

The Law must “Lead” or “Lag”

The recent split verdict of the Hon’ble Apex Court in the *Hijab controversy* has again exposed a split opinion regarding the approach and application of laws and their impact on the society. Change as they say is the only constant. Everything changes except the law of change. Law, society and institutions are no exception to this rule. The law in the broad sense and the whole legal system with its institutions, rules, procedures, remedies, is society’s attempt through State to control this process of change and give it a desired direction. Law, broadly understood can be categorised as, ‘lead law’ and ‘lag law’. Lead law is one where law determines the nature and direction of the goal towards which the system is to move. Lag law on the other hand would follow the social mechanism and would develop a rule to handle the emerging problem.

‘Lead law’ approach proceeds on the instrumentalist vision of law, treats law as an agency of power, an instrument of government, in so far as government is centralised in the State. It is seen as an independent agency of social control and social direction, autonomous and separate from the society it regulates. In this sense law acts upon the society rather than being an aspect of the society. This instrumentalist vision, considers that sovereign power, the ultimate authority in a polity can legislate on any matter and can exercise control over social behaviour within the State.

‘Lag law’ on the other hand relies on sociological vision of law, and looks at the capacity of law as an instrument of social control, as severely limited by emphasizing upon the fact that *if the legal rules are not in congruence with social*

mores they are not only ineffective, but are doomed to stultification almost at birth.

But whether lead law or lag law is suitable for India today? India is a nation that celebrates its diversity and vibrance of cultures, languages and religions, but so are the complexities for regulating behaviour of the people who have different value systems and religious beliefs. In 1947, when India finally broke off the shackles of colonialism, the challenges facing the country were enormous. The social system was beset with social evils like caste system, untouchability, discrimination against women, child marriages and dowry system etc. The challenges for those who were at the helm of affairs were enormous, and so the *lead law approach* was adopted and it was certainly more suited in those times and circumstances.

But after about more than 75 years of independence this system of legal instrumentalism by way of providing lead law rules, was expected to wipe out not only the caste system and other evils like dowry from the face of Indian social system but also to uplift the deprived sections of the society from the morass of underdevelopment, putting them on the equal footing with other sections. But the lead law model did not work the way, it was expected to. The reasons are not difficult to find. There were certain fundamental contradictions in the very approach. First of all, the very idea of law working as an instrument of social reform has its own limitations. *Social phenomenon has its own dynamic and any law that seeks to affect certain changes into it without taking into consideration the fundamental realities is bound to fail.* Any law or even a judgment that deliberately separates itself from the mores and values weakens its social base and authority. Law, philosophy, religions and morality have no

independent existence, but are various reflections of the social dynamic. Any impartial observer of Indian social scene would testify that this lead law approach of affecting social reform by using the instrumentality of law without trying to bring about social consciousness has not succeeded much. To illustrate dowry by and large has spread more than it was in pre-1960 period and has turned out to be some kind of status symbol despite there being a dowry prohibition law. This clearly shows that the lead law approach of law has not really worked well in India. It must be understood that law cannot be seen abstracted from the social realities and that the effectiveness of law in the ultimate sense must derive from the law as an instrument of social change working in tandem with social and cultural life of the people. The Hon'ble Apex Court recently in a landmark judgment *X V. Principal Sec. Health & Family Welfare NCT of Delhi* unanimously allowed an unmarried woman to terminate her pregnancy. While interpreting the issue the Hon'ble Court held that when confronted with the demands of a transformative society *the Court must step up to the challenge by looking at the changed social realities and interpret the law taking into account the changing social mores and realities.*

No law or judgment can be imposed on the people and if imposed it will remain in the statute books only rather being a *law in action*. This gap between the law and the society can be abridged by arousing social consciousness in the people about a particular issue in which not only the Government but even the civil society and media can play a major role. Any new reform sought to be introduced by a law, to which the *Hijab controversy* is no exception must be experimented as a pilot project at the grassroots level and people must be made aware of the objective that a particular law seeks to achieve instead of imposing it, only then such a law will lead the society and bring about reform. We must

have the willingness to examine the changing social realities and it is also the adjudicative obligation of the Courts to discern the changing social mores.

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