



IMPACT OF SOCIAL MOVEMENTS ON INDIAN LEGAL SYSTEM: CHALLENGES AND PROSPECTS

Dr. Sonika Ahlawat*

Dr. Jyoti Rani**

ABSTRACT

Social movements have played a vital role in India since independence in 1947. These movements have proved instrumental in not only leading to major shifts in the society but also contributed to amendments in the legal system. In a sense, the movements act as facilitators to reflect on social, economic and political aspects of society to sensitize the government about the popular perceptions. In the current context, issues such as the rebellious mood of the youth, marginal farmers, educated Dalits, tribal population and industrial working classes have their own grievances that need to be channelized through social movements within the spirit of the constitutional.

The primary objective of the paper is to outline select social movements and critically analyze them in the Indian legal context. Of recent, several legal issues have come to fore, such as revocation of Article 370, repealing of three farm laws after a year-long agitation by farmers, amendment to the Citizenship Bill, unconstitutionality of instant Triple Talaq, etc. These politico-legal issues have become a battleground for the culture versus modernity debate. After attempting a critical analysis of these issues, this paper will make sound recommendations for harmonization of social movements, popular public demands and legal framework.

Keywords: Article 370, Constitution, legal system, social movements.

* Dr. Sonika Ahlawat, Assistant Professor, Trinity Institute of Professional Studies, Affiliated to Guru Gobind Singh Indraprastha University, Dwarka, New- Delhi. E-mail: ahlawatsonika90@gmail.com

**Dr. Jyoti Rani, Assistant Professor, C.R. Institute of Law, Rohtak.
E-mail: jyotiah1234@gmail.com



INTRODUCTION

Social movements are important instruments in bringing change in the society. People's will reflect the public opinion which further takes the form of social movements. Considering in context of legal system, the cumulative campaigning have surfaced as essential law making actors, changing dimensions of politics & norms in ways that trace constitutional insurgency.¹ Some have positive impact whereas some have negative impact on the society. For example, the revocation of Article 370, a big positive step been taken by the government to maintain the principle of brotherhood with the state of Jammu and Kashmir. On the other hand, the government set back with the three farm laws because of the long agitation by farmers on the borders of national capital of country i.e. New Delhi.

Communities within a society or country must get rid of malpractices rampant among their people to grow and develop with the times. But if there is absolutely no attempt to reform within the society, instead there is a stubbornness to keep maintaining the unfair practice, for e.g., triple talaq or talaq-e-biddat then the society has to rely on law to liberate the community from the evil practice.

Issue I: REVOCATION OF ARTICLE 370

Constitution of India, Article 370 talks about the distinct position given to the state of J&K in terms of sovereignty and its potential in formulating the legislations with some limitations for the locals permanently residing in the state. Being the temporary nature since incorporation, it gives power to the state to have its own Constitution. The BJP led government on 5th August, 2019 divided the state of Jammu & Kashmir into two union territories (UTs) namely, Jammu and Kashmir, and Ladakh and did away with its special status. The division made is itself important because a UT has less sovereignty than a state, in India.²

¹ Scott cummings, "The Social Movement Turn in Law" *Law and Social Inquiry* 42(40), May 2017.

² Dalbir Ahlawat & M. Raymond Izarali (2020) India's revocation of Article 370: security dilemmas and options for Pakistan, *The Round Table*, 109:6, 663-683.



Prime Minister Shri. Narendra Modi called it “a historic decision”.³ Since the formation of BJP party in 1980, the chief concern of the government is the issue of granting special status to J&K. It was also the BJP’s election manifesto to ‘delete the temporary Article 370’. The leaders of Pakistan were in great shock after the announcement of revocation of Article 370 and also claims that the decision taken by Indian government is a breach of international law whereas the Indian government stated it an internal matter of the country. It has marked intense crossroads in the long established anticipation between the two nations over the state of J&K.⁴ Article 370 has only ushered to underdevelopment, unbridled corruption, lack of employment, escalation of terror activities and terrorism and incapability of the successive state influence.⁵

Also, it not only posed a challenge to “Indian nationhood” but also to J&K integration with the rest of the country. In consonance with this, Prime Minister focussed that Article 370 has “not given anything other than terrorism, separtism, nepotism and big corruption” to the population of J&K.⁶ The revocation of Article 370 was a watershed moment in the Indian history.

Arguments in favour of revocation of Article 370

- All indian laws will be applicable on the population residing in these newly created UTs and people from all other state from rest of the country will be able to buy the property there. This, in result leads to the development in the region.
- It is an attempt made by the governmnet to unite J&K with rest of the country. Therefore, it propagates the slogan of ‘One Nation One Constitution’.
- The bifurcation of J&K will help the administration to control the situations in the most volatile border states.
- Terrorsim can also be curbed under the hawk eye of the central forces. The revocation of Article 370 was considered as impiedient in fight against terrorism.
- Better educational and medical facilities will be provided to the locals of the region.

³ Priyanka Mukherjee, “Article 370 revoked: When BJP fulfilled its long standing agenda”, *Times of India*, 30 May, 2021.

⁴ Dalbir Ahlawat & M. Raymond Izarali (2020) India’s revocation of Article 370: security dilemmas and options for Pakistan, *The Round Table*, 109:6, 663-683.

⁵ Dr. Dalbir Ahlawat & Air CMDE Kedar Thaakar, “Kashmir Imbroglgio Resolved- Strategic options for Pakistan” *Journal of Indo Pacific Affairs* (Spring 2021).

⁶ *Ibid*



Issue II: TRIPLE TALAQ

Ideally, any attempt for quintessential social reforms must come from within the society. Communities within a society or country must get rid of malpractices rampant among their people to grow and develop with the times. This is all about being a progressive society. But if there is absolutely no attempt to reform within the society or the community, instead there is a stubbornness to keep maintaining the practice that is unfair to a significant part of the society, then, the society has to rely on law to liberate the community from the evil practice. Among these evil practices, triple talaq is the most common practice among Muslim community.

Triple Talaq or Talaq-e- biddat, is that form of taking divorce in which a husband is empowered to give divorce to his wife by chanting thrice the word ‘Talaq’ in any way, including the electronic medium. This practice was in existence in the Indian Muslim community from many decades. The Muslim women were the main sufferers as the husband can give his wife divorce anytime and anywhere. Completely there was sword hanging on the heads of women belonging from Muslim community. Keeping in mind the Muslim community, the government of India has passed Muslim Women (Protection of Rights of Marriage) Bill, 2019 on August 1, 2019 after getting setback thrice in the upper house by the opposition. This step of government is a victory of democratic system in the country. Prime Minister Narendra Modi praised this step of government and stated that it is a “victory of gender justice”.⁷

The moment when announcement made was itself a victorious one as there are around nine crore Muslim women in the country, who were always on the verge of danger of getting divorce round the clock. They can now rest assured that it will not be easy for their husbands to divorce them in a huff or impulse or even in a deliberate attempt. The provisions in the Act are strong enough to deter husbands from using the instant triple talaq. Talaq for the purpose of the Act means “talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband”.⁸

⁷ <https://www.bbc.com/news/world-asia-india-49160818>, Last visited February 4, 2022.

⁸ Section 2(c), The Muslim Women (Protection of Rights on Marriage) Act, 2019.



The Act provides:

“Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form (phone, WhatsApp, sms, e-mail, etc.) or in any other manner whatsoever, shall be void and illegal.”⁹

Core points of Triple Talaq under Act:

- Termed it as criminal offence.
- Illegal form of talaq.¹⁰
- In case of breach of law, a man can be jailed for up to three years and fine.¹¹
- Categorises it as a cognizable offence.

By making the offence cognizable, a police officer is empowered with the arrest powers without warrant. In order to measure the dissipation of cognizance of the offence, the complaint filed by the aggrieved will only be the basis of consideration.¹² Further, only the magistrate of a district is empowered to grant bail only after hearing the indignant woman.¹³ In consonance with this, the indignant woman can also claim for maintenance under the Act.¹⁴ The Act also provides for an agreement by the magistrate but only with the consent of the wife. These provisions are strong enough to instill fear in the minds of husbands and deter them to pronounce triple talaq on their wives.

In this new millennium of knowledge and technology, India remained one of the few countries, if not the only one, where the instant triple talaq was practised. Even all the major Muslim countries have given up this practice long back. In a book¹⁵ it was stated that many Arab countries have given a go- bye to the practice of triple talaq. Egypt was the first country to abolish the triple talaq practice way back in 1929 itself. Besides, Southeast Asian countries like Indonesia, Malaysia and Philippines have also enacted stringent legislations against triple talaq.

⁹ Section 3, The Muslim Women (Protection of Rights on Marriage) Act, 2019.

¹⁰ *Ibid*

¹¹ Section 4, The Muslim Women (Protection of Rights on Marriage) Act, 2019.

¹² Section 7 (a), The Muslim Women (Protection of Rights on Marriage) Act, 2019

¹³ Section 7 (c), The Muslim Women (Protection of Rights on Marriage) Act, 2019.

¹⁴ Section 5, The Muslim Women (Protection of Rights on Marriage) Act, 2019.

¹⁵ Mahmood Tahir & Mahmood Saif, “Introduction to Muslim Law” 2017.



Why was it that the triple talaq was continued and still practised in India? There has also been a broad consensus that this practice is highly unfair and unjustified. The Supreme Court has already declared this practice as unconstitutional and invalid in August 2017. A five-judge Constitution Bench headed by the then Chief Justice Mr. Jagdish Singh Khehar in its 365-page judgment, ruled with a majority of 3-2 that the practice of triple talaq was against the basic principles of the Quran, which allows divorce in an arbitrary manner and also violates Article 14 and Article 15 of the Constitution, therefore, it is illegal and is null and void. Even the two dissenting judges, Chief Justice Mr. Khehar and Justice Mr. Abdul Nazir, had admitted that the practice of triple talaq was unfair and a 'sin', but they restrained themselves to declare it unconstitutional on the premise that the court should not interfere in religious practices and that the government should bring a law instead in six months. Even the Muslim Personal Law Board did not defend or justify the triple talaq before the bench, but said that the Judiciary should not interfere and the community would put an end to this practice through running a campaign within the society itself. Had the community really done so, why would a number of Muslim women divorced using the practice of instant triple talaq, would have to knock at the doors of the Supreme Court.

The fact is that, for many years, the country has been dictated by a politics that sacrificed the interests of the wider society for their petty interests. This politics often stood like a wall against the progressive steps of social reforms within the community. That is why, instead of confronting the elements representing patriarchal forces within Muslim community through logic and facts and eventually convincing them not to stand in favour of an evil practice, this politics provided unabated protection to them. They did not even bother about the sufferings faced by the Muslim women because of the instant triple talaq. The Rajya Sabha was the last bastion of this politics where it could have obstructed reformist moves on the strength of its majority. But the Modi government at the Centre ultimately succeeded in winning even this last refuge of the stubborn regressive politics.



Now, when a law criminalising the triple talaq is in place, society and politics should accept certain things. It would be better for every community to fight against the evil practices and injustices within them and try hard to get rid of them. At the same time, any politics must not stand with and provide protection to the evils in any of the communities. It will be regressive politics and it will never be acceptable to the youth of India.

Issue III: CITIZENSHIP (AMENDMENT) ACT, 2019

This Act provides citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who have come from India's neighbour countries i.e., Pakistan, Bangladesh and Afghanistan and were tolerating religious discrimination. But this Act indirectly excludes Muslims to get citizenship. The CAA and the proposal for NRC have instigated the public against the government.¹⁶

To maintain a database system is the utmost requirement of democratic countries like India. Due to open or unsettled borders, a long coastline, demographic changes in the country, infiltration and terrorism, India needs a database to protect the national security, sovereignty, and integrity of the nation. Through this database we can easily identify the illegal migrants.

The Citizenship (Amendment) Act provides Citizenship to those Hindus, Christian, Sikh, Buddhist, Jain and Parsi who have come from Afghanistan, Pakistan and Bangladesh before December 31, 2014. ¹⁷ This Act applies to those persons who were forced to seek shelter in India due to religious persecution or unfair treatment. This Act has reduced the requirement of aggregate period of stay from 11 years to 6 years before applying for the Indian citizenship.¹⁸

This Act does not apply to “tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under ‘The Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873.”¹⁹

¹⁶ Zoya Hasan, “An Anatomy of Anti-CAA Protest”

<https://www.thehindu.com/opinion/op-ed/an-anatomy-of-anti-caa-protests/article30446145.ece> last visited January 24, 2022.

¹⁷ Sec. 2(1)(B), The Citizenship (Amendment) Act, 2019.

¹⁸ Third Schedule, clause (d), The Citizenship (Amendment) Act, 2019.

¹⁹ Sec. 6 B (4), The Citizenship (Amendment) Act, 2019.



Protests across the Country:

In India, we usually see public protest but this time the protest was a remarkable one and the discontent in the public was at extreme level. The CAA-NRC has stimulated in a much sharper way than the other social movements. Government tried many ways to suppress the public through severe actions like widespread Internet shutdowns, arbitrary arrests and ban on assemblies. But all the efforts of the government went vain. Government was unable to stop the public through these authoritarian methods. The magnitude of authoritarianism and severe use of state power applied this time has never been seen in the past.

Indian Muslims who were terrified by this move was in the forefront of this protest. In the north east, people were afraid that implementation of the CAA may change the demographic structure and their cultural and linguistic uniqueness will be lost. While in the rest of India, it was taken as violative of the basic structure of the constitution and against the article 14, 15, 21, 25 and 26 of the constitution. It was alleged that this Act makes discrimination on religion basis and separate away Muslims. So anti Muslim color was given to the Citizenship Act.²⁰

Not only Muslims but converted Christian tribals of North-East and their converter missionaries in Churches were also afraid that their dominance of North-East region will come to an end. That is why they are protesting against it. Fact is that no tribal in North-East is fully following their traditional culture because most of them have been converted into Christianity.

Arguments in favour of Citizenship Amendment Act

The centre rejected the allegations imposed by opposition that the Citizenship Amendment Act, 2019 is anti-Muslim. The central government reiterated that the Act is against the infiltrators, not against the Muslims and it does not discriminate on the basis of religion. The centre claimed that this measure has the support of 130 crore citizens of India. This Act provides citizenship to all

²⁰ Samiya Latief, “ What is citizenship law and why people are protesting against it” *Times of India*, December 17, 2019

http://timesofindia.indiatimes.com/articleshow/72759793.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst last visited January 28, 2022.



the migrants who have come from Pakistan, Bangladesh and Afghanistan even without having documents, including ration cards.

Issue IV: FARMER'S PROTEST

Being an agricultural country, the two- third of the total population is dependent on agriculture. For the protection of interests of the farmers, the government of the country decided to frame legislations. Therefore, in September 2020, three agricultural bills were passed, namely "Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020", "the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020", and "the Essential Commodities (Amendment) Act, 2020", and the authority repudiated to conduct a discussion on the problems of farmers, which further led to strong agitation.

On the other hand, **the farmers** were of the view that these laws would be detrimental to their interests and can break the market protection and the subsidy network from which the farmers were taking benefit from many decades. Also, it may lead to grasping of their lands by commercial wealth.²¹ These laws would leave farmers exposed to big companies and demolish their livelihoods.²² In consonance with this, there was complete abolishment of mandi system and the farmers were allowed to sell their outcome at market prices directly to the buyers.²³

According to the government the new farmer bills which are passed in the parliament are helpful to change the agricultural sector and improve the farmer income. The Centre propagated that the farmers will have 100 percent freedom to sell their produce for better prices at the market. The bill will also be an impetus to the intra state trade with reduction of transport charges in future. The people can also get the opportunity to get into a contract by entering into a legal framework with companies, exporters, retailers who are interested to buy the produces. This will also help farmers access to modern technology thus improving production. The state

²¹ Satyendra Ranjan, "Farmers' Protest: A Roadmap for the Opposition" *Economic and Political Weekly* Vol. 56, Issue No. 18, 01 May, 2021

²² <https://www.bbc.com/news/world-asia-india-59566157>. Last visited February 8, 2022.

²³ Kavya Datla, "Farm laws 2020: Who are they meant to serve?"

<https://www.downtoearth.org.in/blog/agriculture/farm-laws-2020-who-are-they-meant-to-serve--74540>. last visited January 30, 2022.



was of the opinion that the farmer's bills can be helpful for empowerment of small and marginal and landless farmers.

Agriculture and Farmers Welfare Ministry said, "The reforms will accelerate agricultural growth through private sector investment in building agricultural infrastructure and supply chains for Indian farm produce in national and global markets, create employment opportunities and strengthen the economy." After passing of legislation, Agriculture Minister of country quoted, "Farmers will now have freedom for direct marketing of their produce and will be able to get better prices, MSP procurement system will continue, consumers will also benefit."²⁴

Farmer's Distress:

The main reason for the farmer's botheration was – Middlemen will be affected by these laws. The bills might end the minimum support price by the state in future that agitates the farmers.

Another concern which was cropping in minds was that there will be lack of bargaining with big companies or retailers and companies will decide the rate of crops according to their own benefits. Among the population comprised by farmers, around 96% are illiterate and are incapable in negotiation with the big companies to whom they will sell their outcome and won't be able to fix the prices of their hard work (produce). Outside the Mandis there was no state regulation regarding the sale of produce that might create problems for selling and price fixation by farmers.

It will weaken the AMPC system that will make the farmers dependent on capitalists and companies. As per the advice of the economists AMPC should be strengthened in our nation. The economists stand against privatization. Many were afraid that due to contractual relations of farmers with private companies the farmers may become slaves to the capitalists.²⁵

²⁴ <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1655890>. Last visited February 8, 2022.

²⁵ Abhinav Biswal, "Understanding Farmers Protest Through The Lens Of Functions Of Conflict", December, 2020. https://www.researchgate.net/publication/347907486_TITLE_UNDERSTANDING_FARMERS_PROTEST_THROUGH_THE_LENS_OF_FUNCTIONS_OF_CONFLICT



On November 19, the BJP- led government announcement that they would repeal all three laws because the farmer's agitation had become the biggest challenge for the government. The step taken by the government was hailed as a victory for the farmers agitating in sun, cold and most importantly during the covid era. This was a powerful example of how mass movements could still successfully oppose the government.²⁶

Conclusion

In the last few decades, we have seen a number of protest and social movements that have played crucial role in challenging the government measures and policies. Article 19 of our constitution provides the right to freedom of speech and expression which includes right to assemble and protest without arms. So, right to protest makes the government accountable for their measures and gives an opportunity to rectify them as in the case of Farmer's laws which were repealed by the government. But these social movements have been of no good in case of protest against-CAA, Triple Talaq and revocation of Article 370 because these three protests were not in the favour of the unity and integrity of the nation. So, social movements contribute remarkably in the formation and implementation of new laws in the society.

²⁶ <https://www.bbc.com/news/world-asia-india-59566157>. last visited February 5, 2022.
