

INTERDEPENDENCE OF LAW AND SOCIETAL CHANGES

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INTRODUCTION

It is, I believe, a universally accepted flounder that there is some sort of connection between the society, the legal system, and the operations that take place within. Law is merely the means and cannot be the end in itself, whereas a utopian visualization of a peaceful society is the end that each state wants to achieve. Therefore, it would be no wrong to mention that law and society are both interwoven and whether there is society over law or vice versa remains a conflicting topic to deliberate upon. If we take either of the sides to the debate, both have got an ample number of ostensible arguments accompanied by commendable adduces making one end in dilemma to make a choice. One can ponder upon the fact that there are some marriages, slavery, and employment laws in the statute of their respective states. But, if we indulge a deep thought, it's crystal clear that marriage, slavery, and employment are social issues that need an apposite operating condition and the law is a means to achieve that. Here comes the quote, "law changes according to the society; society changes the law." From time to time we have been getting acquainted with the process of amendment and bills being struck down. This highlights contradictions which are looked upon while analyzing a dispute and reaching an end. However, albeit the topic is suited for a neutral analysis, I would like to tilt my opinion towards the point that Society Changes the Law.

Firstly, if we look into the historical background of the Indian constitution, it is a product of continuous deliberations and research of a body of eminent representatives of the people who sought to improve upon the existing administrative system. To make this point clearer I don't want to exceed beyond the year 1858 because that is when the British crown assumed sovereignty over India and parliament enacted the first statute for the governance of India under the direct rule of the British government. Here came the government of India act 1858 where the entire mechanism was bureaucratic unconcerned with public opinion. Then came the Indian council acts of 1861 and 1892 which were reformative acts of 1858 to give wider space for the Indian society to take part in the working of the government. After that came the Morley- Minto reforms and the Indian council's act, 1909 & the Montagu- Chelmsford report, and the

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government of India act,1919 as an attempt to make the Indian administration more representative where the element of the election was also introduced at the legislative council at the center but the official majority there was maintained. However, all these reforms failed to keep up with the aspiration of the Indian masses and their society which led to the agitation by the congress for swaraj or self-government. Then came the government of India act 1935, which promoted the notion of a federal form of government taking the provinces and the Indian state as units. Later on, after the Indian independence, came the amendment of the 1935 act until the constituent assembly could draw up a favorable and desired constitution for the Indian society. Later on, the continuous deliberation and negotiation of the Indian representatives from different regions led to the date of commencement of the Indian constitution with desired provisions for the Indian masses. Thus, it highly justifies how societal changes and requirements led to the amendments of some acts explicitly.

Secondly, the legal system is man-made- signifying social influence and the legal system in turn depends upon the cultural relativity. Law varies in time and space according to the conditions of the societal culture in which it is embedded. The sociologists of law albeit using different methodologies to study the interwoven trait of law and society reached the universal sign-outs which mention the presence of “social forces in the legal system” e.g.- lawyers (as well as law professors) would probably find it easy to agree to some formulations influenced by social, political and economic matrices in the argumentation and law-making process.

Thirdly, a change in the legal system is often influenced by unlimited human demands. The legal system is forced because of its exposure, to make some sort of response to these demands. Demands are heard and processed in an epileptic way and then legal actions take place after proper perusal.

Fourthly, the question arises of how law can ensure maintain the proper social order by coping with its dynamic feature. Here the answer is two-fold. At first, the ultimate source of law must be the legislation since no other source can easily make law in response to the social changes that are ‘comprehensive and comprehensible.’ After that, the law must be responsive to the immediate and serious needs of society. Thus, the law must be able to make changes whenever the society changes and this factor highly varies from country to country.

Moreover, where the law is the means and justice is the end to achieving a desired utopian society, the two points of law and justice are mediated by the demands of society. Law is not

confined to some watertight definitions but a wider interpretation of law highlights it as social science and the lawyers can be classified as social scientists. Albeit the principles of law do not change but their application changes as per the change in society's needs and circumstances. This presupposes a class of lawyers, a breed of judges to keep themselves connected to the surrounding societies, and the law required to be durable but constant with repetitive revision as per desired needs. Lawyers from time to time while putting forward their arguments indulges in a small degree of self-criticism. When the law system becomes rigid it becomes disastrous for a progressive society. For instance, the law of ancient times that met the needs of an agrarian society cannot coincide with the needs of an industrialized society.

A case in point is the abortion law which plays an imperative role to strengthen the above-mentioned points. Women getting pregnant due to rape or incest, who seeks abortion do not want to keep the child and the emotional stress attended upon the act of unwanted conception and pregnancy may lead to serious difficulties not only for the child-bearer but the baby as a whole. With this concept in the mind, extensive changes were made in states like California, North Carolina, Colorado, and India as well. The recent medical termination and pregnancy (amendment) act, 2021¹ has brought in a radical change where the gestation limit for abortions has been raised from the earlier ceiling of 20 weeks to 24 weeks and women can now terminate the unwanted pregnancies caused by contraceptive failure, regardless of their marital status. Though women do not have complete control over abortion and require the approval of two registered doctors, Suchitra Dalvie (gynecologist and coordinator for Asia Safe Abortion Partnership) said the “the provisions of MTP Amendment Act,2021 are progressive in a paternalistic, victimhood kind of way, for safe abortion advocacy. Hence, as society progresses with its thought process the existing law also gets revoked or abolished. Similarly, as days pass by, ten years from now, when the thought process of a society becomes more accepting and advanced, the question of whether abortion must be liberalized would no longer be a major issue.

This part will highlight the special provisions mentioned in the Indian constitution to cope with the demands of weaker sections of the society to raise them to the equal status of the immediate masses. Clause (3) of Article 15 empowers the state to make special provisions for the protection of men and women. Clause (4) which was added by the constitution (1st amendment) act,1951 enables the state to make special provisions for the protection of the interest of

¹ www.scconline.com Last visited 10th April, 2022.

backward classes of citizens and is, therefore, a required exception to Articles 15 and 29(2) of the constitution.

Similarly, Article 16(4) empowers the state to make special provisions for the reservation in the appointment of posts in favor of any backward class of citizens. Article 17 succeeded in abolishing the age-old 'untouchability' and Article 46 is the heart and soul of social justice which provides that the state shall promote with special care the educational and weaker sections of the society and in particular the scheduled castes and scheduled tribes and shall protect them from social injustice and all form of exploitations. All these articles with the special clauses being inserted from time to time are a result of the social demand to reach an equal status or to mention specifically a just and fair society for all. Thus, it is apposite to state that societal needs do leads to a change in the law. Finally, let us look at a landmark case that led to the amendment of law due to societal need.

The Nirbhaya case² led to the amendment of rape laws in India. On 21st March 2013, the rape law in the country was amended. The new tougher anti-rape law Criminal Law Amendment Act, 2013, to punish sex crimes redefined rape and made punishments more stringent, including death for repeated rape offenders. Even the threat of rape is a crime and the person will be punished for the same. Moreover, extensive recommendations were made regarding avoiding marital rape and rapes committed via the commission of void marriages. However, the Second exception of Section 375 IPC states, "Sexual intercourse or sexual acts by a man with his wife, the wife not being under fifteen years of age, is not rape. This exception has become a wrangling issue as it provides that a husband will not be held liable for raping his lawfully wedded wife.³ Again, the present decade is highly flooded with debates and discussions to repeal the exception as the demand of the society grows matured. Therefore, it is not wrong to sign out with the following quote "the societal need of the hour is given emphasized by the change in law, where the law is signified as a social science." As society progresses and makes new demands for law, it tends to outgrow the older laws. Such demands need to be identified and undergo legal research to keep pace with dynamic society. A classic example of the recent epoch is the television interview of the prime minister of India where he mentioned that the law commission of India has identified 2000 laws that have been declared outdated in 2016.

² Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

³ Penal Code, 1860, S. 375 Exception II

Moreover, the social changes are driven by several factors, like a natural evolution, economic factors, technological changes, resolution of conflicts, and nonetheless, the dynamic mindset of the masses. Hence, the law cannot be isolated from the individuals and community that it seeks to regulate. A thorough understanding of society, its value system, cultural relativity, and its reasonable needs, and claims are the factors that merit consideration for the modification of the law. Lastly, it can be amassed that to achieve a legal system closest to the societal needs, the lawmakers are no less than social scientists with comparative expertise. Hence, after a meticulous study, it can be winded up as “laws evolve in societies over time and subsequently reflects societal view within its operation.”

