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SOCIAL CONSCIOUSNESS AND LEGAL SYSTEMS: A SOCIOLOGICAL PERSPECTIVE WITH CASE STUDIES

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ABSTRACT

This paper explores the complex and dynamic relationship between law and society, emphasizing how collective social consciousness shapes and is shaped by legal systems. It begins by defining key concepts—law as an institutionalized set of rules ensuring social order, and society as the organized network of human relationships and structures. Drawing on classical and contemporary sociological and jurisprudential theories, including the works of Auguste Comte, Emile Durkheim, and the Natural Law School, the study highlights the interdependence of law and societal values. Through an examination of landmark Indian legal cases and recent legislative changes, the paper illustrates how law both reflects and influences social consciousness, responding to evolving public needs and moral standards. It also critically assesses the limits of popular will in legal reform, cautioning against uncritical acceptance of social norms. Ultimately, the paper underscores the importance of a responsive legal system that balances societal cohesion, individual rights, and progressive social change.

Introduction

When we think of sociology, the term “society” naturally comes to mind, as sociology is fundamentally the study of society—its structures, interactions, and institutions. On the other hand, “law” refers to a formal body of rules and regulations that govern societal behavior. This paper explores the intricate relationship between law and society, with a special emphasis on the role of collective or social consciousness in shaping and being shaped by the legal system⁶⁵⁷.

To understand the connection between these two concepts, it is essential to first clarify their meanings. Law can be understood as a set of enforceable rules developed by state institutions to maintain order and justice.

Society, which encompasses the totality of human beings and their interactions, is the context within which law arises and operates. Human beings do not live in isolation; they are inherently social, bound to live collectively. It is from this need for organized living that both the state and legal systems originated. Society, through the delegation of power, enabled the state to enact rules that would ensure its orderly and progressive functioning.

As explained by the Natural Law School, the existence of the state and law is a response to the collective will and natural order of society. Therefore, law and society are inherently interdependent—one cannot be fully understood without reference to the other. Without law, society could devolve into chaos; without society, the law would have no purpose or context.

⁶⁵⁷ Sociology and Law Interface: An Analysis, Manupatra feb 23 2024, <https://articles.manupatra.com/article-details/Sociology-and-Law-Interface-An-Analysis>



Moreover, law must evolve in response to changes in societal values, norms, and collective consciousness. If it remains static, it risks becoming disconnected from the realities of the people it seeks to govern. Sometimes the social mind—public opinion or collective sentiment—forms the foundation for legal changes. At other times, it is the law that influences the shaping and execution of societal values. This dynamic interplay between law and social consciousness lies at the heart of a responsive and just legal system.

Meaning of Law and Society

Law refers to a structured set of rules and regulations created and enforced by legitimate institutions to maintain social order and protect the rights of individuals within a community. These legal norms govern behavior, provide mechanisms for resolving disputes, and establish clear expectations for conduct in various spheres of life. Law encompasses statutes, judicial decisions, administrative regulations, and customary practices, all aimed at ensuring justice and stability in society. It has often been described as "the adjustment and attention that we provide for the welfare of our citizens," reflecting its fundamental role in shaping a fair and equitable social order.⁶⁵⁸

The word "society" originates from the Latin term *societas*, which means a human system or an organized group of individuals who depend on one another for mutual benefit. Society encompasses the relationships, social structures, and institutions that emerge as people interact and cooperate. Our behaviors and attitudes are shaped by social conventions and cultural exchanges, which together form the expectations and norms embedded within communal life.⁶⁵⁹

⁶⁵⁸Inter-relationships between law and society
https://www.iilsindia.com/study-material/872353_1602436341.docx

⁶⁵⁹Amit Khawas Assistant Professor (Sociology), Indian Institute of legal Studies, Nature and Scope of Sociology, https://www.iilsindia.com/study-material/250437_1611941642.docx

Definition of Sociology by Sociologist

Auguste Comte: Comte's main approach of studying sociology was Social Positivism, which is the idea that sociology should be conducted using empiricism and the scientific method. He divided the field of sociology into two subfields. Social dynamics is the study of the factors that lead to societal changes, and social static's is the study of how society maintains itself. Karl Marx Class conflicts between capitalism and socialism are the cause of society's growth. Spencer argues that a society develops through economic and other spontaneous acts of cooperation by outgoing, social people who are exhibiting what is known as "social self-consciousness."

Relationship between Law and Society:

There is an association between law and society. Without any of these, nothing can be clarified. Without the law, society descends into the wilderness. Since the law cannot stay up with society without essential modifications, it should also be modified to reflect the advancements that the general public accepts. The public resorted to wilderness or perhaps primitive behavior when the law was not in control. Accordingly, we must establish a cordial relationship between society and the law in order to maintain public peace. The French philosopher Auguste Comte first used the term "sociology" in 1839. Following World War I, sociology was taught as a distinct subject in the United States in 1876, France in 1889, and Great Britain in 1907. Poland and India following World War I, Egypt and Mexico in 1925, and Sweden in 1947⁶⁶⁰.

Of all the social sciences, sociology is the newest. The Latin word "societies," which means "society," and the Greek word "logos," which means "study or science," are the roots of the English word sociology. According to its etymology, "sociology" means "science of society." To put it another way, sociology is the

⁶⁶⁰ Dr Archana Kumari, MMC, P.U. (Department of Sociology, Scope of Sociology, <https://magadhmahilacollege.org/wp-content/uploads/2020/09/Scope-of-Sociology-.pdf>)



study of how people behave in groups, how people interact with one another, how social interactions work, and how human group activity occurs. The late 1950s and early 1960s saw the emergence of the multidisciplinary discipline of law and society. Its conceptual foundations are found in the jurisprudential works of the legal realists, who contested representations of law as apolitical and autonomous and viewed it as a tool for social engineering⁶⁶¹.

School of Jurisprudence and Social Consciousness

First, the primary, well-known sociological school of law, Dugiat discussed societal cohesion. Social Interest Theory was explained by Iheiring. Ehrich discussed society's living law. Roscoe Pound in light of social engineering theory. The law must safeguard societal interests while minimizing interference with individual liberties. Even other educational institutions, like as historical schools, mention the "Volkgeist" Common Consciousness of Society, according to renowned author Savigny. It must be verified by law. According to Puchta, social and personal conflict shapes the development of law. Maine's Henry Additionally, status to contract and contact to status were mentioned. The social contract theory of state and law, which was founded on social consciousness, was even partially developed by the Natural School. Socrats also asserts that human reason and consciousness, which progressively transform into social consciousness, must serve as the foundation for the rule of law. Since everyone lives in a society with social consciousness, the Realistic School also asserted that social elements undoubtedly influence the judicial process.

Is the applicability of the theory of common consciousness being seen in Indian laws?

Since numerous Indian laws have changed or evolved in response to the wishes of the populace, we may successfully observe the

applicability of the Volksgeist thesis in India. Here are a few examples: The Right to Information Act of 2005 was passed in order to empower citizens to access information that is held by public bodies and to encourage accountability and openness in governance. The Protection of Women from Domestic Violence Act of 2005 was passed in order to address the problem of domestic violence against women and to give victims of domestic abuse legal protection⁶⁶².

The 2013 Act on the Prevention, Prohibition, and Redress of Sexual Harassment of Women at Work:

This law was passed in order to give women a safe working environment and to prevent and resolve sexual harassment of women in the workplace. Act of 2019 Concerning Transgender Persons (Protection of Rights): The purpose of this law is to prevent discrimination against transgender people and to safeguard their rights. The Three Farm Bills, which were approved by the Indian parliament in September 2020, are a recent and excellent illustration of how the popular will of the populace overrides the legislature in India:

The 2020 Farmers' goods Trade and Commerce (Promotion and Facilitation) Bill

sought to establish a framework for farmers to sell their goods outside of Agricultural Produce Market Committees (APMCs), which are controlled markets. Farmers protested the measure in large numbers because they thought it would result in the APMCs, which give them a safety net, being dismantled. The bill was ultimately passed into law in spite of the objections. 2. The 2020 Farm Services and Price Assurance Agreement for Farmers (Empowerment and Protection) Bill: This measure, which sought to provide a legal framework for contract farming, was approved by the Parliament in September 2020. Farmers opposed the law because they believed it would result in exploitation by

⁶⁶¹ Ibid

⁶⁶² ABHI YADAV, THEORY OF VOLKSGEIST APPLICABLE TO THE INDIAN LEGAL SYSTEM, JOURNAL FOR LAW STUDENTS AND RESEARCHERS
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agricultural firms. The bill was ultimately passed into law in spite of the objections⁶⁶³.

The 2020 Bill to Amend the Essential Commodities: The purpose of this measure, which was approved by the Parliament in September 2020, was to take some goods off the list of necessities, including potatoes, onions, pulses, cereals, oilseeds, and edible oils. Farmers opposed the bill because they thought it would encourage stockpiling and illegal marketing of these goods. Nevertheless, the bill was ultimately passed into law. The Legislature had to veto these bills because they were approved against popular will.

Case Study of Different Landmark cases

Social Consciousness influence the Law

1. Jessica Lal Murder Case⁶⁶⁴

On April 29, 1999, when an unlicensed bar was operating, he went to a party. Sharma used a.22 handgun to kill Jessica Lal when she refused to serve him even after being paid 1000 rupees. Sharma was charged with murder, destroying evidence, and other crimes after being placed under arrest. The trial court found the accused not guilty. Social consciousness then convinced him to file an appeal, and he was convicted.

2. Arushi Talwar murder case⁶⁶⁵

Hemraj Police suspected the parents in the double murder case of 16-year-old Arushi and her servant, and the investigation was turned over to the CBI. The servant was charged by the CBI. CBI was given the case once more. Due to a paucity of evidence, the CBI merely cleared the parents; yet, the trial court still found the parents guilty. The 2015 Talwar movie once more raised social consciousness and took a pro-parent stance. The High Court cleared the

defendants. The Supreme Court is currently considering an appeal

3. Hyderabad Disha Rape case⁶⁶⁶

Even commissions for the investigation of such encounters point out that it was legal, and the court also declared that no punishment would be done against the police officers who savagely raped the doctor, including children. Everything was done to satisfy societal conscience.

4. Vasanta Sampat Dupare 2017

The Supreme Court defended the death penalty for a man who raped and killed a four-year-old girl in 2017 by citing the Common Consciousness theory. The Supreme Court considered society's collective conscience in the 1983 Machi Singh Case when deciding whether to impose the death punishment. According to the court, if the community's collective conscience was outraged, it would expect the legal system to apply the death penalty. The Supreme Court applied the theory in 2017 to support the death penalty for a man who killed and sexually assaulted a four-year-old girl.

The Doctrine and a Test

The Division of Labor in Society by Emile Durkheim, a French sociologist, is where the theory of collective conscience first emerged. Durkheim was a proponent of group solidarity as a result of his religious education and subsequent upbringing in a very close-knit Jewish community. "The totality of beliefs and sentiments common to average citizens of the same society" is how he described collective conscience. Many of his thoughts in the book are influenced by the doctrine. For instance, Durkheim advocates for the communal integration of people within a community in his critique of Herbert Spencer's extreme

⁶⁶³ - Gavin Sheldon Pais', SAVIGNY'S IDEA OF VOLKSGEIST IN THE INDIAN LEGAL SYSTEM, INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH, MONTH 2024 ISSN: 2582-7340 VOLUME 4 I ISSUE 2, <https://www.ilsjournal.in/theory-of-volksgeist-applicable-to-the-indian-legal-system-by-abhi-yadav/>

⁶⁶⁴ TRISHA SHREYASHI, 4th YEAR, KIIT SCHOOL OF LAW, BHUBANESWAR, CASE ANALYSIS OF MANU SHARMA V. THE STATE (NCT OF DELHI) ((2010) 6 SCC, https://probono-india.in/Indian-Society/Paper/389_Trisha%20Shreyasi.docx

⁶⁶⁵ 2013(82)ACC303, <https://ijtr.nic.in/Dr.%20Rajesh%20Talwar.pdf>

⁶⁶⁶ Encounter killing in Disha rape-murder: Case should be filed against police says Vrinda Grover, The Hindu, Updated - September 04, 2024 11:56 am IST - HYDERABAD, <https://www.thehindu.com/news/national/telangana/encounter-killing-in-disha-rape-murder-case-should-be-filed-against-police-says-vrinda-grover/article68602177.ece/amp/>



individualism. His theory of punishment, which holds that "an act is criminal when it offends strong and defined states of the collective conscience," is an extension of popular emotion. Durkheim asserts that passion is the essence of punishment and only stops when it is worn out. Group solidarity is also at the heart of Durkheim's moral philosophy. According to him, social integration is a fundamental value of social reality, which is a collective idea. The more cohesive the group, the stronger it is.

Law made Social Change⁶⁶⁷

Recognizing transgender persons as a third gender

NALSA V UOI 2014⁶⁶⁸

Since hijras and transgender people were previously required to write male or female against their gender, the SC established the "third gender" category for them in April 2014. The Supreme Court stated that the "absence of law recognizing hijras as third gender could not be continued as a ground to discriminate against them in availing equal opportunities in education and employment."

Disqualification of convicted representatives in India

Lily Thomas v. Union of India 2013⁶⁶⁹

In its ruling in the Lily Thomas v. Union of India case, the Supreme Court declared in July 2013 that any member of Parliament, the Legislative Assembly, or the Legislative Council who is found guilty of a crime and sentenced to at least two years in prison immediately forfeits their membership in the House. The first person to leave after being accused of corruption was Rasheed Masood.

Declaring instant Triple Talaq Unconstitutional

Shayara Bano V UOI 2016⁶⁷⁰

After her 15-year marriage ended in divorce, 35-year-old Shayara Bano contested the practice of triple talaq in 2016. With a 3:2 majority, the Supreme Court ruled in 2017 that Triple Talaq was unconstitutional. Justice Joseph invalidated the practice on the grounds that it violates Shariat and the fundamental principles of the Quran, while Justices Nariman and Lalit ruled that instant Triple Talaq is unconstitutional. Section 66A was revised to permit arrests based on internet material. Some of the more unusual arrests in recent years have been made on the basis of things like people sharing memes criticizing Modi and Hindutva in general. However, the contentious provision 66A was declared illegal by the Supreme Court in 2015. The Information Technology Act's Section 66A permitted

Declaring that passive euthanasia is permissible

Common Cause V UOI 2018⁶⁷¹

A five-judge Constitution Bench led by Chief Justice Dipak Misra approved passive euthanasia in March 2018, allowing patients to remove their medical care if they enter an irreversible coma and make a "living will." According to the Supreme Court, everyone has the fundamental right to die with dignity

Sabarimala Case⁶⁷²

According to the majority, Sabarimala's exclusion of women infringed upon their fundamental rights as women between the ages of 10 and 50. They also maintained that Lord Ayyappa's followers were not a distinct religious sect. The custom was ruled not to be a necessary religious practice by Justices Misra, Khanwilkar, and Chandrachud.

⁶⁶⁷ Dr.Gyanendra Kumar sahu, Law and Social Transformation in India, <https://utkaluniversity.ac.in/wp-content/uploads/2022/08/Concept-of-Social-change-and-the-Role-of-Law.pdf>

⁶⁶⁸ AIR 2014 SC 1863.

⁶⁶⁹ (2013) 7 SCC 653

⁶⁷⁰ AIR 2017 SC 4609

⁶⁷¹ (2018) 5 SCC 1.

⁶⁷² INDIAN YOUNG LAWYERS ASSOCIATION & ORS V. STATE OF KERALA & ORS. (2019) 11 SCC 1



Decriminalizing gay sex and repealing Section 377

Navtej Singh Johar V UOI 2018⁶⁷³

A five-judge panel at the nation's top court struck down the 160-year-old legislation that called homosexual relations "against the law of nature" and decriminalized homosexuality. In a landmark ruling that sparked applause from all throughout the country, the justices declared that everyone has the equal freedom to love anyone they choose and repealed Section 377.

Right to marry with own free will

Shafin Jahan v. K.M. Ashokan⁶⁷⁴

It centers on the idea of a woman's right to select her mate and intercaste marriage, and is commonly referred to as Hadiya's and the "love-jihad" case. Originally a Hindu, Hadiya Jahan changed her faith to Islam. At the age of 25, she wed a Muslim man named Shafin Jahan. Her father discovered that she had been urged to change her religion from Hinduism to Islam. The father contested the legality of his daughter's marriage in a habeas corpus petition, claiming that his daughter had been duped into changing her religion. If both parties are of legal age to marry under their respective laws, the primary question in the case was whether or not they need their parents' consent before being married. "Marriage is a significant decision and must be taken along with the parents," the high court declared. The marriage is deemed null and void by the Kerala High Court. Jahan went to the highest court after being disappointed with the ruling. According to the court, intercaste marriage is permitted by Indian law (The Special Marriage Act, 1954). The Supreme Court ruled that their marriage was lawful and that, since she had reached majority, she did not require her parents' approval.

Recognition of Live in Relationship⁶⁷⁵

The Supreme Court ruled in *S. Khushboo vs. Kanniammal & Anr.* (April 28, 2010) that there is no statute that forbids premarital sex or live-in relationships, and that live-in partnerships are not unlawful. It also emphasized that, in accordance with Article 21 of the Indian Constitution, cohabitation is a right. A significant contribution to the definition of live-in partnerships in India was also made by *Lalita Toppo vs. State of Jharkhand & Anr.* (October 30, 2018). A woman who has lived with another person for a considerable amount of time is entitled to maintenance under the terms of the Protection of Women from Domestic Violence Act, 2005, according to the recent ruling in the *Lalita Toppo* case. The rights of women in cohabitation were recognized by this ruling, which gave them.

The public will might not be "good" -

As said before, society may not always benefit from the collective will of the populace. Perhaps people aren't always motivated to advance for their own betterment. In the past, a common will promoted the slave trade and the Sati ritual. We could never have progressed and eradicated such regulations if the 'Volkgeist idea' had been adopted literally. This notion won't hold in India since it is important to understand that popular perception isn't always accurate.

Conclusion

This paper highlights the profound and dynamic relationship between law and social consciousness, demonstrating how legal systems both shape and are shaped by the collective values and moral standards of society. Through sociological theories and landmark Indian cases, it is evident that law acts as a reflection of societal conscience, evolving to address emerging social realities while also guiding progressive change. However, the interaction between law and

⁶⁷³ (2017) 9 SCC 1)
⁶⁷⁴ A.I.R 2018 SC 357

⁶⁷⁵ Legal Recognition of Live-in Relationships, <https://www.freelaw.in/legalarticles/Legal-Recognition-of-Live-in-Relationships->



social consciousness is complex and requires careful balancing to protect individual rights without merely enforcing prevailing social norms. Ultimately, a responsive legal framework that recognizes the importance of collective consciousness is essential for fostering social cohesion, justice, and sustained social development.

