

Recipe for reforms

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August 9, 2022

Vivekananda's speech, 'My Plan of Campaign', explores fundamentals of law-making and suggests implementation pathways; write Abhinav Mehrotra & Biswanath Gupta

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It was in 1897 at Victoria Hall, after returning from the United States, Swami Vivekananda delivered his famous speech titled 'My Plan of Campaign' that is available in Swamiji's Book 'Lectures from Colombo to Almora' published by Advaita Ashram, Mayawati. This inspiring book consists of various thoughtful letters and lectures of Swami Vivekananda that continue to hold significance in the modern day. Out of many, this particular lecture was delivered by the prophetic saint after he had returned from the World Religious Parliament in Chicago in 1893. His thoughts have been quite influential in shaping India's national thinking since the time of the struggle for independence. This lecture portrays an iconic view on the sustainable development of any society and nation as a whole. Through the analysis of this lecture, we can explore how his ideas can lead to formation of sustainable laws for all, specifically for the unrepresented and discriminated sections of society. According to Swamiji's speech, the primary objective of law is to ensure the greatest benefit of humanity. Therefore, while forming laws, rigorous scrutiny

is essential to achieve the goal of the all-round development of every individual under the sun. Swami Vivekananda, in this lecture, proposes that in a democratic system of governance, the development and progression of law depend more on public opinion. It takes a lot of time in a democratic society to develop a healthy public opinion that will solve the common problems of the nation. Effective compliance with the law is essential for maintaining peace and security. Development in communication and identification of common evils by the state and its community may increase the observance of law by the states. Since the beginning, critics highlighted the poor implementation of law due to lack of authority. Common evil cannot be effectively fought unless we explore various approaches for better compliance with the law.

The principal problem that lies with such development is: who actually wants such reforms? There are only a few people who initially agree to such reforms. Such an aspect is clearly visible in the modern-day judgments in cases including *The Secretary, Ministry of Defence vs Babita Puniya & Ors*. The case provides equal opportunity to women in the army and equal treatment with men counterparts engaged in Short Service Commission (SSC) in seeking parity to obtain Permanent Commission. Another instance is that of the *Navtej Singh Johar* case, where the Supreme Court unanimously ruled that Section 377 was unconstitutional as far as it penalised any consensual sexual activity between two adults, be it homosexuals, heterosexuals or lesbians.

It is quite challenging to implement a new law if the benefit-holders are not ready to understand the advantage of the law. If few people are aligned with the benefit of any law, the expectation of success is very rare. Even an evil practice is difficult to be removed by law if larger public opinion is not in favour of the removal, as evident from the cases mentioned above. In the former case, the judgment has been hailed as a victory for women officers in their fight against gender discrimination as well as enforcement of their right to equality of opportunity and equal access to appointment and engagement in the Indian Army, as recognised under Article 16 of the Constitution. In the past, women had no pension benefits, no ex-service personal status, no ex-service personnel contributory health benefits, no provision for re-employment, and a meagre encashment of 90 days leave as compared to 300 days for men

Generally, these matters invite limited judicial review because they constitute policy decisions and lie exclusively in the domain of executive functions as per Section 12 of the Army Act, 1950, and Article 33 of the Constitution that allows Parliament to determine to what extent any of the rights conferred by Part III of the Constitution, dealing with fundamental rights, is applicable to the armed forces.

In the second case, Section 377, which has historical roots along with similar laws that were drafted at a time when the concept of "sexual orientation" did not exist and was imposed by the British India. This was with the aim to civilize the Indian population based on the moral standards of the Victorian era where sexual activities were considered mainly for procreation. It was assumed that any individual who engaged in prohibited sexual activity had on their own accord chosen to deviate from social norms, and such predisposition had to be considered a mental illness. Such an outdated understanding was

done away with in the Navtej Johar case. The foremost issue seen with Article 377 was its labelling of sexual activity against the "order of nature". This was vague, arbitrary, and violated Article 14 of the Constitution.

However, there remain many issues that are unresolved. Therefore, how will the nation move? Swamiji proposes three solutions for the effective implementation of law. Firstly, it is important to generate awareness among people regarding the necessity and urgency of the law. The second step is to create a legislative body. Finally, the authority may enact the law only when the larger section of the society is confident about its utility. Hence, he suggests creating the power first, the sanction from where the law will spring. After these two criteria are met, the legislature needs to wait for the right time to introduce such reforms. Otherwise, the new reforms might turn out to be ornamental like many other former reforms.

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