CONCLUSION

“It is odd, when one thinks of it, that there are people in the world who, having renounced all the laws of god and nature, have themselves made laws which they rigorously obey...”

Pascal

It is quite natural that laws which derives it’s source from rituals, believes and also from particular social system are subject to change. But the main issue which is to be noted is that whether the reforms are timely or keeping pace with the social change. If it is not so that it result in hindering social progress. Law Reforms simply aiming at the practicality is very easy. But ignoring sociological and philosophical background of society will do little benefit to the people. Every legislation affecting the social life influences our value system. This will take place directly or indirectly. If the law making authority is not considering this fact it may affect the future social set up. Therefore analysis of the legal system with the help of philosophical tools has its relevance.

Major laws existing in India came into force during the period of British rule. No important reformations except some meager changes took place. Certain laws turned irrelevant now. There are also laws which were enacted in a particular social set up of our country. Now these laws were also

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became impractical. One cannot analyse all these facts in a brief study. Constitution is the major guideline of Indian legal system. Though there are laws enacted before the commencement of the constitution, they also come under the purview of the constitution. So the relevance of constitution in our legal system is very important. Constitution is a declaration for the people by the constituent assembly representing the people. It is more than a declaration. Former Prime minister Jawaharlal Nehru viewed it as a "declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication".\(^2\) For the same reason the reformation of legal system is depended on the flexibility of the Constitution also. So every discussion regarding Indian legal system start from the nature and scope of constitution. Likewise penal laws, family laws, human rights issues etc. should be analysed.

**Criminal Justice System**

The unsatisfactory nature of criminal justice in India has nothing to do with the adversarial system. The reason for the unsatisfactory situation lies elsewhere. India's social structure and attitudes are very much conditioned by entrenched habits of discrimination. There are various forms of discrimination, among which one may mention caste discrimination, discrimination of indigenous (tribal) people and minorities. Discrimination on the basis sex is also a major issue. Discrimination weighs heavily on the

justic system. This has created severe obstacles to the development of India's justice system in general and the criminal justice system in particular.

Another point to be noted is that, now the concept of punishment is changed. For example, in contrast with the primitive community a civilised society considers the social and psychological background of a person before convicting him for an offence. According to the present human rights thoughts the elaborate principles of natural and social justice should also be considered. Rehabilitation of the criminal back into the society is a prime task. Here an important question arises how can a penal code enacted before a century, work effectively without timely reformation. The investigative machinery regarding crimes is terribly crude, both in terms of attitudes as well as facilities. Furthermore, the justice that one may get is also associated with poverty. The level of poverty in India is so appalling that the poor cannot afford justice. In addition, the management of the criminal justice system is inefficient and obsolete. Poor human resources and inadequacy of technical resources affect every area of the system.

The administration of justice in criminal as well as civil cases are mainly based on the evidence given by witness. Some legal concepts such as eyewitness is necessary to convict an accused in certain criminal cases are not at all relevant in modern age. This is because, criminals are using modern weapons and new methods in a crime. Producing eye witness in such
occasions is not practical. Moreover witnesses are often subject to serious threats to their life and property by the accused or their supporters. The causes of such threats can be removed only by strong anti-corruption measures as suggested above. Systematic threats and intimidation take place due to the weaknesses of the system. The people who intimidate feel that law enforcement is weak and they can do what they like. Without improving the overall system, it is not possible to change such a mentality.

Death penalty is an important issue discussed by legal philosophers and jurists all over the world. The predominant global view, including international conventions, appears to favour the abolition of the death penalty. The Supreme Court of India has ruled that the death penalty is not unconstitutional and may be imposed in the rarest of rare cases. But life imprisonment exists as an alternative, and this is quite enough punishment. Furthermore, a large number of cases prove the a miscarriage of justice in a significant number of cases ending in death sentences. The discovery of a miscarriage of justice after the execution is futile for the person concerned and their family. Moreover, the people who are given death sentences are usually the poor. Prominence of reformative theory above retribution is also strong ground for the abolition of death sentence. In India, the number of death sentences were less comparing to the previous decades. Moreover the concept of government, which is supposed to exercise more power to rule efficiently has also changed. The new concept is that whenever the
government become more democratic, then the rudeness of punishment vanishes.

Judiciary for the Disadvantaged

The existing laws dealing with crimes against women, children, Dalits and disadvantaged people do not adequately safeguard their interests. There needs to be more improvements. The most important aspect is the implementation of existing laws. For example, there are many laws relating to Dalits, but they are hardly implemented. The reasons for non-implementation should be studied. One obvious reason is the attitude of the law enforcement agencies and therefore a radical change is necessary in this area.

Reforming legal system is not only related to the amendment of laws, what is required is a change of attitude. Judges must be able to use modern communication techniques and administration methods. However, for that, they must feel that the system they are leading is really working. Above all, they need higher morale. It is a common principle that every profession needs improvement. The immunity of judges for actions taken in their official capacity and in good faith is a concomitant part of the independence of the judiciary. At the same time, a judge who lives in a society open to the 'pulls and pressures of the cosmos' cannot be left unaccounted too. An independent and efficient body should be devised to monitor the judiciary.
The protection of human rights of citizens is one of the important responsibilities of the legal system. It is not satisfactory at all. Meanwhile, legal redress must be provided to victims of human rights violations, India must ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture must be made an offence with serious punishment provided to offenders, human rights claims must receive priority in the courts, more compensation must be granted to victims and violators should be debarred from the civil service.

Women's rights

As long as women do not have the same rights in law as men, as long as the birth of a girl does not receive the same welcome as that of a boy, so long we should know that India is suffering from partial paralysis. Suppression of women is inconsistent with principles of ahimsa (non-violence).

The legal system is an important tool for social change and reform. It is capable of establishing an equitable and transparent framework for the functioning of a civilized society and for protecting the rights of vulnerable groups including women. Many constitutions of the world recognize equality before the law and prohibit discrimination on the basis of sex. Statutory laws aim to reform discriminatory customary practices, and an active judiciary can further protect women's social, economic, and political rights. Indian constitution provide two examples where the legal framework has sought to

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3 Mahatma Gandhi, Harijan, August 18, 1940.
protect the interests of women. Most of the democratic countries, prohibit discrimination on the basis of sex, although they uphold the application of customary laws to personal matters. Women have obtained equal access to property and are able to participate freely in economic activities. These laws also give women inheritance rights equal to those of men.

Such a potentially powerful instrument of change still only vaguely protects the rights of the most vulnerable groups. Equal protection laws have not yet benefited the majority of women who remain unaware of their rights or unable to seek legal protection. Working mostly in the unregulated informal labor markets, these poor women experience the law as harassment, and not assistance. This leads to the question why legal systems in country is unable to protect poor women, identifies reasons why previous legal reforms may not have worked, and highlights some principles that may be useful for undertaking future legal reform.

The discourses of Muslim reformers deprecated useless custom, particularly as observed by women, and placed heavy emphasis on the need to observe the Shariat in everyday life. The recommendations of these reformers involved changing personal habits and eliminating household rituals. In some cases, however, reformers advocated legislative enactments in order to bring Muslim personal law closer to the spirit of the scriptures, as well as to improve women's rights in the context of family relations. Thoughts on the
need for a reformed divorce law was one such instance. Reformers were concerned about British legal actions invalidating certain types of *waqf* (pious endowments) that had been used in the past to support the donor's surviving family members - frequently women. Thus, the revalidation of such *waqf* would benefit indigent Muslim women.

Another matter that concerned reformers was succession to property. Under the *Shariat* a daughter is entitled to inherit a share of her father's property - half that of a son, to be sure - but nevertheless her right to property is specified in the Koran and *Hadith*. In many places in British India, however, 'customary law' was enforced, custom that favoured sons to the exclusion of daughters. This was to the benefit of rural landed magnates, cultivated as political allies by the British, in the interests of keeping landholdings intact. The nature of rural landholdings varied greatly from place to place, but in general, the issue of *Shariat versus* custom among Muslims pitted rural landholders against urban reformers and some *ulama*.

In the early part of the twentieth century, therefore, an undesirable coalition of *ulama*, Muslim middle-class reformers, and Westernized politicians with nationalist leanings came together - for very diverse reasons - to enact a series of legal reforms. The Waqf Validating Act of 1913, the Muslim Personal Law (*Shariat*) Application Act of 1937, and the Muslim Dissolution of Marriage Act of 1939 were laws that specifically applied to
Muslims. In this period also the Sarda, or Child Marriage Restraint Act of 1929, was enacted that applied to all religious communities. The latter was heartily endorsed by the All-India Women's Conference (AIWC), founded in 1927, representative of the growing voice of Indian women in the social and educational reform arena.⁴

**LAWS ARE BASED ON DIFFERENT VALUES**

Laws are often more difficult and costly to implement when based on values alien to those they are supposed to help. In India, the reform of personal laws for the Hindu majority imposed values different from those based on principles of dharma or obligations. New laws adopted an individual-rights approach and assumed a community of nuclear families.

Egalitarian laws and norms work best when both men and women have economic opportunities. When poor, uneducated, and often illiterate women have little chance of attaining economic independence, they cannot take advantage of egalitarian laws to assert their individual rights. Exiting out of inequitable contexts has high social and economic costs. They may instead choose options offering less individual freedom but lower social costs, lessening the impact of egalitarian legislation. Despite good intentions, legal reforms may have unintended effects on women’s property rights. The dowry system in India, for example, shifted from a familial obligation to provide a

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⁴ Janaki Nair, *Women and Law in Colonial India* New Delhi, 1996, pp. 79-84.
share of family property to daughters at marriage to a de facto right of the bridegroom’s family to demand compensation. In response, the Dowry Prohibition Act (1961), while not banning dowries, prohibited gifts given or taken in consideration for marriage. Unfortunately, it also reduced the willingness of families to provide property to their daughters at marriage, while maintaining preferential rights of male members of joint families over inherited properties. Subsequently it led to the fact that daughters’ claims to family property were generally not in practice.

For effective legal reform, both substantive and procedural issues must be addressed; piecemeal legal reform is ineffective. Judges as impersonal officers of the court and their concern should not be near the peace of the community but upholding of laws prescribed by the state. With increasing importance given to inflexible written laws and judicial precedents, the illiterate and the poor became more disempowered. Court and advocate fees and complex procedural rules ensured that the process of seeking justice became expensive and difficult for the poor, let alone for women.

Need of holistic reform

Considering all the issues discussed above, legal system in India need holistic reform. It requires inter disciplinary approach to benefit more. Mere legal consideration will not do good. Here the importance of philosophical perceptsives show its importance. As the ethical principles contribute to the
basics of law, the prominence of philosophy increases. More over the new principles of social and political philosophy is also to be considered. Green politics, Feminism, Human rights and even the concept of animal rights should be included among the guidelines.

The essence of legal thought and practice, the delimitation of it's areas, the norms and conditions of its validation were problems to all. The present day legalists and socio-political and cultural study experts may say that they have nothing to do with natural law not with social norms and ideas to which it represented. But such an approach have not succeeded in resolving or removing the problems which natural law attempted to solve. The present thesis aims to project the fact that such vital issues are problems which are the domain of legal and socio-political philosophy are nothing else than natural law write large. Conceptual clarity, objectivity and public nature of legal terminology and discourse is another point that the present thesis aimed to highlight, for it is an important problem in humanistic terms. All the wisdom includes legal thought is for man or humanity. There should not be any cleavage between law and humanity. This is another point which the present project intended to presents.