200 million out of 950 million people in all are a powerful middle class: the poor, the wretched, dalits belong to the latter. The young generation belonging to the former coming out of English-medium schools lacks bilingualism. The young generation belonging to the other class is either illiterate or has studied in

government schools, thus continuing to remain monolingual. The elite group (former) does not understand the needs and problems of the latter; unemployment, low-paid jobs continue to haunt the latter group in its search for a cross-over to the former. This has affected the social fabric of Indian society. The problem of social development has to deal with this issue squarely.

The Indian Constitution which came into operation from 26 January 1950 commands law for production of politics and a programme of action for empowering the poorer and disempowered sections including unorganized labour, women, children, scheduled castes, and OBCs. It promises to build a just and egalitarian social order so as to create a sense of belonging in the poor, the wretched, dalits. Enlightened society based on the cherished goals of the Constitution, which includes administering social, political and economic justice. This requires asking where power lies (Kjonstad and Wilson, 1997). When the institutions created by the Constitution fail to work as per the projected intentions, it leads to privatization of certain portions of the state whereby dominant power groups subvert the social values implied in the societal fabric. It is these power groups which often buy the autonomy of various state institutions for their personal ends and create situations of crisis of governance. The relevant question to ask is whether this reflects a problem of the system or individual and group attitudes, and how far law can be used to turnaround the situation. In fact, this is an egg-and-chicken situation where one affects the other. In a plural society dominated by some, it is necessary that people in general are involved in state processes so as to tackle the problem of alienation. Among others, this requires an efficient working of the legal system.

The Indian legal system has multiple sources: legislative, judicial, quasi-judicial, customary, secular, religious. It has behind it centuries of juristic thought, which is reflected in the rules of family law. Some rules have come from middle ages. The great task of nation-building undertaken in the post-independence India has had tremendous impact both on the structuring and functioning of the Indian legal system. Most of the laws in the area which affect the primary aspects of people lives have been enacted by the centre, thus providing a uniformity in legal rules throughout. The regional variations in others have come about due to legislative action of the respective states.

Some of the salient features of the Indian legal system include: guaranteeing certain fundamental freedoms and directives to the state by the Constitution as per Chapter IV, which permeates the

entire Indian law; centre and states sharing the legislative power as per the Seventh Schedule of the Constitution; existence of comprehensive codes on several aspects of law; adversarial rather than

inquisitorial legal procedures; and rule of law. Also, Indian law recognizes precedent as an important source of law unlike the civil law system which does not recognize the binding nature of case law.

Law Commission of India plays an important role in lawmaking. It is a non-statutory advisory body, which was created in 1955 to recommend to the Central Government need for reform in various laws, especially those which directly affect the general public. A large number of reports have been submitted by it to the government for necessary action. Many of these reports are cited in court judgements by the higher judiciary even though they have no legislative force. The reports also influence academic opinion.

III. **INDIAN CONSTITUTION AND NOTIONS OF SOCIAL DEVELOPMENT**

The Constitution of India, envisages an egalitarian conception of development. It establishes India as a secular (later socialist as well) federal republic with parliamentary form of government. It is based on the British model, providing for a strong centre. It contemplates very strong central and State legislatures. It also establishes the broad structure of the Indian judiciary led at the apex level by the Supreme Court of India as a court of final appeal in all cases. Each state has a high court under whose supervision and control the subordinate judiciary in the state functions.

The key values and model of socio-economic development are laid down in Chapters III and IV of the Constitution, which are titled the Fundamental Rights, and the Directive Principles of State Policy respectively. All government regulations and laws in every part of India must conform to the Fundamental Rights, which are enforceable in a court of law. Some of the important rights contained in Part III include: right to equality (Art. 14); prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art. 15); equality of opportunity in matters of public employment (Art. 16); abolition of untouchability (Art. 17); protection of certain rights relating to association, assembly, trade, profession, etc. (Art. 19); prohibition of traffic in human beings and forced labour (Art. 23); prohibition

of employment of children in factories, etc. (Art. 24); freedom of religion (Art 25); protection of interest of minorities (Art 29); remedies for enforcement of rights conferred by Part III (Art. 32).

Part IV of the Constitution is titled, the Directive Principles of State Policy. These principles contain directions to the state to operationalize a scheme of social justice and upliftment of the downtrodden guided by the basic postulates of proactive state action. The Directive principles are considered to be the "soul of the Constitution (Dhavan 1989: xxii). Some of the more important provisions of this part from the viewpoint of social development are: duty of state to secure a social

order for the promotion of welfare of the people (Art. 38); state to follow certain principles of policy (Art. 39); equal justice and free legal aid (Art. 39-A); organization of village panchayats (Art. 40); right to work, to education and to public assistance in certain cases (Art. 41); provision of just and humane conditions of work and maternity relief (Art. 42); living wage, etc. for workers (Art. 43); participation of workers in compulsory education of children below 14 years of age (Art. 45); promotion of educational and economic interests of Scheduled Castes (SC) and Scheduled Tribes (ST) and other weaker sections (Art. 46). The Directive Principles serve as a guide to the legislatures, but are non-justiciable. This chapter imbibes certain key values which are to be rooted in "the reconstruction of Indian society and government along the lines of a modern welfare state" (Galanter, 1989:29).

In fact, it is not wrong to say that chapters III and IV of the Constitution define the key value premises of economic and social development of India. This is done through a centrifugal immersion of social values into the diverse Indian society, which traditionally has been medieval, feudal, caste-ridden and status-ridden. Taking cue from chapters III and especially IV, both Parliament (the central legislature) and state assemblies (state legislature) have enacted a flood of legislation aimed at economic and social development in their respective jurisdictions. This in effect has extended governmental regulation to variegated spheres of life, which was earlier not subjected to any regulation or control. Much of the social legislation discussed in the subsequent parts has been enacted on the basis of principles enunciated or duties entrusted to the state by these two chapters of the Constitution. This model envisages effective use of law by the weak and unrepresented. It lays down the socio-economic transformational potential of law.

Especially chapter IV of the Constitution envisages law to re-design social arrangements so as to bring certain socio-economic practices as per the well-accepted human rights or basic postulations of a modern welfare state. Even the Indian judiciary has drawn tremendous strength from this chapter in its

crusade against executive lawlessness and inertia by liberally interpreting the provisions of this chapter. These principles set forth the humanitarian socialist precepts that were and are the aims of the Indian social revolution (Austin, 1976:51), where social and economic justice is made available to all.

The chapter on fundamental rights does not confer any positive duty on the state to create any socio-economic conditions for enjoying the fundamental rights. These rights have no meaning for a person who is powerless, poor, untouchable, weak, sick, ignorant and illiterate. The Constitution makers were aware that the state would have to undertake massive transformational programmes to cater to the above needs of the poor and the deprived and also that it could be done quite gradually, given the poor resources with the state. Therefore, they made these directives non-enforceable but they are nevertheless presumed to be fundamental in the governance of India. The huge agenda of social development as laid down in the Constitution involved bold decisions on the part of the Indian state in a society, which valued purity and pollution dichotomy through the

practice of untouchability and whose indigenous traditions had been considerably influenced by the liberal values of the West through the rule by Britishers.

IV. **KEY AREA OF SOCIAL DEVELOPMENT IN INDIA: FRAMEWORK AND WORKING**

When one talks of social development in the Indian context, one is reminded of prevalence of evils, among others, such as slavery, bonded labour, untouchability, deprivation of childhood to working children, illiteracy, women subordination. All these problems arise because of the presence of acutely hegemonic groups in our society where people exploit others due to their superior power of money, muscle power, rank or position, etc. The prevalence of these reflect the widespread absence of equality in society. Social development would mean empowering the downtrodden to levels whereby they can stand up by their own bootstraps raising.

The right to development as crystallised as a separate right through UN General Assembly Declaration on the Right to Development, which was adopted on December 4, 1986 recognizes that the human person is the central subject of the development process and the development policy should make the human being the main participant and beneficiary of development. It is not possible to realize these unless a framework creating a level-playing floor is developed whereby favourable conditions are created for the realization of the right to development.

Emphasizing the need for developing social framework for realizing human dignity Seton Pollock observes:

"The task is to meet and master those frustrations that diminish man in his humanity and obstruct the realization of his freedom and fulfillment within the human society. Those frustrations stem from ignorance, poverty, pain, disease and conflicts of interest both within the person (the field of psychological medicine) and between persons (the territory of the law).

These manifold and interacting frustrations cannot be met by any one discipline but only by coordinate attack upon the problem through enlightened political and administrative initiatives and by educational, medical, psychological and legal remedies" (quoted in Krishna Iyer, 1995:149).

major areas of social developments

1. **Primary-Education: A Sine Qua Non of all Development**

Any exercise in empowerment of weaker sections is bound to be ineffective unless the prospective beneficiaries are literate and can appreciate the framework of empowerment to which they are being subjected. World over, state and local governments have a primary duty to provide for basic education to children. Imparting training and developing skills without imparting education becomes

a tougher task. Education provides the basic foundation for good citizenship, and is a primary vehicle for imparting cultural values in children, and making them adjust to the fast-changing environment around them. Noted economist of Indian origin, Professor Amartya Sen rightly argues that social rate of return from investment in education especially basic and primary education compares favourably with investment in physical assets and that increase in physical capital-formation by itself cannot ensure rapid economic growth.

Article 26 of the Universal Declaration of Human Rights has recognized education as a basic human right. It also envisages primary education to be free and compulsory. Article 45 of the Indian Constitution which contains such a promise to the people reads:

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Article 46 of the Indian Constitution obliges the state to promote with special care the educational and economic interests of the weaker sections of the people and in particular those belonging to the Scheduled Castes and Scheduled Tribes (SC/ST). The Supreme Court of India has held in the case of Mohini Jain v. State of Karnataka (AIR 1992 SC 1858) that "Right to life is the compendium expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life.... The right to education flows directly from the right to life." Later in Unni Krishnan

v. State of A.P. [(1993) 1 SCC 645] the majority judges held the right to education as a fundamental right.

The National Education Policy (1986) projected that the promise of Article 45 would be redeemed by the year 2000. It also promised that six percent of the Gross Domestic Product (GDP) would be earmarked for the education sector by the year 2000 A.D. In the budget of the Central Government for 1998-99, the allocation of education has gone up from Rs. 4,716 crores to 7,047 crores. The Minister for Human Resource Development (HRD) moved a bill in the Rajya Sabha (upper house of Parliament) for making the right to education a fundamental right in October 1997, which is still pending. According to a 1991 survey the national literacy rate for the population aged seven years and above has increased from 43.56 percent in 1981 to 52.21 percent in 1991. The estimated rate in 1998 was 64 percent. Presently, we have 4,000 million illiterates, which is more than 50 percent of world illiterate population. Growth rate in literacy in 1980s was 1 percent, which rose to about 2 percent in 1990s. A very serious problem in compulsory primary education is high rate of drop outs. Drop out rates between class I and IV is over 36 percent, and between class VI and VIII is 56 percent; but unofficial figures are higher. Highly literate states in India as per 1991 census are Kerala (89.81 percent) and Mizoram (82.27 percent). Later Kerala claimed to have attained 100 percent literacy. This is also believed to be the most socially developed state in India.

Keeping in view the high drop-out rates, the focus in elementary education has shifted from enrolment per se to retention and achievement. The programme lays down competencies to be mastered by all children in the country at a particular grade and aims at upgrading the quality of education. A national programme of nutritional support to primary education commonly called the Midday Meal

Scheme was launched by the government on 15 August 1995. This scheme is aimed at improving enrolment, attendance and retention as also upgrading the nutritional status of students in primary classes. Under the scheme students studying in classes I to V in all primary schools run by government and local bodies are provided cooked/processed food. It envisages central assistance for reimbursing the cost of food grains. Provision has also been made for special assistance for education of women education, SC/ST candidates, minorities, and adults.

An assessment of the working of the various state and central schemes for enhancing the effectiveness of the programme of primary education would reveal a disappointing scenario. The present exercise mainly rests on bureaucratic planning and involvement. In order to be effective, there needs to be a massive programme of social audit with the help of activists and NGOs. Community participation also needs to be encouraged to check bureaucratic indifference and inertia. This will also check acute bureaucratic discrimination to schools especially those which are remote from the power centres. Also, there is known to be corruption in matters related to selection of teachers. The rest of the country needs to learn from the experience of Kerala. Some of the other challenges in this regard are: making primary education more interesting, improving the quality of teachers and the infrastructure, and providing curriculum based on needs of the area.

2. **Untouchability**

India is a caste-ridden society. The varna system divides hindus into four broad classifications: brahmins, kshtriyas, vaishyas, and shudras. More than 4000 Hindu castes exists which can be classified into one or the other of these varnas. The last category i.e. shudras consists of those who work manually, usually for the higher castes. Out of the shudras some castes have been treated for centuries as untouchables. These include mainly the scavengers, sweepers, skin-flayers, apart from several other categories of untouchables. In the Constitution of India the untouchables have been referred to as the scheduled castes (SC). They are the most unfortunate social categories in the Hindu caste hierarchy. They are scattered throughout India. They have been exploited economically and oppressed socially by other castes including the higher category of shudras. In an enlightened, society practicing of untouchability towards any castes or groups of people is highly condemnable. Various social reformers have expressed concerns about abolishing such practices. Despite these, untouchability still survives, more so in rural India, but its incidence in urban areas is also fairly high at certain subtle levels.

Scheduled castes mostly live in rural India. They are usually landless and bonded labourers with the landed aristocracy or other category of farmers; or they work in factories or small skill industries.

The incidence of illiteracy in them is appalling. In some cases the rate of illiteracy is as high as 95 percent of the scheduled caste population. The population of scheduled castes in India is around 15 percent of the total. As per the 1991 census it was 16.8 percent. While the Constitution was being debated in the Constituent Assembly, Dr. B.R. Ambedkar, an untouchable himself and a renowned jurist who was also a member of the Constituent Assembly, showed tremendous concern for evolving positive legal and social instrumentalities towards abolishing untouchability. He made notable contribution in espousing social consciousness against this deep-rooted social evil.

Article 17 of the Constitution declares that untouchability in any and every form has been abolished, and cannot be practiced in any part of the country. Its practice is punishable by law. The Constitution makers were aware that to uplift the untouchable it would be necessary to provide for a kind of a positive discrimination in their favour which I will discuss in the next section. Such discriminatory reservations have been made in favour of the scheduled castes and others. Article 341 (1) of the Constitution authorizes the President of India to specify, after consultation with various castes, races or tribes or groups belong to the scheduled castes, as to which castes can be included in this category. A list was issued in the year 1950 which has been amended several times. As per the Constitution only a Hindu can be put in the scheduled castes. Social criteria is used in such a selection. The factors considered for this purpose are: exclusion from entry into hindu temples; exclusion from the services of clean brahmins; exclusion from the services of the same barber/tailor as is used by higher caste; inability to give water to higher caste; limited access to public facilities such as wells, schools and roads.

The caste system in India has implied a consistent denial of equality before law. However, the practice of untouchability is the worst category of unequal treatment to humans that one can think of. The caste system survived despite: introduction of rule of law, urbanization, industrialization, spread of mass education, and constitutional commitment to egalitarian social order, and despite challenges thrown to it by newer sects of Hinduism like Buddhism, Jainism, and Sikhism. And this is despite the crusades of reformers like Mahatma Gandhi, B.R. Ambedkar, Jawaharlal Nehru, and reformation movements such as Brahmo Samaj, Arya Samaj, and Ram Krishna Mission. It is also intriguing to note that democracy mass mobilization and adult franchise have given new base of life to the institution of caste.

Taking cue from the central spirit of Article 17 of the Constitution the independent India enacted Untouchability Offences Act (UOA) in 1955. This piece of legislation outlaws untouchability directly or indirectly, even as it has not attempted to define untouchability. It also makes its practice punishable. The working of this Act was reviewed in 1972 and various limitations were discovered. The Act renamed the UOA as Protection of Civil Rights Act (CRA) in the year 1976.

The key Provisions of CRA are as follows: It forbids enforcement of disability on the ground of untouchability against any person with regard to access to any river, well, bathing ghat, etc. Earlier the Act was concerned at prohibitions imposed on untouchables in relation to public places. Now, it also includes privately owned places of worship allowed by owner for public worship. Many new behaviours have been included: discrimination in jobs and employment, disability in participation in cultural, or in hostels, residences. It forbids direct or indirect preaching of untouchability or its

justification on historical, philosophical or religious grounds. Also is prohibited compelling any person to do scavenging, flaying of animals, etc.

Offences under CRA are cognizable and non-compoundable. It provides for summary trial in cases of offences where punishment does not exceed 3 months. Both fines and punishments are provided for. If a public servant shows wilful negligence in investigation of a case, he is deemed to have abetted it and is liable to be punished accordingly. The law also provides for adequate facilities to persons subjected to untouchability.

The state is obliged to take special measures in case of civil rights accruing from untouchability. They include: provision for legal aid; appointment of officer for exercising supervision over prosecution, setting up of special courts and special committees to assist state governments in formulating and implementing various measures. The Act obliges the Central Government to coordinate measures taken by state governments in administering the law. At the centre, the Government has recently created a Ministry of Empowerment and Justice to deal with issues such as reservations, untouchability and others.

About a decade back the government realized that the atrocities on the scheduled castes were rising phenomenally. This was more so due to a greater degree of assertion of their rights by the untouchables which has resulted from the awareness created by empowerment. Therefore, to deal with this situation a new law was enacted so as to provide for more stringent punishment for such practices.

It was titled The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989. The Act confers civil rights on SC/ST and seeks to prevent atrocities on them. CRA does not define untouchability, but the SC/ST Act defines atrocities. It is amazing that SC/ST are still subjected to various offences, indignities, humiliations by the upper castes and other castes from shudras. This includes brutal incidents of deprivation of life and property. More atrocities are perpetrated on them when SC/ST resist untouchability; try to preserve their self respect or honour of their women; or become irritants for the dominant and the mighty. The Hallmark of this law is its conceptualization of the term atrocity through its definition and introduction of stringent measures for committing atrocities.

The law also makes provision for punishing a public servant (non-SC/ST) who wilfully neglects his duties under the Act. The minimum punishment is 6 months imprisonment which can go up to one year. In fact, one of the key reasons for perpetuation of untouchability is its subtle approval by the very officials belonging to the higher castes who have been assigned the task of enforcing this law. The Act provides for removal by special court of any person likely to commit offence under the Act from a scheduled or tribal area under Art. 244 of Constitution to an area beyond its limits. The court can however modify its order. This law also envisages creation of a special court to be appointed by state government for each district to try offences. The Administrative machinery (District Magistrate, Sub Divisional Magistrate, Executive Magistrate, etc.) can take preventive action when an offence

under the act is likely to be committed. The Probation of Offenders Act does not apply to an accused under the Act. This shows legislature importance attributed to this law. The new law defines atrocities in section 3 which are given in table 1.

Working of the Untouchability Prevention Law (CRA & SC/ST Act):

A review of the working of these two laws reveals that they have been responsible for arousing a good amount of consciousness about their rights in the untouchables. This is reflected in the election results of Parliament and state assemblies. The emergence of the Bahujan Samaj party, a party mainly of SCs but also of backward castes, as a fairly powerful force in nearly all states is an important point to be noted in this regard. This party has increased its strength to more than ten members of Parliament in the recent elections. From their point of view, it reflects a salutary effect of law and policy for the upliftment of the Scheduled Castes.

However, it is discouraging to note that these laws have not substantially eradicated the inhuman and barbaric practices such as untouchability. It is amazing to know that even after 45 years of working of CRA, few states have set up special courts. No efforts have been made to appoint officers to supervise the prosecutions under CRA. Lack of activist legal service organization is also noticeable. Periodic surveys and studies are not conducted. Despite the presence of law, various violations continue: access to wells, temples is still not realized. There are cases where separate water facilities are provided by the state government to untouchables. Also, there is a problem of discrimination inter-se among the untouchables. In the short-run, however, law can act as a deterrent. But courts' have a tendency to impose only minor punishments, which dilutes the efficacy of this law. In actuality, the liberation of SC/STs can come about by linking it with freedom from economic bondage to the top peasantry. There is a need for creating more work opportunities for the untouchables. This will require revolutionary efforts towards changing the whole set of exploitative societal practices. Law can play only a limited role in this regard. It should be admitted that we really have the most stringent possible laws on these subject. The ultimate goal has to be changing the attitude of society in general, and especially of those who are prejudiced against the untouchables.

3. **Removing Social Stigma through Reservations for SC/ST Candidates**

The evil practices related to untouchability also extend in a strange way to the economic plight of the untouchables. Due to their low literacy and discrimination against them by high-cast officers employers, they do not have much access to the job market. Also, if they get education, they find it very difficult to compete with the candidates from the higher castes especially for more-sought-after

jobs in government and public sector undertakings. Similar is the situation about admission to educational institutions. The higher castes which have only about 10 percent the countries population occupy most jobs in these sectors.

The Constitution makers were aware of such susceptibility in the position of members belonging to scheduled castes (SCs) and Scheduled Tribes (STs). Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, Article 15 (3) exempts women and children from this provision, and Article 15 (4) provides that special provisions can be made for SC/STs and OBCs in relation to job reservations. Article 16 envisages equality of opportunity in public employment. Article 46 talks about promotion of educational and economic

interests of weaker sections especially SC/STs and protecting them against social injustice and all forms of exploitation. Article 29 (2) provides that no citizen is to be denied admission in educational institutions maintained or aided by the state on grounds only of religion, race, caste, language. But reservations can be made for all persons belonging to SCs (15 percent) in government jobs and promotions. No means test has been provided for this purpose. Reservation for admission to educational institutions are also provided in institutions run both by the Central as well as the state governments. Article 366 (25) of the Constitution provides the meaning of the term Scheduled Tribe (ST). It means such tribes...as are deemed under Article 342 to be ST for the purpose of Constitution." Art. 342 confers powers on President to list STs in various states. These tribes have traditionally based their lives on extremely primitive methods of living and earning of livelihood. Most of them are related to the forest life. This category of population also needs special protection through reservations in government jobs. They have been provided 7.5 percent seat reservations in government jobs and educational institutions. Usually, the official thinking puts the interest of SCs and STs together. The government has been providing special assistance to candidates belonging to SC/STs by allowing them preferential treatment for admission to educational institutions, including in IITs, IIMs, RECs, central universities. Remedial/special coaching is also provided for SC/ST candidates. There is also provision for junior research fellows (JRF), and teacher fellowships by the UGC exclusively for them. Instructions to states/district are also provided to give priority in opening schools, adult education centres, implementation of operation black board, etc. in areas where SC/STs are concentrated. Special care is taken in the matter of preparation of textbooks in tribal languages through The National Council of Educational Research and Training (NCERT). Free textbooks, uniforms, transportation are given to economically backward members of SC/STs. Union territories Primary Education Programme (DPEP) aims at opening more primary and upper primary schools in SC/ST habitations.

4. **Positive Discrimination Favouring Other Backward Classes**

As discussed earlier, the varna system of Hindu India gives lowest status to the shudras who mostly do manual work including that of artisans, carpenters, washermen, flowerpickers, etc. Barring SC/STs, the remaining castes among the shudras are not treated as untouchables but have suffered from serious problems of social and economic deprivation. It is estimated that there are about 4000 sub-castes in the shudras community which are educationally and socially backward. They have

never enjoyed a respectable status among the other three varnas. The population of these castes is about 52 percent of the total Indian population. Article 15(4) of the Constitution provides that the state shall make provision for advancement of any socially and educationally backward classes or SC/STs. Article 16(4) provides that State can make reservations of appointments or posts in favour of "any backward class" of citizens which in the opinion of the state is not adequately represented. Article 46 provides that the State shall promote with special care, the educational and economic interests of weaker sections and especially SC/STs.

Even though the Constitution provided for special treatment to these castes for the purpose of giving them job reservations, the subject of identifying as to who should be included in the category of other backward classes (OBC) always remained controversial. One after the other, commissions have been appointed to resolve this matter but not much solution came out. The Janata Party Government appointed the Mandal Commission which submitted its report in 1980 and suggested ways and means to put into operation this spirit of Article 15 (4) of the Constitution. It found that OBCs can be Hindus and non-Hindus both. Such castes/occupations were found to be numbering about 3743. The commission conducted a survey covering 405 out of 407 districts of India. It evolved 11 indicators and divided them into three groups to determine the criteria of backwardness. These three groups are social, educational, and economic. The commission gave larger weight to social indicators, and minimum to economic indicators. On the basis of its study, the Mandal Commission (MC) recommended 27 percent reservations for OBCs in government jobs. It treated caste as class on the belief that there is a class linkage between a person's caste ranking his or her social, educational, and economic status.

Following the judgment of the Supreme Court in the famous case of Indra Sawhney v. Union of India (1992 Supp 3 SCC 217), the government provided 27 percent reservations in government jobs for OBCs.

It is believed that reservation for OBCs is a revolutionary step in uplifting the status of these communities in the caste-ridden India. The former Prime Minister V.P. Singh who took the courageous step of implementing the Mandal Commission has become a hero amongst these classes. In the post- Mandal India, OBCs are showing a remarkable comeback in the social mainstream. After this historic step, OBCs have united themselves considerably. They have become subjects of observation and study by nearly all political parties including the two major parties, the Indian National Congress and the Bhartiya Janata Party, which have been dominated by mainly the high castes. In the post-Mandal India major political parties are competing to project one or the other OBC candidate for the Chief Ministership in various states. This is one case where a legal action has led to a conspicuous redefinition of social relations.

5. **Free me From Bondage: The Bonded Labour Abolition Law**

In a poor country like India where poverty and unemployment are acute, labourers are likely to offer themselves for wage employment at very low wages.

The Constitution of India through Article 23 abolished the bonded labour system throughout the length and breadth of the country. But the problem still prevailed. Therefore, the Bonded Labour System (Abolition) Act was enacted in 1976. The Act also aims to prevent economic and physical exploitation of weaker sections of society. The Act is an extension of Article 23 of the Constitution.

A bonded labourer is defined as one who incurs, or has, or is presumed to have incurred, a bonded debt. The Act prohibits any advance to a worker (under the Act) and prohibits to compel any person to render bonded labour. It declares any custom of bonded labour in a family void, abolishes liability to pay bonded debt, and frees any attachment of the bonded labourer. The District Magistrate (DM) has been obliged to promote welfare of freed bonded labourers and protect their economic interests. The purpose of the vigilance committees are as follows:

1. Advise the District Magistrate in matters of implementation
2. To provide economic and social rehabilitation to freed labourers
3. To coordinate functions of rural banks and cooperatives in providing credit to bonded labour
4. To keep an eye on the number of offences acted upon in area
5. Survey if there is any offence of which cognizance should be taken
6. Defend a suit against a bonded labourer/family for recovery of bonded debt

The Central Government claims that nearly all bonded labourers have been freed and rehabilitated. Several cases have come before the Supreme Court where the resort to the bonded labour system has been alleged. In most cases, the Supreme Court directed the government to ensure compliance of the law and also release funds for the rehabilitation of bonded labourers. However, rehabilitation has always been found to be a very complex issue and the assistance from government in this regard as always inadequate. Nevertheless, the Supreme Court has read in the Act a scheme of rehabilitation. A survey of bonded labour was held for 12 states: Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka, M.P., Maharashtra, Orissa, Rajasthan, Tamil Nadu, U.P., which was completed on December 31, 1996. The survey identified 28000 bonded labourers and all were rehabilitated. We may look into Table 4 which shows the number of bonded labourers identified, released and rehabilitated as on 31 March, 1989. It shows a high incidence of bonded labour in these 12 states. Interestingly, it also shows a very high rate of rehabilitation. This gives a very encouraging picture of the working of this law. If one looks at some of the recent annual reports of the Ministry of Labour, Government of India, one will find very little number of cases of discovery of bonded labourers which goes to show that the incidence of bonded labour in India has considerably diluted.

6. **Return My Childhood: Towards Tackling Child Labour Problem**

No enlightened society can allow its children to be subjected to work at a tender age. Childhood is believed to be one of the most beautiful and happiest periods of life. One feels always nostalgic to remember one's childhood. This is so even with the poor people. Childhood protection is the key aspect of social development. In a land of poverty such as India where about 36 percent people live below poverty line, the incidence of child labour is likely to be high. It is so in case of Mexico as well. As per 1981 census the number of child labourers was 13 million, which came down to 11 million as per the 1991 census. It is estimated that about 80 percent child labourers in India are from SC/STs and mostly live below the poverty line. This problem is one of the key social problems for a country like India which has made tremendous progress since independence on nearly all fronts including social developments.

The framers of the Constitution conferred a fundamental right on children to the effect that they will not be required to work in factories or hazardous occupations. Article 24 was included in the Constitution to this effect. The Supreme Court has taken the provisions of these articles extremely seriously, and has provided that this Article is enforceable not just against government and collectives but even against individuals.¹ Article 45 of the Constitution should be read along with Article 24. The former makes primary education compulsory and free for all children till they complete the age of 14 years. It was thought that India would be able to achieve 100 percent target in primary education for children in a period of about 10 years. But even after 50 years of independence we have attained a literacy rate of close to only about 60 percent. Of course, ambitious schemes of compulsory primary education are being followed by the state, but still we have miles to go in this regard. Article 39 provides certain principles of policy to be followed by the states. This includes that health and strength of workers including children is not abused and children are given facilities for developing in healthy manner with freedom and dignity. A child labour programme should aim to convert working children into productive and participative members of the society, and providing education is the key weapon to realize the goal.

Even as the best friends of children were waiting for compulsory primary education to become a reality, the Government of India in 1986 enacted the Child Labour (Prohibition and Regulation) Act, which in a way considerably harmed the child labour abolition agenda. Rather, it accepted the legitimacy of child labour by providing for its regulation in most cases and its abolition in only some. The Act regulates the employment of children who are below 14 years where they are permitted to work under this law. Interestingly, serious penalties have been envisaged for violation.

Problems & Issues in Child Labour Abolition

It should be noted that the employment of children is hazardous per se because it takes away from the child his/her childhood. Therefore, to think of making child labour as acceptable and worthy of regulation in some employments is not tenable. This shift of official thinking took place in India in 1980s when we made a choice of giving support to working children rather than banning it altogether. Child labour issues are deeply intertwined with general poverty alleviation and a better organization of primary education. In many locations, child labour is still rampant mainly because of the presence of a social milieu which is hostile to the cause of the child interests. The bureaucratic inertia and indifference has exacerbated the problem. From the widespread incidence of child labour in India one can note that the implementation of the law is not very effective despite provision of severe penalties. We need much more concerted and systematic efforts towards tackling this issue. So long as compulsory primary education does not become a reality it is difficult to effectively realize this dream.

7. **Labour Organization: An Important Social Value**

One can hardly over-emphasize the importance of countervailing power in society as a social value for balancing competing interests and needs of social development. Labour rights are also a measure of poverty alleviation. This is a peculiar problems of developing countries. In India, a large part of the population [320 million i.e. 36% of total] lives below poverty line, gets starvation wages, and is subjected to unfair labour practices (ULPs) committed by the employers. Only 8.3% workers are in the organized sector. It is also believed that only 2 to 3 percent workers enjoy the benefit of collective bargaining, that too mostly in the public sector.

Article 23 of Universal Declaration of Human Rights adopted by UN admits "the right to ... join trade unions, for the protection of his interests." The World Summit for Social development in Copenhagen in 1995 adopted a programme of action on "basic workers' rights" which includes freedom of association and collective bargaining. The Constitution of India provides for freedom to form associations and unions in Article 19 (1) C.

The Trade Unions Act 1926 (TUA) provides for formation of unions in industries. It is provided that any seven or more persons who are employed in industry can register a union. Unions have been

conferred corporate status, and when registered they enjoy some immunities from certain criminal actions committed in relation to organizing labour struggle. They also have certain obligations under the Act. But there is no provision in it for recognition of unions. A good number of unfair labour practices are committed by the employers in matters of giving recognition. The TUA should be understood as an adjunct of the industrial disputes Act 1947 (IDA). The latter law provides a machinery for prevention and settlement of industrial disputes.

The 1998 ILO Declaration talks of four basic rights of workers: freedom of association and right to collective bargaining; elimination of all forms of forced/compulsory labour; effective abolition of child labour; elimination of all discrimination in employment.

Working of the TUA/IDA

The key goal of trade unionism is securing a just and fair sharing of gains of industry through organization and developing countervailing power. But IDA contains loopholes, which results into negation of the rights conferred by both these laws. It has been found (Saini, 1995) that the following powers have been misused eventually to the disadvantage of the weaker side: discretion to conciliation officers (COs) (Sec.12 (3)); discretion to appropriate government in matters of "reference" and "strike- prohibition;" adjudication of interest and rights disputes; exercise of residuary power by police, and bureaucracy which are often misused.

We may note the problems which have been discovered in the working of these two laws. There is a tremendous amount of lawyering that goes on in labour courts which has led to the conversion of union leaders into brief-case union leaders (Saini, 1994); that industrial relations have been legalized completely. Which also proves harmful to the weaker side (Saini, 1991). Industrial disputes resolution processes have shown a high incidence of delay, formalism and inaccessibility (Saini, 1997). Consequently the projected goals of the tribunal adjudication with the help of unions have been realized only to a very limited extent. The system has not checked the commission of unfair labour practices by the employers on a grand scale and dismissal of union leaders for indulging in trade union activities. Interestingly, instead of resolving disputes an important role of tribunals is legitimizing union-smashing (Saini, 1995). The IDA has helped the powerful actor in industrial relations to impose its wishes on the

poor workers through legal mechanisms. It is absolutely pertinent therefore that if the social value of union organization is to be realized, contradictions in the existing legal framework should be removed.

Governance of peoples' lives is an important area in social development. It involves questions of conferring dignity and participation to citizens in a country. Democracy has always been cherished as the highest value in this regard. However, the presence of vested interest groups in society has always made these arrangements less effective. India has recently effected revolutionary changes in its laws relating to village and local governance. In the year 1992, the Constitutional Amendment(73rd and 74th) Acts were enacted to this effect. I will examine these two laws and their impact on local governance in two parts i.e. i) Village Governance; and ii) Municipal Governance.

i) Village Governance

The Constitutional amendment (73rd) Act represents a historical period in this regard. This amendment envisages a model of governance which has the following features:

1. Formation of Gram Sabhas (Village councils)
2. Uniform 3-tier system at village, block and district levels
3. Direct elections—all seats at all levels
4. Indirect election of the chairpersons at intermediate and Apex levels—mode of election of chairman for the lowest level left to the state
5. Voting rights to MPs, MLAs in these elections
6. 21 years as minimum age for membership as well as chairperson of the Panchayat
7. Reservation on rotational basis for SCs and STs in proportion to their population for membership as well as chairperson of the Panchayats

8. Reservation of not less than 1/3 seats for women: These seats may be allotted to different constituencies in a Panchayat. It is expected that 8 lakh women including those belonging to SC/ST will become panches and sarpanchs
9. Five-year term for Gram Sabhas
10. If a Panchayat is suppressed or dissolved, fresh elections are provided for in 6 months
11. Devolution of powers and responsibilities by the state in the preparation and implementation of the economic and social development plans, and implementation of schemes for economic development and social justice including those in matters listed in the Eleventh Schedule
12. Financial arrangement through tax, grants-in-aid, levy, fees, etc.
13. Setting up Finance Commissions: once in five years to revise financial position of these institutions and to make suitable suggestions

The Gram Sabha, which is the pivot of village panchayat has been entrusted with multi-dimensional responsibilities in the changed atmosphere. These are: assisting in the implementation of development schemes in its area; identification of beneficiaries for the implementation of development schemes; mobilizing voluntary labour & contribution in cash and kind for community welfare programmes; promoting adult education and family welfare; promoting unity and harmony among all sections; other welfare functions.

State Finance Commission is being created at the level of each state to discuss measures for providing the desired finances to panchayat raj institutions. In this regard the finance commissions have to focus on the following items:

- i) Identify state taxes, duties, fees levied by the state government that may be divided between government and local bodies
- ii) Allocation of this amount between the government and the local bodies
- iii) The allocation of the share of the local bodies

- iv) Identify the taxes, fees, etc. levied by the state which may be assigned to these bodies

- v) The grants-in-aid to be paid from the state funds to the local bodies

- vi) In all the above cases deciding the principles governing distribution and release of grants

- vii) Measures needed to improve the financial position of the bodies Giving recommendation on any other matter referred to by the government

Important Agents of Social Development of Rural India: Key Impediments

A review of the working of the village governance systems would reveal that there are three key agents for social development of rural areas in the Indian context. These are peoples participation; role of voluntary organizations (NGOs); and the role of bureaucracy. It is difficult to fully realize the cherished goal of social development through local governance without providing for an ideal combination of these three agents of social development. In a large country like India which has been ruled by the colonial rulers, these issues are highly complex and critical. The problems involved in their use are variegated. We may note them as under:

1. Peoples' Participation

The 73rd amendment of the Constitution does provide for direct participation of people in village governance structures. But there are many bottlenecks when we think of implementing it. They include: hostile socio-cultural ethos, economic dependency, political domination, bureaucratic attitude towards poor, etc. There are small caucuses (village elites) who take decisions regarding community projects such as drinking water, school construction, etc. and do not encourage real participation by others. Non-participation by poor due to their wretched economic conditions is also a usual problem. Poor are not made a part of evaluating rural development, which takes away their potential contribution.

2. Voluntary Organizations (NGOs)

They can motivate people and mobilize them to participate in rural development. Also, they can make government delivery system more effective. They can mobilize local resources better, besides helping in definition and expression of the local needs. Creation of awareness can also be an important contribution of theirs. However, NGOs have not gone into the villages very extensively. Therefore, full potential in this regard has yet to be realized. The forces hostile to participatory governance at the grassroots level, which get affected by the work of NGOs, would wish to see their marginalization.

3. Bureaucracy

Bureaucracy can play facilitating, promotional, regulatory, custodian and welfare roles. But it has a structure of steel frame and an urban bias. It involves a top-down approach to management and has made administrators authoritarian and rent-seeking. In such a situation social development becomes

submissive to statist institutions. In the administration structure, the district magistrate is the centre of all power. In the new dispensation, the DM sees PRIs as a centre for countervailing power and thus demonstrates some kind of hostility towards them. It has also been noticed that often bureaucrats, rural elite, and politicians combine in an alliance for their own pecuniary benefits. This results in impeding social development. It was once remarked by the former Prime Minister Rajiv Gandhi that 80 percent of the funds for rural development are absorbed by the bureaucracy itself. In the new governance structure MPs and MLAs have been given the right to vote in PRIs. It is apprehended that their protégé will replace power of the District Magistrate. This to therefore, is likely to prove counter productive so far as promoting social development is concerned.

Promises of 73rd Amendment: The New Village Governance Paradigm

The 73rd amendment transfer power for determining priorities in planning at the grassroots level; this promise of politicians has become a reality now. It also confers constitutional status to Panchayat bodies and endows them with measure of continuity, certainty and strength. Earlier Gram Sabha remained in cold storage for several years in a large number of cases. Pradhans used to have coterie, around them and used to hold meetings at home, thus diluting the sanctity of this institutions.

The new law aims to enhance the capabilities of rural people to involve themselves in the planning process about their priorities. One can also witness decentralization of developmental activities, with active people participation. However it is found that there is a general reluctance on PR bodies to impose taxes as they face people everyday. Poor tax collection due to lack of machinery for collection of taxes is also a serious problem, which PRIs have to develop. It is also noticeable that the poor assessment of properties affect the resource base of PRIs. In any case one can notice poor economic base of people in rural areas. Thus they still look to this state for enhancing their financial resources.

The amendment empowers the State legislatures to authorize PRIs to impose taxes. But states by and large political will to do so. The States reject recommendations of Finance Commission for various reasons.

These realities are likely to somewhat the promises and projections of the new dispensation and the champions of people empowerment will have to tackle these issues on a priority basis.

ii. Municipal Governance

In the area of municipal governance, the new law has come from the 74th constitutional amendment, which took place along with the 73rd amendment. Its features are as under:

There is a provision for constituting in every state: a) a nagar panchayat in a transition area, b) a municipal Council for smaller urban area, c) and a municipal corporation for larger urban area. However, there are some exceptions. It is provided that seats in a municipality (meaning all three) shall be filled by persons chosen by direct election. There shall be constituted Wards Committee consisting of one or more wards in case municipality of 3 lakh and more. Seats in every municipality shall be reserved for SC/ST in proportion to their population, which may be allotted by rotation to different constituencies. Not less than one third seats to be reserved for women (including SC/ST women).

Seats for the posts of even officers or chairpersons of the municipalities shall be reserved for SC/ST/women as specified by state legislature. Reservation seats are to expire when the period specified in Article 334 expires (i.e. fifty years).

Legislature of a state may by law endow: a) the municipalities with powers and authority as may be necessary to enable them to function as institutions of self governance with respect to: i) preparation of plans for self governance, and ii) implementation of schemes; b) committees with necessary powers about matters in the twelfth schedule,

9. Empowering Women: The Mother of all Social Development

Empowering women in the Indian context is a very complex issue. It involves changing the preconditioned mindsets of males and the society in general. There are several problems to be tackled in this regard. Human dignity for women need economic self-sufficiency; they need capacity to generate independent income. Their disempowerment is a result of complex interaction of economic, social and political power structures. Education of women is also a first pre-requisite in uplifting their status.

Women organizations have demanded reservation of 1/3 seats for women in Indian Parliament. But the political parties have not been able to resolve several issues connected to this. We need to follow policies of affecting fundamental change in attitudes of the state and the society towards women. Major areas of focus are: improving wage conditions for women; equality of wages between men and women; protection of women from problems resulting from their biological situation; access to credit and training for self-employed.

Feminist women in India is mostly an urban phenomena. Women in rural areas is a subject of grave exploitation. The voluntary organizations need to undertake massive programmes of reforms in this regard. The problem of dowry exists both in the urban and rural areas. The dowry prohibition law has made some impact on the abolition of this practice but we still have a long distance to cover. Also, there is problem of sati (voluntary self-immolation by young women on widowhood), which remains mostly only in some parts of Rajasthan. The strictness of the administration in administering the anti- sati law seems to have made impact in tackling the problem.

Legal Protection to Women's Rights in India

Women's rights in India are widespread over a fairly good area. For example, there is prohibition of discrimination against them as per the spirit of Articles 14, 15, 16, 39 of the Constitution. Article 15 (3) envisages affirmative action for women and children. The Equal Remuneration Act 1976 talks about: equal wages for the same work or work of similar nature for men and women workers; and prohibits discrimination against women in matters of recruitment.

The Maternity Benefits Act 1961 and the Employees State Insurance Act 1948 provide for payment of maternity benefit. Also, this benefit is payable in case of miscarriage, sickness arising out of pregnancy and abortion. But in actuality very small number of women get this benefit. Unfair Labour Practices are committed by employers against their employment.

The Factories Act 1948 provides for restriction of hours of work (women can not be asked to work between 7 p.m.-6 a.m.), concessions regarding lifting of weights, and special safety protection for women.

Political reservations for women in panchayats, local bodies has been provided for in the recent laws on local and municipal governance. A debate is presently going on for reservation of seats in Parliament/State assemblies.

The Dowry Prohibition Act 1961 provides stringent punishment for the practicing of dowry. Also the law prohibiting sati makes the commission of this evil practice difficult. The government has appointed the National Commission on Women for deliberating on issues of women's empowerment. There is provision for special Women's Cell in police departments which is also a significant step in providing special protection to women.

PRIs and Rural Women

The new law provides reservation of not less than 1/3 seats for women in panchayats. These may be allotted to different constituencies in a Panchayat. It is expected that about 8 lakh women including those belonging to SC/STs will benefit from such reservations.

Various steps needed to be taken to effectively operationalize these protections for rural women. There is a need to raise general & political awareness of women. They need to have awareness about their own needs, health needs, and legal rights. The state need to do training programmes for them. There is need to organize rural women for breaking barriers to inequality. Funds should be allocated for this purpose. NGOs and women's organizations can act as facilitators for this purpose in this regard.

Perhaps the key issue in women's empowerment is the need to promote female literacy. We have to also sensitize those in power about issues in women's development and rights. Thus attitudinal reorientation of administrative machinery at village, block and district levels about this issue can be of help. Since most rural women are poor, they cannot go for training in village governance, leaving their work behind. Thus one can think of giving allowance at minimum wage rate to women when they go for training for Panchayat work. At least this can be done for women below poverty line.

V. **BUREAUCRACY AND PARTICIPATION IN SOCIAL DEVELOPMENT**

When India got independence, the Central Government led by Jawaharlal Nehru, undertook a massive programme of development. He was brought up in the liberal traditions of the West, which had a

tremendous influence in his selection of the model of development. His modernism led to a Planning Commission approach to economic development whereby investment in industrial development was highly subjected to government regulations, leading to a largely protected economic regime. Bureaucracy enjoyed tremendous powers in the process. In the social development sphere as well a good number of laws were enacted that have been noted in the foregoing paragraphs. In 1964 "there were still 160 ICS (Indian Civil Service) officers in senior posts in Delhi and elsewhere committed to the old style of administration... [and] the IAS (Indian Administrative Service) was growing fast and by then [had] 2,100 officers" (Parekh, 1995:41). The model of development continued to be top-down.

A bureaucratic model of development in any location always has problems. Overdependence on bureaucracy leads to so many problems. Bureaucracy is known to suffer from the following:

"Over-devotion of officials to precedent; remoteness from the rest of the community; inaccessibility; arrogance in dealing with the general public, ineffective organization, waste of manpower, procrastination, an excessive sense of self-importance, indifference to the feelings of inconvenience of citizens, an obsession with the binding authority of departmental decision, inflexibility, abuse of power, and a reluctance to admit error (Encyclopaedia Britannica 1987: 342).

Most social development laws that were enacted by the government gave important place to bureaucratic power in several ways: ensuring enforcement of the protection, issuing certificates and documents, exercising discretion of various types under the laws, use of police force in containing organized protests, granting permission, etc. In effect, our development model emphasized the need to embed the state in the cultural life of people. But bureaucracy, apparently suffering from the above malaise, could not use people's energies for the development process. It was in fact not even trained properly to deliver the goods as per the Indian realities. It symbolized the perpetuation of colonial thinking.

Undoubtedly, Nehru's model of economic and social development helped in keeping the country united and created a sense of unity in diversity. It also contained the incidence of communalism in India to quite an extent. He won the hearts of minorities, especially Muslims and the Scheduled Castes and Scheduled Tribes. His contribution towards strengthening liberal democracy was also substantial, and also in sustaining if not strengthening federalism. The strong public sector that he set up, influenced by

the soviet and not American model, exacerbated the presence of state in the life of people in a big way. He took care of all groups in society and tried to provide to them dignity through law, with the

hope that the bureaucracy would work as expected. When bureaucracy could not deliver the goods it became politicized and corrupt (Parekh, 1995). This model of economic and social developmental benefited only an elite middle class. Masses remained far away from the development process. Local bodies at village, block and district level were controlled by bureaucratic power. This scenario has adversely affected the change potential of our social legislation. Interestingly, several scholars have labelled this as a problem of state inaction and have advocated the use of the power of the judiciary in correcting the things through PIL. But, it is important to ask whether PIL can be a substitute to a participatory model of development. I will discuss PIL in the following section.

VI. **CRISIS OF GOVERNANCE: REALIZING DEVELOPMENT THROUGH PUBLIC INTEREST LITIGATION**

Public Interest Litigation (PIL) can be seen as an important means of Social development. Contemporary Indian discourse on law and social change has given an important place to PIL. Judiciary has shown commitment to correct administrative injustice through this device. This method originated in the USA and has travelled fast in India.

PIL is concerned not with individual rights but with interests of class/groups. By using the technique of judicial decision-making the higher judiciary has granted relief to: women, children, undertrials, prisoners, bonded labourers, workers, environmentalists. It goes to the credit of the Supreme Court that it has broadened locus standi which was diluted for the first time by Justice P.N. Bhagwati in the case of S.P. Gupta v. Union of India. He argued that locus standi arose in an era when private law dominated the legal system and public law had yet to be born. The crux of PIL is as follows:

If a legal wrong is caused to a person/s by way of violation of legal/constitutional right... and such person cannot come to court due to: poverty, helplessness, disability; or socially or economically disadvantaged position he can maintain an application for appropriate direction, order or writ in High Court under Articles 226 or in case of fundamental rights in SC... Court has to innovate new methods for devising strategies for access to justice.

In order to activate PIL, it is necessary that the individual must act bona fide. PIL is also important for enforcing rights as per the directive principles of state policy which requires proactive involvement of state and public institutions to fight governmental lawlessness.

While handling a PIL case courts often appoint commissions/committees to investigate into the existence of facts in issue and to gather data. If courts can prevent misuse of this system by self-seeking opportunists. PIL can help in promoting responsible administration.

VII. CHANGING CONTOURS OF SOCIAL DEVELOPMENT

Traditionally, law reform often becomes a technocratic and non-participative affair, impulse for which comes from the governing elite. This is based on the assumption that what is good for the elite is good for the masses. In order to be effective, however, law reform should not merely be a piece-meal exercise in social engineering. It must involve fundamental re-examination of the legal system and its crisis. It should be based in social reality so as to promote peoples' law, informal law, living law, private government, etc. As far as possible, implementation mechanism of a social legislation should include constitution of Vigilance Committees consisting of representatives of affected groups. These committees exercise a surveillance on the bureaucratic power.

Such laws should also provide for education of those whose attitudes are to be changed or who are conferred the new rights. India has recently appointed national commissions in many areas of social operations. The purpose of these national commissions is to: investigate and monitor matters related to safeguards provided, participate in planning socio-economic development of beneficiaries, and report to government about the assessment of the laws and measures to be taken. In India such commissions have been appointed in case of women, minorities, backward classes, Human Rights, and SC/STs. These commissions are quasi-judicial bodies and are performing a very useful role. Social law must aim to create enlightened public opinion and generate pressure groups for countering hostile implementation structures. This essentially involves encouraging people to participate in their administration.

It is interesting to note that there is a greater realization about the need for participation rather than people accepting the unilateral bureaucratic decision-making. This is, in fact, attributable to what is happening in the economy world over thanks to the globalization policies of most nations.

The world is also in a massive process of de-politicization. Declining dependence on dominant individuals is noticeable. There is a diminishing role for the state in the globalizing world. Globalization is based on the debris of a discredited bureaucracy. Attempts are being made to entrust state apparatus to scientific managers and technocrats. Thus there is a decline in liberal politics. In the Indian context, the chief architect of this thinking is Rajiv Gandhi, who brought to the centre a managerial model of polity (1993-88). Political leaders must, I believe, play their roles as catalysts of the historic process. Now, there is a need to make democracy an instrument of the oppressed and the victims of history.

We are witnessing in 1990s a fear and nervousness among the elite in the face of the awakened people, emergence of mass politics, and the realization of the failure of top-down model. A democratic polity is one in which government and people together create an open and civil society. We are in a time when party system is losing credibility, new institutional spaces are opening up, and there is emergence of non-party political processes in almost all parts of the country. Also, there is a change in official thinking in recent years regarding voluntary action. The government is itself

involving voluntary organizations in official programmes. Government's own fragility and incompetence are becoming more open to non-governmental citizen groups.

In the above context, we may note some of the emergent techno-political realities in India. For example, We had Sam Pitroda's hi-tech revolution which helped opening up of the economy in the 1980s. Debureaucratization of local governance has brought in volunteers through 73rd & 74th amendment. Emergence of a Chief Minister (Mr. Chandrababu Naidu) in the role of a CEO is a good augury. Another Chief Minister, S.M. Krishna (Karnataka) is following him. Politicians are engaged in competition to excel quite the way private sector companies are building their competition strategies. Earlier ruinous competitive populism does not work any more as most part of the country remained underdeveloped. Organizational thinking is making a widespread use of the term empowerment. This concept is being extended to local governance. These developments are harbinger of a message that in the coming times politics is likely to change. Earlier politicians in India became accustomed to perpetuating ignorance in the masses so that people remain a ballot box folder. We are in a post-

Marxian world of discursive power and decentered subjectivities in which no group is authorized to construct for others a vision of a socially just world.

VIII. **CONCLUSION**

The foregoing discussion reveals that the Indian state has undertaken massive programme of reforming some of the age-old practices of social hierarchy and a caste-ridden society. These concerted attacks are reflected in a number of laws enacted in the post-independence India. These laws should be understood as a part of the overall magnificent presence of the state in peoples' lives as per the approach of the Planning Commission followed by the Congress Party which has ruled India for much of the period of 52 years after independence.

The fact that India is labelled as an over-legislated society shows, that peoples' feelings for legislative action were quite strong. But various factors contributed for causing a big gap in the projections and achievements. One of these is bureaucratic inertia and indifference, besides the presence of alliances between vested interest groups to marginalize the change agenda.

The recent amendments in the Constitution (73rd and 74th) have promised transfer of power from bureaucrats to people in matters of local governance. This transfer should still be viewed in a gestation phase because its results have yet to surface. The amendment gives representation to

women and SC/STs in the new structures and also confers autonomy on the local bodies. This paradigm is an alternative to both the weak and soft instrumentalism that I talked about in the introductory part of this paper. Sociologists and political scientists are watching very curiously as to how the arrangement works towards building a democratic participatory, accountable, and socially developed India. At the same time, it is important to remember that participative development in the real sense of the term would warrant tackling the other social problems that have been discussed above.