



## LAW AND SOCIETY: A SYMBIOTIC RELATIONSHIP AND ITS INFLUENCE ON THE RECENT TRENDS IN INDIA

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*“All collective human life is directly or indirectly shaped by law. Law is like knowledge, an essential and all-pervasive fact of the social condition.”*

- Niklas Luhmann<sup>1</sup>

### **Abstract**

*The relationship between law and society has been accepted both in the jurisprudential concept and the various practical disciplines’ aspect. Therefore, the discipline of Law in itself cannot be considered as an autonomous discipline instead it has to be studied in the context, the context of the society and social relationships. Studying the “Black Letter Rule” of any Criminal Law or Civil Law cannot happen in isolation. The author through this paper emphasizes on how studying of the black letters of law simultaneously with the study of society is equally important. The paper analyzes the socio-legal influence on the recent trends that persists in the India. Furthermore, the author traces the recent trend in the balance-cum-disbalance in the inter relationship between the two separate yet interconnected disciplines that is Law and Society. The analysis is done through*

<sup>1</sup>NIKLAS LUHMANN, A SOCIOLOGICAL THEORY OF LAW 1 (Martin Albrow eds., Elizabeth King-Utz & Maritn Albrow trans., 2<sup>nd</sup> ed. 2014).

*emphasizing the concept of both law and society. There exists a deep nexus between both law and society and is considered to be interconnected in such a way that one cannot exist without other subject. The paper emphasizes on the importance and influence of the inter relationship between the law and the society, its impact on the intra state affairs(India) and the further understanding that is required both for the law makers and the social opinions.*

### **1. Introduction**

The inter-influential standing of law and society marks the current trend in the modern sociology specifically after the Second World War. There is a very much needed clarification regarding the study of the relation between law and society, as against only studying the “black letter laws”<sup>2</sup>. Therefore, the analyzing and understanding of the relationship between law and society in both the legal and sociological perspective is very much important.

### **2. Conceptualizing Law and Society**

The Federal Republic of Germany faced with the problems of the individuals who conformed to the defeated regime of Nazi regime headed by totalitarian dictator Adolf Hitler in post Second World War scenario. In one of the famous<sup>3</sup> instance, a woman, with an intention to pursue a sexual liaison, had reported about her husband for making remarks against Hitler, i.e. violating

<sup>2</sup>The well settled and established principles of law; see <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803095510675> (last visited June 6, 2018).

<sup>3</sup> Criticism of the phrase *Gesetz ist Gesetz*.



the Nazi Laws. The husband was sentenced to death but later sent to the war frontline.<sup>4</sup> After surviving the war he complained against his spouse. A West German appellate court, reflecting the natural law philosophy, convicted the spouse and reasoned that the Nazi Law was contrary to “sound conscience and sense of justice of all decent human beings”.<sup>5</sup> The case of vindictive spouse marked a question on the meaning of law, as well as of society and their prevailing nature over each other if contradiction arises.

As the establishment of societies came first and the existence of so called man-made laws came into play after that, in order to sustain the society adequately, the conceptualization should be done in a deductive process, i.e. study of society of study of law.

### A. Society

From when the forming of human society started that is still unknown it is to be noted that even before establishment of a civilization and society in a strict and general sense, there were groups of the ancestors of now humans. The only difference was that they used follow the rules of nature as they didn't establish laws to govern themselves. As soon as human started forming civilizations like Mesopotamian Civilization (3500 BC – 500 BC)<sup>6</sup> and Indus Valley Civilization (3300

BC – 1900 BC)<sup>7</sup>, formulation and imposition of man-made laws started.

### I. Definition and Meaning

There are two theories regarding the definition of society. One is the ‘structure theory’ by renowned British sociologist MacIver. He said “Society is a system of usages and procedures, of authority and mutual aid, of many groupings and divisions, of many groupings and divisions, of controls of human behavior and of liberties. This ever-changing, complex system we call society. It is the web of social relationships. And it is always changing”.<sup>8</sup> The other one is ‘function theory’ given by American sociologist C. H. Cooley, “Society is a complex of forms or processes each of which is living and growing by interaction with the others, the whole thing being so unified that what takes place in one part affects all the rest”<sup>9</sup>.

### II. Social Basis of Law

In order to understand the social perspective of law, the necessity to understand social origin of law, i.e. Mores, Norms, Folkways, is undeniable.

Values are the foundations to understand the substance of moral and immoral, good and bad, acceptable and unacceptable.<sup>10</sup> Norms are the “action

<sup>4</sup> *Criminal Law-In General-German Citizen Who Pursuant to Nazi Statute Informed on Husband for Expressing Anti-Nazi Sentiments Convicted Under Another German Statute in Effect at Time of Act*, 64 HARV. L. REV. 1005, 1006 (1951).

<sup>5</sup> *Ibid.*

<sup>6</sup> Saugat Adhikari, *10 oldest Ancient civilizations ever existed*, ANCIENT HISTORY LISTS,

<https://www.ancienthistorylists.com/ancient-civilizations/10-oldest-ancient-civilizations-ever-existed/> (last visited June 22, 2018).

<sup>7</sup> *Ibid.*

<sup>8</sup> MACIVER & PAGE, *SOCIETY: AN INTRODUCTORY ANALYSIS* 5 (1957).

<sup>9</sup> C.H. COOLEY, *THE SOCIAL PROCESS* 28 (1918).

<sup>10</sup> MATTHEW LIPPMAN, *LAW AND SOCIETY* 15 (2<sup>nd</sup> ed. 2017).



aspect” of values and provides us the idea the modus operandi to act. ‘Folkway’ is one of the classifications of informal norm. Folkways can be phrased as customs that guide our daily actions and behavior, e.g. our style of dress, use of language etc.<sup>11</sup> Another informal type of norm is Mores. These are said to be the norms regarding the righteousness of something. Violation of a More results strong condemnation, as against lesser strong condemnation of, upon violation of one’s Folkways and Values. An example of Mores in context of India is the dressing code for a job interview where the law has not been laid down for dressing in interviews however individuals still follow these mores. Mores are not binding on individuals but if not followed may lead to strong condemnation. It is also to be noted that important Mores may land up being laws due social sanctity.

Norms often become the foundation of laws, e.g. the More against taking the life of an individual is termed as the sin of Murder in legal system in every country.<sup>12</sup> While in contrast Laws are legally binding rules which if violated may be enforced in the Courts. Laws are inclusive of formal norms enforced by external controls, i.e. the Government having the sole authority of imposing sanctions.<sup>13</sup> Folkways, Mores are more likely to be considered as informal ways of establishing social control by a Non-governmental body. However, when thrcomplexity of the society increases, formal mechanism to control the society

through law is more likely to be relied upon.<sup>14</sup>

### **B. Law**

Law is an instrument of social change, or in simple words, it is the means to achieve justice in the society. Due to the subjectivity and dynamicity<sup>15</sup> of legal perceptions, it has been defined in various verbatim.

### **I. Definition and Meaning**

The great positivist Austin defined it as “Command of sovereign”<sup>16</sup> reflecting a conspicuous support to the principle of ‘Gesetz ist Gesetz’<sup>17</sup>. Salmond channeled it through the way of justice administration, saying “Law is the body of principles recognized and applied by the State in the administration of justice”.<sup>18</sup> The statement of Woodrow Wilson, i.e. “Law is that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.”<sup>19</sup> The eminent scholar of sociological school, Roscoe Pound, defined

<sup>14</sup>ROSCOE POUND, SOCIAL CONTROL THROUGH LAW 20 (1<sup>st</sup> ed. 2002)

<sup>15</sup> *Law is not a dry subject, it’s not static, it’s dynamic: CJI Altamas Kabir*, DESHGUJARAT (Jan. 19, 2013), <http://deshgujarat.com/2013/01/19/law-is-not-a-dry-subject-its-not-static-its-dynamiccji-altamas-kabir/>.

<sup>16</sup> Manmeet Singh, *Analytical Legal Positivism*, LEGAL SERVICE INDIA, <http://www.legalservicesindia.com/article/2228/Analytical-Legal-Positivism.html> (last visited June 25, 2018).

<sup>17</sup> Law is law.

<sup>18</sup>JOHN SALMOND, JURISPRUDENCE: OR THE THEORY OF THE LAW 39 (7 ed. 1924).

<sup>19</sup>R.S.N. PILLAI & BAGAVATI, LEGAL ASPECT OF BUSINESS 5 (1<sup>st</sup> ed. 2013).

<sup>11</sup>*Id.* at 16.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*



law as “social engineering which means a balance between the competing interests in society”<sup>20</sup>. Therefore to analyze all the definitions of Law as discussed above following can be inferred that –

- The law is the set of rules, accepted by the state, in a frame of command.
- The command is be given by the sovereign authority, i.e. the politically superior group to govern the subject, i.e. politically inferior group.
- The motive of the command is to avoid conflict between competing interests and to uplift those which are just and proper.
- As a result of failure to the compliance of the command, sanctions will be imposed on the individuals, at the discretion of the Sovereign.

## II. Functions of Law

Law, being an integrative mechanism, functions of to accomplish social control, dispute resolution and social change inclusively.

### *a. social control*

The very process of ensuring individuals that they engage in the “right conduct” is known as social control. In a homogenous type of a society social control may be achieved through the social pressure from friends, relatives, neighbors.<sup>21</sup> However, in a heterogeneous and larger type of a society law is required to maintain social control. Though implementing a law does not mean that all the deviant acts will be controlled. In those cases, the picture of

Courts, Jury, Lawyers, Police and other law enforcement bodies comes into play.

### *b. dispute resolution*

Dispute Resolution is considered to be the second most important function of social control. Friedman defines dispute as “assertion of inconsistent claims over something of value”<sup>22</sup>. Disputes can be “dangerous” because they can easily go boisterous, leading to retaliation and violence. Negotiation is one of most effective methods to resolve Dispute and Conflict. A complaint in court is nothing but the dispute or conflict, transformed into legal disagreement.

### *c. social change*

The third function of Law, in relevancy, is Social Change. Social Change means a change in the system of social relationships where a social relationship is understood in terms of social processes, social interactions and social organizations. Thus, Social Change indicates changes in social institutions, social processes and social organizations. In other words, it can be explained that social change leads to structural changes in the society.

## 3. Inter-dependency between Law and Society

### *A. Effect of Law on Society*

There were several means of informal methods through which social control in a society was maintained. However, law being a formal means of social control it immensely impacts the society as well. For instance, Shah Bano’s

<sup>20</sup>DR. B. N. MANI TRIPATHI, JURISPRUDENCE LEGAL THEORY 49 (16<sup>th</sup> ed. 2014).

<sup>21</sup> L.M. FRIEDMAN, LAW AND SOCIETY: AN INTRODUCTION 11 (1977).

<sup>22</sup>*Id.* at 12.



case<sup>23</sup> was a milestone in the Muslim women's search for justice. A 60 year old woman, who approached the court to ask for maintenance from the husband who divorced her, got justice from the Court. Furthermore, it brought about a social change in society even if it has to go against the established customs, traditions and religion.

Every society gets affected by the laws implemented in the Country, e.g. Criminal Law, such as prohibition of murder<sup>24</sup> or theft<sup>25</sup> ensures penalties for those who violate the law. The rule of law becomes fundamental in advancing the democracy in a particular. For example, law implemented in our country encourages the individuals to take part in the democratic system and be a part of the political affairs. The Law, in a country like India, also ensures to protect the rights provided to the individual by the state. Therefore, it must be said that the legislative principles laid down by the Legislature of the state and the democratic nature of the state is maintained by the Law imposed.

### **B. Effect of Society on Law**

The degree to which law is impacted by the society in which it works is clearly evident through different pieces of legislative documents. The primary instance that law is affected by the society is the relationship between laws and traditions. Custom is considered to be a major source of law. For instance the Hindu Marriage

Act, 1955<sup>26</sup> is a law which has its establishment within the traditions of the Hindu's way of marriage. Hindu Succession Act<sup>27</sup> also has cleared out the door open for the recognition of tribal customary laws and practices of "Scheduled Tribes." Societal opinions can be a enticing reason for choosing a specific policy or deciding a case in a certain way. It was post Nirbhaya Rape case in December, 2012 that the mass movement for revising the laws for the individuals committing a heinous offence took place This mass movement represented the public opinion and outrage and thus, this mass movement led to the passing the Juvenile Justice Bill in order to revise the laws which was enforced in the year 2015.

Therefore, what can be inferred from the above discussion is that Society also impacts the law in a larger way. Society in simpler understanding also influences the laws that are made. Laws at times are made on the basis of the societal opinions and influences

### **4. Relationship between Law and Society**

The legal system of the society reflects the very nature of the society.<sup>28</sup> Laws are neither created nor applied in a

<sup>23</sup>Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945 (India).

<sup>24</sup>PEN. CODE §302.

<sup>25</sup>PEN. CODE § 380.

<sup>26</sup>The Hindu Marriage Act, No. 25 of 1955, INDIA CODE, <https://indiacode.nic.in/bitstream/123456789/1560/1/195525.pdf#search=hindu%20marriage>.

<sup>27</sup>The Hindu Succession Act, No.30 of 1956, INDIA CODE, <https://indiacode.nic.in/bitstream/123456789/1713/1/195630.pdf#search=Hindu%20Succession%20Act>.

<sup>28</sup>Kishan Tiwari, *Importance of Law in Society*, LEGAL DESIRE (Feb. 1, 2017), <http://legaldesire.com/article-importance-of-law-in-society/>.



vacuum. Laws intend the individuals to move in a certain direction that are assumed to be good, as well as to prohibit moving in a particular direction because it is considered to be bad.<sup>29</sup>

It is the members of the society who make the Social rules<sup>30</sup> which if not followed leads to ostracization from a group but doesn't lead to any formal punishment. This is when the law comes into picture by making laws that can be enforced and the violation of which may lead to severe penalties.

Law and Society scholars tend to view the relationship between law and society from two perspectives.

#### **A. Consensus Perspective**

It views society as based on shared values. The scholars of this perspective consider that law is a mechanism through which the occasional disputes are resolved and also it maintains stability in the society. According to this perspective the central function of law is to help ensure that people will cooperate with one another and that society will operate in a smooth and integrated fashion.<sup>31</sup>

#### **B. Conflict Perspective**

It views conflict as a central aspect of the society<sup>32</sup>. It is the extreme opposite of the Consensus perspective. As well said by M. Lippman, "Society is viewed as composed of competing groups, and the law is an

instrument of coercion that is employed by dominant and powerful groups to maintain their power and control"<sup>33</sup>.

The debate between these two perspective has been a persistent theme which is unlikely to be resolved. These are the two perspectives which is extremely useful in understanding two different types of relationship between the law and the society.

Sociology helps law to better understand society for smoother regulation and formation of laws<sup>34</sup>. Similarly, the law is important to regulate a society<sup>35</sup>.

#### **5. Recent Trend in Relation between Law and Society**

There have been good laws which have been implemented by the state because of the societal demand and the public opinion. For instance, The Juvenile Justice Act (Care and Protection), 2015 is an amended version of the previous Juvenile Justice Act. The major amendment in the 2015 Act was that any individual above 16 years committing heinous offences may be convicted. This amendment happened because of the mass movement and also in the opinion of the majority individuals this has been a good law. In the similar instance the laws that are made for the protection of women is also a good law. However, the implementation of these good laws may not be of a particular standard to be called a

<sup>29</sup>*Ibid.*

<sup>30</sup>*Ibid.*

<sup>31</sup>MATTHEW LIPPMAN, LAW AND SOCIETY 61 (2<sup>nd</sup> ed. 2017).

<sup>32</sup>*Ibid.*

<sup>33</sup>*Ibid.*

<sup>34</sup> *Relationship between Sociology and Law*, SOCIOLOGY GROUP (Oct. 1, 2017), <http://www.sociologygroup.com/relationship-sociology-law/>.

<sup>35</sup>*Ibid.*



good Law. For instance, there have been several non-constitutional bodies like Khap Panchayat and the Kangaroo Courts sanctioning violence against a particular women or curtailing women's freedom in significant ways<sup>36</sup>. The question that lies ahead of us is why is it that there have been legal expansion of women's rights in India, and still the societal trends that maintain a violent order against women have remained intact?<sup>37</sup>

At a time when the developing countries in the entire world are having an eye to become a developed nation, India's lagging behind creates regarding the harmony of the relation between law and society. For instance, despite the legislations have been made to protect the women, still the statistics of rape and sexual assault goes on increasing per year<sup>38</sup>. Another instance is, when U.K. from where the concept of exemption of men in committing marital rape<sup>39</sup> originated has criminalized marital rape in its own country<sup>40</sup> but India which

has followed U.K. in making laws has not criminalized marital rape, in spite of the demand of social opinions. Another such example is the existence of section 377 of Indian Penal Code where even the smaller countries have legalized LGBT<sup>41</sup>.

The recent judgment, *K.S.Puttaswamy v. Union of India*<sup>42</sup> is yet another aspect in which law and society both are evaluated equally claiming that the law related to privacy is as much important as any other right to freedom and liberty of an individual. Socially without these basic rights it becomes highly impossible for a peaceful society. At a time when the informational technology is rapidly increasing it is also important that the right to Privacy of an individual exists where the data shared by the individual to any agency remains confidential and not remain available to the public. Aadhar card for a matter of fact is a scheme which collects all the data like both demographic and biometric data and it claims that the data remains confidential however, there have been cases where the data of one lakh individuals has been leaked and hence, it was considered to be a serious societal threat to the public in general. The societal opinion therefore, in this context, fails to recognize Aadhar Card scheme as a scheme which should be considered as mandatory for all the individuals. What can be evaluated that,

<sup>36</sup> Vasundhara Sirnate, *Good laws, bad implementation*. THE HINDU (May. 18, 2018), <http://www.thehindu.com/opinion/lead/good-laws-bad-implementation/article5639799.ece>.

<sup>37</sup> *Ibid.*

<sup>38</sup> Sujan Bandyopadhyay, *A Closer Look at Statistics on Sexual Violence in India*, THE WIRE (May 8, 2018), <https://thewire.in/society/a-closer-look-at-statistics-on-sexual-violence-in-india>.

<sup>39</sup> Sash Hart, *Rape, marriage and rights*, OPEN DEMOCRACY (June. 14, 2014), <https://www.opendemocracy.net/5050/sasha-hart/rape-marriage-and-rights>.

<sup>40</sup> Five Law Lords, in an unanimous judgment on 23<sup>rd</sup> October of 1991, held that English law does not permit a husbands to get immunity from an accusation of his wife's rape; see Kate Painter, *Wife Rape In United Kingdom*, AMERICAN SOCIETY OF CRIMINOLOGY: 50<sup>TH</sup> ANNIVERSARY MEETING,

<http://www.crim.cam.ac.uk/people/visitors/katePainter/wiferape.pdf>.

<sup>41</sup> David Masci, Elizabeth Sciupac & Michael Lipka, *Gay Marriage Around the World*, PEW RESEARCH CENTRE (Aug. 8, 2017), <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/>.

<sup>42</sup> *K.S. Puttaswamy v. Union of India*, Writ Petition (Civil) Nos. 494 of 2012 and 829 of 2013.



the societal opinion led to making of the Right to Privacy as a basic fundamental right and, it is because of this fundamental right that the Aadhar Card scheme is a matter that lies sub-judice in the Supreme Court.

What can be ultimately inferred is that it is not an ideal relationship between the law and the society. There are major differences in the existence of both the Law and the societal opinion.

### 6. Suggestions

India as a nation emphasizes on taking a step towards becoming a developed country. However, this has been considered to be impossible for various reasons. The opinion in the matter of interdependency of law and society on each other are the following. The individuals nowadays, have wider and broader connections throughout the world, hence they get accustomed with the practices all around the world. With the changing times in the society specifically, in a developing country like India, where individuals have a tendency to follow the developed western society it becomes highly difficult to maintain the already persisting values and nature of the society. The society automatically transform themselves into a rebellious group in order to amend or modify or make a new law altogether. This has been seen in the Post Nirbhaya Rape Case where the public came up on roads in order to amend and modify the laws then existing for rape. Furthermore, what the individuals of the society need to consider is that there are some laws which are made according to just not their perspective but also, keeping in mind the entire nation. And for such a large nation it become next to

impossible to please and satisfy every individual through the laws of the society. The ultimate suggestion is that the law makers should consider the changing nature of the society and the society should also evaluate and understand the diverse nature of Indian society where not every individual or not every group can be satisfied.

### 1. Conclusion

In a time when the world is taking leap in the era of broadening the laws and considerations of people with regard to everything, it's time for India to awake both in the societal frame and the administrative form. What is imperative for India as a nation is to actualize great laws in a better way possible; a distant better way and not as a awful usage of a great law. For instance, if protection of women laws have been made and which is considered to be a good law it is essential that legitimate execution of these laws take place which isn't happening in the present society of India. Another critical viewpoint that's considered to be vital for reciprocal relationship between the law and the society which is vital in India is not to overlook the demand and the opinions of the people within the society, conjointly, not to encourage the opinions which cannot be considered to be great for the welfare of the society.

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