

LAW AND SOCIETY: COMPLETE WHEN TOGETHER

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ABSTRACT

People choose law as they have interest in field of law or legal research, to become a man of virtue by knowing the difference between right and wrong, etc. But there are some who want the people around them to be secure and contented and some want the society to grow. A rule made by some authority, to be followed by people at large is necessarily made for the welfare and wellbeing of all. Here comes the interplay between law and the society where both influence each other and are associated together with cause and effect relationship. Law acts as a weapon to protect the society and the people who constitute it. A law-less society is nothing but a playground of corruption. This essay provides distinct perspectives to the relation shared by law and society and also with passing time major developments which have shaped it. Among other things law also constitutes the societal institutions such as family, polity, or corporation. They both being multi-disciplinary revolve around one subject matter i.e., the social order.

INTRODUCTION

Before discussing the topic, there is a need to understand what is law? Law is a dynamic principle which widens itself every day and it is usually difficult to confine it within certain definitions as it is inclusive. Law can have various meanings according to different schools of law discussed in Jurisprudence, the science of law. The sources of law are as following:

- a) NATURAL SCHOOL- This school of law believes that law is made by the Almighty God, who praises those who abide by it and curses those who break it. As God has created human beings, he has also affirmed a code of conduct, regulating their behavior. Men have to submit to the ultimate power and live blissful lives. One can find traces of natural law in the Vedas, the Puranas, the Upanishads, etc. which are of divine origin.
- b) HISTORICAL SCHOOL- It suggests that law is an outcome of historical development of society as it originates from customs, conventions and relations people share. Law is based on consciousness of the people as developed by Savigny, *Volksgeist*. According to it, law

is based on the general will of people which dies with dissolution of city-state. People will only follow that, which suits them and hence it can change when people, time or place change.

- c) **POSITIVE SCHOOL**- It says that law comes from a supreme body called the Sovereign, which has to be strictly followed. Austin, father of Positive School of Law gave two points that Law is the command of the Sovereign and that Force is the essence of law. He separated law and morality for the first time and compared law with all scientific arrangements around.
- d) **REALIST SCHOOL**- This School of law underlines that the courts, the judges and the precedents are the prominent sources of law which have the authentication and are persuasive. Practically, what they do, say and debate is known to be law. It also highlights the social implications of legal decisions.

Now, society can be defined as group of people occupying a territory sharing thoughts, ideas. This was the primitive agriculture-based society where people had same livelihood and lived in proximity. Society is an organized group of people associated together for the purpose of religion, culture, polity, and patriotism. Society can be classified on the basis of development and advancement in technology as following:

- a) **HUNTING AND GATHERING SOCIETIES**- Every human being needs some earning to survive and primary societies sustained on hunting of animals, gathering forest produce and fishing. They were constantly on move in search of food and water and were called nomads. They totally depended up on the forest resource with men and women having divided the tasks equally.
- b) **PASTORAL SOCIETIES**- As the time passed they started domesticating animals like sheep, goat, etc. which could be reared to get food and clothing. This helped pastoral people to produce in large quantities and hence they settled at one place. Once their lives became stable they started to trade with other communities.
- c) **HORTICULTURE SOCIETIES**- When pastoralists settled at one place, they learnt the technique of cultivation and grew fruits and vegetables. It was produced in surplus and when the land lost its fertility or resources became scarce, they moved to another patch of land.

- d) **AGRICUTURAL SOCIETIES**- With technological advancement, the style of cultivation developed and communities shifted to food crops like wheat, rice, corn, barley, etc. As the population increased, people depended more on agriculture to feed themselves. Some produce was for personal use and the surplus was sold in towns which helped the farmers to earn profit too. With wood and iron plough, it was easier to till the land and mix the manure properly.
- e) **INDUSTRIAL SOCIETIES**- They emerged after the Industrial Revolution in the 18th century, where production of goods was mechanized as machines replaced humans for better quantity and improved quality. Transportation enhanced with the invention of faster mode of travelling of people and goods, with the invention of steam engine. City life improved as people got the opportunity to study and secure a job as well as the health condition upgraded.
- f) **POST-INDUSTRIAL SOCIETIES**- Technological revolution has created this society based on information and knowledge. Rather than being driven by the factory production of goods, society is being shaped by the human mind, aided by computer technology.¹⁴ The educational and technical skills will determine whether a person will be successful and not by ownership of property.

RELATIONSHIP

Society is the subject matter of law. Taking into consideration the background of emergence of rules and regulations, it takes us to the beginning of the human civilization. The society was pre-social as considered by Thomas Hobbes and pre-political as explained by John Locke, and a social contract was made to introduce a sovereign and law. Jean-Jacques Rousseau talks about the general will of the society where people have to sacrifice their private needs and demand for what is good for the society. True Sovereignty is directed always at the public good, and the general will, therefore, speaks always infallibly to the benefit of people.¹⁵

It is well known fact that animals are ancestors to humans and the only fact which differentiates humans from animals is law abiding instinct in the former. Law acts as a social control over

¹⁴ Houghton Mifflin, *Types of Societies*, 2020, CLIFFS NOTES, accessed on 3 June, 2020 <https://www.cliffsnotes.com/study-guides/sociology/culture-and-societies/types-of-societies>.

¹⁵ James J. Delaney, *Jean-Jacques Rousseau (1712-1778)*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, accessed on 4 June 2020, <https://www.iep.utm.edu/rousseau/#H4>.

individuals and prevents them from harming others of their kind. Span of law is wide as it governs every activity taking place in the society and is even applicable to an unborn child and deceased person. Primarily, whenever a dwelling or institution comes into being, the first thing to be done is providing a framework for its smooth functioning and for everyone related to it to know their rights and liabilities.

Law coming from a legitimate authority confers rights and responsibilities on the citizens, dereliction of which can cause trouble. Anyone who falls into dispute with another, approaches the court for justice and the court first examines the law in force rightly applicable to the dispute. In this way law gives stability to society and re-establishes peace and order. Natives of the territory elect their representatives, from society itself, who they think precisely know and will be able fulfil their desires. Citizens vest power in the hands of officials who further make legislations for society itself. Then the society decides whether the law is satisfactory or not. If not, people protest so that the authority can rectify it or can even use force to apply the regulation.

Society includes not only the people but also the people made institutions such as family, neighbourhood, educational institutes, trade unions, religious places, the Parliament, political parties, pressure groups, media, courts, etc. which have their own rules of conduct which have to be abided by. In this manner law enjoins people to different faiths and, in turn build a strong society. Morals and ethics are passed from one generation to the other which boosts the physical, mental, religious, cultural, economic and political base of the society. Even any clash between a person and some institution is resolved with the help of law. For example, a basic social unit in any society is family which is defined and protected through legal rules (marital laws) and institutions (family courts).¹⁶

A very important part of every community or dwelling is customs. They are the habitual practices followed since time immemorial by group of people. Ultimately, these customs are recognised and some shaped into laws. Majorly the religious customs and rituals today find a place in the Personal Laws. Law-making bodies give space to these practices to respect the sentiments of the society and to keep them united despite diversity. But that custom should not be contrary to the law or it should not be against public policy, decided by the judiciary varying from case to case.

¹⁶ Himanshu Rathee, *Law and Society*, 4 February 2014, ACADEMIKE, accessed on 6 June 6, 2020, <https://www.lawctopus.com/academike/law-society/#page>.

Power of making laws are vested in legitimate authority which can be identified by its impartial conduct and being just. This authority also has the power to enforce it by using any means. Wonder why only a few words making up a sentence and then making points, creating so called a law, are able to control the whole society? It is indeed a sense of fear and feeling of respect at the same time. Fear of punishment and respect for land which is source of livelihood for people.

A lawless society is an abode of crimes, evils and brutality. Taking the most common example to explain the relation between law and society in minutes, the concept of marriage. Hindu marriage has been considered a sacrament for a blissful life; after the codification of marriage laws (of other personal laws too), it has governed the marital relations of people. Before the enactment of Hindu Marriage Act, 1955, polygamy was prevalent but now it is illegal. Earlier, there was no concept of divorce and marriage seemed to last for seven births but now the Act has defined the rights given to the husband and the wife for dissolving marriage. Previously, even there was no prescribed age for marriage, but after 1955, it was clearly laid down who can or cannot marry. Laws made for Muslims, Christians etc. in same manner apply to the persons belonging to each community.

Another example could be of untouchability, practise of ostracising a group of people who are considered socially backward. Supported by the former Varna system in the Vedic period, casteism developed and found roots in the society. These backward caste people were considered impure and exploited rashly by the upper castes. Reformers like Ambedkar, Jyotiba Phule, Veer Savarkar, Mahatma Gandhi, came forward to stop the oppression and fought for the social, educational and legal rights as well as for better treatment of the Dalits and the scheduled castes as a result Right to Equality was ensured to every citizen.

INFLUENCES

When there is a cause and effect relation between two subjects, there emerges influence and impact of one on the other. Law asserts an influence on society; and vice versa. The interaction between society and law is a complex one as the former is diversified and the latter is multidimensional. Law is nothing but a living entity which reflects the energy of life which comes from a vivacious and a vibrant society. Social change is derived from legal action. The variations in the societal organisations and processes are carried in by law either directly or indirectly.

Law is a medium of modernisation and a strong indicator of growth and development. But on the other hand, if the society not follows the law of land, it results into downfall of humanity. The time long practises of sati, child marriage, dowry, bonded labour, beggar, human trafficking, etc., reflecting a typical orthodoxy, have reduced and ended by society through shield of law. Law certainly has acted as a catalyst in the process of social transformation of people wherein the dilution of caste inequalities, protective measures for the weak and vulnerable sections, providing for the dignified existence of those living under unwholesome conditions etc. are the illustrious examples in this regard.¹⁷

On one hand, law changes the perspective of interpreting people's action and on the other hand, it changes a person's character and the way society perceives it. Rules made either by family or by corporation or by government have to be abided. Any disapproval or disobedience to them invites punishment which can range from trivial to harsh. Along with this comes criticism and condemnation. If the laws of nation or state are violated, there is a penalty which can be either fine, imprisonment or death penalty (or even capital punishment) depending upon the severity of the offense.

It is the law which ensures justice (social, political or economic) to the people if they are not treated properly. It is said that 'justice delayed is justice denied', which means it is the failure of law and the society as well which could not offer what was due. Laws made long back like the constitution will need time to spread the light (due to different interpretations) of justice in the society. That does not mean there is no law. There have been laws made during the colonial period which actually governed the society and are still in force.

Law as a multidimensional discipline has influenced people's outlook and perspective towards others and themselves. Law changes the immoral habits of persons who really want to change; or law can even make persons follow what is immoral. It is just the difference in authority which frames laws for the society and has the discretion to choose the former or the latter. It takes time for a law to completely transform an attitude or actions of a part of society or whole. When it is

¹⁷ *Importance of Law in Society*, 1 February 2017, LEGAL DESIRE, accessed on 10 June 2020, <https://legaldesire.com/article-importance-of-law-in-society/#:~:text=The%20law%20is%20important%20for,It%20keeps%20the%20society%20running.>

difficult for the society to accept a law, it tends to resist it, leading to protests and strikes, which is necessary for a democratic nation to give a reality check to the law makers and to the society.

Any new law which is executed faces either appreciation or public scrutiny. A modern society with outdated law or vice-a-versa can never be acceptable. Law can either be amended or repealed or reformed which binds the society. There are a few instances in India where by the influence of society, has drastically shaped the laws. Be it a religious or stubbornly social issue, the Indian judiciary left no stone unturned to ensure justice to masses.

- 1) SECTION 377 OF INDIAN PENAL CODE- The case named *Navtej Singh Johar vs. Union of India*¹⁸, was related to the sexuality of an individual. Homosexuals and trans-genders have been looked down upon in the society since time immemorial. But in the historic judgement on 6 September 2018, the honourable Supreme Court in a unanimous ruling decriminalised homosexuality. It struck down some provisions of section 377 of the IPC, like the consensual sexual acts between adults including homosexual sex, as unconstitutional. The conservative law will take time to penetrate in the society and accept the LGBT community. But laws almost always play an important role in changing mindsets, and by recognising the community's right to love, the Supreme Court has restored the dignity denied to them for a long time.¹⁹
- 2) SECTION 497 of INDIAN PENAL CODE- The 158-year old law on adultery which imposed blame on a man engaging in sexual intercourse with wife of another man. The law was violative of articles 14, 15 and 21 of the constitution as it did not give woman the right to prosecute her adulterous husband and also it did not punish the women in adultery. When sexual intercourse takes place with the consent of both the parties, there is no good reason for excluding one party from the liability.²⁰ The SC decriminalised adultery and it is no more a crime one of the reason being it treats a husband as a master. The case was *Joseph Shine vs. Union of India*²¹.

¹⁸ AIR 2018 SC 4321.

¹⁹ *India court legalises gay sex in landmark ruling*, 6 September 2018, BBC NEWS, accessed on 12 June 20, <https://www.bbc.com/news/world-asia-india-45429664>.

²⁰ Jismin Jose, *Joseph Shine vs. Union of India*, 8 March 2019, LAW TIMES JOURNAL, accessed on 12 June 20, <http://lawtimesjournal.in/joseph-shine-vs-union-of-india/>.

²¹ 2018 SCC OnLine SC 1676.

- 3) SABARIMALA TEMPLE CASE- The temple is dedicated to Lord Ayyappan in Periyar Tiger Reserve, Kerala. The temple of a celibate deity was revered by only men and the women between 10 and 50 years of age were restricted from entering the temple. On 28 September 2018, the honourable Supreme Court in the *Indian Young Lawyers Association vs. The State of Kerala*²² case held this prevention, a violation of Right to Equality and Right to Freedom of Religion of women worshippers and overruled the 27-year old Kerala High Court judgement which prohibited the entry of women. The dualism evident in venerating goddesses and not allowing women to enter into the temple degrades women's status.
- 4) NIRBHAYA GANGRAPE CASE- A heart throbbing case of brutality and the devilish manner of treatment of women, seriously periled, disrupted and questioned humanity. The four accused were convicted and given death sentence in 2017, and hanged in early 2020. They used all the means to stop the sentence but could not succeed and met with their end. There were changes in many laws after the public became outrageous like demanding more security for women in the Delhi and the National Capital Region, Criminal Law Amendment Ordinance, 2013, promulgated by the President, provided death penalty to convicts in rape cases, Rajya Sabha passed the Juvenile Justice Bill proposing that an accused in a heinous crime, above 16 years of age will be treated as an adult in the court of law.
- 5) RAM JANAM BHUMI- BABRI MASJID CASE- Another case which is deeply related to the sentiments of two communities, Hindus and Muslims. The demolition of Babri Masjid, built in 1528 by Mir Baqi, Emperor Babur's Commander. The premises of the masjid were unlocked for Hindus to offer prayer to Ram lalla at the site which they considered to be a temple and the birth place of Lord Rama. The dispute of ownership of land went to court. In December 1992, the Babri Masjid was demolished which intensified the curiosity to come to a decision regarding dispute in the court. It was also shifted to mediation which was a failure. This finally came to an end on 9 November 2019 when a five-judge Constitution bench headed by the Chief Justice of India, Ranjan Gogoi pronounced a unanimous judgement, the bench allotted the land to the Ram Janam Bhumi for

²² 2018 SCC OnLine SC 1690.

construction of a temple. The court also ordered that the Sunni Waqf Board be provided five acres of land at a prominent place in Ayodhya for construction of a mosque.²³

There have been many in the past which stirred the country's politics and were to test the stability of society. It was an attempt to save democracy from the clutches of ambitious politicians to protect the society from being treated like subjects. The Parliament after 1965 took the initiative to amend the constitution in which it had unlimited power to keep every other pillar of democratic India under it. But the judiciary interfered and claimed that the Parliament is not restricted to amend the constitution but it has to abstain from amending the fundamental rights. This was held in *Golak Nath vs. State of Punjab*²⁴, two years after which in 1969, 14 banks were nationalised by the Prime Minister Indira Gandhi. This act was challenged in *RC Cooper vs. Union of India*²⁵ and the SC struck down the nationalisation. The government then abolished the privy purses (the payments to the princes from the Consolidated Funds of India) which was also struck down in *Madhav Rao Scindia vs. Union of India*²⁶. This was the time when the parliament and the judiciary were at daggers drawn. There were Constitutional Amendments 24, 25 and 26 in the year 1971 wherein the first two restricted the scope of judicial review in Article 368 of the constitution which was the power of amendment, and the third declared the decision in the Scindia case as null and void. Nothing was settled and the question remained about unlimited power of parliament to amend the supreme law and the constitutional remedy or restriction on Article 368 of the constitution.

This was finally solved by a thirteen judge bench of the Supreme Court in a momentous decision in case *Kesavananda Bharti vs. State of Kerala*²⁷. In a seven-six majority, the bench held that Parliament's power to amend the Constitution was not explicitly limited, but was limited to not altering or modifying the basic features or structure of the Constitution.²⁸

²³ Kanishka Gupta, *Ram Janma Bhoomi-Babri Masjid land title dispute: Verdict explained*, 8 January 2020, BUSINESS STANDARD, accessed on 12 July 2020, https://wap.business-standard.com/podcast/current-affairs/ram-janma-bhoomi-babri-masjid-land-title-dispute-verdict-explained-119110900912_1.html.

²⁴ AIR 1967 SC 1643.

²⁵ AIR 1970 SC 564.

²⁶ AIR 1971 SC 530.

²⁷ AIR 1973 SC 1461.

²⁸ Faraz Alam Sagar, *Kesavananda Bharti v. State of Kerala and The Basic Structure Doctrine*, 26 September 2017, CYRIL AMARCHAN BLOGS, accessed on 13 June 20, <https://www.google.comamp/s/corporate.cyrilamarchanblogs.com/2017/09/kesavananda-bharti-v-state-of-kerala--basic-structure-doctrine/amp.htm>.

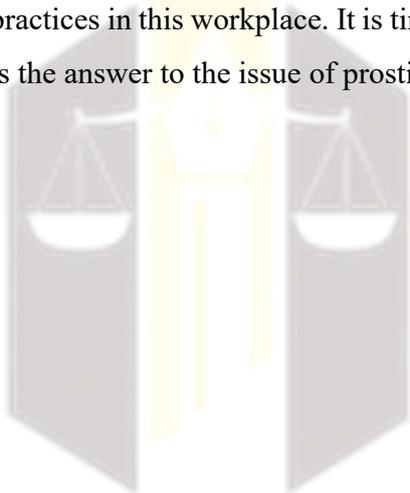
POINT OF VIEW TO STUDY LAW AND SOCIETY

There are many scholars of sociology who have different standpoint to study society and examine law as an important component of it. Broadly their views are divided into two kinds, consensus and conflictive perspective. They are supported by different theories based on the ideology of the society itself. According to consensus perspective law is a tool to resolve dispute and ensure cooperation for better coordination in daily actions. There are diversities in the society but their main motive is to stay peacefully which can only be achieved in a law abiding society. This perspective is supported by Rosco Pound, Talcott Parsons, John Sutton, Lennard Davis, Lawrence Friedman and Jack Ladinsky.

Conflictive perspective is just opposite. Society is constituted by two groups one which is powerful and another that is weak. And law is like an instrument in the hands of former to command over the latter. The central idea suggests that society is a pyramid with rich and powerful at the top and poor and weak at the bottom. Slaves exploited by their masters for instance. The rich interpret and manipulate the law for their easiness to fulfil their ambitions. Also the deprived do not have enough knowledge to understand the gorge and once they get trapped into a wrong belief, no one can take them out. Howard Zinn, Richard Quinney, William Chambliss, Joseph Gusfield and Karl Marx, back this perspective as emergence of better off economic class introduced competition in the society where they managed to regulate everything.

CONCLUSION

The prostitution issue has become the hour's need and government agencies are required to tackle this issue as soon as possible. It seems more practical and feasible to legalize prostitution than trying to abolish prostitution as the government has been trying it for decades and hardly struck that note. What today is needed is a practical approach. By the sex worker's legitimacy, millions of women entering this trade to feed their families will be released from the clutches of on-the-take pimps, brothel owners and cops. Legalizing prostitution will see these women, everywhere living on the edge of life, gain access to medical facilities that can control the spread of AIDS. Appropriate sex education for sex workers can make them aware of the venereal diseases associated with that profession. There is a very strong need to treat the sex industry as any other industry and empower it with legal safeguards that would get rid of exploitative and unhealthy practices in this workplace. It is time that lawmakers became serious about this issue. Legalization is the answer to the issue of prostitution.



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