

Law as a means of social change with reference to case essay



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Morris writes, “ to a zoologist, a horse suggests the genus mammalian quadruped, to a traveler a means of transportation, to an average man the king of sports, to certain nations an article of food. ” 1 Likewise, law has been variously defined by various individuals from different point of view. For clarity and understanding their viewpoint they have been divided into various schools on the basis of their approaches to law.

Sociological school is also one of them which views that law is wholly concerned with the effects and results on society and aim to protect socio economic good of society through law. 2 Law is regarded as a means to an end. The end may be broadly categorized as i) ii) Social change Social control ? This paper explores how law had acted as a means of social change in the Nepalese context referring to the case of „ Meera kumari Dhungana v His Majesty? sGovernment Ministry of Law, Justice and Parliamentary Affairs and others? (Daughter? s Property Case) N.

K. P 2052, P. NO. 462. ? 1 Student, Kathmandu School of Law, L.

L. B. 2nd Year. V.

D. Mahajan, Jurisprudence and Legal Theory, Eastern Book Company, Lukhnow 2005, p. 26. , 2 S. N. Dyani, Fundamentals of Jurisprudence, Central Law Agency, Allhabadh, 2007, p.

304. An Introduction to Social Change: According to Lundberg “ Social change refers to any modification in established patterns of inter-human relationship and standards of conduct” 3 According to M. D. Jenson, “ Social

change may be defined as modification in ways of doing and thinking of people” 4

According to Encyclopedia Britannica, “ Social change is the alteration of mechanisms within the social structure, characterized by changes in cultural symbols, rules of behavior, social organizations, or value systems. ” 5 The concept of social change implies measurement of some of the characteristics of a group of individuals.

While the term is usually applied to changes that are beneficial to society, it may also result in negative side-effects and consequences that undermine or eliminate existing ways of life that are considered positive. 6 Law as a Means of Social Change: Change is an ever present phenomenon everywhere.

The nature is never at rest. The history of humankind reveals that human wisdom has devised different methods and means to meet the structural changes in the social system which take place with the advancement of knowledge, culture and civilization.

Law plays an agent of social change. As the society changes, so do it needs a serviceable system must be able in its development to take account of new social, political and economic requirements and law is an effective medium or agency, instrumental in bringing about social change. 3 4 Vidya Bhusan, An Introduction to Sociology, Kitab Mahal, Allahabad, 2001, p. 714 Ibid.

5 “ social change. Encyclop? dia Britannica. Encyclop? dia Britannica 2009 Student and Home Edition. Chicago: Encyclop? dia Britannica, 2009.

6 http://en.wikipedia.org/wiki/Social_change , visited on 26/02/2010 Law has always been considered as one of the important instruments of affecting social change. In the modern era, there has been widespread concern of law as a tool for bringing about homogeneity in the heterogeneous population having socio-cultural diversities. Inequalities, discrimination, exploitation, etc prevail in every society. Law helps to reshape the society by eliminating these social drawbacks through social changes.

The *sin quo non* of law is to bring gradual and orderly progress in the society. Law brings social change through the instrumentality of legislation. Hence legislation may be enacted for slum clearance providing assistance to the poor, providing social security to the marginalized, handicapped persons, for providing protection to the women, children, aged, minorities, etc. Case Study: “ Men and women are the two wheels of the same chariot” The above quotation reflects the importance of both men and women. The society can be considered as a chariot whose wheels are men and women.

Inequality among them can result the chariot to lose its balance and head towards undesirable ends. This is the situation of our Nepalese society. A deep rooted concept of gender inequality has jeopardized our society for decades. In such situation, a change is needed, a change towards equality. There has been many areas where women are discriminated and even various provisions in our legal system had also hindered the equality between men and women. The “ Partition? chapter of National Code, 2020 also had some discriminatory provisions.

So advocate Meera Kumari Dhungana filed a writ against the legal provision. Writ no. 392 of the year 2050 B. S.

Petitioner: Advocate Meera Kumari Dhungana Versus Respondent: HMG Ministry of LAW, Justice and Parliamentary Affairs and Others⁷ Case: Daughter's Property Right 7 N. K. P. 2052, P. 462 i) Fact of the Case: Article 1 of the Constitution of the Kingdom of Nepal, 2047 provides that all laws inconsistent with the constitution shall ipso facto be void in tune of article 131 of the constitution.

Article 11(2) of the constitution of the kingdom of Nepal, 2047 guarantees that no discriminatory treatment shall be made against any citizen in the application of general laws on grounds , inter alias of sex.

However there reminded a provision in the national code that treated son and daughter differently in the context of obtaining parental property as legal heirs. No. 16 of the chapter on partition of property of the national code 2020 provides that an unmarried daughter having attained the age of 35 years is entitled to obtain property under partition as par with the son, and if she weds after obtaining the partition share, the property obtained by her, shall after deducting her marriage expenditure pursuant to law should be returned . i) Petitioner's Contention: The issue of constitutionality of the clause 1 and 16 of the chapter on Aungsabanda (Partition of Property) were in clear contraventions of the Article 11 and 17 of the Constitution of Nepal 2047 and Article 15 of CEDAW which expressly prohibits discrimination on ground of sex. There were two important issues, raised by the Petitioner's Contention, which the Supreme Court had to settle in this judgment: ? Firstly,

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the issue of equality of sex was the prime issue, which is already settled by the Article 11 and interpreted by the Supreme Court.

The major issue of the case was whether Clause 16 of the Chapter on Aungsanbanda⁸(Partition of Property) was constitutional or not. The issue of unconstitutionality of the Clause 16 on the ground that it provides for two distinction provisions to be applicable in the case of a son and daughter. The son has the birth right on Aungsa (Property)but the daughter has excluded from it. ? Secondly, the right of Aungsa (Property) is interference with the property of parents. No one has right to force other to share his/her property.

The law on Aungsabanda (Partition of Property) allows a son to force his father to share the property, which is 8 “ The daughter who has reached the age of 35 years and remained unmarried is entitled to get share in property as equal to the sons. If she gets married or elops after receiving the share in property, then she has to return the property to the person who is entitled to it. ” jurisprudentially not founded on justice. The issue in fact was related to the consequences of inequality created by law against the Constitution. iii) Defendant’s Submission: the defendant stated that the provision laid down in the no. 6 of the chapter on partition of the national code, 2020 is consistent with the provision of art.

11 of the constitution of the kingdom of Nepal, 2047. Art 11(1)⁹ is also similar to the provision of art. 15(1) of CEDAW¹⁰. Regarding the allegation that the provision of no.

16 of the chapter on partition of the national code is inconsistent with the art. 11 of the constitution, no. 16 of the chapter on partition of the national
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code has provided that the kind and quantum of the husband, and before marriage from father shall be the same as the sons obtain from his father.

Even as nos. and 25 of the chapter on Partition of the national code, 2020 provide that unmarried daughter can get partition share so far as the provision of sec. 16 is concerned, it requires a daughter to live unmarried in the house of her father and attain the age of 35 years.

if this provision is revoked, the daughter will be entitled to get partition share from the properties of both her father and husband, and the son will be entitled to get partition share only from his father's property. It will be contrary to the principle of equality. The existing legal provision of no. 16 of the chapter on partition is, therefore, not liable to be void. v) Decision of the Case: " Making sudden changes in traditional social practices in matters of social norms perused by the society since a long time ago, may create problems in connection to adjustment in the society. And, it may cause such a situation beyond perception.

Therefore, before reaching a decision all of a sudden, a just provision should be made by holding wide and extensive discussions and deliberations taking into account the constitutional provision vis-a-vis equality. As the family law relating to property is to be wholly considered, it is hereby issued this directive order that 9

All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. States Parties shall accord to women equality with men before the law.

10 HMG introduce an appropriate Bill to Parliament within 1 year of receipt of this order, by making necessary consultations with the recognized women's organizations, sociologists, the concerned social organizations and the lawyers as well and by studying and considering the legal provisions in this regard on other countries. " v) Analysis of the Case: The presented case had seriously highlighted the issue of discrimination on women in our society.

Our society had been mostly guided by an orthodox philosophy which had always given more priority to men. As a result we have turned into a patriarchal society which the Supreme Court had also recognized.

So, the Supreme Court, citing the probable chaos and disturbance to be created in the society, couldn't agree with the claim of petitioner. However the court's decision to conduct an extensive research in regard of this topic both within and outside Nepal and to introduce an appropriate bill to parliament within one year has clearly reflected the importance of research and public opinion in law making.

Here the Supreme Court had rightly pointed the interrelationship between law and society. The case thus paved a way to the 11th amendment of Muluki Ain (National Code) and also a separate Art. Regarding women i. e. Art. 20, Right of Women in the Interim Constitution of Nepal, 2063. As a result the case is of immense importance in Nepalese society as it has ignited a spark of equality of men and women in an orthodox society like ours.

Conclusion: Today the importance of law has increased to a great extent.

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Now, law is not just regarded as a set of rules but also a means to guide the human society to betterment. Law is to address the complex social problems and thereby becomes essentially a healer, reconciler and also a guarantor of social reforms and peaceful change with the principles of humanity, liberty and equality. Though there are several devices to bring about a change and reformation in society, but reformation through law is perhaps the most effective and safest methods to achieve this end.

Law therefore has proved to be an agent of social change which the above mentioned case has clearly established.