



## Law And Social Transformation: The Propinquity Between Law And Society

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### INTRODUCTION

The question of whether law changes society or society changes law, being along the same continuum, creates a loop. In order to understand the impression law and society make on each other, we must dive into the provenance of both praxes. Society derives its actuality from the existence of people in a particular environment, practising certain cultures that give them a sense of accepted morality, belongingness and group identity. On the other hand, law builds its corpus on the back of customs, traditions, legislations, precedents and social acceptance. This derivative understanding is primarily why this piece contends that it is a society that catalyses changes in law and not the other way round.

Evolution of Law is a pre-requisite for establishing thriving, stable and predictable civilizations. Once the human endeavour began to develop a sense of control over its environment along with sensing its ability to collaborate and realising the inevitability of structure, character and ambition to sustain its efforts, the need for a social framework that is equipped to address the growing complexity was felt. Law is an outcome of this civilized human effort and ingenuity. With time, Law developed its own nuances and muscled applications and this does infuse an idea that Law is in position to determine the course of human development. These perceptions, while not being preposterous, are at best imaginative. There is a universal truth of society being a dynamic entity and chiefly shaped by the limitless aspirations and possibilities of the human strength. This feature of constant change is powerful enough to take its creations (including Law) into itself and mould it align with the new realities. In this respect, Law differs from Technology. Civilization could be a victim of

Technology but is wise enough to lead from the front when it comes to Law.

There are several articles that provide legal theory and research from the perspective of classics and early modern science, respectively, and reflects how these accomplishments have shaped the legal theories and the research today. Law is one of the most fundamental tools for regulating social behaviour among people, groups, and the entire community. However, it is not only a normative but also a social characteristic. Legal theory examines law as a component of social life, researches the link between law and society, and evaluates law in its socioeconomic historicity. (Bily J, 2021)

As a result of a conflict between human rights and social interests, a constructive legal control of human behaviour captures the national mindset and influences the construction and redefinition of justice in a desirable direction by incorporating the national culture. Analyses show that there is no need to worry about the "infinity" of human rights, as previously thought. With respect to other members of civil society, this barrier is usually established naturally. (Kharytonov, E., & Kharytonova, O., 2019)

Society has evolved through various stages, each adding a defining element that guided the direction of evolution. For instance, early political regimes and legal provisions have progressed through various ideological expressions from the Theory of Divine Origin, Social Contract Theory, Evolutionary theory, Laissez-faire economy to a Welfare state. Each of these stages was heavily influenced by changing structure of society, shifting stages of economic development, modified societal values and an evolving need for a solid political and legal system in place to support the aforementioned developments.



This research aims to observe, understand, rationalise and analyse the impact of society on the development of law and legal institutions by navigating pluralistic contemporaneous evidences of the primary influence and impact of society on Indian legal jurisprudence.

## I. CHRONOLOGICAL AND SOCIAL PROGRESSION APROPOS THE EVOLUTION OF LAWS

### i) Legislations and legal reforms pre-Independence

Before the arrival of the British, India was predominantly guided by secular laws derived from the Vedas and Upanishads and other doctrines that followed after the emergence of other religions in the country. The Mauryan dynasty and the Mughal empire boasted of well-structured court systems, which were subsequently replaced by the Common law system with the advent of the British and their stronghold over India post the Battle of Plassey in 1853.

The era of British rule brought with it exposure to Western ideology, new social institutions and administrative regimes and an opportunity to introduce new reforms in India. There have been multiple legislations passed during British rule that serve as gateways to transboundary transactions and social rectifications. While serving British interests, these legislations also considered Indian socio-economic and religious positions and catered to the same. The Bengal **Sati Regulation of 1829** brought about thanks to the continued efforts of Raja Ram Mohan Roy, and the **English Education Act of 1835** serve as examples for socially driven legislations. The Indian community was not exposed to western modules of education and instruction. These acts sought to inculcate learning in the English language and by extension, rid society of malpractices that hindered social development. As a society that viewed a wife as the husband's property, widows in Hindu families were forced to self-immolate on the pyres of their deceased spouses as a show of loyalty and chastity. Widows were considered to lose their values as human beings following the death of their husbands. They were prohibited from remarrying and leading a domestic life. This regressive practice was prohibited by the **Widow Remarriage Act (1856)** on the advocacy of Raja Ram Mohan Roy.

The widening scope of marriage laws in India led to changes with respect to separation, conversion and property among others. This prompted the introduction of the **Divorce Act (1869)**, the **Indian Christian Marriage Act (1872)**, etc. The confluence of education, western influence and personal ambitions led to increased transactions in property, especially in the states of Bombay, Delhi and Punjab. The **Transfer of Property Act (1882)** sought to regulate and administer such transactions in line with legal provisions and obligations. With rising tendencies for social progression, it was conceived that understanding and preserving one's history and allowing social mobility is of the essence. This postulation paved the way for **the Ancient Monuments Preservation Act (1904)** and the **Caste Disabilities (Removal) Act (1850)**.

The British also set up commerce-centred laws to facilitate trade and exchange within and outside India. We continue to enforce most of these laws, making amendments to a few as and when necessary, so as to cater to the contemporary needs of the Indian society. The **Contract Act of 1872**, **Companies Act (1913)**, the **Reserve Bank of India Act (1934)** and the **Industrial Disputes Act of 1947** were few legislations that aimed to bring centralisation, uniformity and accountability in commercial and financial undertakings.

As society expands, asymmetrical and inequitable development give birth to poverty, unemployment, societal neglect, alcoholism and other vices that eventually grow into delinquency and criminal activity that threaten social security and harmony. This resulted in the introduction and adoption of the **Indian Penal Code (1860)**, **Indian Police Act (1861)**, **Evidence Act (1872)**, and **Civil Procedure Code (1908)**. These legislations put in place exhaustive regimes for modulating, monitoring and supervising social behaviour and morality.

British rule and administration displayed explicit favouritism towards English citizens and disregarded Indian sentiments and ambitions for the most part. This ill-treatment and a growing sense of nationality and individualism fuelled civil rights movements and anti-British agitations, which finally resulted in the demand for **Swaraj** or complete independence from British rule. Hence, the **Government of India Act (1935)** and the **Indian Independence Act (1947)** signify landmark legislations in forming the Indian sovereign.



## ii) Legislations and legal reforms post-Independence

Social dynamics influence law and exert a directional force, guiding legislation in the desired line of activism.

As Indian society developed, science and technology saw huge advancements, owing to the ongoing industrial revolution. This focus shift from agriculture to industry paved the way for a relook at existing policies. A new economic regime was then identified and adopted and appropriate legislations were passed. The **New Economic Policy of 1991** marked a new beginning for India's commercial, financial and entrepreneurial journey. This policy was backed by subsequent legislations on the **prevention of corruption, insolvency**, etc.

Technological advancements and economic development catalysed the transboundary exchange of people, ideas, goods, services, cultures and technologies. This exposure served as the bedrock for native inventions and artistic works. This incipient sector of creators then required protection while others required incentives to contribute to national development. Indian leadership recognised the need for patents and other modes of protection for creative works and inventions and became a party to multiple conventions to protect intellectual property like the **Nice, Vienna and Locarno agreements**, among others. India also sought membership to various organs of the United Nations to strengthen its global presence.

After gaining sovereignty, the Indian Constitution, which is the world's most extensive constitution, saw multiple additions and amendments of legislations to regulate and shape upcoming sectors and generations. Law, much like society, is dynamic and changes with developments in society. To date, we have witnessed landmark legislations concerning the protection and upliftment of women and other marginalised sections of society like the **Sati (Prevention) Act, 1987** following the Rup Kanwar case, acts against **indecent representation of women, domestic violence, child marriage, sexual harassment at the workplace**, and **rights of the members of the LGBTQ+ community** among others. Rising activism in favour of sensitization and acceptance of same-sex relationships led to the Supreme Court **scraping Section 377** of the Indian Penal

Code in 2018, post the landmark judgement in the **Navtej Singh Johar case**.

## II. INTERNATIONAL PERSPECTIVE

A macroscopic view of global standards legal obligations will help accentuate the influence of a society on the laws of the land. **Multiple countries have laws that are unique to their territories and are supported by policy decisions**. For instance, chewing gum in Singapore is a grave offence and is punishable by a hefty fine. Spain has criminalised the building of sandcastles, while Kenya and the United Arab Emirates penalise the use of swear words and obscene gestures by imprisonment and fines. Switzerland boasts of a federal law that prohibits flushing toilets after 10 pm in certain areas. While these laws might seem quirky and unreasonable to an outsider, we must remember that these legislations and guidelines result from social and moral consideration and cultural influence prevalent in the society concerned.

Similarly, we notice that **laws on the same subject matter differ in their contents and enforcement across countries**. While on the one hand, Switzerland recently joined countries like France, New Zealand, Denmark and Brazil in legalising same-sex marriages, **rights available to members of the LGBTQ+ community** are worsening in Kenya, Iran, Afghanistan, Nigeria, Uganda and others. (*Angelo, P and Bocci, D., 2021*) **Abortion laws** also display variance. Many Catholic countries like Malta and Brazil do not favour abortion, while Argentina, Mexico, Chile, South Korea, Ireland, etc. have legalised abortion. However, many countries have laid conditions for abortion, allowing the same only if the pregnancy poses a threat to the woman, is a result of rape or ineffective contraception. In India, women can only abort before 20 weeks.

The issue of **women's rights** has always been a pressing one. U.S. News' website notes the UAE, Qatar, Saudi Arabia, India and Oman as the five countries with the worst gender equality. Asian and middle-eastern countries seem to predominate this list. A study by CEOWorld Magazine puts Netherlands, Norway, Sweden, Denmark and Finland as the countries with the highest levels of gender equality. (*Radu S, 2020*) This comparison reflects the importance and influence of religion and holistic education in forming societal priorities and outlook and this set of priorities gets manifested in its laws.



### III. CONCLUSION

Laws and other operational standards in society have served as an indicator of prevailing socio-economic, political and customary subscriptions of the land since time immemorial. Legal philosophy and its interpretation have been moulded and manipulated to keep regulation and penology at par with developing changes in society. Legal machinery has always been aligned with the economic, sometimes political, and environmental interests of a State.

While this disquisition ventures that society is the leading factor of influence on legal developments, it would be erroneous to state that law and society share a unilateral relationship. The concepts and institutions of law and society are not exclusive of each other and share a symbiotic relationship, drawing influence and inspiration from each other to accommodate changing needs of society and political and judicial structures. Law affects society just as much as the latter colours it. Laws, backed by social sanction as they are, enjoy universal applicability in the territory in question. Laws provide for the protection of rights and punishment for the violation and encroachment of the same. This provision maintains order and security in society by aligning social values and priorities with legal obligations for harmonious cohabitation with mutual respect. A flag-bearer of justice and a vehicle of social constraint and change, the law also facilitates a mechanism for grievance redressal and dispute resolution. Law, much like society, is dynamic and is prone to continuous changes to keep up with prevailing social norms and eco-political conditions. Society sets the context for law and provides the rationale for its justification. Therefore, a law enjoys the status of applicability as long as society deems it necessary, progressive, conducive of development, and accepts it.

### IV. REFERENCES

- Briggs, A. (2013). *Conflict of Laws* (3<sup>rd</sup> Ed.). Oxford University Press
- Kharytonov, E., & Kharytonova, O. (2019). Human Rights, Civil Society, Private Law: Correlation Problems. *Ius Humani*, 8, 225-244. <https://doi.org/10.31207/ih.v8i0.222> (last visited Oct. 12, 2021).
- Bily, J. (2021). Conception of Law in Earlier Founders of Modern Social Thought. *Journal on European History of Law*. 12(1), 178-184.
- Radu, S. (2020, February 10). *The 10 Worst Countries for Gender Equality, Ranked by Perception* U.S.News and World Report. <https://www.usnews.com/news/best->

[countries/slideshows/10-worst-countries-for-gender-equality-ranked-by-perception?slide=7](https://www.usnews.com/news/best-countries/slideshows/10-worst-countries-for-gender-equality-ranked-by-perception?slide=7)

- Angelo, P and Bocci, D. (2021, January 29). *The Changing Landscape of Global LGBTQ+ Rights* Council on Foreign Relations. <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>
- Benami Transactions (Prohibition) Act, 1988
- Prevention of Corruption Act, 1988
- Insolvency and Bankruptcy Code, 2016
- The Foreign Trade (Development and Management) Act, 1992
- India's Export Import (EXIM) Policy, 1992
- Foreign Exchange Management Act, 1999
- Information Technology Act, 2000
- Deena Lal and Ors. v State of Rajasthan, 1988.
- The Indecent Representation of Women (Prohibition) Act, 1986
- Protection of Women from Domestic Violence Act, 2005
- The Prohibition of Child Marriage Act, 2006
- The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Transgender Persons (Protection of Rights) Act, 2019
- Protection of Children from Sexual Offences Act, 2012
- Navtej Singh Johar and Ors v Union of India the Secretary Ministry of Law and Justice, 2018.
- Medical Termination of Pregnancy Act, 1977

