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“The Power of Public Opinion: Shaping Democratic Governance and Policy Making”

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Abstract: Public opinion serves as a crucial mechanism for gauging the needs and desires of society. In a democratic republic like India, understanding the sentiments of citizens is vital for effective governance. Legislators have the responsibility to enact laws that reflect these public needs, ensuring that the legislation is not only acceptable but also supported by the populace. When legislators take public opinion into account, they can craft laws that resonate with citizens and are more likely to gain acceptance.

There are numerous instances in history where legislation was rejected because it failed to consider public sentiment, leading to the withdrawal of such laws. This highlights the importance of public opinion in the legislative process.

In this research paper, the focus will be on defining public opinion and its significance, drawing upon insights from various jurists. Additionally, the paper will explore the relevance of public opinion within the context of democracy and the legal framework. The advantages and disadvantages of public opinion in shaping a democratic government will also be discussed, providing a comprehensive overview of its impact on governance. The primary objective of this paper is to highlight the main issue of non-recognition of public opinion while making nay policy. In this paper the research the researcher use the doctrinal method of research for collecting data and also analyze various reports as a secondary data for validate the facts of this paper.

Index Terms - Public Opinion, Democracy, Legislation, Government, Advantages.

I. INTRODUCTION

Public Opinion in policy making was defined by many jurists. According to Jeremy Bentham (174-1832) “the public opinion necessary in a representative democracy must be unfettered and inclusive. For Bentham, the Public Opinion Tribunal, constantly judging government, was the most important social institution in preventing ‘misrule’. He thought it would eventually coincide with his utilitarian ethical standard, the greatest happiness of the greatest number.”¹

“According to V. O. Key, Jr., that unless mass views have some place in the shaping of policy, all the talk about democracy is nonsense. According to Shapiro, public opinion and policy making are fundamental to a democracy, which is linked to elected accountability, meaning that the leader who was elected ‘will not deviate far from voter’s opinion.’”²

¹Cutler, F. *Jeremy Bentham and the Public Opinion Tribunal* 63(3), The Public Opinion Quarterly, 321-346 (1999) <http://www.jstor.org/stable/2991711>, last seen on 06/11/2021.

²Robert Y. Shapiro *Public Opinion and American Democracy* 75(5), The Public Opinion Quarterly, 982-1017 (2011) <http://www.jstor.org/stable/41345919>, last seen on 06/11/2021.

Alexis de Tocqueville said that “public opinion would become an all-powerful force, and that the majority could tyrannize unpopular minorities and marginal individuals.”³

The journal by Ram Prakash Sharma we are going to understand the nexus between public opinion and democracy it said in his journal that “the whole concept of popular sovereignty which is the very breath and soul of democracy is based upon public opinion. Behind all laws of democratic state there is the power of public opinion, If public opinion a certain measure, it cannot live or operate for long time. If a government loses touch with the people or ignores their concerted opinion it ceases to be a democratic government.”⁴

Now we are going to understand the relevancy of public opinion in a democratic state “Public opinion is considered to be the essential element for successful working of democratic communication in the system. Public Opinion is the expression of the views of citizens. No government can afford to ignore it. A sound and effective public opinion can even shake the structures of dictators. The strength of democratic system lies in respecting the mind power of the people. There should be free and fair interaction of thoughts for solving the collective problems. Public opinion acquires great relevance in realizing this democratic goal.”⁵

The Postal Bill of 1986 is a significant example where the government sought to enact a law that would allow it to open personal mail, raising serious privacy concerns for individuals. Despite both houses passing the bill due to the ruling party's majority, it was sent to the president for approval. However, the president refused to consent, returning it for reconsideration. This scenario illustrates a disconnect between the government and public opinion, as many individuals opposed the bill, highlighting the importance of considering citizens' voices in legislative decisions.

The Maratha protests are a noteworthy example of public outcry leading to legislative changes. During the protests in 2017-18, demonstrations escalated and unfortunately turned violent, with tragic instances of suicides among individuals demanding reservation for the Maratha community. The first suicide linked to the demand for Maratha reservation occurred in the Kannad taluka of Aurangabad district. The Maratha community made it clear that they were seeking substantial reservation and would not accept anything less. This level of public protest highlighted the urgency of their demands, prompting discussions around amending laws to address their concerns.

In response to the escalating tensions among the Maratha community, the ruling BJP government, led by then Chief Minister Devendra Fadnavis, established an 11-member commission in June 2017. This commission was headed by Retired Justice N.G. Gaikwad and tasked with thoroughly investigating the demands for reservation. After conducting detailed studies and hearing testimonies from various groups and individuals, the commission ultimately submitted a report recommending that Marathas be granted reservation under the Socially and Educationally Backward Class (SEBC)⁶ category. This move was aimed at addressing the community's concerns and mitigating the aggression displayed during the protests.

Now we come to understand the impact of public opinion through cases. We can analyze the case regarding section 377 of Indian Penal Code that is “Navtej Singh Johar v. Union of India”⁷ after this case section 377 was struck down and stated that homosexuality is not an offence.

After this in the case of “Shayara Bano v. Union of India”⁸ the instant talaq i.e. triple talaq held unconstitutional and made one law on that called “The Muslim Woman (Protection of Rights on Marriage) Act, 2019.

II. PUBLIC OPINION AND ITS RELEVANCY

Public Opinion

Public opinion is a crucial factor in the formation and enactment of policies. It serves as an essential element in the law-making process; without public involvement, laws may lack effectiveness, as people are less likely to adhere to regulations enacted against their will. Historically, every law enacted in India has been influenced by public demand and has taken into account the perspectives of the populace. Numerous jurists and authors have emphasized the importance of public opinion in shaping legislation.

³Alexis de Tocqueville *The Tyranny of the Majority*, <https://edsitement.neh.gov/curricula/alexis-de-tocqueville-tyranny-majority>, last seen on 06/11/2021.

⁴Ram Prakash Sharma, *Democracy and Public Opinion in India*, 18(2), The Indian Journal of Political Science, 135-140 (1957), <http://www.jstor.org/stable/42743463>, last seen on 11/11/2021.

⁵*Public Opinion and Pressure Groups*, Political Science, 227, available at <https://nios.ac.in/media/documents/srsec317newE/317EL21.pdf>, last seen on 12/11/2021.

⁶Shubhangi Khapre, *Explained: How Marathas got reservation, and what happens now*, The Indian Express, <https://indianexpress.com/article/explained/explained-how-marathas-got-reservation-and-what-happens-now-7303056/>, last seen on 12/11/2021.

⁷Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

⁸Shayara Bano v. Union of India, (2017) 9 SCC 1.

In this chapter, we will explore various viewpoints from jurists, relevant articles, notable cases, and real-life examples that highlight the significance of public opinion in policy-making. We will also examine the consequences that arise when laws are enacted without considering the will of the people, shedding light on the critical interplay between public sentiment and legislative processes.

Public opinion is very well defined by William Temple in his journal. He observed that “when vast numbers of men submit their lives and fortunes absolutely to the will of one, it must be force of custom, or opinion which subjects power to authority. Temple disagreed with the prevalent opinion that the basis of government lay in a social contract and thought that government was merely allowed to exist due to the favour of public opinion.”⁹

“The common view of Bentham as a paternalistic utilitarian who wanted to employ a corps of civil servants to measure utility and then govern to maximize it is clearly at odds with a free, indeterminate, public opinion in a mass democracy.”¹⁰

Public opinion plays a vital role in policy-making. To understand its importance, we will first discuss insights from eminent jurists who have highlighted its significance in the legislative process. Following this discussion, we will analyze various real-life cases and examples that illustrate how public sentiment influences policy decisions. Through this comprehensive examination, we will gain a clearer understanding of the crucial role that public opinion holds in shaping effective and responsive legislation.

“Public opinion represents people’s collective preferences on matters related to government and politics. One perspective holds that individual opinions matter; therefore, the opinions of the majority should be weighed more heavily than opinions of the minority when leaders make decisions. A contrasting view maintains that public opinion is controlled by organized groups, government leaders, and media elites. The opinions of those in positions of power or who have access to those in power carry the most weight.”¹¹

“Public opinion can be defined most generically as the sum of many individual opinions. More specific notions of public opinion place greater weight on individual, majority, group, or elite opinion when considering policy decisions.”¹²

Wlezien writes that research “generally corroborate a linkage between public preferences and , policy, evidence shows substantial empirical relationship between opinion and policy.”¹³

“The mere observation of congruence between opinion and policy tells us little, of course, about which causes which. Congruence could indicate that there is democratic responsiveness: that changes in public preferences cause changes in policy. But it might instead result from policy affecting opinion. Policy changes might lead citizens to change their opinions as they saw good results from the new policies, or as they rationalized that whatever the government does must be acceptable.”¹⁴

“Public opinion is an autonomous and rational force responding in sensible ways to changes in the political and economic environment, that policy makers are responsive to this autonomous force, and that it can be fairly accurately measured using polls. More critical perspectives challenge the theory of government responsiveness by focusing on the frequent instances in which opinion and policy diverges.”¹⁵

“Another reason as to why policy might diverge with opinion as measured by polls in that, although elected officials may try to respond to public opinion, they do not think that polls accurately represent the real state of public opinion. They may therefore rely on other indicators or interpretations of public opinion that they find more useful than polls to assess where majority opinion stands on an issue.”¹⁶

⁹ Hans Speier, Historical Development of Public Opinion, Vol. No. 55 (4), American Journal of Sociology, 88, 376 (1950), available at <http://www.jstor.org/stable/2772299>, last seen on 24/11/2021.

¹⁰ Supra 1, at 324.

¹¹ Supra 10, at 277.

¹² Ibid at 278.

¹³ Paul Burstein, *The Impact of Public Opinion on Public Policy: A Review and an Agenda*, 56(1), Political Research Quarterly, 29-40 (2003), available at <https://www.jstor.org/stable/3219881>, last seen on 30/11/2021.

¹⁴ Benjamin I. Page, Robert Y. Shapiro, *Effect of Public Opinion on Policy*, 77(1), The American Political Science Review, 185 (1983), available at <https://www.jstor.org/stable/1956018>, last seen on 30/11/2021.

¹⁵ Francois Petry and Matthew Mendelsohn, *Public Opinion and Policy Making in Canada*, 37(3), Canadian Journal of Political Science, 506 (2004), available at <https://www.jstor.org/stable/25165689>, last seen on 30/11/2021.

¹⁶ Ibid at 507.

“The public opinion and policy has been referred to as the ‘belief-sharing model,’ according to which the preferences of constituencies are reflected in the policy decisions of representatives through a set of commonly held attitudes or belief.”¹⁷

“Mass opinion is more likely to influence policy if public majorities and government policies follow the same ideological direction on issues than if one takes a left and the other a right direction. A government of the left is expected to follow public opinion more closely if public majorities support left policies than if they support right policies.”¹⁸

After analyzing the perspectives of various jurists and authors, it becomes clear that public opinion is crucial in the policymaking process. When policymakers take public opinion into account, they gain valuable insights into the needs and desires of the populace, which helps in enacting effective laws. Conversely, if policymakers ignore or fail to consider public sentiment when enacting or amending laws, those laws may prove ineffective, as people are unlikely to follow regulations that are contrary to their beliefs and interests.

As a result, public opposition often emerges in the form of protests against such laws. Additionally, when policymakers overlook or neglect the opinions of the majority, they risk facing significant backlash from the public, prompting further protests aimed at ensuring their needs are addressed and laws are enacted in alignment with their views. This dynamic underscores the indispensable role that public opinion plays in shaping responsive and legitimate legislation.

Relevancy in legal system through Judicial Decisions

To understand the relevance of public opinion in policymaking, we will examine several case laws and real-life incidents where public sentiment has compelled the legislature to enact, amend, or repeal certain laws.

One significant aspect to consider is the interpretation of public demand within the Indian Constitution. Over time, there has been a growing consensus among the majority of the population regarding the need for changes to various Articles of the Constitution. This reflection of public sentiment has often led to constitutional amendments aimed at addressing societal needs and ensuring that the legal framework remains aligned with the values and expectations of the people.

By exploring these examples, we can better appreciate how public opinion serves as a catalyst for legislative action, highlighting its critical role in shaping effective and democratic governance.

In the case of *Vishaka and Ors v. State of Rajasthan*¹⁹, Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

In this case Supreme Court issue guidelines but government not enacted law till 2013 in between 1997-2013 there were two important cases related to sexual harassment at workplace. i) *Apparel Export Promotion Council v. A.K. Chopra*²⁰ and ii) *Medha Kotwal Lele & Ors v. Union of India & Ors*²¹ where court apply the direction given by Supreme Court and then after so many incident and analyze the need of the majority, government enact law that is Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Now we talked about the Right to education as a fundamental right:

In the case of *Mohini Jain v. State of Karnataka*²² Supreme Court held that “Right to education is the essence of the right to life and directly flow and interlinked with it, and life living with dignity can only be assured when there is a significant role of education.”

¹⁷ Lawrence R. Jacobs and Robert Y. Shapiro, *Public Opinion and the New Social History: Some Lessons for the Study of Public Opinion and Democratic Policy-Making*, 13(1), Social Science History, 13 (1989), available at <https://www.jstor.org/stable/1171211>, last seen on 30/11/2021.

¹⁸ Supra 26 at 509

¹⁹ *Vishaka and Ors. v. State of Rajasthan*, (1997) 6 SCC 241

²⁰ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

²¹ *Medha Kotwal Lele v. Union of India* (2013) 1 SCC 297.

²² Supra 14.

In another case of *Unni Krishnan, J.P. v. State of Andhra Pradesh*²³, Supreme Court held that “Right to education means citizen has the right to call up the state to provide the facilities of education to them in according to the financial capacity”.

In another case of *Avinash Mahotra v. Union of India*²⁴, Supreme Court elaborate the ambit of Right to Education and held that “the right to education to include the right to the provision of a safe environment in schools, and imposed an obligation on schools to comply with certain fire safety precautions which were detailed in the judgment.”

After this we talked about how right to privacy declared as a fundamental right. In the case of *Kharak Singh v. State of Uttar Pradesh*²⁵ In the present case the petitioner challenges the constitutionality of police regulation on the ground of that they violated his fundamental right to privacy under clause ‘personal liberty’ of article 21 of the constitution of India. In this particular case majority of the judges decline to interpret article 21 to include within its ambit the right the privacy, part of the majority expressed “The right of privacy is not a guaranteed right under our Constitution, and therefore the attempt to ascertain the movements of an individual is merely a manner in which privacy is invaded and is not an infringement of a fundamental right guaranteed in Part III.

In the case of *R. Rajagopal v. State of Tamil Nadu*²⁶ “the petitioner was a Tamil news magazine which had sought directions from the court to restrain the respondent State of Tamil Nadu and its officers to not interfere in the publication of the autobiography of a death row convict- ‘Auto Shankar’ which contained details about the nexus between criminals and police officers. The Supreme Court framed the questions in these terms; whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorized writing infringe the citizen’s right to privacy?

The Supreme Court, for the first time, directly linked the right to privacy to Article 21 of the Constitution but at the same time excluded matters of public record from being protected under this ‘Right to Privacy’. The Supreme Court held that “the right to privacy is implicit in the right to life and liberty guaranteed to citizens of the country by Article 21. It is a ‘right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

After this there were several cases like *PUCL v. Union of India*,²⁷ in which court elaborate the ambit of Article 21 with reference to Right to Privacy and held that “the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as ‘right to privacy’ and held that telephone-tapping would violate Article 21 unless it was permitted under a “procedure established by law”.

After this in the case of *Justice K.S. Puttaswamy v Union of India*,²⁸ the question again raised before court that Aadhar which collect our personal data is curtail our right to privacy and court held that Right to Privacy is a fundamental right of every citizen which is protected under Article 21 of Constitution of India.

Significant changes in our legal system have arisen from various cases concerning the right to privacy, serving as a prime example of how public opinion has been acknowledged and interpreted by the judiciary. This principle of prioritizing public sentiment can also be seen in the context of the law relating to Maratha reservation, where public protests and demands played a pivotal role in compelling the government to consider the community’s requests for reservation.

The demand for reservation in government jobs and educational institutions for the Maratha community first emerged in 1997. Proponents argued that Marathas are not an upper caste but are essentially Kunbis, thereby justifying their claim for reservation. Although the demand persisted for years, it wasn’t until 2014 that the government approved a proposal to allocate 16% of government jobs and 5% of seats in educational institutions for the Maratha and Muslim communities. However, this decision faced legal challenges when the Bombay High Court issued a stay on the government’s order for the 16% reservation.

In response, the government appealed to the Supreme Court, but the court upheld the High Court’s order, refusing to vacate the stay. This refusal ignited widespread frustration within the Maratha community, leading to significant public protests, including the first Maratha Kranti Morcha in Aurangabad in 2016, followed by

²³ Supra 15.

²⁴ *Avinash Mahotra v. Union of India*, (2009) 6 SCC 398.

²⁵ *Kharak Singh v. State of Uttar Pradesh*, 1963 AIR 1295.

²⁶ *R. Rajagopal v. State of Tamil Nadu*, 1995 AIR 264.

²⁷ *PUCL v. Union of India*, AIR 1997 SC 568.

²⁸ *Justice K.S. Puttaswamy v Union of India*, AIR 2017 SC 4161.

similar demonstrations in Nagpur. These events underscored the community's determination to secure their demands for reservation and highlighted the profound impact of public opinion on legislative and judicial processes.

“Then in the year 2017 Maharashtra government set up committee headed by Retired Justice N G Gaikwad. A massive Maratha morcha held in Mumbai on August 2017. Then in the year 2018 the committee submits its report “after detail study and depositions from various groups and individuals, the commission submitted a report stating Marathas should be given reservation under Socially and Educationally Backward Class (SEBC).”²⁹

On November 2018 “Maharashtra legislature passes a bill [proposing 16% reservation](#) in education and government jobs for Maratha community, declared as socially and educationally backward class by the government.”³⁰ Bunch of petitions filed in the Court and in the case of *Jaishri Laxmanrao Patil v Chief Minister, Maharashtra*,³¹ Court held that the Maratha reservation is unconstitutional and strike down the law. There have been several other significant cases where the courts have acknowledged the importance of public opinion, resulting in the enactment of laws that reflect societal demands. One notable example is the Muslim Women (Protection of Rights on Marriage) Act, 2019.

This Act emerged as a direct response to the public demand from the Muslim women's community, who sought legal protection against the practice of Triple Talaq, which they deemed unconstitutional. The demand for a law that would safeguard their rights gained traction over time, particularly as various court cases highlighted the issues surrounding the practice.

Through these judicial precedents, the courts set the stage for the legislature to enact a law that would officially declare Triple Talaq unconstitutional, thus providing Muslim women with the legal protections they sought. This case illustrates how public opinion can drive judicial interpretation and influence legislative action, ensuring that laws align with the evolving values and needs of society.

The cases related to it were *Rahmat Ullah v. State of Uttar Pradesh*,³² in this case the High court held that that an irrevocable talaq (talaq-e-biddat) is unlawful because this kind of talaq is against the dictates of the Holy Quran and is also against the provisions of the Constitution of India. Again in the case of *Shayara Bano v. Union of India*,³³ the same question raised before Supreme Court and the court held that the instant talaq i.e. tripal talaq held unconstitutional and after this case the legislature made one law on that called “The Muslim Woman (Protection of Rights on Marriage) Act, 2019.

Now we talked about Section 377 of Indian Penal Code cases where one particular class of community demanded from the court to decriminalize Section 377 and held that this section is unconstitutional and violate their fundamental right. There were several cases relating to it, first was *Naz Foundation v. Government of NCT of Delhi and others*,³⁴ in this case Delhi High court held “In the year 2009, the Delhi high court decided this landmark judgment as a victory for equality and social justice but also in terms of its robust legal reasoning the Delhi high court concluded that “Section 377 IPC, insofar as it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Indian Constitution. Thus, dealing with the argument that the section 377 was neutral submitted by the MHA, the HC stated that although the provisions on its face was neutral and targeted acts rather than persons, in its operation it unfairly targeted a particular community, having result that all gay men were considered criminal and it therefore violated Article 14 and held that Section 377 is unconstitutional.

Then again in the case of *Suresh Kumar Koushal and another v. Naz Foundation and others*,³⁵ the Supreme Court of India “overruled the High Court's previous decision, finding its declaration to be “legally unsustainable”. The Supreme Court ultimately found that Section 377 IPC does not violate the Constitution and dismissed the writ petition filed by the Respondents. Regarding its power to rule on the constitutionality of a law, the Supreme Court acknowledged that it and the High Court are empowered to declare as void any law, whether enacted prior to the enactment of the Constitution or after.”

Then in a landmark decision of *Navtej Singh Johar v. Union of India*,³⁶ Supreme Court struck down Section 377 of Indian Penal Code to the extent that it criminalized same-sex relations between consenting adults.

²⁹ Supra 6.

³⁰ Sonam Saigal, *Maratha Reservatio: A Timeline of Events*, The Hindu (05/05/2021), available at <https://www.thehindu.com/news/cities/mumbai/maratha-reservation-a-timeline-of-events/article34487593.ece>, last seen on 19/12/2021.

³¹ *Jaishri Laxmanrao Patil v Chief Minister, Maharashtra*, 2018 SCC OnLine Bom 18206.

³² *Rahmat Ullah v. State of U.P.*, AIR 1969 ALL 165.

³³ Supra 8.

³⁴ *Naz Foundation v. Government of NCT Delhi*, (2009) 111 DRJ 1 (DB).

³⁵ *Suresh Kumar Koushal and ors v. Naz Foundation and ors*, (2014) 1 SCC 1.

³⁶ Supra 7.

After discussing all these cases we understand the importance of public opinion in policy making or in amending the law or repealing the laws. The cases only elaborate the way of public opinion effecting policy structure through judiciary.

Let's discuss a significant incident where the government enacted a law, but the President refused to grant assent: the Indian Post Office (Amendment) Bill, 1986. This bill sought to empower authorities to open any letter deemed suspicious, raising grave concerns about the potential infringement on the fundamental rights of citizens. The president's refusal to consent to this bill highlighted the crucial role of public opinion in legislative processes, illustrating that laws must be reflective of societal values and respect individual rights. Transitioning to a recent example of public dissent, we can examine the farmers' protests against the three Farm Laws enacted by the government on September 20, 2020. Following the enactment, farmers from Punjab and Haryana began to protest vehemently, demanding the repeal of these laws. They argued that the laws would privatize the Mandi system, severing the connection between farmers and the government. With power shifting to private entities, farmers feared that these entities could dictate crop prices without any regulatory oversight, jeopardizing their livelihoods. As a result, the farmers advocated for a Minimum Support Price (MSP) system, where the government would set a guaranteed minimum price for their products.

The protests commenced just seven days after the laws were enacted, on September 27, 2020, and continued for over a year. Despite several dialogues between government officials and farmer leaders, no resolutions were reached. Ultimately, after prolonged agitation and resistance from farmers, the government decided to strike down all three laws in November 2021.

This incident stands as a powerful testament to the importance of public opinion in policymaking. It reinforces the idea that when governments enact laws without genuinely considering the voices and concerns of the public, it can lead to significant unrest and ultimately necessitate the reversal of those laws. The farmers' protests serve as a prime illustration of how collective public sentiment can influence legislative decisions and ensure democratic accountability.

In this chapter, we explore the concept of public opinion and its significant role in policymaking and the legal system. We analyze various cases where public opinion and demands were crucial in influencing legislative actions. Through these cases, it becomes clear that the public plays an essential role in enacting, amending, or striking down specific sections or acts.

III. RELATION OF PUBLIC OPINION AND DEMOCRACY

In this chapter, we will explore the meaning of democracy and examine India as a democratic republic. We will discuss the significance of public opinion in any democratic state and the repercussions for democracy when the legislature fails to consider it. Additionally, we will look at the perspectives of various jurists on this topic. Furthermore, we will correlate important cases where the courts have elaborated on the definition of democracy in the context of public opinion.

Democracy and Public Opinion

According to Robert Shapiro, public opinion and policy-making are fundamental to a democracy, which is linked to electoral accountability, meaning that the leader who was elected "will not deviate far from voters' opinion"³⁷.

"The role of public opinion in a democracy is of particular significance on two grounds. In the first place, when free play of opinion is assured, the whole process acts as a check on the overgrowth of power. The second important function discharged by public opinion in a democracy is when law became a reflection of public opinion; it offers an easy solution to the problem of political obligation. The citizen obeys the law, as it rests on their will to obey. The whole process of lawmaking serves to obliterate the distinction between the law-giver and the law-receiver."³⁸

"Public opinion is one of the most important factors of social control in a democracy. Although public opinion needs the mediacy of the action of the political party for being pushed up and legislated into the concrete determinants of governmental action and public policy, nevertheless, as it is, public opinion is and can be a more effective source of influence than folkways, mores, ceremonies, prejudices, etc."³⁹

³⁷ Robert Y. Shapiro, *Public Opinion and American Democracy*, Public Opinion Quarterly, available at <https://academic.oup.com/poq/article-abstract/75/5/982/1826441?redirectedFrom=fulltext>, last seen on 20/12/2021.

³⁸ Varun Shivhare, *Public Opinion and Democracy*, Legal Service India, available at <http://www.legalservicesindia.com/articles/demo.htm>, last seen on 21/12/2021.

³⁹ VISHWANATH PRASAD VERMA, *Public Opinion and Democracy*, The Indian Journal of Political Science, 311, 316 (1956), available at <https://www.jstor.org/stable/42744048>, last seen on 21/12/2021.

“Public opinion is mostly, but not necessarily and always, expressed through majority opinion. There should be the orientation of public opinion to subserve the public advantage and the rational good of the general public.”⁴⁰

“Democracy is a government of the people. It is a government which is conducted according to the wishes and desires of the people. So in a democratic state the opinion of the people as a whole has a very important place. The whole conception of popular sovereignty which is the very breath and soul of democracy is based upon public opinion. Behind all the laws and institutions of the democracy is the power of public opinion. If public opinion opposes a certain measure, it cannot live or operate for a long time. If a government loses touch with the people or ignores their concerted opinion, it ceases to be a democratic government.”⁴¹

Now we talked about one famous quote written by Abraham Lincoln the former President of United State he said that “Democracy is a government of the people, by the people and for the people.”

This phrase highlights the deep connection between democracy and the people. In every democratic state, citizens elect their representatives in the legislative assembly by casting their votes. People choose their representatives because they believe that these individuals will address their needs and enact laws that reflect public demand. As Lincoln stated, democracy is of the people, meaning that the government is formed by individuals elected by the citizens. The phrase "by the people" emphasizes that every person has the right to vote and elect representatives, while "for the people" signifies that these elected officials are obligated to work for the benefit of the general public, considering their opinions.

There are two main types of legal systems in the world: democracy and monarchy. In a democracy, representatives are elected by the people to voice their views in the legislative assembly. In contrast, a monarchy is led by a king or queen, who holds ultimate authority and typically does not adhere to the opinions of the general populace. In such systems, laws are imposed by the monarchy, and citizens must comply, resembling a form of dictatorship. Therefore, if legal representatives fail to consider the opinions of the general public, democracy can falter, shifting towards a more monarchical system where authority does not rest with the people.

“For the success of democracy in a country it is essential that there must be existing sound public opinion in that country and the organs for the formation and expression of public opinion must be working with full freedom.”⁴²

“The formation of sound public opinion is very essential in a democratic state. Simple exercise of the right to vote is not enough. The right to vote is exercised at the time of general election or in by-elections. They do take place after long intervals. It is through public opinion only that the government can be continuously controlled and influenced. It is only under the pressure of public opinion that the government acts in the welfare of the community as a whole. Otherwise the government is likely to become sectarian.”⁴³

Judicial Decisions and Examples

There are several cases where government tried to hamper the basic feature of democracy and amend the constitution. In the case of *Minerva Mills v. Union of India*,⁴⁴ in this case government amends the basic structure and court interprets Article 368 and said that the theory of unlimited power to amend the constitution would alienate democracy and create a totalitarian State.

In the case of *S. R. Bommai v. Union of India*,⁴⁵ SR Bommai was the Karnataka Chief Minister between August 1988 and April 1989. He led a Janata Dal government, which was dismissed on 21st April 1989 when President's Rule (Article 356) was imposed in Karnataka. The Bommai government doesn't get a chance to prove their majority. So they went to Karnataka High Court against the Governor's decision court dismiss the writ petition. Then they move to Supreme Court. In this case Supreme Court restrict center for imposing presidential rule on states. It said that the power of the President to dismiss a government of a state is not absolute. Further it said that the President should use this power only after his proclamation (of imposing President's Rule) has been approved by both Houses of the Parliament.

Next, we will discuss a real-life example that illustrates how the concept of democracy can be curtailed by the government during a National Emergency. The Emergency declared in India in 1975 serves as a significant case in point. At that time, the government led by Indira Gandhi faced the prospect of losing the upcoming election. To maintain power, they declared a state of emergency, which allowed for the suspension of civil

⁴⁰ Ibid.

⁴¹ Supra 4, at 135.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

⁴⁵ *S. R. Bommai v. Union of India*, 1994 AIR 1918.

liberties and the curtailment of political dissent. This action demonstrated how, under the pretext of necessity, democratic principles can be undermined, highlighting the delicate balance between governance and the will of the people.

In this chapter, we discussed the importance of public opinion in a democracy, emphasizing that it is a fundamental condition for the functioning of a democratic state. When the legislature fails to consider the opinions of the people, the essence of democracy begins to erode, potentially leading to a shift towards monarchical rule. We also examined various cases where the government attempted to undermine the basic features of democracy. However, in response to public demands, the Apex Court took necessary steps to protect the rights of the citizens, reinforcing the idea that the judiciary plays a crucial role in upholding democracy and ensuring that the voices of the people are heard.

IV. ADVANTAGES AND DISADVANTAGES

In this chapter, we will explore the advantages and disadvantages of public opinion in the process of rule-making. Public opinion plays a crucial role in enacting, amending, or striking down laws, as it reflects the collective views and needs of the community. We will examine how positive public sentiment can drive legislative change and promote accountability among representatives.

However, we will also discuss the disadvantages of public opinion. These may include the potential for populism, where laws are enacted based on fleeting emotions rather than informed analysis. Additionally, public opinion can sometimes be swayed by misinformation or media influence, leading to decisions that may not be in the best interest of society as a whole. By analyzing both sides, we aim to gain a comprehensive understanding of the intricate relationship between public opinion and rule-making.

Advantages

We have discussed public opinion and recognized its necessity in a democratic state like India. In analyzing this content, several advantages of public opinion emerge:

1. **Harmony and Balance:** Public opinion fosters harmony and balance between the legislature and the people, ensuring that representatives are in tune with their constituents' needs.
2. **Law Adherence:** When public opinion is considered in rule-making, the resulting laws are more likely to be accepted and followed by everyone; otherwise, laws may lose their relevance.
3. **Reflection of Majority Needs:** Public opinion generally reflects the majority's desires and demands, helping to shape laws that serve the population's interests.
4. **Effectiveness of Laws:** Laws that are created with public input tend to be more effective, as they align with the needs and circumstances of the community.
5. **Maintenance of Democracy:** Public opinion is essential for maintaining democracy in a state, as it empowers citizens to voice their concerns and influence governance.
6. **Stability:** It creates stability within the socio-political system by ensuring that the voices of the people are heard and acknowledged.
7. **Development in Developing Nations:** In developing countries, incorporating public opinion can reduce tensions between the government and the public, allowing the government to focus on national development.
8. **Achieving Social Justice:** Considering public opinion can lead to quicker attainment of constitutional goals, including social justice.
9. **Constitutional Goals:** Engaging with public opinion is crucial for achieving the various goals outlined in the Constitution of India, ultimately promoting a more just and equitable society.

Disadvantages

There are also several disadvantages to considering public opinion in rule-making:

1. **Manipulation of Government:** At times, public opinion can be manipulated, leading governments to enact laws that may be inconsistent or demand-driven without a thorough evaluation, such as the case with the Maratha reservation. This can create complex legal challenges and societal divisions.
2. **Short-Term Focus:** The public may not always understand the future implications of certain laws and can protest against them, forcing the government to repeal legislation that could have been beneficial in the long run. This short-sightedness can hinder the development of effective policies intended for long-term progress.

We have discussed various advantages and a few disadvantages of public opinion, but it is clear that the benefits far outweigh the drawbacks. Public opinion is crucial for the overall development of the country. It ensures that the government remains responsive to the needs and desires of the people, fostering a more inclusive and democratic society. By engaging with public sentiment, we can create laws and policies that not only address current issues but also promote long-term progress and stability. Ultimately, public opinion serves as an essential catalyst for national development and social justice.

V. CONCLUSION

In this study, we have explored the concept of public opinion in the processes of lawmaking, amending, and repealing legislation. We began by defining public opinion as described by various authors and jurists. In my view, public opinion encapsulates "the thinking of people and their demands," reflecting what they truly believe regarding specific issues.

Next, we examined the role of public opinion in policymaking. I believe that public opinion highlights the needs and demands of the general public from the legislature, indicating what laws are truly necessary and providing insight into how specific legislation is perceived. Public opinion is vital for enacting any law, as laws are designed for the betterment of citizens. By incorporating public sentiment into the policymaking process, we can ensure that laws are more effective and widely followed.

We also analyzed several landmark case laws that demonstrate the importance of public opinion in changing or enacting certain laws. For instance, we discussed the Right to Education, the Right to Privacy, the decriminalization of Section 377, the abolition of the Triple Talaq law, and the establishment of laws related to sexual harassment. Each of these advancements occurred after the public raised their voices and demanded changes essential for societal improvement.

In recent events, we witnessed how the legislature enacted three agricultural laws without seeking public opinion, leading to significant protests from farmers in Punjab and Haryana. Ultimately, the government was compelled to repeal all three laws.

In my view, a law holds value only when the majority of the populace adheres to it; otherwise, its effectiveness diminishes. Therefore, whenever the legislature considers enacting a law, it is crucial to take into account the views and sentiments of the public regarding the specific issue at hand.

This highlights the fundamental connection between public opinion and democracy. Public opinion is an essential component of a functioning democracy; neglecting it risks transforming democratic governance into an autocratic one.

Finally, we explored both the advantages and disadvantages of public opinion. While the advantages are numerous, the disadvantages appear to be relatively limited.

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