

# A REVOLUTION IN SOCIAL AND LEGAL CHANGE: THE KERALA-MODEL RESISTANCE AGAINST PESTICIDE OVERUSE THROUGH ORGANIC FARMING

## ABSTRACT

*It is a celebrated dogma of socio-legal studies that social change and legal change cannot be isolated phenomena in social production. The dogma is too deep-seated that the epistemology of socio-legal studies became awfully singular apropos of the modalities of change, establishing the credo that the only mode of social change is legal change. This article challenges the said dogma by building a case against the singular modality of social change—the case of the organic farming revolution and the social changes caused by that revolution in the Southern Indian state of Kerala. The case study questions the conventionality that legal change is a prerequisite for social change and establishes that social change can happen in ways other than through legal change. It asserts that neither law is the sole causal agent for social change nor does law undergo a major transformation alongside social change. Finally, the article builds a new theory of social revolution and change that not only restructures our understanding of social change but also prompts us to reflect on the role of law in causing social transformations.*

## I. INTRODUCTION

The fundamental nature of the theories of social change is that they are also theories of legal change. In most of such theories legal change is depicted either as a constituent of social change or as a means for social change. They hold that social change that brings about legal change has been changing the dogmatic paradigms of law, emphasizing the conventional wisdom that social change is synonymous to legal change. But elsewhere in the scholarship, legal

change is deemed to be the culmination of social change.<sup>1</sup> However, these two things are no different than what Jan Broekman would put:

What is legal change? Is it a simple result of a more general social change? [T]here [cannot] be a more encompassing change of the legal paradigm as such [than social change] and [...] that type of change an extrapolation of the methodological components of the legal dogmatic paradigm, or of legal rationality in general.<sup>2</sup>

This evinces that hardly a theory has contested the paradigm change in law when legal changes occur alongside social changes.

However, this type of an approach to social change has a certain advantage. That is, when legal change is seen as a paradigm change in law, it signifies a normative realignment of the social foundations of society because law is a reflection of the social normativity. Such an explanation of the normative realignment can effectively rationalize and explain social change: social change thus becomes a larger reordering of the normative foundations of society. Theories of this nature can effectively explain social transformations by focusing on regulatory and institutional changes which constitute the normative base of society.

That being the general case, however, in capitalist societies, social transformations do not occur through change in the normative foundations of society, for capitalist societies are not normatively ordered, though they have also a governance structure (institutions) similar to that of normatively based societies. Rather they are ordered on the basis of the idea of capital accumulation. Governance structures, i.e., institutions and regulatory structures, therein facilitate the mobility of capital and for that sake they engage with the populace to give a *feel* of a necessity of accumulation. This necessity is created through laws and regulations which provide a sense of accumulation and abundance. In such societies, social change, which is in fact a shift to better conditions of accumulation and greater sense of affluence, occurs through re-adaptation of laws and regulations so that the spirit of accumulation is preserved. Whatsoever, even in capitalist societies, despite their non-normative character, legal change, though of a different nature, occurs alongside social change.

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<sup>1</sup> Jan Broekman, *Changes of Paradigm in Law*, in THEORY OF LEGAL SCIENCE 133, 136 (Peczenik, Lindahl & van Roermund, eds., 1984).

<sup>2</sup> *Id.*

The definiteness scholarship attributes to the role of legal change in social transformations has become an epistemological dogma. It is also the point of departure for discourses in law and social change to issues of social importance such that analyses therein mainly focus on law's power to produce social change. Research questions in socio-legal studies are of the nature and range of changes law causes to society (while self-transforming itself): How law is mobilized for social change? "How lawyer motivations, professional contexts, and political structures influence the decision to mobilize law as a political tool?"<sup>3</sup> How effectively can the interactions of legal and social structures change law and society to the needs of particular societies and cultures.<sup>4</sup> Whatsoever is the specific focus (and motives) of these questions, they have turned the analytic-focus on law to describe social changes into a cliché of socio-legal studies.

This article builds a case against the above said modality of socio-legal studies. It argues that social change can happen in ways other than through legal change brought about by regulatory action. It questions the conventionality of legal change as a prerequisite for social change and asserts that neither law is the sole causal agent for social change nor does law undergo a major transformation alongside social change. In Part II, the article presents a general theory of social change that captures the contemporary modality of social change. In Part III, the article, corroborates the above said general theory of social transformation through the case of social change brought about by the people's resistance against the use of the pesticide *endosulfan* in the state of Kerala in Southern India. In Part IV, modifying that position, the article illustrates, through the case of organic farming revolution in Kerala, that regulatory intervention is not a *sine qua non* for social transformation. Prompted by the case of organic farming revolution and the social change thereof, in Part V, the article builds a new theory of social revolution and change that not only restructures our understanding of social change but also prompts us to reflect on the role of law in causing social transformations. There is indeed a paradigm shift.

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<sup>3</sup> Scott L. Cummings, *Empirical Studies of Law and Social Change: What is the Field? What are the Questions?* 2013 WISCONSIN L. REV. 171, 173 (2003).

<sup>4</sup> See Yogendra Singh, *Law and Social Change in India: A Sociological Perspective*, in LAW AND SOCIAL CHANGE (J.S. Gandhi, ed., 1989).

## II. A THEORY OF SOCIAL CHANGE AND RESPONSES

Social change, in a general parlance, is a realignment of the configurable properties of society (configurable property, e.g. can be the polarizing quality of power in the dyadic relationships between individuals and their mode of social production). The causation for such a realignment, again to generalize, is an improper alignment of the people's aspiration with the dominant mode of production which is regulated through power. That is, when the dominance of the mode of production starts to overdo in a totalizing manner, it ontologically decenters rational individuals situated in society, rendering them disjointed from the social time-space, what may be called "the societal self-consciousness". The socially disjointed subjects have their aspirations unaligned, if not loosely aligned, with the dyadic power relationships of society.<sup>5</sup>

When disjointed from the mode of production people's identity becomes severely challenged and their selfhood, which was until then a productive sense in a production relationship, gets reduced into a fatalistic subordination. In a market sense, such a reduction is a transformation from a productive indulgence to a consumerist subordination. The alienated individuals who are onto-sociologically decentered do not concern further for their selfhood. That is to say, their ontological selfhood loses its correlation with social identity, which is to be replaced by a dazzling affluence—of a choicest variety—around them, and they totally endowed with a purchasing power. It gives them a sense of again being part of the mode of production and that their production relations are redefined.

In capitalist societies, these type of consumerist sensibilities are woven into a network of social relationships, as Cy Gonick puts it, "[t]he root of infinite consumerism is the peculiar network of social relationships between human beings created by the much broader capitalist mode of production."<sup>6</sup> In the new network of relations the ontologically disunited consumerists encounter new interests and aspirations to which they easily get entangled. William I. Robinson observes that this is a capitalist strategy which de-locates individual social positions and preempts any response that may bring radical

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<sup>5</sup> On the Foucauldian position, *see* WOLFGANG DETEL, *FOUCAULT AND CLASSICAL ANTIQUITY: POWER, ETHICS AND KNOWLEDGE* 15 (1998).

<sup>6</sup> CY GONICK, *INFLATION OR DEPRESSION: AN ANALYSIS OF THE CONTINUING CRISIS OF THE CANADIAN ECONOMY* 289 (1975).

changes by “channeling people’s activities into a fixation on the search for individual consumption and survival.”<sup>7</sup> Thus consumption becomes a “cultural production” wherein consumers are given a sense of localizing and sense of individuality in alternative lifestyles they have found.<sup>8</sup>

However, the transformed self of the people in capitalist societies is also disposed to further transformations. This is primarily due to the reason that the consumerist self is a deluded self-caught in a complexity of collectivism; paradoxically the rationality of that collectivism is unknown to the self, an ignorance that puts the subject in an “ontological emptiness”. The presence of such a self, which is uninformed of its existential logic, makes it depended on the glamor of the products and self-define itself in the opulence of market.<sup>9</sup> Hence the market must not fail to maintain the product-fetish of the consumers (the product fetish is actualized in “spheres of amusement”, e.g., “mall experience”).<sup>10</sup> And if it fails, the synthetically joined consumerist selves will disintegrate into disconcerted bodies desiring for existential meanings and social identity.

Failure to retain the product-fetish can occur *inter alia* in the form of fall in the quality and safety of products. However, fallen quality can always be raised and reinstated in the market through remedial advertising. But addressing consumer discontent that occurs due to a disintegration of the consumerist self is far beyond the scope of the market means to address “particular discontents”.<sup>11</sup> This is for the reason that consumer discontent is “diffuse” and is a result of a protracted irreversible chain of events, the tipping point of which is a social response pressing for “legislative and regulatory action.”<sup>12</sup>

In societies, regulatory action is not a direct response to the discontents of people. Rather, it is caused by organized social response because any legal change is a process of re-normativization of the

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<sup>7</sup> WILLIAM I. ROBINSON, *A THEORY OF GLOBAL CAPITALISM: PRODUCTION, CLASS, AND STATE IN A TRANSNATIONAL WORLD* 84 (2004).

<sup>8</sup> MATHEW HILTON, *CONSUMERISM IN TWENTIETH-CENTURY BRITAIN: THE SEARCH FOR A HISTORICAL MOVEMENT* 8 (2003).

<sup>9</sup> WOLFGANG HOESCHELE, *THE ECONOMICS OF ABUNDANCE: A POLITICAL ECONOMY OF FREEDOM, EQUITY, AND SUSTAINABILITY* 134 (2010).

<sup>10</sup> MARK GOTTDIENER, *NEW FORMS OF CONSUMPTION: CONSUMERS, CULTURE, AND COMMODIFICATION* 24 (2000).

<sup>11</sup> David A. Aaker & George S. Day, *A Guide to Consumerism* in *CONSUMERISM: SEARCH FOR THE CONSUMER INTEREST* 1, 15 (Aaker & Day, 4d., 1982).

<sup>12</sup> *Id.*

sphere of law which happens through large scale realignment of the social expectations and social actions of the people. Even then only discontents of a severe nature of the people with the system's ability to fulfil the promises can cause a social response that has the potential to realign expectations and trigger regulatory action. Particularly in the case of liberal markets, a failure of the market to hold consumer expectations by allowing an alienation of the consumer from the glamor of products can cause discontents. Such discontents are also severe, for they potentially threaten the very identity of consumers. The reason for the severity of the identity crisis in consumerist markets according to Herbert Marcuse is that consumption is a "false consciousness", "an activity that gives people worthless satisfactions, illusory pleasures preventing them from improving their society and themselves."<sup>13</sup> The sense of such false pleasures is reinforced by capitalist institutions such that any desire to break free from consumerist existence not only entails a response against their forged existence but also a response against social institutions, which help reinforce the false consciousness.

Social response against capitalist consumerism is thus an expression of the causal forces triggered by people's discontents. Regulatory action resulting from social response is a structural change which is effectuated by the process of institutionalization of the behavior and attitudes of the people. In the newly acquired institutional forms of self-governance people find new reasons for contentment and newer identities.

Social change thus has linear order—people's discontent, social response, regulatory action, and legal change—in which each causal factor contributes to the next in the linear order. Legal change, which is the summit of social change, however, is only an abstraction of the realigned expectations of the people and their fulfillment thereof—it is not law transforming *per se*. Sharyn L. Roach Anleu puts this linear dynamics succinctly to illuminate the concept of legal change: "Wider social pressure influence legal development to the extent that they affect legal constructions of reality."<sup>14</sup> Legal change signifies such a recreation of social reality than structural changes in law.

A theory of social change that tries to contextualize *change* in terms of capitalist societies must have regard for the dynamics of

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<sup>13</sup> PAUL HOLLANDER, DISCONTENTS: POSTMODERN AND POSTCOMMUNIST 172 (2d. 2002).

<sup>14</sup> SHARYN L. ROACH ANLEU, LAW AND SOCIAL CHANGE 45 (2d., 2010).

consumerism and its role in building social relations. The robustness of a capitalist society is heavily reliant on the relationships it can forge to keep people in a sense (albeit false) of belonging and connection—the existential identity. Even the mildest form of disruption of the existential identity can let people dissociate from the market. Hence capitalism gives utmost prominence to institutions within which the connections of identity are produced and reinforced. It is for this reason that a people-induced social change requires regulatory intervention into institutions to effectuate the change.

Many a times, regulatory change is easier said than done, no matter the intensity of the social resistance which demands regulatory change, because regulation is a bootstrap which holds the culture of accumulation, in which consumers are caught in the network of relations, tight. But massive public discontents over institutions can weaken the networks, for they are resistance against the mode of production itself and the way production relations are organized. Such discontents can put regulation under challenge and the pressure to transform. Post global resistance to neoliberal institution have been a cause to many such regulatory adjustments and legal change. However, as said earlier, this article takes issue with such a determinism—that legal change is causative to social change—in socio-legal studies. To this end, the article, in the next section, illustrates this general theory of social change.

### III. THE CASE OF ENDOSULFAN AND THE RESPONSE CHAIN: ILLUSTRATING THE GENERAL THEORY OF SOCIAL CHANGE

In the Kasargod district of Kerala in Southern India, an area rich in plantations, a highly toxic organochloride pesticide named endosulfan was in wide use since 1976 in order to guard plantations against insects and mites.<sup>15</sup> Nearly three years after its initial use in the region, cases of deformities on calves were reported, and by 1990s serious health disorders were reported on humans, especially children.<sup>16</sup> The health issues in the region ranged from cancer, cerebral palsy, and

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<sup>15</sup> *End of the Road for Endosulfan: A Call for Action Against a Dangerous Pesticide*, SUMMARY REPORT OF THE ENVIRONMENTAL JUSTICE FOUNDATION 1 (2002), available at [http://endosulphanvictims.org/resources/end\\_of\\_the\\_road.pdf](http://endosulphanvictims.org/resources/end_of_the_road.pdf).

<sup>16</sup> See *History of the Tragedy*, ENDOSULPHAN VICTIMS RELIEF AND REMEDIAL CELL, <http://endosulphanvictims.org/history.htm> (last visited Dec. 15, 2016).

physical deformities to skin allergies, infertility, and asthma.<sup>17</sup> In the next two decades there were hundreds of fatalities, and more falling prey to the health hazards of the pesticide.<sup>18</sup>

In the aftermath of endosulfan tragedy, there were massive people's agitations against the use of Endosulfan across the region, prompting the Government of Kerala to regulate the use of Endosulfan in the Kasargod region in 2001 and later on across the whole state in 2002.<sup>19</sup> Social actions against endosulfan did not stop there. Active campaigns were conducted by various environmental activist groups even after the partial banning of endosulfan in order to make the people aware of the danger of the pesticide and to extend the ban across the whole country. Prominent work in this regard was done by Thanal, a Non-Governmental Organization committed to fight against environmental injustices (which also led the people's resistance against the use of Endosulfan), the Centre for Science and Environment, and the Pesticide Action Network. Other social groups which partook the fight against Endosulfan are e.g., Endosulfan Virudha Samithi, Punchiri Arts and Sports Club, Kasargod Paristhithi Samrakshana Samithi, and Thiruvankulam Nature Lovers Movement. Their collective commitment to the social cause is best reflected in the mission statement of Thanal,

It is our duty to ensure that the [government] does not succumb to the pressure of corporate lobby, as the chemical corporations are much worried about their profit than the safety of farm workers and consumers. Also, we as responsible citizens should be keenly watching the stand and proceedings both nationally and internationally until this toxic [endosulfan] is phased out.<sup>20</sup>

Highlighting the health effects of endosulfan use through various outreach and awareness-building programs, the social action groups

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<sup>17</sup> *Effects of Endosulfan on Human Beings*, DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE OF TECHNOLOGY, Calicut, November 2006, p.13. available at [http://www.indiaenvironmentportal.org.in/files/Effect\\_of\\_endosulfan.pdf](http://www.indiaenvironmentportal.org.in/files/Effect_of_endosulfan.pdf).

<sup>18</sup> See M. KARPAGAM & GEETHA JAIKUMAR, GREEN MANAGEMENT: THEORY AND APPLICATIONS 70 (2010).

<sup>19</sup> *Disaster of Endosulfan in Kasargod and Kannur* (Feb. 1, 2011), <https://endosulfan.wordpress.com/2011/02/01/disaster-of-endosulfan-in-kasargod-and-kannur/>; see also *Thiruvankulam Nature Lovers Movement v, Plantation Corporation of Kerala*, available at <http://thanal.co.in/resource/view/endosulphan-case-verdict-13076754>.

<sup>20</sup> *Support Global Ban*, BAN ENDOSULFAN, <http://www.endosulfan.in/#poisonfreecrops> (last visited Dec. 15, 2016).



worked towards the complete elimination of the pesticide nationwide, for e.g., the Pesticide Action Network stated in a position paper that

We believe that endosulfan should be the next pesticide added to the POPs [Persistent Organic Pollutants] schedule for elimination because: it is acutely toxic and has poisoned numerous people, livestock and wildlife; it is an endocrine disruptor and threatens reproductive capacity; it is volatile and contaminates environments far from where it is used; it is persistent in the environment, and its main metabolite is even more persistent and bio accumulative and exhibits long range transport across national boundaries; effective alternatives are available; it is already deregistered or banned in many countries.<sup>21</sup>

Campaigns were also regularly held at local and panchayat level to raise awareness of the dangers of endosulfan.

Finally yielding to the pressure of collective social resistance, the Government of Kerala imposed a ban on the use of endosulfan in agriculture in 2010.<sup>22</sup> With the strong word coming from the government of an affected state, the chain of legal responses started. First, India along with 128 other member countries of the Conference of Parties to the Stockholm Convention on Persistent Organic Pollutants, 2004 added endosulfan to the list of Persistent Organic Pollutants (POP) in 2011.<sup>23</sup> In blacklisting endosulfan, the Review Committee of the Convention observed that,

A thorough review of control measures that have already been implemented in several countries shows that risks to health and the environment from exposure to endosulfan can be significantly reduced by eliminating the production and use of endosulfan. Global action on endosulfan will significantly reduce harm to human health and the environment.<sup>24</sup>

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<sup>21</sup> *Position Paper of Pesticide Action Network (PAN) Asian and the Pacific on Endosulfan*, ENDOSULPHAN VICTIMS RELIEF AND REMEDIAL CELL, [http://endosulphanvictims.org/resources/PANAP\\_Position\\_Paper\\_on\\_Endosul.pdf](http://endosulphanvictims.org/resources/PANAP_Position_Paper_on_Endosul.pdf) (last visited Dec. 15, 2016).

<sup>22</sup> SAPNA E. THOTTATHIL, *INDIA'S ORGANIC FARMING REVOLUTION: WHAT IT MEANS FOR OUR GLOBAL FOOD SYSTEM* 36 (2015).

<sup>23</sup> *United Nations Targets Widely-Used Pesticide Endosulfan for Phase Out*, STOCKHOLM CONVENTION (MAY 3, 2011), <http://chm.pops.int/Convention/Media/Pressreleases/Widelyusedpesticideendosulfanphaseout/tabid/2216/language/en-US/Default.aspx>.

<sup>24</sup> Annex 1, Conference of Parties to the Stockholm Convention on Persistent Organic Pollutants, UNEP/POPS/COP.5.17, p.3.

Subsequently, the Supreme Court of India ordered a ban on the production, use, and sale of Endosulfan.<sup>25</sup> In passing the order, the Court observed that

Right to life, guaranteed under Article 21 of the Constitution of India, is the most fundamental of all human rights, and any decision affecting human life, or which may put an individual's life at risk, must call for the most anxious scrutiny.

....

[K]eeping in mind the various judgments of this Court under Article 21 of the Constitution of India, particularly keeping in mind the precautionary principle, we hereby pass an ad-interim order to immediate ban the production, use and sale of Endosulfan all over India and we further direct the statutory authorities to seize the permit given to the manufacturers of Endosulfan till further orders.<sup>26</sup>

As follow-up to the Court's order and in compliance with the international commitments undertaken under the Stockholm Convention, the Central Government ordered all state governments to implement the ban on endosulfan and give necessary directions to endosulfan manufactures.<sup>27</sup> The Central Insecticides Board and Registration Committee directed all Pesticide Associations to withdraw the Certificates of Registration for Endosulfan.<sup>28</sup>

The legal response further triggered a chain of institutionalized effort to secure the health and safety of the people from endosulfan. It is again the activist groups which took the initiative to institutionalize the fight against endosulfan, though governmental bodies also actively contributed to the overall effort. Institutionalization was carried out primarily in two directions: first, at rehabilitating the endosulfan victims and, second, at securing a complete ban of the pesticide and developing harmless alternatives to endosulfan.<sup>29</sup> The first move in this regard came right after the initial ban of endosulfan by the Government of Kerala. Persuaded by social groups like Thanal and Endosulfan Spray Protest Action Committee, the government

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<sup>25</sup> *Democratic Youth Federation of India v. Union of India and Others*, W.P.(C) NO.213/2011, available at <http://supremecourtindia.nic.in/outtoday/wc21311p.pdf>

<sup>26</sup> *Id.*

<sup>27</sup> *Ban on Endosulfan*, PRESS INFORMATION BUREAU, MINISTRY OF HEALTH AND FAMILY AFFAIRS (Jul. 25, 2014), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=107462>.

<sup>28</sup> *Id.*

<sup>29</sup> Aditya P., *India's Endosulfan Disaster: A Review of the Health Impacts and Status of Remediation*, available at <http://www.indiaenvironmentportal.org.in/files/IndiaEndosulfan.pdf>, p.2.

established the Endosulfan Relief and Remediation Cell (“ERRC”) for the victims in the Kasargod region.<sup>30</sup> The ERRC funded by the state government provided compensation to nearly 500 victims and provided medical aids like wheelchairs, hearing aids, and spectacles in coordination with local Primary Health Centers.<sup>31</sup>

In addition to the work done by the ERRC, rehabilitation and remediation works like providing the victims with food, medicines, housing, support for higher education, and mainstreaming physically handicapped children were carried out by Solidarity Youth Movement, a non-profit organization, and the government aided Sarva Shiksha Abhiyan.<sup>32</sup> Further, upon the findings of the National Institute of Occupational Health regarding the continuing harmful effects of endosulfan, the National Human Rights Commission (“NHRC”) recommended *inter alia* to “supplement the efforts of the Government of Kerala (and of other State Governments where victims of endosulfan use are found) in the provision of relief and long-term rehabilitation.”<sup>33</sup> The Commission also recommended to the state government that “The State should pay at least . . . five lakhs to the next of kin of those who died and to those who were fully bed ridden [or] unable to move without help or mentally retarded and three lakhs to those with other disabilities.”<sup>34</sup> In 2012, NHRC asked the state government to submit the status report of the implementation of its recommendations on compensation and relief and to set up a tribunal to settle the claims of endosulfan victims.<sup>35</sup>

As far as institutionalized effort at securing a complete ban on endosulfan is concerned, India has committed to the Stockholm Convention to phase-out endosulfan by 2017. In this direction the government has tabled the Pesticides Management Bill, 2008, which fixes a “tolerance limit” in the use of pesticides under the Food Safety

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 4, 5.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *NHRC’s Recommendations on Endosulfan*, NATIONAL HUMAN RIGHTS COMMISSION (Dec. 31, 2010), <http://www.nhrc.nic.in/dispatcharchive.asp?fno=2175>.

<sup>34</sup> *Id.*

<sup>35</sup> *Endosulfan: NHRC Concern Over Delay in Setting Up Tribunal*, THE NEW INDIAN EXPRESS, (Apr. 10, 2015), <http://www.newindianexpress.com/cities/thiruvananthapuram/Endosulfan-NHRC-Concern-Over-Delay-in-Setting-Up-Tribunal/2015/04/10/article2757305.ece>.

and Standards Act, 2006 (“FSSA”).<sup>36</sup> Though this cannot secure a complete ban, the minimum institutional monitoring it brings could curb the uncontrolled use of the pesticide to a large extent. Further, in 2013, the Stockholm Convention approved non-chemical as well as chemical alternatives to endosulfan.<sup>37</sup> Investigations on alternatives were periodically reviewed by the Persistent Organic Pollutants Review Committee and mechanisms therein which the Convention had established.<sup>38</sup>

More recently, the Kerala Government as part of phasing out endosulfan has initiated steps to dispose existing quantities of the pesticide under the process called “Operation Blossoms Spring”.<sup>39</sup> The process would transfer endosulfan stored in corroded barrels to polythene drums which prevent the chemical from leaking. These drums would be handed over to international agencies for detoxifications and safe disposal.<sup>40</sup> The entire process would be in strict adherence to international safety standards.<sup>41</sup>

Albeit institutionalizing the rehabilitation of endosulfan victims has been effectively carried out, the complete ban of endosulfan is yet to be successfully institutionalized worldwide. The aftereffects of endosulfan continue to cause health hazards in Kasargod region and beyond, however, the causal effects of “endosulfan issue” have largely been subsiding.

If the endosulfan case is theoretically reviewed it becomes obvious that social action against a social evil triggered legal responses, but none of the legal responses secured outcomes anticipated by the social action groups. Rather they were open-ended outcomes which refused to give control either to the people or to pesticide manufacturers. That is to say, the Stockholm Convention while listing endosulfan as a POP,

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<sup>36</sup> Pesticides Management Bill, 2008, *available at*

<http://www.prsindia.org/billtrack/the-pesticide-management-bill-2008-169/>

<sup>37</sup> Roy Mathew, *Nod for Alternatives to Endosulfan*, THE HINDU, (May 3, 2013),

<http://www.thehindu.com/todays-paper/nod-for-alternatives-to-endosulfan/article4679050.ece>.

<sup>38</sup> *See* SC1/7: Establishment of the Persistent Organic Pollutants Review Committee, *available at*

<http://chm.pops.int/TheConvention/POPsReviewCommittee/OverviewandMandate/tabid/2806/Default.aspx>.

<sup>39</sup> K.A. Shaji, *Steps to Dispose of Endosulfan Stock*, THE HINDU, (Oct. 6 2014),

<http://www.thehindu.com/news/national/kerala/steps-to-dispose-of-endosulfan-stock/article6473247.ece?ref=relatedNews>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

provided India a timeout of 11 years to phase-out endosulfan, whereas the Supreme Court of India limited the ban to a temporary ban pending the report of a Joint Committee entrusted to conduct a scientific study on the health hazard of endosulfan.<sup>42</sup> Micro level plans to eliminate endosulfan is yet to be fully accomplished. The collective effect of these legal responses is a continued, though regulated, use of endosulfan.

In the endosulfan case, however, there is a proper response chain: there is a confluence of social action, legal response, and institutionalization, the cumulative effect of which is a demand for social change, if not for social change itself. Yet the causal forces of society, law, and governance have not sufficiently altered earlier conditions to make “meaningful demarcations possible or sufficiently pervasive that widespread effects can be observed.”<sup>43</sup> That can be either because the causal interconnections between the said three causes—social action, legal response, and institutionalization—were insufficiently low or because possibility of a demarcation is the final stage in a development towards social change. Either way, leaving apart critical possibilities, it is in fact the case that endosulfan issue has had the social response system unfolding against a social injustice, against the statutorily guaranteed right to life.<sup>44</sup> If changes are discussed in particular, in this case they have occurred on the social front, altering, albeit limited, the regulatory structure.

However, this pattern of change need not always be the case. As systems and actors overdo in a mad rush to maximize utility, harming the public good beyond optimum satisfaction of rational self-interest, masses resort to collective resistance. They do so only when law too becomes at-the service of capitalist exploitation. The collective resistance of masses in such cases disregards law because it sees law as fixated (deeply institutionalized) such that changing law requires massive system readjustments which has high transaction costs. Hence peoples’ movements tends to center on institutionalizing the resistance and directly cause social change. The next part of the article presents

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<sup>42</sup> See *Democratic Youth Federation of India v. Union of India and Others*, *supra* note 23.

<sup>43</sup> John Schulenberg et al., ‘*Spread Your Wings and Fly*’: *The Course of Well-Being and Substance Use During the Transition to Young Adulthood*, in *NEGOTIATING ADOLESCENCE IN TIMES OF SOCIAL CHANGE* 224, 251 (Crockett & Silbereisen, 2000).

<sup>44</sup> See *Democratic Youth Federation of India v. Union of India and Others*, *supra* note 23.

such a resistance which literally challenged the conventional modalities of social change.

#### IV. POST ENDOSULFAN: THE CASE OF PESTICIDE OVERUSE AND THE RESPONSE CHAIN

##### A. *The Social Issue: Residue of Endosulfan*

The endosulfan issue has alerted the people of the state of Kerala against a larger social evil, the prevalent overuse of pesticides in food products. After the endosulfan incidents, many cases of overuse of pesticides were reported from other parts of the state, e.g., use of banned chemicals in the cardamom estates in Idukki district,<sup>45</sup> overuse of pesticides in paddy cultivations across the state,<sup>46</sup> and presence of high pesticide contents in the vegetable samples collected by the Council for Food Research and Development from vegetable markets in various districts in the state.<sup>47</sup> Many official reports have also endorsed the overuse of pesticides in the state:

In the recent years, several reports have pointed to the health risks of the vegetables, fruits, meat, chicken, rice and wheat coming to Kerala from other States. Chicken was found containing high levels antibiotics (this would cause resistance to antibiotics in human beings); fish sprinkled with formalin (used to preserve dead bodies); and rice coated with harmful preservatives. Apple and grapes are among the most-contaminated fruits in the market.<sup>48</sup>

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<sup>45</sup> Don Sebastian, *Pesticide fear Grips Kerala Hills*, DAILY NEWS & ANALYSIS, INDIA (Nov. 21, 2006), <http://www.dnaindia.com/india/report-pesticide-fear-grips-kerala-hills-1065329>.

<sup>46</sup> *Editorial: Pesticides on Paddy: How Long Will We Go On Like This?*, PADDY, (Jul. 2011), <http://thanal.co.in/uploads/resource/document/Paddy-July-2011-12556911.pdf>.

<sup>47</sup> R. Ramabhadran Pillai, *High Pesticide Contents Found in Vegetables Across Kerala*, THE HINDU, (Jan. 12, 2014), <http://www.thehindu.com/news/national/kerala/high-pesticide-content-found-in-vegetables-across-kerala/article5569659.ece>.

<sup>48</sup> K.P.M. Basheer, *Kerala Wakes Up to the Risks of Pesticide in Food*, THE HINDU, (Nov. 19, 2014), <http://www.thehindubusinessline.com/economy/agri-business/kerala-wakes-up-to-the-risks-of-pesticide-in-food/article6615325.ece> (original parentheses).

The majority of these chemicals used for killing insects and pests can be dangerous to the human body and can cause cancer and similar deadly diseases.

It is also the case that more than sixty percentage of fruits and vegetables, which are chemically contaminated by overused pesticides and insecticides, for the consumption of the people of Kerala arrives from the neighboring state of Tamil Nadu where there is no ban on these harmful pesticides.<sup>49</sup> Therefore, smuggling of the banned pesticides is also rampant in the border districts of Kerala.<sup>50</sup> Roy Mathew reports that “Endosulfan is smuggled from Tamil Nadu under different names. Batches of workers from Tamil Nadu carry Endosulfan with them while travelling daily by bus or jeep to Idukki district.”<sup>51</sup>

While Tamil Nadu has denied these allegations saying that there is nothing out-of-standards in terms of the pesticides used in the fruits and vegetables exported to Kerala,<sup>52</sup> Kerala alleges that pesticides are overused in vegetables and fruits by the neighboring states in order to ensure that they are not eaten away by insects when transported across the border.<sup>53</sup> In the wake of a general distrust and suspicion amongst the public about the fruits and vegetable sold in markets, a study conducted by the Kerala Agricultural University named “Safe-To-Eat” reports that many of the randomly collected and tested samples of fruits and vegetables had pesticide levels above the limit prescribed by

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<sup>49</sup> *Kerala Calls Meeting of Southern States over Pesticides Scare*, THE HINDU BUS. LINE (Jun. 25, 2015), <http://www.thehindubusinessline.com/news/national/kerala-calls-meeting-of-southern-states-over-pesticide-scare/article7354541.ece>; See also P.K. Jayachandran, *Keralites Beware! You are Consuming High Toxic Pesticides*, MATHRUBHUMI, (Oct. 12, 2015), <http://english.mathrubhumi.com/news/kerala/keralites-beware!-you-are-consuming-high-toxic-pesticides-english-news-1.594845>.

<sup>50</sup> K.P.M. Basheer, *Kerala Calls Meeting of Southern States Over Pesticide Scare*, THE HINDU BUS. LINE (Jun. 25, 2015), <http://www.thehindubusinessline.com/news/national/kerala-calls-meeting-of-southern-states-over-pesticide-scare/article7354541.ece>.

<sup>51</sup> Roy Mathew, *A Deadly Cocktail of Pesticides, Medicines*, THE HINDU (Jan. 10, 2011), <http://www.thehindu.com/todays-paper/tp-national/a-deadly-cocktail-of-pesticides-medicines/article1076947.ece>.

<sup>52</sup> Aruna Urs, *In Defence if Pesticides*, BUSINESS STANDARDS (Sept. 7, 2015), available at [http://www.business-standard.com/article/punditry/in-defense-of-pesticides-115090700092\\_1.html](http://www.business-standard.com/article/punditry/in-defense-of-pesticides-115090700092_1.html).

<sup>53</sup> Sneha Mary Koshy, *Your Veggies Bad For Us, Says Kerala to Tamil Nadu*, NDTV (Jun. 18, 2015), <http://www.ndtv.com/kerala-news/too-much-pesticide-in-your-veggies-kerala-tells-tamil-nadu-772773>.

the Food Safety and Standards Authority of India (“FSSAI”).<sup>54</sup> However, Tamil Nadu has questioned the authenticity of the report and dismissed the allegations.<sup>55</sup>

Since governmental level discussions against the overuse of pesticides did not yield favorable results,<sup>56</sup> Kerala decided to introduce registration for fruits and vegetables as per the Food Safety Act. Shaju Philip, quoting departmental sources, reports that

The food safety department has convened a meeting of wholesale traders in Kerala [...] as part of sensitizing them about procuring pesticide-free provisions from Tamil Nadu. All inter-state fruit and vegetable traders would have to get licence by 15 of July [2015]. Only registered traders would be allowed to bring vegetables from other states. They would have to reveal the market or the farm from where they procure the produce.<sup>57</sup>

Further, due to the unenthusiastic response from the neighboring states, the Government of Kerala strengthened its internal food safety mechanisms by creating more posts of food safety officers, sanctioning rupees 2.45 crores for buying GCSMS machines in testing labs, and creating state-level committees for monitoring the import of pesticide laden agricultural products.<sup>58</sup>

However, in a counter move, the state of Tamil Nadu, which has been denying the allegations by the state of Kerala, counter alleged Kerala for scaremongering, stating that “Kerala's ‘unnecessary steps’ that could cause fear are in no way correct and these are based on

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<sup>54</sup> *Ambiguity in Agriculture: Kerala Agriculture University's ‘Safe-To-Eat’ Report*, THE NEW INDIAN EXPRESS, (Oct. 5, 2015), <http://www.newindianexpress.com/cities/thiruvananthapuram/Ambiguity-in-Agriculture-Kerala-Agriculture-University%E2%80%99s-Safe-to-Eat-Report/2015/10/05/article3063506.ece>.

<sup>55</sup> Ayyappa Prasad, *False Report on Tamil Nadu Vegetables*, TAMILNADU CENTRAL (Oct. 7, 2015), <http://tamilnaducentral.com/2015/10/07/false-report-on-tamil-nadu-vegetables/>.

<sup>56</sup> *See Mind Your Veggies: Kerala Complains to Tamil Nadu of Pesticide Residue*, HINDUSTAN TIMES (Jun. 18, 2015), <http://www.hindustantimes.com/india/mind-your-veggies-kerala-complains-to-tamil-nadu-of-pesticide-residue/story-4jblbPRANe8WHJ6LWMDpjI.html>.

<sup>57</sup> Shaju Philip, *Kerala Govt Makes it Mandatory for Wholesale Traders to Reveal Source of Produce*, THE INDIAN EXPRESS, (Jun. 10, 2015), available at <http://indianexpress.com/article/india/india-others/kerala-govt-makes-it-mandatory-for-wholesale-traders-to-reveal-source-of-produce/>.

<sup>58</sup> *Kerala to Stop Import of Veg Containing Pesticides*, METRO VAARTHA (Jun. 11, 2015), <http://metrovaartha.com/en/2015/06/11/kerala-to-stop-import-of-veg-containing-pesticides/>.



‘unfounded’ claims of presence of pesticides”.<sup>59</sup> To substantiate its counter allegation Tamil Nadu laid down that

Out of the 17 fruit varieties tested [by the Kerala Agricultural University], only one – green grapes – was found to have raised a red-flag. Even so, it was in one out of the three samples tested, and the level of chlorpyrifos found in it was 0.5 ppm, the exact amount of the pesticide deemed permissible by the Food Safety and Standards Authority of India (FSSAI).<sup>60</sup>

In a more drastic move, the Crop Care Federation of India (“CCFI”), a body that stands for the interests of pesticide manufacturers and users, alleged a violation of Section 18(3) of the FSSA by Kerala and filed a *mandamus* writ petition under Article 226 of the Constitution of India before the High Court of Kerala requesting directions to be issued to the Chief Secretary of Kerala to act in strict adherence to the FSSA.<sup>61</sup> Further, the CCFI, legally proceeded against the Kerala daily *Malayala Manorama* for publishing “false and fabricated” report alleging overuse of pesticide by Tamil Nadu.<sup>62</sup>

Irrespective all governmental action to address this social evil the final outcome is a failed legal response, if not no-response. What should have been ideally a welfarist paternalistic approach by the legal and the political system turned to a travesty of the aspirations of the people under a unitary system. While the social threat did not obtain a proper legal mobilization to effectuate change, it did trigger social responses at various levels of society.

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<sup>59</sup> Geetanjali Rai, *Not Cauvery or Mullaperiyar, Tamil Nadu now has Veggie War with Kerala*, *INDIATODAY* (Sept. 4, 2015), <http://indiatoday.intoday.in/story/not-cauvery-or-mullaperiyar-tamil-nadu-now-has-veggie-war-with-kerala/1/465495.html>.

<sup>60</sup> *Kerala’s Pesticide Paranoia and Organic Farming Campaign: Does the State Have Any Real Data?*, *THE NEWS MINUTE* (Nov. 28, 2015), <http://www.thenewsminute.com/article/kerala%25E2%2580%2599s-pesticide-paranoia-and-organic-farming-campaign-does-state-have-any-real-data-31434>.

<sup>61</sup> Shaju Philip, *CCFI Moves High Court Against Kerala Drive To Restrict vegetables from Tamil Nadu*, *THE INDIAN EXPRESS* (Oct. 20, 2015), <http://indianexpress.com/article/india/india-news-india/ccfi-moves-high-court-against-kerala-drive-to-restrict-vegetables-from-tamil-nadu/>. Section 18(3) of the FSSA reads as follows: “The provisions of this Act shall not apply to any farmer or fisherman or farming operations or crops or livestock or aquaculture, and supplies used or produced in farming or products of crops produced by a farmer at farm level or a fisherman in his operations.”

<sup>62</sup> *CCFI Slaps Lawyer Notice To Kerala Daily Malayala Manorama on Excessive Pesticide Use in Tamil Nadu Veggies*, *THE EMERGING TRUTH* (Nov. 28, 2015), available at <http://theemergingtruth.com/News/MediaWatch/94>.

*B. Social Movements: The Organic Revolution*

It was again Thanal, the organization that led the fight against endosulfan, which initiated the social revolution against pesticide overuse.<sup>63</sup> During its fight against endosulfan, Thanal felt the need to go beyond social resistance, advocacy of pesticide-free farming, and rehabilitation of victims to find “viable alternatives” to mainstream agriculture.<sup>64</sup> Thanal consequently envisaged the idea of “organic farming” which is “a form of agriculture that relies on techniques such as crop rotation, green manure, compost and biological pest control”.<sup>65</sup> This initiative came at a time when public discontent was mounting regarding food safety throughout the state and there was an alarming increase in the number of cancer patients in the state.<sup>66</sup> As a result, the initiative to “go natural” through organic farming was soon taken over by the people of Kerala. Need of farming land was not a constraint that households in the state started using patches of their terraces and balconies for cultivating naturally fertilized and nutritionally rich vegetables on a small scale using bio pesticides.<sup>67</sup> Most often household organic farming became an integrated approach by which vegetable farming is combined with animal rearing and poultry farming.<sup>68</sup> Rahima Rahman provides a few narratives on the household organic revolution, which best illustrate the manner in which women in Kerala resist pesticide overuse. Two of them are provided below and one which this author has empirically found:

Think how good it is to produce what we eat. . . . Ms. Lalitha Sahadevan is an Organic Farmer who is doing farming for about thirteen years. Initially she was doing farming in her own land but after the construction of her home she [obtained] a land in lease for farming. She is growing plants in her backyard garden in the few cents [of land] . . . The kitchen wastes are

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<sup>63</sup> THOTTATHIL, *supra* note 20, at 59.

<sup>64</sup> Saraswathy Nagarajan, *The Good Earth*, THE HINDU (Jun. 4, 2010), <http://www.thehindu.com/features/metroplus/society/the-good-earth/article446424.ece>.

<sup>65</sup> MARLON HENKEL, 21<sup>ST</sup> CENTURY HOMESTEAD: SUSTAINABLE AGRICULTURE I 167 (2015).

<sup>66</sup> K. Jayaprakash, *Terrace Farming Catching Up*, DECCAN HERALD (Jan. 6, 2013), <http://www.deccanherald.com/content/303256/terrace-farming-catching-up.html>.

<sup>67</sup> Lily Mathew, *Organic Farming Reaches the Roofs*, VOICES OF YOUTH, <http://www.voicesofyouth.org/en/posts/organic-farming-reaches-the-roofs----> (last visited Dec. 16, 2016).

<sup>68</sup> Rahima Rahman, *Yes! We Can Do Organic Farming*, THANAL (Sept. 25, 2014), <http://thanal.co.in/article/view/yes-we-can-do-organic-farming-47803542>.

efficiently . . . fed into the bio gas plant for the energy production and its byproduct bio gas slurry can be applied to plants as a nutrient source. She [in her kitchen garden] is growing bitter gourd, brinjal, cow pea, okra, ginger, yam, amaranthus and different varieties of banana . . . She applies cow dung, poultry manure [obtained from her animal and poultry farm], neem cake, ash and groundnut cake as an organic inputs.

Ms. Sreelekha . . . does farming mainly in terrace where different varieties of chilly, ivy gourd, cow pea, brinjal, pudhina, coriander, lablab, cabbage, cauliflower, cherry tomato and some ornamental flowers [are grown]. In the front yard garden of about one cent, banana, yam and curry leaves were grown . . . Organic inputs like vermicompost, poultry manure, neem cake, neem oil, chiretta plant extract (Kiriya) are added to the soil. The fallen dried leaves are utilised for making pot mixture.<sup>69</sup>

Ms. Santhakumari K.R., a 70 year-old retired government employee, discontented by the fact that she had to serve pesticide-laden food to her family, decided to go organic. She uses a few patches of her terrace for cultivating tomatoes, okhra, beans, cabbage, brinjal, spinach, pumpkins, coriander, and bitter gourd. To start her terrace farming, she received 25 bags filled with seeds as well as saplings from the Block Panchayat. As manure, she uses dry cow dung, fermented groundnut cake, neem cake, and tobacco decoction. She also distributes her organic products to the neighbors free of cost to ensure that they also get to consume pesticide free products.

The revolution that started as a resistance against a social evil soon began to establish itself, triggering causal forces to bring about social change thanks to active participation by many people living in the urban and the semi-urban areas of the state, not as a fad but out of a desire to resist poison being served on the plate. As Jayaprakash K. reports: “A silent revolution is taking place on rooftops across Kerala. Hundreds of families in the state have converted terraced roof of their houses into micro farms, where they grow organic vegetables, free from killer chemical fertilizers and pesticides.”<sup>70</sup> Motivated by the social cause, many successful farmers, opened organic stalls for the public to buy pesticide-free fruits and vegetables.<sup>71</sup> Seeds were also supplied to organic farmers through residents’ associations apart from

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<sup>69</sup> *Id.* (slightly edited).

<sup>70</sup> Jayaprakash, *supra* note 66.

<sup>71</sup> *Sreenivasan Set to Open Organic Vegetable Outlet*, MATHRUBHUMI (Aug. 14, 2015) <http://mathrubhumi.com/english/news/latest-news/sreenivasan-set-to-open-organic-vegetable-outlet-163889.html>.

educating the residents on the modalities of organic farming.<sup>72</sup> Many movie celebrities of the state volunteered on an active campaign in order to boost people's, especially youngsters', interest in organic farming.<sup>73</sup> The organic movement has also benefitted from popular media and films. For instance, the drama *Kumbaladesham*, staged by the students of Cheekkonnu Upper Primary School in order to generate awareness about the health risks of pesticides and the 2014 Malayalam movie *How Old Are You?* which prompts housewives to take to organic farming have given great fillip to the mass social resistance against the overuse of pesticides.<sup>74</sup> Interest groups in social networking sites like Facebook also play a prominent role in promoting and supporting organic farming. Beyond the virtual interactions, some of these groups, e.g., *Adukkala Thottam* (Kitchen Garden) and *Krishibhoomi* (Agricultural Land) have organized awareness-building workshops and exhibitions for sale and purchase of pesticide-free agricultural products.<sup>75</sup>

Over the last few years, Kerala, a state well-known for its revolutionary tradition, a state that has witnessed proletarian struggles, has been the ground for a silent revolution, a revolution that can be best dubbed as a revolution in the backyards and terraces of Kerala households. As is the case of most social resistance, organic revolution in Kerala also soon found itself fitted into the institutional grid. Mind it, it was more an institutionalization of the social resistance and less of an institutionalization of the outcomes the resistance sought.

### C. Institutionalizing the Organic Revolution

The institutionalization of the resistance happened on an extensive scale and yielded far reaching outcomes. The first step in this regard was taken as a response to the endosulfan tragedy, as part of

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<sup>72</sup> Jayaprakash, *supra* note 66.

<sup>73</sup> *Malayalam Film Celebrities Taking to Farming in Big Way*, ZEENEWS (Sept. 16, 2013), [http://zeenews.india.com/entertainment/regional/malayalam-film-celebrities-taking-to-farming-in-big-way\\_142823.html](http://zeenews.india.com/entertainment/regional/malayalam-film-celebrities-taking-to-farming-in-big-way_142823.html).

<sup>74</sup> Anila Backer, *Students Lead the Way in Organic Farming*, THE NEW INDIAN EXPRESS, (Mar. 27, 2015), <http://www.newindianexpress.com/states/kerala/Students-Lead-the-Way-in-Organic-Farming/2015/03/27/article2732451.ece>; *Organic Farming Revolution: A Big Hit in Kerala*, KERALA BACKWATER (Jul. 29, 2015), <http://www.keralabackwater.com/blog/organic-farming-revolution-big-hit-kerala/> (hereinafter "Organic Farming Revolution").

<sup>75</sup> M. Suchitra, *Rooftop Revolution*, DOWNTOEARTH (Jun. 30 2015), <http://www.downtoearth.org.in/coverage/rooftop-revolution-50161>.

institutionalizing the social and legal response to the issue. In 2008, the Left Democratic Front Government of Kerala announced the *Kerala State Organic Farming Policy, Strategy and Action Plan* with the overall goal of making “Kerala’s farming sustainable, rewarding, and competitive, ensuring poison-free water, soil and food to every citizen.”<sup>76</sup> The general approach of the action plan is

[T]o convert Kerala into an organic State [which] is to be achieved focusing on potential crops and areas in a phased and compact manner with the aim of converting a minimum of 10% of the cultivable land into entirely organic every year and thus achieving the target within five to ten years.<sup>77</sup>

In order to effectuate the organic farming policy, the Plan lays down twenty four strategies which range from ensuring seed sovereignty to farmers and states to guidelines for institutional organization of organic farming.<sup>78</sup> The Plan provides for greater coordination between various governmental departments, local self-governing bodies and organizations. *Strategy 24* of the Plan lays down the overall institutional structure.

Set up an Organic Kerala Mission to implement the organic farming policy, strategy and action plan and ensure their success. Since the coordination of the various departments is vital for the same, a General Council to be chaired by the Honourable Chief Minister and, since the policy has to be implemented by the Agricultural Department, an Executive Committee to be chaired by the Honourable Minister for Agriculture will supervise and guide the functioning of Organic Kerala Mission.<sup>79</sup>

Under the aegis of the state government, social groups like Thanal started awareness building on the benefits of organic farming.<sup>80</sup> It was to ensure that social resistance is channelized into public participation in social production and in social and community decision-making, all in the language of revolution and in the form of alternatives.

Earlier in 2011, the State Horticulture Mission (“SHM”) started its campaign for organic revolution and became an outlet for grow bags

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<sup>76</sup> *Kerala State Organic Farming Policy, Strategy and Action Plan, 2008*, (2008), [http://foodprocessingindia.co.in/state\\_pdf/Kerala/Kerala-Organic-Farming-Policy\\_2008.PDF](http://foodprocessingindia.co.in/state_pdf/Kerala/Kerala-Organic-Farming-Policy_2008.PDF) (hereinafter “Organic Farming Policy”); THOTTATHIL, *supra* note 20, at 59.

<sup>77</sup> Organic Farming Policy *supra* note 76, at 7.

<sup>78</sup> *Id.* at 19-24.

<sup>79</sup> *Id.* at 19.

<sup>80</sup> THOTTATHIL, *supra* note 20, at 67.

for organic farmers.<sup>81</sup> Apart from facilitating organic farming, SHM also provides consultation and advice to farmers. Almost concurrently, Kudumbasree, a women-empowering project, under its organic mission Harithasree, constituted a technical team comprising of farming and agricultural experts to provide training and technical advice to farmers.<sup>82</sup> Under this project Kudumbasree carries out organic farming in 8400 hectares of land,<sup>83</sup> conducts trade fairs in collaboration with self-governing bodies and village panchayats,<sup>84</sup> educates people on organic farming through “green technicians” and Farmers Facilitation Centres,<sup>85</sup> and provides interest-free subsidies to joint liability groups of women farmers.<sup>86</sup>

Further institutionalization of the resistance was carried out at the village panchayat level. This is done, for example, by creating interest groups among the villagers to cultivate pesticide-free fruits and vegetables.<sup>87</sup> The panchayats not only provide the groups with land, seeds and saplings but also allocate money for funding the farmers.<sup>88</sup> “Organic Farming Gram Sabhas” chaired by the panchayat presidents and the agricultural officers of respective panchayats are established by the state government to monitor such organic farming projects.<sup>89</sup>

Under the banner of the Organic Farming Policy of the Government of Kerala, many schools in the state have started organic farming by setting up school agricultural clubs wherein students, teachers, and

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<sup>81</sup> *Terrace Turns Garden in 18000 Houses* (Dec. 12, 2011), <https://thiruvananthapuramupdates.wordpress.com/2011/12/23/terrace-turns-garden-in-18000-houses/>.

<sup>82</sup> ‘Harithasree’ to Promote Organic Farming, THE HINDU (Aug. 27, 2012), <http://www.thehindu.com/news/national/kerala/harithasree-to-promote-organic-farming/article3824968.ece>.

<sup>83</sup> Organic Farming Revolution, *supra* note 72.

<sup>84</sup> ‘Harithasree’ to Promote Organic Farming, *supra* note 82.

<sup>85</sup> *Kudumbasree to Educate Citizens on Organic Farming*, DECCAN CHRONICLE (Sept. 26, 2015), <http://www.deccanchronicle.com/150926/nation-current-affairs/article/kudumbashree-educate-citizens-organic-farming; Kudumbashree to Expand Organic Farming; to Woo More Women>, INDIATODAYIN (Sept. 3, 2015), available at <http://indiatoday.intoday.in/story/kudumbashree-to-expand-organic-farming-to-woo-more-women/1/464160.html>.

<sup>86</sup> *Collective Farming*, KUDUMBASHREE, <http://www.kudumbashree.org/?q=cf2> (last visited Dec. 16, 2016).

<sup>87</sup> *Panchayats Gearing to Promote Organic Farming*, THE HINDU (Feb. 5, 2016), <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/panchayats-gearing-up-to-promote-organic-farming/article8196784.ece>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

parents join hands to produce chemical-free vegetables.<sup>90</sup> The Policy, apart from urging schools to set up vegetable gardens, create seed banks and setting links with organic farmers, stands for making organic farming part of their curricula.<sup>91</sup>

The state government has also institutionalized the marketing and distribution of organically cultivated products. For example, the Kerala Agricultural Development Society (“KADS”), an organization registered under the Charitable Societies Act, 1955, which stands for marketing ecofriendly agricultural products, was chosen as a service provider under the National Centre for Organic Farming to make organic products available to the larger public.<sup>92</sup> KADS, in association with the Indian Organic Certification Agency, also provides certifications to organic farmers under C1, C2, C3 categories of organic certificates under its mandate of promoting organic certification to ensure that organic product meet “organic standards”.<sup>93</sup>

The Government of Kerala and under its aegis various non-governmental agencies came together in support of a silent social revolution. Their collective effort at institutionalizing the resistance gave a boost to the organic revolution. However, the developments in Kerala on the organic farming front is not a “patterned institutionalization” that can claim bureaucratic quality (which is something that would be ill-suited to the organic movement). And the movement did not want to have the bureaucratic touch either, for organic revolution in Kerala is a product of the failure of the customary social response, as Narendra K. Singh conceives, “The informality operating in parts or at the level of sub-systems occurs due to structural limitations [also failure] of the system to accomplish tasks efficiently.”<sup>94</sup> What has, in fact, transpired in Kerala in the name of

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<sup>90</sup> Backer, *supra* note 72. Para 20.2 of the Organic Farming policy aims to “Set up a system in all schools in Kerala to have organic vegetable and fruit gardens as well as paddy, in potential regions, as part of inculcating among the children the love for organic farming and biodiversity conservation and, perpetuation in their households.” See Organic Farming Policy, *supra* note 74. See also THOTTATHIL, *supra* note 20, at 174.

<sup>91</sup> Organic Farming Policy, para 20.7.

<sup>92</sup> *A Green Philosophy in Organic Farming*, KADS, <http://kadsindia.com/organicvillage.php> (last visited Dec. 16, 2016).

<sup>93</sup> *Id.*; see also *Regulations and Standards*, INDOCERT, <http://www.indocert.org/index.php/en/2012-06-26-06-49-39/2012-06-26-06-58-31/2012-06-26-06-50-49/indocert-organic-certification> (last visited Dec. 16, 2016).

<sup>94</sup> NARENDRA K. SINGH, BUREAUCRACY, POSITIONS AND PERSONS: ROLE STRUCTURES 294 (1974).

organic revolution is a response to such a failure by the established systems and a subsequent takeover of the modes of social transformation by a sub-systemic proletarian class. The movement can be dubbed as new form of social revolution that is transforming a consumerist subservience to a productive self-sufficiency. The next section theorizes the new social revolution and the social change that is transpiring through it.

#### V. THE NEW REVOLUTION: THE PARADIGM SHIFT IN SOCIAL AND LEGAL CHANGE

The organic farming revolution in Kerala was a social revolution, which would be called a revolution in minds, an “exemplar” by the people who rose in collective resistance against their paradigmatic existence forged by consumerist forces. It is a revolution, as other revolutions are, against established patterns of governance which yielded to a domineering control by certain vested interested in the push-pull of control and wellbeing meant to secure optimal (melioristic) outcomes for people. However, what distinguishes this revolution from other social revolutions of a reformist nature is that, rather than being a reformation of the social setup which helps people reimagine their reality, the organic farming revolution is a reformation of the peoples’ re-imagination of the means and modes of the governance of them without resorting to any of the social-gears, e.g., law, of revolution. It simply was not a structural revolution.

The organic farming revolution illustrates that the potential of the algorithm of law, power, authority, and control, is an overestimation. The theorem that law has the potential to control the masses to secure political outcomes is relevant and unassailable only to the extent masses are like, as Gerald Turkel describes a Foucauldian postulation, “things that are possessed by agents of actions, as repressive, and as centralized in core structures such as legal institutions and the state.”<sup>95</sup> Law, according to Foucault, simply helps expand social control over the masses.<sup>96</sup> Thus when discontented masses address law in a revolution for changing the social structures, law only realigns its structural properties to find new ways of identity-generation for the

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<sup>95</sup> Gerald Turkel, *Michael Foucault: Law, Power, and Knowledge*, 17 J. L & SOC’Y 170, 170 (1990).

<sup>96</sup> *Id.*



people.<sup>97</sup> In the organic farming revolution masses did not have recourse to this transformative potential of law because in the whole affair they found law playing an enabling role for the market, which in pursuit of profit, went to the extent of threatening individual's life and the feeling of social being-ness they had in markets. This overtly self-interested approach of the markets prompted the masses to explore their own potential out of a sense of survival. It is their own ability to recreate their reality without resorting to external social aids.

In a stricter sense, it is a revolution originally conceived as a metaphysical revolution, as Philip Allott grandly characterizes such a revolution:

[A] new philosophy of mind's collective understanding of its own existence—a revolution in the way humanity understands its own situation—how it imagines its relationship to the natural world of this planet, to the universe of all-that-is—a new imagining of the meaning and purpose of human existence, a self-creating of the human world, the world made by the human mind.<sup>98</sup>

It is an awareness that laws and related institutions are constructs of human mind—they are not independent of human thinking rather they are, if we take Hegel seriously, only “objectification” of the thinking subjects' thoughts.<sup>99</sup> That is to say, systems of governance, e.g. institutions, are only processes of actualization of the human imagination and not products (objects) of imaginations *per se*.<sup>100</sup> For Marx, this process of actualization (objectification) is influenced by historical memory and a sense of being part of nature, while for Hegel the sole influence in actualizing imagination is the awareness of Spirit.<sup>101</sup> Whatsoever their disagreements, both Marx and Hegel would agree that there is nothing perpetually domineering about institutions that makes individuals submissive to them. But if the product (object) thus objectified (it can be any social products including market products) is estranged by the possession and control of that product by

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<sup>97</sup> This position is sufficiently illustrated above in this article using the example of how law helps produce and perpetuate a consumerist culture in order to quieten the discontents of the decentered masses. *See* Part II.

<sup>98</sup> PHILIP ALLOTT, *INVISIBLE POWER 2: A METAPHYSICAL ADVENTURE STORY* (2008).

<sup>99</sup> *See* TARIK KOCHI, *THE OTHER'S WAR: RECOGNITION AND THE VIOLENCE OF ETHICS* 188 (2009).

<sup>100</sup> *See* GEORGE L. KLINE, *ON HEGEL* (2015).

<sup>101</sup> *See* NICHOLAS CHURCHICH, *MARXISM AND ALIENATION* 36-38 (1990).

one who is a non-producer, as in the case of capitalist systems of private ownership, the producers becomes subordinate to the production as well as to the non-producer who owns the production.<sup>102</sup>

For the people of Kerala, the self-consciousness that “what we have made by thinking we can make by new thinking” was an optimism to free themselves from their enforced alienation and subordination.<sup>103</sup> It also manifested as their “sense of social responsibility” and their inspiration to ‘stimulate the self-consciousness’ by comprehending the “intellectual creativity” of the system-builders and displaying a similar ingenuity in social self-ordering.<sup>104</sup> It was a Parmenidean moment for the people, as Allott puts it,

That moment of self-enlightenment when the self-examining human mind recognises the problem of what it is to say that anything *is*, whether we say it of a god or gods, of justice, of the state, of our own being, of our own mind ... It is an intimidating power.<sup>105</sup>

In such a moment of self-realization, Kerala collectively said no to the pesticide-laden food on their platters; they denounced that the laws and institutions are at the service of larger projects of wealth maximization. They did not hesitate to disinvest faith in a system, of whatever utility maximization that system promises, which did not have worries in collectively harming people for achieving developmental goals. They stood against fabricated statements (law) which held a certain reality as “this is what society is”: they questioned the falsity of, what Allott calls an “Istopia”.<sup>106</sup> But it was in fact actions that spoke: “To insulate themselves from this daily dose of poison, a recipe for disaster, people have started looking for a viable option for growing pesticide-free vegetables on their residential premises and, thus, landed in terrace farming.”<sup>107</sup>

The dubiety people of Kerala had about law—thanks to the lessons of endosulfan and the futility of post-endosulfan legal responses in

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<sup>102</sup> *Id.* at 84.

<sup>103</sup> On the self-consciousness regarding one’s existence vis-à-vis society, *See* PHILIP ALLOTT, *HEALTH OF THE NATIONS: SOCIETY AND LAW BEYOND THE STATE* xxvii (2001).

<sup>104</sup> *Id.* at 5. System builders, according to Allott, are dwellers of Istopia, the world of “is” forged by the “master builders ... whose task in the social division of labor is the fabrication of is sentences.” *Id.*

<sup>105</sup> *Id.* at 7.

<sup>106</sup> *Id.* at 8.

<sup>107</sup> Jayaprakash, *supra* note 64. (internal quotes omitted)

curbing pesticide-overuse—prompted them to deviate from the modes of social change caused by law. In the spirit of revolution, they decided to make institutions, which are the means for actualizing peoples' imagination, responsive to their needs through the power of their collective self-consciousness, challenging the conventional modality that it is law which alone can make institutions responsive to the needs of people.<sup>108</sup> In doing this, in fact, there was less of a negation of the role of law in social change, but more of a re-conception of law.<sup>109</sup> It was a re-conception of law that law needs to be an equivalent of a causal force which conditions both the public and private minds which are the general and particular will of individuals. Anything that has the said potential qualifies as law.

In their willing and acting against the social evil of pesticide-overuse through collective resistance and organic farming, people of Kerala have in fact invoked the universalizing possibilities of human minds by connecting aspects of persons and situations to each other in a particular way independently of the “rest of their reality and rest of social reality” from which they were already ontologically decentered.<sup>110</sup> It is a proletarian revolution under the “unified historical subject”, who, according to Georg Lukacs, is “capable of acting consciously on the [false] totality of society from a strategic position giving it leverage on that totality.”<sup>111</sup> Jayaprakash succinctly illustrates the said will-forming totality of the masses in Kerala: “Initially it was an isolated effort by individuals and small groups. It reaped a rich harvest and thus the idea sprouted in several minds.”<sup>112</sup> It became the common interest of the people, superseding what existing laws have declared as the common interest.

Once the willing and acting of the people are coordinated—either by law or otherwise, as in the present case—to serve the common interest, it is the role of institutions to act in furtherance of that common

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<sup>108</sup> Contemporary theories of social change deem institutions as “instruments that set off, monitor or otherwise regulate the fact or pace of social change”. A. Lopez Valdez, *Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Caribbean*, 7 *LAW. AMERICAS* 1, 2 (1975).

<sup>109</sup> On such possibilities, see Philip Allott, *The Concept of International Law*, 10 *EUR. J. INT'L L.* 31 (1999).

<sup>110</sup> *Id.* at 36.

<sup>111</sup> See Andrew Feenberg, *Rethinking Reification*, in *GEORG LUKACS: THE FUNDAMENTAL DISSONANCE OF EXISTENCE* 101, 111 (Timothy Bewes & Timothy Hall, eds., 2011).

<sup>112</sup> Jayaprakash, *supra* n.64.

interest to effectuate a social change.<sup>113</sup> In the same vein, the Government of Kerala took over the task of institutionalizing people's efforts at organic farming. And, indisputably, social institutions, habituated to act in accordance with the directions of law, took their cue from the willing and acting of the people to localize production and distribution, which displaced law that were serving the people's un-interest of subjecting them to a submissive consumerism.

In the whole process, initially it was the resistance which was institutionalized because the social force in question is a proletarian resistance in disguise which cannot be easily institutionalized in rationalized social structures of a bourgeois character.<sup>114</sup> Moreover, the interplay of relevant forces within institutions is foreign to the new will-forming process. Hence, only the people's resistance was institutionalized by the government of Kerala at a sub-systemic level and not the outcomes the resistance sought. However, in the fullness of time, when the institutionalized resistance would establish relations sufficient to cause social production, the new social consciousness will become the willing and acting of society.

#### VI. CONCLUSION: THE NASCENT EPISTEMOLOGY OF SOCIO-LEGAL STUDIES

It is obvious that social transformations can happen without law, and when it happens, as seen above, theory has to look for alternative causal forces to explain the dynamics of transformation. Moreover, new reality (human condition) which is brought about without law's participation, and legal change thereof, needs new medium for reflecting change and new explanatory tools for elucidating changed social behavior. Challenge is also posed for the socio-legal scholars to epistemologically accommodate social changes caused through legal change and social changes caused without through legal change. These considerations have assumed a certain imperativeness given the paradigm shift in the modalities and nature of social and legal change.

First, if not for law what causal force can help socio-legal theory explain social transformations? In the conventional socio-legal discourse, social change, which is brought about through law, is understood from the functions (procedural specialties) of the redefined

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<sup>113</sup> Allott, *supra* note 106, at 36.

<sup>114</sup> On the plausibility of resistance to get situated in dominant social structures, *see* Feenberg, *supra* note 108, at 111.

normative (legal) order which is a natural output of law-induced social change. It is for such structural outcomes caused by law which made law the causal agent for social change, and legal change thereof the reflection of social change. This position is stated earlier in this article. However, in a situation when the role of law is taken over by the collective willing and acting of the people through intersubjective interactions, as happened in the case of organic farming, a rational sense of falseness about society, which precedes the mind-revolution, replaces the social discontents that generally invoke the causality in law to produce social change.

Second, social change devoid of transformations in law requires new explanatory means to account for the change, which in general case is mirrored through legal change manifested through the redefined normative order. However, the intersubjective interactions of people through which the collective willing and acting occurs is a dialogical process open for social participation.<sup>115</sup> Such participation is akin to the Kantian “rational perspective” to place oneself in the perspective of others who are part of a certain intersubjectivity.<sup>116</sup> Its openness for participation of the subjects is more involving and informing apropos of the social change than the descriptive and relaying power law has about social change.

Third, a paradigm shift in social and legal change does not exclude totally the conventional modalities of change. Changes can be law-induced and also through the mind-revolution. Albeit this contrast is less impactful for social events to occur alongside, it is challenging for the socio-legal epistemology to properly accommodate conflicting modalities of change. This dichotomy would threaten the unitary nature of the knowledge of socio-legal studies. However, refusal of one for the other will cost the epistemic credibility of socio-legal studies and impose limitations on it to account for social change. Hence, law and the intersubjective willing and acting of people—both agents of social change—if can correlate, would yield constructive results. Need for such a correlation can create a dialectical necessity to

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<sup>115</sup> See Esteban Marin Avila, *Social Acts as Intersubjective Willing Actions*, in *FEELING AND VALUE, WILLING AND ACTION: ESSAYS IN THE CONTEXT OF A PHENOMENOLOGICAL PSYCHOLOGY* 245 (Martha Ubiali & Maren Wehrle, eds., 2015).

<sup>116</sup> See Steve Odin, *Whiteheadian Perspective-Taking as a Basis for Peace*, in *LIVING TRADITIONS AND UNIVERSAL CONVIVIALITY: PROSPECTS AND CHALLENGES FOR PEACE IN MULTIRELIGIOUS COMMUNITIES* 237, 248 (Roland Faber & Santiago Slabodsky, eds., 2016).

recognize the possibility of a paradigm shift as part of the evolving dynamics, and the self-becoming thereof, of socio-legal studies.

On balance, the organic farming revolution in Kerala has been a whole lot instructive, especially that social change is not always pattern-wise singular and evolutionarily linear. It informs that deviation from the conventionalities of social change happens only when social systems and institutions overdo in a totalizing manner, imperiling the lives and property of people. And when it happens, nothing, not even law's time-tested power to delude peoples' selves to a certain make-believe reality, can help prevent disruption in the patterns of social change. Organic farming revolution discussed in this article need not be seen as an isolated revolution of a region that has a revolutionary tradition, rather it is temporally given out of a collective urge of the people to overcome the falsity of society in their coming to consciousness.

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