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## Learning Outcomes

After the completion of this chapter, the students will be able to:

- Discuss the meaning of law reform
- Critically analyse the need for law reform in India
- Explain the role of British administrators in improving the Civil and Criminal justice system in pre-independent India
- Describe the role of law commissions in law reforms in pre-independent India
- Enumerate recent law reforms in Independent India

## I. Need for Law Reform

There is a strong relationship between the law and the society. Law has to be dynamic. It cannot afford to be static. In fact, law and society act and react upon each other.

Law reform is the *process by which the law is adapted and advanced over a period of time* in response to changing social values and priorities. The law cannot remain stagnant. Law has to respond to the social concerns and has to provide amicable solutions to the problems that keep coming up before the society. It has to respond to social, economic or technological developments. Law reforms also help to shape democracies to suit changing political and legal environments. Law reform is not a one-time process but a tedious and gradual process.

## II. Law reforms in India

Law reforms in India can be broadly classified into two periods, which are as follows:

- i. Pre-independent India law reforms
- ii. Post-independent India law reforms

Before the advent of British rule, the Indian society was by and large governed by its customary laws, either based on Hindu Dharmashastra or Islamic religious scripts. These customary laws were followed by the rulers and the ruled. Customary laws were considered as rigid and averse to the idea of social change.



The East India Company introduced the western legal system as well as legal reforms in India. Prior to the First War of Independence in 1857, the East India Company ruled India under the permission of the British crown, and later on the British crown governed India till 1947. During the British Raj, i.e. from 1600 A.D to 1947 there were major changes in political, economic, administrative and legal fields.

Modern courts were established by the enactment of various Acts such as the Regulating Acts, 1773, the Government of India Act 1935, etc. Further, well accepted principles of English law like justice, equity, and good conscience were used by the courts in India for their decisions. British administrators like *Warren Hastings* (1732-1818), the first Governor-General of India, *Cornwallis* (1738-1805), a British Army officer and colonial administrator, who served as a civil and military governor in India, and is known for his contribution to the policy for the Permanent Settlement and *William Bentinck* (1774-1839), a British statesman, who served as Governor- General of India from 1828 to 1835, played crucial roles in the reforms in the Judicial System in pre-independent India.

A major milestone in law reform during the *British Raj*, was the establishment of the Law Commission. The first Law Commission was established in 1834 under the Charter Act of 1833, under the Chairmanship of *Thomas Babington Macaulay*.

The major contribution of the Law Commission was the recommendation on the codification of the penal code and the criminal procedure code. Thereafter, the Second, Third and Fourth Law Commissions were established in the years 1853, 1861 and 1879 respectively. The Indian Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Indian Evidence Act, 1872 and the Transfer of property Act, 1882, are major contributions of these above Law Commissions.

## Post-Independent India

Freedom brought the winds of change and an ideological shift in post-colonial India. This change was very visible in the field of law reform as well. In Independent India, the newly enacted Constitution and Principles enshrined under it were the main guiding forces of law. The Fundamental Rights and Directive Principles of State Policies are now the basis for any social change. After Independence, the Constitution under Article 372, recognized the pre-constitutional laws. However, there were demands from various quarters to have a fresh look at the colonial laws. Responding to the feeling of the Indian masses, the government constituted the First Law Commission of India under the chairmanship of the then Attorney General, Mr. M.C Setalvad. Since then, twenty Law Commissions have been constituted.

The Law Commission of India has dealt with wide range of issues. The government is equally aware and concerned about the need for timely reform in laws, in order that law may respond to the changing needs of society.

However, in recent years, economic reforms have brought about many changes in the Indian society. New categories of crimes including white-collar crimes, crimes against women and economic inequality in particular, have to be tackled on an urgent basis. The Law Commission therefore occupies a central role in law reforms in India.



Lord Macaulay, 1800-1859, came to India in 1834 as a member of the Supreme Council of India when William Bentinck was the Governor- General of India. He stayed in India till early 1838. However, during his short stay Macaulay had left his unforgettable imprint on the Indian legal system which made a long term impact on the Indian society.

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### III. Recent Law Reforms in Independent India

#### A. The Right to Information Act, 2005

The Right to Information Act, 2005 also known as RTI Act, aims to promote transparency in government institutions in India. The Act came into existence in 2005 after continuous struggle by anti-corruption activists.

It is a revolutionary Act as it opens public authority for scrutiny by an ordinary citizen. An Indian citizen can demand information from any government agency, who in turn is bound to furnish the information within 30 days, failing which the officer concerned is fined. As a common person it is important to be equipped with the knowledge of RTI.

#### B. Information Technology Act, 2000

This Information Technology Act, 2000 is based on the United Nations UNCITRAL Model Law on Electronic Commerce, 1996.

Information Technology Act is most important law in India dealing with Cybercrime and E-Commerce. It provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as electronic commerce.

#### C. Muslim Women (Protection of Rights on Marriage) Act, 2019

Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed by the Parliament of India criminalizing triple talaq to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands.

In 2017, the Supreme Court of India declared triple talaq, which enables Muslim men to instantly divorce their wives, to be unconstitutional.

#### D. The Consumer Protection (Amendment) Act, 2019

The Consumer Protection (Amendment) Act, 2019 came into effect in July 2020. It repeals and replaces the Consumer Protection Act, 1986. The purpose of the amendment act is to prevent unfair trade practices in e-commerce to protect consumers.

The Act also protects the consumers from misleading and deceptive advertisements. Now, an advertising code gives customer protection against false advertisements, especially protecting them from celebrities, who do paid reviews of the products and services. The advertising code is applicable throughout all mediums of communication like social media, print media etc.

The Act also provides for settlement of consumer disputes in India and strict penalties, including jail terms for adulteration and for misleading advertisements. It now prescribes rules for the sale of goods through e-commerce.

The Consumer Protection (Amendment) Act, 2019 provides greater transparency and gives more power to the customer for redressal of disputes.

#### Highlights of the Act:

- An aggrieved consumer can file complaints about a defect in goods or deficiency in services from where she/he lives, instead of the place of business or residence of the seller or service provider.
- One can now do an e-filing of consumer complaints.



- No fees is required to be paid if the claim is within Rupees 5 lakhs.
- The consumer need not engage a lawyer and can conduct her/his own case via video conferencing.
- A concept of product liability now allows aggrieved consumers to claim compensation due to the negligence of the manufacturer or service provider.
- A class action suit can now be filed by a group of aggrieved consumers who can now join hands to reduce costs and improve chances of redressal or settlement. (like in the US)
- Producers of spurious goods may be punished with imprisonment.
- Those celebrities who now endorse a product can now be barred from endorsing if the advertisement is misleading.
- E-commerce is tightly regulated. E-commerce companies now have to disclose all relevant product information, including country of origin and address all of consumer grievances within prescribed timelines.
- Settlement of consumer disputes through mediation is encouraged thus saving time and resources of disputing parties.

#### IV. Exercises

Based on your understanding, answer the following question:

Q-1 What is the need for Right to Information Act in today's context?

#### Activity

Q-1 Research paper/ PPT on Law reforms that took place due to recommendations by various law commissions, for instance, Passive Euthanasia.

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