CHAPTER VI

AN ASSESSMENT OF THE EFFECTIVENESS OF
SOCIAL LEGISLATIONS IN INDIA
Before we embark ourselves to study the effectiveness of social legislations in India, it may not be out of place to mention the limitations and difficulties involved in the task.

Firstly, the very magnitude of the plethora of social legislations hitherto enacted in this country would render a detailed study in this regard very difficult if not impossible. Secondly, the object of this dissertation is also not to assess the relative effectiveness of the very many social legislations in a great detail, even though, the data concerning the effectiveness of the social legislations are vitally necessary to exemplify the impact of these social legislations on the criminal law of India.

However, it is an undisputed fact that even amongst the many social legislations, some of them are the very essence of human dignity and human values and are very vital to the human existence. It would be worthwhile to concentrate more on studying the effectiveness of such social legislations and draw out a common summary concerning the other social legislations which will enable us to arrive at the necessary conclusions later on.
Hence, the study of the relative effectiveness of social legislations are restricted to some of the crucial enactments dealing with the basic human equality like the Civil Rights Enforcement Act and other important social legislations concerning the equal status of women, particularly those which plan protection of women from various kinds of exploitation such as abolition of Sati, infanticide, dowry and connected enactments like the Suppression of Immoral Traffic Act and the Child Marriage Act, etc.

Further, a cursory survey of some of the important social legislations concerning social defence measures and correctional endeavours would provide a comprehensive picture for our study. A passing reference to some of the other important social legislations concerning public health, decency and morality and a general view of some of the 'economic justice' oriented social legislations and also a casual glance at some of the labour legislations would be necessary and useful in this regard.

It may be reiterated here that the purpose of this particular Chapter is also to establish the relative value of the very social legislations themselves and to stress the importance of other social institutions factors which are vital to the effectiveness of social legislations in general. It is the combination of all the factors taken together that are likely to achieve the desired social transition. A right appreciation of this fact would in turn project the true role of social legislations in a correct perspective.
As mentioned earlier, a comprehensive and reliable assessment of the effectiveness of various social legislations hitherto enacted in this country is understandably difficult to achieve. But, at the same time, it is necessary to arrive at some dependable yardstick in this regard which can help us in planning the efficient employment of the means of social control to promote social justice through social legislations.

No doubt, mere reliance on statistics available would provide only an incomplete picture of the subject under study. Firstly, the statistics are generally not comprehensive for obvious reasons. Secondly, statistics are not always reliable and sometimes statistics may even be misleading.

A more rational approach could be based on the collection of opinion from amongst those who are involved or concerned with the issue. This could be laced with the opinions and facts expressed by the victims or the potential victims of the malady about which data is being compiled. In addition, other vital information could be got from the study of the consequential effects of the problem on the society in particular. Likewise, other sources of information would naturally lie in the reflections of the mass media concerning the problem and also by a sample field study.

In contrast to the punitive social legislations, the effort to study the relative effectiveness of beneficial
or correctional legislations are rendered more elusive as these legislations do not easily provide an estimable reflection with regard to their effectiveness. In addition, the prevailing social climate may also camouflage the real situation particularly with regard to statutory legislations making the study more elusive and illusory.

In fact, it is only the integrated appreciation of all the above factors that can help us in assessing the effectiveness or otherwise of the social legislations.

However, one has to concede that inspite of the disadvantages, shortcomings and incomplete projections, the statistics may often provide, it cannot be ignored totally nor can it be lightly brushed aside. Statistics will have to be analysed and evaluated subject to the above limitations.

(i) *The Civil Rights Protection Act of 1976 (repealing Untouchability Offences Act of 1955)*:

The sequence of events leading to the introduction of the Untouchability Offences Act in the year 1955, in pursuance of the constitutional proclamation under Article 17 have already been mentioned.

After observing the relative effectiveness of the Untouchability Offences Act for a couple of years, the Parliament had appointed a sub-committee under the leadership of Shri Elayaperumal, in the year 1964, to study the problem of untouchability with reference to the enforcement part of the Untouchability Offences Act and sought suitable recommendations. After a series of deliberations the Elayaperumal
Committee submitted its recommendations to the Parliament in the year 1969.

In pursuance of the several debates in Parliament while reviewing the Elayaperumal Report, the legislature again sought to amend the Untouchability Offences (Amendment and Miscellaneous Provisions) Act of 1972 (XXXI of 1972). The amended Act contemplated stringent punishments in contrast to the earlier Act. It also contemplated minimum punishment, cumulative punishment and withdrawing the facility of fine and alternative imprisonment. Further, the Act also provided for higher punishments for subsequent offences.

In spite of the changes in the law it was experienced that much was left to be desired in the effective enforcement of the Untouchability Offences Act. In addition to certain shortcomings in the letter of the law, several other contributory factors such as lack of initiative and lack of right attitude on the part of the enforcement machinery and all important lack of social involvement of the society at large towards this social change compelled the perpetuation of the inequalities sought to be abolished by the Untouchability Offences Act 1955.

Again a joint committee of the Parliament (1972) undertook an extensive study of the working of the Untouchability Offences Act and made its recommendations in the year 1974. Some of its recommendations were:
(1) The abolition of "Untouchability" should be taken to have conferred upon the untouchables certain legally enforceable immunities and privileges of citizenship - the "civil rights". Therefore, the law intended and designed to punish the practice of "Untouchability" should be described as a civil right enforcement legislation. Accordingly, the committee felt that the short title of the principal Act - the Untouchability Offences Act should be changed to the "Protection of Civil Rights Act".

(2) Any disability on ground of "Untouchability" should include any discrimination on that ground.

(3) Any place of public worship established and maintained by a religious denomination should be open to all persons belonging to the same religion.

(4) Prevention of temple entry on the ground of untouchability of a person should be punishable, even if the person concerned does not belong to the same denomination as the person prevented.

(5) No one should be prevented on the ground of untouchability from bathing not only in, or using waters of the sacred tanks, wells, springs or water courses, but also of the rivers, lakes or ghats attached to them.

(6) Any disability enforcement on ground of untouchability with regard to the taking part in, or taking out any religious or social procession should be made punishable.
(7) Any insult done or attempts to do it to a person on ground of untouchability should be punishable.

(8) A person who justifies or preaches practice of "untouchability" on historical, philosophical or religious grounds should be deemed to encourage, or to excite practice of untouchability.

(9) A public servant showing any negligence in investigation of the Untouchability Offences Act or offences should be punished as an abettor.

(10) Any community - local or other - practising "untouchability" should be liable to a collective fine.

(11) Legal aid should be made available to the victims of the Untouchability Offences Act crimes.

(12) Official machinery including committees at various levels should be planned for overseeing implementation of "Untouchability" removal measures, and conducting periodic surveys of the Untouchability Offences Act operation.

(13) Special officers and special courts for trial of the Untouchability Offences Act offenders should be appointed.

(14) The reports concerning various measures taken by the various governments should be placed on the Tables of the Houses of Parliament.

In pursuance of these recommendations, the Untouchability Offences Act was replaced by the Civil Rights Protection Act of 1976. The salient features of the Civil Rights
Protection Act reflected many of the recommendations of the Parliamentary Committee. Wider meaning is provided to section 3 under explanation for that section and section 4 covers the application of the Act to Buddhists, Sikhs or Jains also. Similarly, wider coverage to prevent several other manifestations of discriminatory practice, left out in the original enactment have also been added.

A singular feature of this Act is stringent action contemplated against an investigating officer for improper and deliberate subversion of the law. He would be liable, in addition to other sections of Indian Penal Code and respective Police Acts for a constructive liability under the Civil Rights Protection Act itself.

The working of the Untouchability Offences Act and the enforcement part of the 'Untouchability' offences have been extensively dealt with by the two committees of the Parliament in the years 1964 and 1974 respectively.

A statistical survey conducted by the Bureau of Police Research and Development in the year 1975, went into the enforcement aspect of the Untouchability Offences Act and observed that during the year 1972, 1635 cases were reported under the Untouchability Offences Act 1955 all over the country and in 1973 and 1974, increase was noticed respectively at 2719 and 2413 cases. The break-up of cases State-wise was -
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Total: 1635 2719 2413
The Bureau of Police Research and Development survey laid due emphasis on statistics and cautioned against an isolated review of the enforcement without looking into other administrative and social bottlenecks in the realisation of the objectives of the Untouchability Offences Act. Further, the survey carried out an exhaustive study of the problem (i) to critically analyse the cases registered; (ii) to identify vulnerable areas and suggest remedies to strengthen them; and (iii) to study the police attitude in the implementation of the Act, and (iv) to identify areas presenting difficulties in investigation and suggest remedies to remove them either through unproved methods or amendment procedures.

Some of the general conclusions concerning the Untouchability problem were :-

(a) The problem is mainly confined to the rural areas.
(b) The confrontation between the untouchables and caste Hindus are mainly in the areas of temple entry, common wells, discrimination in educational facilities and isolation in community functions.
(c) The enforcement of the law has not been strict and impartial.
(d) As it is, the workload on the investigating officers is very heavy and the investigating officers cannot give as much attention to the cases under the Act as they should.
(e) There is a necessity for special police cells to tackle the problem vigorously and continuously.
(f) Erring police officials should be awarded
(g) There are congestion of cases in courts and delays in their disposal.

The study group also organised a series of group discussions and arrived at some of the glaring facts:

(a) There is discrimination between Harijans and caste Hindus in the rural areas - especially in social functions, common wells, shops selling essential commodities etc.

(b) Visits by higher police officers to villages are rare.

(c) Police action is delayed denying immediate relief and restoration of balance between the communities.

(d) Opening of new police stations and out-posts in rural areas is necessary to ensure police presence in vulnerable areas.

The B.P.R. & D. study went deep into the investigation/disposal aspect and observed that:

(a) Investigation was superficial.

(b) Evidence was inadequate or biased due to local pressure, non-availability of witnesses for the fear of getting involved in court proceedings.

(c) Investigating officers did not appear in court on the date of evidence.

(d) Versions given by witnesses were contradictory.

(e) Evidence was not weighed before the case was sent to court.

(f) Relevant documents were not produced in court.
(g) General lack of interest and involvement in the conduct of such case by the prosecuting agency.

In addition to making recommendation for treating the offences reported under the Act as "heinous" offences (as is prevalent in some States) to attract the obligatory supervision of gazetted officers, it also suggested special courts to exclusively deal with the offences under the Untouchability Offences Act.

The other recommendations of the study included -

(a) As the offences registered under the Untouchability (Offences) Act 1955 are simple cases to investigate, a time limit of 15 days should be laid down for completing the investigation.

(b) Collusion, or partiality by the police should be taken serious notice of by awarding exemplary punishment.

(c) The problem of untouchability is essentially a social one, and the success of any movement to eradicate it would largely depend on the social awareness and the attitudinal transformation to be brought about among the people in general. Carefully designed social programmes would give the real thrust to the movement and the role of the Social Welfare Department in designing and organising such programmes on a large scale cannot be over-emphasised. The enforcement machinery could add strength to the movement by active
(d) There should be total involvement of the local police in this movement to eradicate untouchability. This is possible only if the police personnel dealing with the problem feel totally responsible for the enforcement of the Act and develop appropriate attitudes in this regard. It would, therefore, not be desirable to set up special police stations for the exclusive purpose of enforcing the Untouchability (Offences) Act 1955.

(e) In areas where the problem of untouchability is not acute, the local police should be able to look after the problem. All that is necessary is to ensure adequate supervision at the higher level.

Further, the study reported the necessity of augmenting the manpower of the enforcing agency and also dealt with the restructuring of supervisory control, need for reorientation of the staff with regard to attitudes of the executive officers, motivation and efficiency to pursue these cases. The report also stressed the need for an all-round involvement to overcome the menace of this social gap in the Indian society.

It is thus evident that 'untouchability' is still one of the major social problems confronting the Indian society. Periodical violent eruptions of this social malady, which often gets reported from different parts of the country
discloses the depth and extent to which the affliction persists. At the same time, it is equally true that the constitutional mandate followed by the legislative enactment relating to untouchability have definitely created an impact on the society in two ways. Firstly, the social legislations have gone a long way to curb the practice of untouchability. Secondly, it has influenced the attitudinal change amongst the people in general, which is undergoing a shift in the desired direction.

B. (1) Bonded Labour Abolition Act and Debt Relief measures:

The recent social legislations like the Bonded Labour Abolition Act and some of the Debt Relief Acts enacted by several States have no doubt created a tremendous impact in the social life of our country. Even though comprehensive all India statistics concerning these two social legislations are not readily available, some statistics are available which will help us in assessing the magnitude of these social problems.

The various facets of the problem of bonded labour have already been discussed in Chapter III. In fact, the problem of bonded labour had received piecemeal attention of several States and many legislations like Bihar-Orissa Kamiauti Agreements Act of 1920, the Madras Debt Bondage Abolition Regulation Act 1940, or the Rajasthan Sagri Abolition Act 1961 had been enacted. In spite of these legislative endeavours the accursed system of bonded labour still persists particularly in rural parts of the country.
Consequent to the Bonded Labour Abolition Act 1976, the law in all its panoply of criminal sanction has been conceived. In addition to release from bondage, the liquidation of any debt or liability due from such bonded men have been conceived in a series of parallel social legislations under debt relief enactments.

No doubt, most of the States in India did present statistics during the year of the enactment of Abolition of Bonded Labour Act (1975) indicating the number of such bonded labourers who were identified and released from the clutches of their bondage, according to which a staggering number of over 50,000 bonded labourers who were freed. But at the same time number of such released men contrasted to a sad figure of hardly 6,000 who were rehabilitated. The sudden legislative action did put enormous pressure on the State to plan their rehabilitation and aftercare.

The latest figures presented before the Parliament during December 1979 indicates that from a National Survey conducted in about 1,000 villages of 9 States, there are still 22.4 lakh bonded labourers in these States alone. Further, these States have identified nearly ten lakh bonded labourers amongst whom only 31,000 have been so far rehabilitated. The prevalence of this malady is thus on a very wide scale. In view of the fact that legislative endeavour in this regard is of a comparatively recent origin its effect may be appreciated probably after a reasonable passage of time.
Similarly, in the implementation of several debt relief measures it is experienced that the legislative enactment is really a great economic succour to the poor and socially and economically exploited people. However, lack of alternative financial credit facilities at the rural level coupled with the drying up of the traditional sources has been resulting in a tremendous pressure being felt in the village life. No doubt, efforts are under-way to tide over this crisis. At the same time it is a pointer to the fact that it is not merely the legislative will, but the social circumstances coupled with the positive support of various other factors which can really promote the cause of social justice or make the social legislations in various directions really effective.

(ii) Social legislations and women:

Many of the evil social customs like Sutee, infanticide, child marriage, dowry system are essentially related to the status of women in general. It is gratifying to see that the Indian society has recorded an appreciable transition, though belated and in a slow manner, by according a better status to the women.

Even though cruel practices like Sutee or infanticide are almost the things of the past, same cannot be said of the 'child marriage' or 'dowry' menaces afflicting the Indian society. The success achieved in translating the legislative will as conceived by several social legislations like the Child Marriage Restraint Act (1929) or the Dowry Prohibition Act of 1961 leave much to be desired.
In spite of the fact that a social legislation like the Child Marriage Restraint Act (also known as the Sarda Act) was put on the Statute Book in the year 1929, the present day society cannot possibly claim to have got rid of this social evil and scourge on young females of this country. One of the seriously debated points and much demanded amendment with regard to the minimum age prescribed under the Child Marriage Act has also undergone an amendment in the year 1978. But a feature which has stifled the implementation of this legislation is that the Child Marriage Restraint Act is not cognizable by police (except in the State of Gujarat). No doubt, various considerations might have weighed heavily to restrict cognizance of the offence by courts only. However, those reasons appear to have outlived their utility in the presently prevailing circumstances.

Another feature of this Act under an acrimonious debate is the provision which does concede validity of the child marriage under review beyond the pale of the Act (as it does not hold such a marriages as void). There has been a persistent demand and public outcry that either such marriages should be treated as void or atleast the minor girl should have a right similar to the rights of a girl authorise to exercise the 'option of puberty' under the Muslim Law. In fact, this was one of the recommendations of the National Committee on Status of Women together with the obligatory registration of all marriages which could go a long way in preventing bigamous marriages also. Even the Suicide Enquiry (Pushpaben) Committee, appointed by the Gujarat State opined
that child marriages contribute substantially to the unhappiness and consequential incidence of suicides amongst young married women.  

No doubt, 'child marriage' is a legally prohibited act but legal action of treating of such marriages themselves not being void offsets, to a certain extent at least, the purpose sought for and law is thus rendered futile and blunted in its armour.

Similarly, the Dowry Prohibition Act of 1961 has merely tackled the tip of the ice-berg of this social malady. The original Act of 1961 was not a cognizable crime to enable immediate setting in motion of the legal process by the police. However, during 1975 and 1978 several States like Haryana, Karnataka, Orissa, Punjab, Uttar Pradesh and West Bengal have made the necessary amendments to render the offence of demanding/accepting dowry a cognizable offence and also have saddled further legal sanction of punishment on husbands who deny to the wife her conjugal rights on plea of non-payment or inadequate payment of dowry. Even though compromise and withdrawal of proceedings are permitted, restarting of the case is provided for on the complaint of the wife for failure to honour the terms of compromise.

First disadvantage of these legislative endeavours is that there is no uniformity to tackle this national problem which has its ramifications spread to the length and breadth of this land. Since this menace of dowry in reality is more pervasive evil than even the untouchability, being common
pitfall of all castes, creed and communities, an organised and uniform legal drive is a must. In fact, the provisions of some of the Amendment Acts of States concerning dowry are comparable to the 'compounding' provision of the earlier Untouchability Act which was honoured more in breach and more often than not was used by the vested interests in putting undue pressure on the victims and thus get out of the clutches of the law.

Likewise the lack of uniformity in all the States concerning the Dowry Prohibition Act leaves adequate legal loopholes to defeat the very purpose of this salutory legal measure.

Even though number of cases registered under this Act are very meagre, it is obvious that the statistics do not reflect the true nature of the prevailing situation and the invidious hardship caused due to the persistence of this cruel social custom continues to be a conspicuous social malady of the present generation.

The official statistics appear a cruel joke when we read that according to a survey conducted during the middle of October 1976, no case had been prosecuted under the anti-dowry law and it appears that during 1976 only four persons were prosecuted followed by a couple of cases being registered in the year 1977. It would be really futile to depend on statistics to assess the prevalence of this malady. At the same time it is obvious that the menace of dowry is still very prevalent all over the country.
The National Committee on Status of Women in India, in their recommendations (1975) have pleaded the imperative need for uniformity of the Act with regard to its cognizability and parallel provisions of compounding the offence and connected limitations to suit the needs of the society of the country as a whole.

Similarly, social legislations like the Medical Termination of Pregnancy Act have liberalised the attitude and relaxed the rigours of criminal law in respect of abortion in comparison to the provisions contained in sections 312 and 316 of the Indian Penal Code. In contrast to the highly narrow permissible possibilities of legal abortion, as contained under the Indian Penal Code, the medical termination of pregnancy is a permitted measure under eugenic, humanitarian and social grounds. However, the social need for extending the benefits of this Act towards sociological or birth control measures is yet not explored or utilised by the State.

One other major social problem concerning women relates to 'prostitution'. As discussed earlier in Chapter III, the causative factors contributing towards this social evil are many. Prostitution has been opposed by our society for reasons which are not far to seek. Some of its disadvantages are inherent. Prostitution is an affront to our sense of decency; it creates a nuisance; it spreads venereal disease; and it has the adverse effect on children and young persons and it tends to break the peace of the home. The other disadvantages are the various undesirable acts that
prostitution promotes or facilitates, like obtaining money by deception, theft, robbery, blackmail and the breaches of peace. These offences are not necessarily the outcome of each act of prostitution, but they are often concomitant with it.

The three major options open to combat prostitution are Regulation, Suppression and Abolition. None of them can claim complete results expected but each has a content of possible restriction or reduction of the problem. The Suppression of Immoral Traffic Act obviously plans the second course of action.

The enforcement of the provisions of the Suppression of Immoral Traffic Act, as observed by a study of statistics compiled by the National Institute of Social Defence during the year 1977 disclose several factors. The number of cases reported by the enforcing authority under the Suppression of Immoral Traffic Act during the year 1974 are:
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</table>

**Union Territories:**

| Andaman & Nicobar Islands | 1      | 1     | -    | -    | -    | -    | -    | -    | -    | -    | -    | -    |
| Delhi                      | 133    | 487   | 335  | 478**| 337  | 3    | 3    | -    | -    | -    | -    | -    |
| Goa, Daman & Diu           | 27     | 22    | 133  | 3    | 4    | -    | -    | -    | -    | -    | -    | -    |
| Pondicherry                | 7      | -     | 21   | 17   | -    | -    | -    | -    | -    | -    | -    | -    |

**Total (1974):**

| Andhra Pradesh | 13875 | 1184 | 14459 | 4465 | 3355 | 361 | 8 | 11 | 1 | 178 | - |
| (1973)         | 11072 | 797  | 11494 | 4085 | 3284 | 213 | 15 | 1  | 1 | 117 | - |
| (1972)         | 7718  | 778  | 7487  | 1911 | 1204 | 378 | 23 | -  | 1 | 124 | - |
| (1971)         | 7744  | 667  | 7756  | 1864 | 1112 | 222 | 39 | 7  | 4 | 169 | 2 |

**Note:** *Figures relate to 1973

**Provisional Figures.**
<table>
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<th>State/Union Territory</th>
<th>No. of persons whose cases were pending during the year (Sec.4)</th>
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**NOTE:**
- ** Figures of 112 persons dealt with by courts under section 9 of S.I.T. are also included.
From the statistics compiled by the National Institute of Social Defence, it is apparent that most of the cases are disposed of by fine. The details concerning the rescue homes and the financial investment by the State towards tackling this social vice provide an interesting data.

In assessing the effectiveness of legislations like the Suppression of Immoral Traffic Act, one must bear in mind that prostitution as a social malady is a very complex phenomenon. The causatory factors are many and it would be running away from truth if one were to ascribe to single factor theory - of poverty and employment. There are many diverse factors like social, economic, sociological, physiological, psychological and emotional influences which often interact and that may contribute, pre-dispose and at times compel this social vice to persist in its many facets.

No doubt, legal measures such as the Suppression of Immoral Traffic Act are absolutely necessary in combating the problem of prostitution but it is at the time obvious that legal measures in themselves are not sufficient to overcome the consequences of this problem.

(iii) Social Defence and correctional measures and legal enactments concerning decency, morality, public health, etc.

As mentioned earlier, social defence measures like the Probation of Offenders Act or Children Act, Borstal Schools Act or correctional enactments like Prison Reforms or anti-beggary laws are elusive enough to prevent a realist
assessment of their relative effectiveness. Likewise, social legislations like 'Prohibition' laws or 'drug laws' or 'anti-gambling' laws are so complicated with reference to the conflicting values inherent in the society that a satisfactory assessment of their relative effectiveness is often illusory.

However, the statistics of enforcement of anti-beggary and vagrancy laws obviously indicate that the effort made in the enforcement of these social legislations is rather inadequate in proportion to the magnitude of the problem. The data compiled by the National Institute of Social Defence during 1976 indicates that the number of beggars admitted into various beggar homes in several States during 1973 was 26,441 males and 4,894 females. Another interesting feature being that the statistics indicating the data from 1968 to 1972 are comparatively on even level (showing only marginal variations). This would, in the light of the fact that the number of beggars in India are increasing, disclose that the enforcement of anti-beggary laws are at a steady but low profile and only touching at the fringe of the problem. Even though the financial investments made by the State over the years have shown a steady increase, the impact of the same on the problem is yet marginal.

The statistics showing the implementation of Probation of Offenders Act and Children Act discloses that during the year 1974, 40,663 cases concerning first offenders and 13,972 enquiries under Children Act were dealt with. Statistics from 1971 to 1973 indicate an appreciable increase in the treatment of offenders under the Probation of Offenders Act
whereas the enquiries under Children Act show only a marginal increase. The financial outlay by the States have also shown a marginal increase from Rs. 4489.5 thousands to Rs. 5100.6 thousands only. On a perusal of the data gathered regarding the number of young offenders coming before various criminal courts and those coming under Children Act, it is obvious that the impact of social legislations vis-à-vis the treatment of offenders under the Probation of Offenders Act and the treatment of juvenile under the Children Acts can at best be said to be modest.

This assertion gets substantiated when we contrast the data concerning juvenile offenders during the same period with the data concerning implementation of Children Acts and Probation of Offenders Act. 15

The relative success of various social legislations conceived under the social requirements of decency, public health and morality also defy a satisfactory estimation. There are a few restraints which render the reach of the law in these areas comparitively stifled. Firstly, the very approach of law in so far as morals are concerned, raises a debate whether the State should interfere too much with individual habits so long as it does not affect others. Legislative measures against prostitution, smoking, or prohibition policy proscribing consumption of intoxicants are often criticised that they interfere with the citizens' fundamental right to choose as to what he wants to do with himself or with those who consent with him for certain activities. In fact, this question had come up for serious debate before the
Wolfendon Committee in England which presented its considered recommendations to the British Parliament in the year 1970.16

However, it is beyond doubt, that there are certain areas of social life concerning 'morals' which need to be assigned due priority and may warrant certain legislative proscriptions either to totally prohibit or control or minimise a particular kind of social habits. To find examples would be to consider cases of immoral trafficking in women, or public gambling etc.

The rational basis for the States interference in the morals of citizens has been a subject of serious debate. The problem gets more complicated as more often than not morals are sufficiently influenced or involved with the religion. In fact most of the moral values do seek their authority and justification in the religious precepts. The present day secular concepts of the State makes any statutory authority for conditioning moral values illogical and self-contradicting. A secular State which does not really believe in any religion obviously has no authority to pursue any moral enforcement which in turn seeks support of any religion. No doubt, secularism does not believe support or dependence on any particular religion. The State is not, in fact, against any religion. It is not irreligious but is only not encouraging any particular religion.

In reality all actions prohibited by law are traced to bear support of notions normally outside the moral plane. No doubt, many of the criminal laws may have evolved out of
the need for uniformity and suited the convenience. In fact, quite a substantial number of criminal laws are not choosing between good and bad but are conceived in pursuance of the object of ensuring order which has the primary requisite for ordering its regulation.

But it is also true that many of the laws may have overlapping basis in their conception. To quote Lord Devlin, crime of violence are morally wrong and they are also offences against good order; therefore, they offend against both laws. But this is simply because the two laws in pursuit of different objects happen to cover the same area. Such is the argument.¹⁷

The necessity of pursuing the dictates of established morality is essential for the welfare of the society as well as the good governance. While reviewing the Wolfendon Committee report, Lord Devlin had analysed the need of enforcement of morals in the society and had said that there is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration. Hence society is justified in taking the same steps to preserve its moral code as it does to preserve its government and other essential institutions.¹⁸

In addition, there are several other deeper reasons which provide a wider basis for legislative reaction in matters concerning morals. Firstly, it may involve the 'public health' from the point of view of the likely and foreseeable consequences of such prohibited actions. Secondly, it may also be an effort on the part of the State to ensure protection of persons from
exploitation of persons involved and their dependents from further economic exploitation owing to the financial distress.

However, it is apparent that the objectives of several social legislations like Suppression of Immoral Traffic Act or Gambling Act or several other measures like the Prevention of Smoking by Children or Abuse of Drugs (concerning morals in general but also particularly interest of the public health) have not been really effective to the extent sought for. Lack of social awareness and a conscious involvement or belief in the very prohibited acts themselves by a sizeable populace renders the legislation blunted to a great extent. It would be necessary to look briefly at the various relevant factors which affect the process of social change through law.
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(iv) Incidence of violation of other social legislations like Opium Act, Customs Act, Gambling Act, Prevention of Corruption Act etc.

The report concerning incidence of crimes in India, particularly in relation to offences under the Opium Act, the Gambling Act, Excise Act/Customs Act give an insight into the magnitude of the problem. The study conducted in the year 1976 discloses an increase of crimes under Opium Act at 15.7 per cent, under Gambling Act at 23.9 per cent, under Excise Act at 10.7 per cent and under Customs Act at 15.7 per cent, with reference to the previous year.
From a perusal of the statistics, it is evident that the volume of offences under all the above social legislations are increasing. Of course, it is quite natural to expect an increase in the number of cases in view of the increasing population and also due to a more stringent detection of cases etc. However, this does not throw any light on the effectiveness of these social legislations.

(v) **Labour legislations and their enforcement**

A comprehensive statistics concerning various labour legislations are not available. However, the Labour Bureau is annually publishing the 'Labour Year Book', giving out relevant statistics under various headings. This does give a broad picture of the situation prevailing in the labour populace of the country. While writing preface to the 'Labour Statistics 1967', the Director of the Bureau has emphasised the limitations of the statistics compiled in the volume and has also stressed the need for an objective assessment of the data.

Data provided by the study detailing the Minimum Wage of different workers gives us one side of the picture but does not disclose the extent of violations of the Minimum Wages Act. This fact has to be viewed particularly with reference to the unorganised sector of labour populace who are normally beyond a statistical survey.

Similarly, injuries to industrial workers employed in various units has also increased. But, this does not show the details as to how many are due to failure of the employer to comply with the statutory directions of the
Factories Act and similar other labour welfare legislations.

Statistics showing the then extent of social security ensured for various labourers during the period 1951-1965 does give an idea of the magnitude of the problem, which at present can be compared to a scratch on the tip of the inner ice-berg. The efforts so far initiated by the Government to implement various welfare schemes are indicative of the efforts continued to secure social justice to the labour population in general.

The drive launched by the state to secure social justice to all either by way of social reform or by social welfare has to be infused with a dynamic content in project formulation, project implementation, monitoring, evaluation and restructuring wherever needed to enable a quicker realisation of the objectives sought for.
In our endeavour to appreciate the effectiveness of any legislation, more so a social legislation, we have to keep in mind the widest possible perspective of all the vital factors having a bearing upon the same. Social change desired and planned to be achieved through the process of social legislation depends essentially on a three dimensional approach. Each of these facets has a mutual influence on the other two and in fact they are complimentary to each other. They could be broadly classified as:

1. Conceptual level factors
2. Popular level factors
3. Enforcement level factors

1. Conceptual level factors:

It hardly needs any reiteration that in our effort to build up a new society, we have endeavoured to conceive a new social order in which all the notions so beautifully enshrined in the preamble to the Constitution of India are brought into the realm of reality. Even though the objective and goal that is being sought is clear in our minds, it is really difficult to imagine, forecast or anticipate all the legal, practical and other impediments and obstructions which may pose themselves against the forces of change. This factor had been mentioned earlier that even while conceiving any legislative enactment, it
may not be easy for the drafters of such legal enactments to anticipate the various shortcuts or ingenuous techniques that can possibly be employed by the counter-forces of change in undermining the enforcement of law and in turn affect the speed of the social change.

Another factor which needs to be kept in mind is that most of the social problems sought to be remedied by the process of social legislation are complex in nature and tend to generate vicious circle. The society will have to reconcile with various fall-outs in this venture in seeking change through legislations. Some of the sociologists have been persistently holding that social problems are never solved, at least not in the terms set out in a proclaimed goal. "A combination of expressed hope, adopted means and commitments made, always results in an ambiguous state of affairs which discloses much that was unanticipated and unwanted. We deal with a tangled web of wish, delusion, resentment, cross-purpose, disappointment, and then renewed hope - with social life itself."²²

The examples of unintended fall-outs of many social evils will substantiate this assertion. As an illustration we can see that the legislative drive to eradicate untouchability as had not, at least at the time of its conception, anticipated the problem of retaliatory social boycott of harijans by the upper classes particularly in the rural areas. Likewise the constitutional guarantee of protective discrimination clause is having, in places, adverse consequential effects which were originally not anticipated. At times cures may appear to be
worse than the malady itself. Similarly, efforts to repress vices like immoral trafficking in women, gambling or drug addiction, problems of prohibition and so on are throwing up very many unforeseen residues which the society has to take into account in its endeavour to solve these special problems. As such it would be very difficult to project a comprehensive appreciation of the effectiveness of any social legislation without keeping in reckoning the above two factors.

2. Popular level factors:

The second facet which has its say in the success of social legislation relates to popular level factors. There is hardly any doubt that no public system can succeed without public support. This is more apt in the case of social legislations. The success of the legislative drives undertaken to fight the social evils through social legislations depends ultimately on the public support and co-operation.

Even a concerted effort on the part of the law enforcement agency can at best be scratch on the surface of the real problem posed by the social evils taken as a whole. Law or no law, the problem persists, for, the legislation by itself is no substitute for popular assent. One of the widely believed but scarcely understood fallacies of human nature is that to solve some of the problems of society, particularly those relating to discrimination and exploitation, (like untouchability, or exploitation of women in general), it is necessary only to "pass a law". The hope that either a legislative act or a judicial decision can solve a social problem, is one of the most prevalent delusions of the human mind.
A famous Roman historian is reported to have said, "Nulla lex sine moribus" i.e., what are 'laws without mores' and an extension of this expression is often quoted as 'when mores are adequate, laws are unnecessary and when mores are inadequate, laws are useless'. No doubt, this is not wholly true but it is quite instructive of the relative value of mores with regard to laws as laws tend to be reduced to impotency when confronted by contrary mores³⁰.

In fact, a mere passage of an enactment, according to some sociologists would result in undesirable adverse consequences. Firstly, it may be observed more in breach and secondly, it may unfortunately appease the conscience of the community but offer impugnity for violation on the other. As such merely laws cannot solve a social problem by themselves and something more is necessary. However, it would be equally untrue to hold the view that a State should fail to utilise all its resources to enforce a new social order to overcome the discriminatory customs prevailing in society.

"A law, in a sense, serves notice that this is the will of the community. In situations where the mores lack definition, a law can introduce a concrete clarity and indicate what is henceforth a proper conduct. In situations where the community is divided, as on segregation issues in the United States, the law can hasten a process - not without intensified opposition - that has come to be inevitable in any event. Even more important, perhaps the law can operate as an instrument of education, lending dignity and rectitude to a course of conduct that might not otherwise be openly approved or condoned."
Law by itself may be helpless but in the total fabric of norms, however, it plays a heavy and substantial role. The dictum quoted by Allen that 'laws foster law making opinion' get reiterated when -

"the symbols of State power are to the undedicated non-revolutionary mighty and awesome things, and he will think long and hard before he commits himself to subversive action and again a statute tends to create a climate of opinion favourable to its own enforcement".32 (This aspect has been discussed earlier in Chapter III).

The problem confronting a law with regard to social evils persisting nurtured by prejudice and discrimination has to be solved by the above factors in addition to mere legal sword. The observations of the U.S. Supreme Court are appropriate here -

"The Supreme Court of the United States can help to end segregation but no decision of that court, however, unanimous can force the Governor of Mississippi, for example, to like integration".33

It is evident that various other social factors which can tackle root of the social evil needs to be fully utilised, if the social legislations have to succeed. In fact, the law only tends to deal with the external manifestations of the severe internal disorder of the society. As such, the limitations of law in this regard have got to be appreciated.
Another salient feature is that customs, practices, habits etc., which require legislative therapy, on account of its being unreasonable and/or opposed to public policy tend to take more energy of the legislative effort of the society, particularly where such customs, practices or habits are connected with the religion.

One must ultimately agree that laws are not but the reflection of the values accepted by the society. No doubt, values are dynamic and change with the needs of the time. In pursuing a social change, the employment of means of social control may bank heavily on 'law as a pioneer' in seeking a desired change. But at the same time, efforts are a must to provide suitable social atmosphere which will support the new values which can accept the change emerging. The primacy of law as a means of social control is really beyond doubt. If law were to be something more than a mere official document and if law were to become an active and dynamic social force, there should be internationalisation of the new patterns of behaviours amongst the individuals of the society. The process of institutionalisation and internationalisation between law and behaviour are inter-related and mutually influencing. A lag on one may be breached by a multi social effort. However, if there is a discord between the two, the law would be futile.

The society seeking a social transition in overcoming social evils through social legislations has, however, to keep in touch with the several factors which affect and influence the patterns of social change. The demographic, technological
economic, cultural factors coupled with the modern man's potential to plan for social change can be put to best advantage in seeking the social transition.

It is obvious that legislation cannot succeed unless the people accept it. However, in our endeavour to achieve the popular social acceptance we have to consider one basic reality. With regard to quite a large number of social legislations, the people's reaction is not one of overt rejection but one of ignorance. The common populace have not been made aware of the surrounding factors and the social aspects have not been fully projected and the likely results not brought home.

In the crusade to fight social evils, the legislations, no doubt, are the primary weapons. Law can be compared with the Infantry Unit in a modern warfare. Infantry has to march ahead into the territory occupied by the enemy against heavy odds. But the infantry has got to be given air and artillery cover, without which it may be an exercise in futility. Similar is the case with law without efficient enforcement and positive public support.

It is said that laws are meant for the 'recalcitrant minority' who do not conform to the prescribed outward behaviour. If their number were to be so alarmingly against the values sought for by the legislation, the result may prove to be counter-productive.

The three stages in the public support to the social values are consciousness, conviction and assertiveness. Many
of the very ideally conceived legislations may remain to be mere platitudes on paper if the public for whose welfare the legislations are enacted are not aware of their rights.

A recent study conducted by the National Institute of Public Co-operation and Child Development on working children in Bombay, provides a common place example. The report said that there existed a 'colossal ignorance' about the laws relating to child labour and that only 13.6 per cent of the employers in Bombay are dimly aware about the existence of such laws and out of the 159 employers only nine mentioned officials visiting their establishment for inspection purpose.

This is just an illustration to show that if in a reasonably developed urban area of country ignorance amongst people about the law and inadequacy of enforcement machinery is so glaring, it is easy to estimate the reasons for perpetuation of various social evils which are being sought to be tackled by these social legislations.

Even if the spread of knowledge through various educational drives can make the people aware of the laws regarding various social problems, it also needs the acceptance or conviction of the people in the desired change.

The people have got to be educated or made to realise not only their rights guaranteed under the progressive legislations in general but also their social duties which must be convincingly brought home. In this venture the role of the social leadership is vital. They have to inspire the people through their rapport, intimacy and contact with the people and achieve the desired social awareness.
consciousness of the masses. The mass media have the biggest potential in this direction and in reaching the masses more rapidly and effectively. The latest advancements in mass media techniques, particularly in newspaper, radio, cinema and television have got to be put to maximum use and best results achieved in establishing a better social rapport vis-a-vis people and social legislations.

It is recommended that it is urgently necessary that all the social legislations have to be brought nearer to the people's comprehension. As such all social legislations have got to be translated into all the regional languages (This alone can successfully overcome the language barrier which has virtually compartmentalised the people of this country). Further, it is not the mere verbatim translation that is needed but a concise rendering of the very many important social legislations in the regional languages in a lucid and intelligible manner. The technical skill and constructional jugglery are alien to the common populace and those hurdles have got to be removed by a simple conveyance of objectives, substance and extent of the vital social legislations. The rights or benefits conferred by the legislative enactment and the mischief which the legislation seeks to repress have got to be made easy for comprehension. Even the legislators have got to bear in mind that it is the common people who are the ultimate customers of their legislative or drafting efforts. It is for them, who have to observe and follow it. It should be intelligible to them as well as not merely to lawyers, policemen, judges and the intelligentsia.
The education of the people in this regard has to reckon the social forces at work. The education must exemplify the implications of the change sought for. It must be made very clear that it is not a change for mere changes sake. The consequential and intended benefits due to all and the securing of social justice to all must be brought home. More often than not, it is the lack of understanding of this particular fact that operates as an important negative factor in building up resistance to any change. But such barriers have got to be overcome. A clear projection of the intended social happiness, social prosperity and social reconstruction can to a great extent succeed in soliciting the co-operation and support of the people in general.

Any effort on the part of the state to vigorously enforce social legislations without peoples support can be compared to a motor car in neutral gear and the accelerator being pressed hard which generates a tremendous noise without any physical movement of the car. The fate of social legislations, without people's co-operation and support will be the same.

In addition, the beneficiaries of several social legislations have also got to be assertive of their rights. In the implementation of social legislations and in the acceptance of new social values it is generally a fact that people who have to make concessions in favour of those for whose benefit the legislations are enacted have to reconcile with the emerging trend. The complexities of this issue
often generates a vicious circle of fear and persecution as the former are in a higher social position. This is also one of the reasons which contributes to provide a counter force against the implementation process. This acts as a dampner in building the right attitude of the people towards these social crimes. Since the persons who are involved in these new social crimes are politically or socially powerful, the offences as well as the offenders escape suffering the right indignation or condemnation they really deserve. The right deploration, condemnation and assailment is thus lost which can hasten the process of social change in the desired direction.

However, the inevitable opposition of the vested interests and conservative outlook which tend to check to the emerging social change through social legislations have got to be met effectively on social and political plane. The physical power of the state and the coercive power of law will obviously have got to be brought into play. If the public awareness is well planned, the resistance will not be taking a significant form. Mobilising public opinion and enlisting their co-operation would thus be vitally necessary.

3. Enforcement level factors:

The success of any legislation depends substantially on its enforcement, which in the present context could be viewed as the integrated result of the functioning of the various wings of the criminal justice system (which includes investigation and prosecution wing, the judicial system and the prison
and aftercare organisations). Before we attempt to identify the important factors in this regard, a very vital important complimentary factor pertaining to the enforcement of legislation deserves a careful consideration. This relates to the 'political will' vis-a-vis the social change through social legislations.

The imperative necessity of a determined political will on the part of the political leadership, which can go a long way in the effective implementation of social legislation, hardly needs reiteration. Social legislations, at times, are enacted as a mere political propaganda without adequate conviction or the necessary political will to implement the same. Since the successful realisation of the desired social transition through the social legislations depend on the effective enforcement to a substantial extent, the inevitable support of a political will and determination to implement the social legislations is all the more vital. In order to realise this, it may even be necessary to motivate suitably the legislators in this regard.

(a) Bureaucracy and social legislations:

In a Parliamentary democracy the bureaucracy is bound to play a vital role in translating the aspirations of people as conceived by various legislations into a reality. It is the duty of the bureaucracy to implement the policies of the political executive. It is, therefore, vitally necessary that the total involvement of bureaucracy is available for the social legislations.
Bureaucracy is, at times, not very responsive to the emerging values and ideas. In fact, the bureaucracy is often heavily in support of the conservative ideas and strives to maintain the status quo and thus may be even in favour of the vested interests. The conservative approach of the bureaucracy is aggravated by the lack of mass contact and thus the bureaucracy may be even ignorant of the subtle emergence of social opinions and the resulting wave of change. The bureaucracy have got to be motivated and the necessary attitudinal change in their ranks must be brought about.

This is not to suggest that the bureaucracy ought to be committed to the political ideologies of the political leadership prevailing. No doubt, the word 'commitment' smacks of some evil dimensions. What is necessary is that the bureaucracy must be committed to the social philosophy as enshrined in the Constitution of India. After all, what is constitution? It is the supreme legal document of the land, may, it is the source of all social legislations, may, it is the spring-head of social justice. The commitment or dedication of the bureaucracy to the social philosophy as enshrined in the Constitution will provide a better reflection of the ideals as well promote quickly the realisation of the objectives of various social legislations.

(b) **Enforcement machinery**

Enforcement machinery is a very important part of the criminal justice system. The enforcement machinery has got to be geared and attuned to the changes and recalcitrant members thereof have got to be tackled. The three wings of the
criminal justice system have got to play their respective roles effectively. The goal is common and the object is the same and they should naturally work in harmony to achieve the desired results. Lack of mutual co-ordination, understanding and consideration will upset the rythmic flow of the whole system itself. The respective areas of operation of the three wings of the criminal justice system are well demarcated, and the three functionaries have got to co-ordinate for integrating their respective efforts in furtherance of a common object. Legalistic view of things, abstract or extreme approach, based on mere technicality a technical angle would result in the failure of the purpose. Undue emphasis on the form of law than on its substance will force the very system to fall victim to its own web.

Sensitisation of all those connected in the bureaucracy and the judiciary to the sufferings of the people would be necessary to develop the much desired quality of empathy which can motivate them in the better implementation of social legislations by playing their respective roles in a dynamic and meaningful way.

In addition to necessary correctives needed with regard to attitudinal and motivational factors in the enforcement machinery, other shortcomings concerning the enforcement machinery have also got to be reckoned with. The inadeuacy of the enforcement machinery either by way of shortage of manpower or lack of technical or professional skills affect adversely the implementation of social legislations. In addition, the callousness, corruption, indifference and
lack of application on the part of some of the personal
belonging to the enforcement wings have got to be taken
into account and necessary remedial measures taken.

In fact, a particular aspect of this problem is
being tackled, probably for the first time by the Civil
Rights Protection Act 1976 which has envisaged a deterrent
punishment even to the investigating officers for negligence
lack of application or callousness or similar acts or
omissions affecting adversely the investigation of offences
under the Act. No doubt, the working of this particular
legal provision is not yet established but the trend is
certainly salutory.

It would be desirable to consider, after a mature
deliberation at the appropriate level, introduction of
similar provisions in some of the very vital and basic
social legislations also. This in turn would compel place-
ment of a higher status to these social legislations warrant-
ing a shift in the criminal law by not only impressing on
the investigating machinery and the other wings of the
criminal justice system but also creating a positive
public opinion in the desired direction.

(c) Social legislations and the traditional
crime laws viz., Indian Penal Code:

As discussed earlier, bringing about the necessary
motivational and attitudinal change in the personnel manning
the enforcement machinery would be an urgent task. Another
angle to this particular issue has relevance to the approach
of the investigating agencies towards social legislations in
The experience all over the country is that the investigating machinery places the task of implementation of the provisions of the Indian Penal Code at the highest level and other legislations do not receive similar placement for very obvious reasons of increasing workload coupled with a few other factors. The lack of realization of the investigating machinery that at least some of the important social legislations are very vital to the stability of the society is virtually relegating these social legislations to a secondary level and is indirectly contributing towards its failure by the lukewarm approach. It is said that Law is what it does and not what it speaks. Further, a law is no better than its implementation and the success of law depends upon how soon the root cause of the social mischief is sought to be repressed. In addition to directing efforts towards the primary causes, it is also vital to concentrate on the implementation of the enactment with all the sincerity, eagerness, speed and authority at the command of the State.

As motivating the enforcement machinery from the highest functionaries to the lowest ranks may consume more than sparrow time, it is recommended that a proposal to introduce an additional chapter in the Indian Penal Code under the heading "Social Offences" may be considered. This chapter may include some of the social legislations which are very vital to the liberty, dignity and basic equality of the human being; (such as those dealing with the problems like
untouchability, dowry system, bonded labour, etc.); and public health and moral legislations; (such as drug laws, prostitution, anti-beggary laws, child marriage Act and other legislations concerning children, food adulteration and essential commodities, etc.) and a couple of other basic enactments protecting the people from economic exploitation.

At first sight, this suggestion may appear to throw the Indian Penal Code out of its gear by its sheer bulk. But in reality it would not be so. On the contrary, it would provide new vigour, new meaning and a new direction to the Indian Penal Code. In any case it is not the bulk or size of the enactment but the objects of the same that matters.

With regard to better enforcement of social legislations some of the other important points needing attention are:

(i) The creation of more and more specialised investigating agencies for the enforcement of social legislations is necessary. The success of any penal legislation depends to a great extent on the convictions obtained with acts as a deterrent to many like-minded potential offenders and generates a cycle of the public opinion against the prohibited act in question.

No doubt, some of the police organisations have some specialised wings to exclusively handle matters connected with social legislations and the results are encouraging. It would be worthwhile to intensify this approach and keep up continuous pressure to speed up the process of implementing legislations.
(ii) The task of better implementation of social legislation has got to be laced with the fact that "prevention of these social offences is better than the 'consequential cure' operations of the State. The enforcement machinery should be made conscious of this vital fact and a sound system of intelligence should develop through public support.

(iii) Imposition of undue restriction on the speedy operation of some of the important social legislations by making them non-cognizable offences acts as a damper in quick implementation of some of the social legislations. As an illustration the working of the Child Marriage Restraint Act 1929 or the Dowry Prohibition Act 1961, which restricts immediate cognizance by the Police can be considered.

No doubt, the purpose behind such contraints may have been noble firstly to prevent undue interference of police in certain matters and secondly due to the enormity and volume of workload that will involve upon the enforcement agency.

In view of the urgent need of the desired social change it would be expedient to provide steps for a comparatively swifter police operations in some of the vital areas. It would be in the best interest of the society that quicker and simpler processes of initiating cases, collecting evidence and prosecuting social offenders before the competent courts are conceived and implemented.

(iv) The rules of evidence prescribed under the law may be considered as reasonable and fair with regard to the ordinary penal enactments. However, some of the social legislations require a wider vision and broader application.
of the rules to hasten the process of law and advance the cause of social legislations. In fact, this fact has already been accepted in practice by the necessary changes brought about in the rule of burden of proof in the implementation of some of the social legislations. For example, under the Customs Act, there is a shift in the onus of proof after the prosecution has succeeded in establishing some primary factors concerning the case. This may be illustrated by making reference to section 123 of the Customs Act 1962, which provides that when goods are seized by the Customs Officer, in the reasonable belief that they are smuggled goods, the onus shifts on to the person from whose possession the goods were seized to show that the goods are not smuggled.

Likewise, under the Prevention of Corruption Act, the onus shifts on to the accused once the prosecution establishes the existence of resources with the accused beyond his known and reasonable source(s) of income. Section 4 of the Prevention of Corruption Act 1947, lays down that 'where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code (Act 45 of 1860), or of an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved.'
that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate'. The reversal of burden of proof is necessary in view of the peculiar nature of the crime or offence and the inherent difficulty for the prosecution to establish such facts in these cases. Similar provisions to some of the social legislations can be added after a mature deliberation and consideration of factors surrounding such social offences.

With regard to the standard of proof, only one factor needs to be emphasised. The provision of law as contained by the Indian Evidence Act is adequate and appropriate but with regard to its application, there doesn't seem to be a uniform approach. The Supreme Court of India has made the issue clear in a recent case with the following direction:

"While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man
cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of foolproof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.37

For proper enforcement of social legislations, the judiciary has to play its role keeping in mind the social perspective. The notion of burden of proof beyond a reasonable doubt ought not to be carried beyond the line set by the Supreme Court in the aforesaid judgement.

(v) Likewise, the legislative directions which are at times acting as unworkable restraints need a fresh look which can simplify the law in relation to realities and practical considerations. In fact, a State cannot decree what is physically impossible. A simple illustration from the working of the Suppression of Immoral Traffic in Women and Girls Act 1955 would substantiate the above assertion. The task of proving a 'promiscuous intercourse' under the said Act is a real enigma. In order to convince the court on the above who will come forward to be a witness and depose before the court? If a decoy is employed, that doesn't get the approbation of the court. Rightly so, as this practice deserves to be deprecated and discouraged as the police must not encourage the very mischief sought to be suppressed and the enforcement machinery cannot become a party to the violation of the very law which it is supposed to uphold and enforce. Further such an approach is also not in consonance with the
spirit of the law. Next, a habitual visitor to such houses of ill repute, who has no fear of adverse public opinion also fails. If he is an inveterate and a habitual visitor, his credibility is lost. Further, it would be difficult to expect such witness to create hostility in his own environment by tendering evidence. To get a respectable witness is doubly difficult if not impossible. The net result is that however anxious the police are, they would find it extremely difficult to satisfy such legislative requirement on proof. Of course, this needs a review keeping in view the relative magnitude of the social malady.

Similarly, insistence on a woman witness to be present during a search under the Suppression of Immoral Traffic in Women and Girls Act 1955, also operates as an unenviable hurdle for enforcement. No doubt, the legislator might have been, while enacting such provisions, inspired by lofty and noble ideas which are intended to inspire confidence in the people. But such restrictions are more theoretical than practical and are divorced from reality. Since it is difficult to get witnesses in such areas and to get respectable women as witnesses is virtually ruled out, such impracticable portions of social legislations have to be remodelled and rigours of such conditions, if necessary, should be relaxed.

In (vi) two other areas of evidence concerning 'presumption of innocence' and 'benefit of doubt' also require a re-examination specially in the context of social
legislations. One should not forget that a majority of those who violate the social legislations are those who are sophisticated, with modern tools at their command and are powerful in resources which can influence, win over or even bully the witness and at times even interfere with the investigating machinery. If that be the case, a closer look at the benign protection of 'presumption of innocence' is urgently warranted.

The cherished ideal of criminal law that 'let nintynine guilty escape lest one innocent is unjustly punished' is no doubt a worthy principle to follow. But the application of this principle may lead to absurd results particularly with regard to social legislations in an egalitarian and welfare goal-oriented society.

In fact, more often than not, it is the powerful and vocal section of the society which opposes the social legislations. The justice demands that all precautions must be taken to ensure that not even single innocent is wrongly punished. But this rule should not be extended to an embarrassing extent despite precautions and care, if an individual innocent, per chance suffers, the same may have to be conceded in the larger interests of social security. In view of the fact that most of the social offenders are the blood suckers of the society, who operate at will holding the entire society to ransom, affecting adversely the economic interests of the society, and who threaten the very social security of the society, a cloak of protection of the society from the operations of such depredators is very urgently necessary. In this context, we cannot afford an unhealthy extension of the dictum above which
will operate injuriously to the society and affect the people at large prejuidicially. The dictum could well be reconstrued to mean that 'Let not ninety-nine guilty escape and in the process, even if an innocent were to suffer', the scales must be in favour of social security.

Magnifying the presumption of innocence, the fundamental rights and the technicalities of procedure beyond what they actually cut at the very root of the very judicial system itself.

In fact, we have accepted this very approach in a different form. The purpose of 'deterrence' in punishment supports the new values. The penological theories have accept 'deterrence' as a social imperative. Imposing graver, sterner or stricter punishment, as an answer to the demands of social security and as a held-out threat to the potential like-minded offenders, in reality, is a punishment beyond the scales on which the criminality in question does not really deserve. We have always been holding that the punishment must relate to the gravity of the offence and at the same time must be tailored to the individual in question. The theory of deterrence, of awarding exemplary punishment is often rendered very essential and inevitable lest the very foundations of the society get shaken up and the confidence of the people in the system get shattered. A careful analysis of the 'deterrence' approach vis-a-vis the imperative need for certain punishment of all social offenders portrays that both are aiming at the same objective of social security and social defence.

(vii) One other important change that needs a radical review is the 'appeal system' that is prevailing in our legal
structure. No doubt, 'appeal' is a sacred right, which can correct a wrong done and do justice at various levels. It would be disastrous if decisions or judgments, however, unfair or unjust are made final and rendered without any source of succour by way of appeal. But we must also see that the 'justice' that is being sought is not rendered such a distant object that it is really an unreachable mirage as by various levels of appeal the issues are engaged in a never-ending legal battle keeping both the offender and the victim at bay far beyond a reasonable time. Neither justice is felt due to inordinate lapse of time nor is the unjust punished in time. Justice delayed is in fact justice denied.

It would be worthwhile to consider the establishment of a "tribunal system" for expeditious disposal of certain categories of crimes involving social offences. The decisions of the tribunal must be made absolute and final. A body of judges sitting on the tribunal would, to a great extent foreclose the whims, fancies, prejudices of individual judge, (if by chance present) and the collective wisdom of the tribunal can discuss deliberate and decide issues and avoid the delays which are inherent in the present system, where appeals run from district courts to the Supreme Court covering a huge time gap, at times extending even up to generations. In addition, in contrast to the existing system, the tribunals must also be saddled with the task of getting the decisions or decrees executed by itself which can give relief and render justice then and there. The decisions of the tribunal should be definitive and should not be made liable to be called in question before any other court either by way of appeal or revision or any other form.
This system could well be tried with regard to specified social offences to begin with and extended to other social legislations subsequently. It may have to be ensured that the judges who are likely to be called upon to sit in the tribunals are competent, capable and are men of highest integrity and having the right social perspective. Their appointments must be made independent of the executive and must be under the administrative control of the respective High Courts.

Even if this 'tribunal' system is considered inexpedient at the present moment, it would be imperative to set up sufficient number of special courts (whose number should be equal to the workload) for the trial of specified social offences. This will avoid delay and speed up the process of justice and enable quicker realisation of the objectives of social legislations.

CONCLUSION

Even though we cannot assert that social legislations have fully succeeded in achieving the objectives with which they were conceived, it is beyond doubt that social legislations have played a positive role in moving the society toward the desired social change. The generation of social consciousness is one of the important contributions of social legislations. As mentioned earlier, social legislations and social conscience are very intimately connected with each other. At times one may be ahead of the other. But in a country like India where the great majority of the people are
steeped in ignorance, it is the social legislation which acts as the pole star and arouses the consciousness of the masses. This fact is the most dynamic aspect of social legislations.

Planning for social change through the process of social legislation should be geared to utilise the right means of social control to promote the right attitude amongst all and motivate people in achieving a quicker and smoother transition.