
RECIPROCITY BETWEEN LAW & SOCIAL ATTITUDE - AN INTERSTATE DELIBERATION

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ABSTRACT

This Paper aims at bringing out the Interrelationship between Law and Social Attitude. With the change in social norms and societal conditions in a country there are changes in the system of law too. But this is a matter of research as to how this relation affects the overall legal system of a sovereign state. Does the advancement in social outlook of people of a society result in a liberal legal regime or leads to more and more stringent laws? Laws governing acts of adultery for an instance has been categorized as an offence in some countries while in others, it is not. Some countries allow consumption and possession of few kinds of narcotic substances, and others at the same time penalize it. Few countries have legalized same sex marriage but not all the countries on the globe. This research paper revolves around the same kind of disparities. We will delve upon such disparities and eventually try to understand the factors which bring about these differences in the systems.

This paper does not look at the law in isolation but law as an instrument of change of societal conditions and vice versa. Eventually, we'll be able to fill in the gap and have clarity as to the Indian scenario of people's behavior and law. The prime concern of the researcher is to work out a workable model where both law and social attitude aide each other and we can design a better system suiting India.

Review of Literature:**Cevat G. Aksoy, and his co-authors in their Paper titled “Do laws shape attitudes?**

Evidence from same-sex relationship recognition policies in Europe” of Aug-2018 particularly dealt with the impact of law on the societal acceptance of something of a novice character or whose advent has been relatively new. For the same the researchers have based the whole study around the same-sex relationships. They have utilised this novel culture which has become rampant in almost all the states as the base of their study. But the scope of the research has been kept restricted to the European Society only. To come to a definitive and well-reasoned result the group of researchers has taken support of the European Social Surveys. The study concluded in affirmative, and gave our hypothesis a strong core.

Kenworthy Bilz And Janice Nadler, in their Research Paper- “Law, Moral Attitudes,

And Behavioral Change” published in the Oxford Handbook on Behavioral Economics and The Law, 2014, have enlightened upon the actual influencers of law. It states that the political agendas, social working groups etc tend to support the laws which favor their personal ideas. In nut shell laws are based and molded according to the self-interest of people. The paper suggests that it is good as far as the policing of the behavior of the people are concerned but to pave way for a sound legal system is an expensive option.

A Chapter by Herbert Blumer in the book *Social Problems* attempts to understand the human attitude in a scientific manner, but towards the end failed in his approach. Now there’s a vacuum for others to take a new study.

Also, in the article “Can a Law Change an Attitude?”, the author has based his article on a paper published in the “*Proceedings of the National Academy of Sciences*” on the effect of same-sex marriage legislation on the societal acceptance of homosexuality in US. And the study revealed that such legislations do shape the people’s outlook pertaining to social stigmas. It is observed that this change was noticed only in those states where such legislation has been brought to effect.

All this literature suggests that there’s a gap in the field of research. I couldn’t find such a celebrated work in Indian context. Also, the work found focuses largely towards a single legislation; they do not substantiate the study by such instances readily found in various facets

of law. Such a study would be more appropriate to bring out an actual pattern of reciprocity between the two variables. India being a country with such vivid culture and diversity being the core of its identity, makes it all the more essential to delve with such a theme. Because what is true for others might not be true for Indian setting. An interstate study is required which culminates in Indian backyard.

Material Premise:

This is an established proposition that law and society are inter-locked to each other. Then what is the need of yet another study on the same variables all over again. As stated above the studies so far conducted has taken into consideration a specific legislation to deduce, how has it brought about change in social outlook of the people in specific country setup. While the current study aims at inferring on the factors which bring the disparity in law from country to country. Why at a given point of time laws prevailing in varied geographical areas are so diverse? What makes the concept of legality and illegality so fluid?

The social attitude of the people plays a key role in defining the legal system. There are instances where legislation has brought about a difference in people's behavior and also where a social practice brought about a new law in effect. This paper tries to answer the less dealt with area that whether the law shapes social attitude or it just reflects the same, that is the later gives rise to laws. Also, the question that whether law can change the habits of people at large or can mould the way one acts. And the extent and limitation of the same would also be included in the discussion. The approach largely is analytical and deductive. The legislations and social pattern of various countries would be considered to draw the relationship and as a resultant we will be in a better position to decide our approach towards law making.

The title is enough to forward a clear picture of the oncoming elucidation. The term Reciprocity is suggestive of the two-way link to be delved further. It is must to start this deliberation from understanding the very essence of our two variables i.e., Law & Social Attitude. There is not much need of elaborating on the former, assuming that a fair understanding exists about Law, let us take up the later. Social Attitude has a wide connotation. A narrow approach would not suffice our study. An inclusionary definition would be best suited. The phrase "Social Attitude" includes the behavioral pattern of public at large, the action and reaction relationship, habits a society at large cast back. It is not an individual's or a group's consciousness but usurps a collective stance of a greater societal structure. Therefore, at the micro level the responses of

people might differ but at macro level a definitive pattern exists. Such attitude is what we are concerned with in this study. The factors which shape such collective outlook of the subject society is a debatable theme. Few of the thinkers are of the view that similarly placed countries react in similar pattern to laws, while few others are of the view that it depends on the customs prevailing in each and every society locally. Therefore, a diversion in the opinion exists that whether application of such principles should be national or universal. There can be numerous factors ranging from the cultural wiring done from the very birth of a unit, popular believes, the developmental standard, level of literacy, combined economic status. The list is exemplary and not exhaustive. Therefore, as we move ahead in this paper, we will be better positioned to deduce as to which are the factors which bring about this disparity.

Before moving on with the discussion, it is apposite to glance at the ultimate purpose sort to be achieved by law. Law is not just for the regulation of the society but it guards the society. And a good legal system is that which complements the societal structure and thereby steer through the continuous changing conditions smoothly. Hence, for such a commute in time we need to establish a definite pattern amongst our variables and plan further.

There are two primary dimensions we need to look into, pertaining to the interaction amidst law and social attitude, keeping the time frame constant. Firstly, how law moulds social attitude and secondly, how does the social attitude of a state affect law. Only after this analysis we will be able to design a working model for Indian legal system for a better and scientific approach towards law-making. By scientific approach the researcher contemplates towards the cause-and-effect relation it beholds. Let us deal with them separately.

The Effect Law cast on Social Attitude:

[As our area of concern is Indian legal regime, we will focus on the effect of laws prevalent here in shaping attitude of Indian Society]

Not only in the present but in past too we can observe instances where law has diverted the course of society. From the subsequent enumeration it will become evident that whatever is the timeline, law has brought about a sweeping change in the societal practices and resultant effect on the collective attitude can also be seen.

Practices *sue generis* Sati and Dowry; have proven that law has a strong impact on society. It

has the force to uproot such firm holding of the age-old customs & practices. Sati was a preposterous practice in Indian Society and in a country like India which is known for its cultural background and stringent traditional values, it was a challenge for the administrators to rule out Sati practice. But the series of laws on the same starting from the famous Bengal Sati Regulation, 1829 proved otherwise. The evil of dowry prevalent was also handled in like manner. Although it does not mean that such societal issues have been entirely ruled out by such legal steps, but to a wider extent stands curbed. The impact of law is not the reduction in the number of cases alone, whereas, the true repercussion is the outlook of the society towards this practice. Earlier which was considered to be a part of Indian theology, now is condemned by the same set of people. The role played by legal intervention is evident.

A similar blow to caste system can be observed by the legal backing, practices such as untouchability was struck upon by the legislative power of the government. Casual attitude of people towards the prevailing social evils has been time and again challenged by such legal dynamism. Sometimes ignorance is not bliss, and is distasteful as far as a sound societal advancement is concerned. The injustices in the ancient Indian society such as the zamindari system, bonded labor etc have too been efficiently checked. Not only by law-making but by judicial activism it has been made possible¹.

Societal Attitude does not restrict itself to the social customs and practices, but it is any behavioral motif which reflects a community backing or affirmation. It can be food preferences of a society, their joint thought process etc.

The Motor Vehicle (Amendment) Act, 2019, imposes hefty penalties on violation of traffic rules. Although not a considerable time has passed since the revised fine scheme has rolled into action to be able deduce its long-term impact, but we could certainly make out from the observatory technique that it has served as a positive push for the people to abide by the law. The commuters have developed the habit of wearing helmets on the roads and ensure that they are not made liable to pay fines. As seconded by the address of Nitin Gadkari, Road Transport and Highways Minister, at the 3rd High Level Global Conference on Road Safety for Achieving Global Goals 2030, Stockholm².

¹ Bandhua Mukti Morcha vs Union Of India & 1984 AIR 802, 1984 SCR (2) 67 like judgements.

² Concerted efforts to curb road accidents result in reducing crashes, deaths: NitinGadkari | Deccan Herald, Addressing World Bank's Global Conference of Regional Road Safety Observatories - YouTube

The ban on sale of liquor in Bihar has shown considerable change in people's attitude³. Studies conducted by Asian Development Research Institute and Development Management Institute concludes that people are more and more buying clothes these days and also property purchases ha also gone up. Such a modification in people choice has been brought by a law, which is commendable and has wide impact on various facets of life in Bihar. For illustration, the status of women and crime against them reduced also the economic dimension of the same is noteworthy.

The Law as to Triple Talaq⁴ has done away with an age-old discrimination. Again, judiciary had proven to be the torchbearer. An unquestioned practice of the Islamic society has been repressed by this welcome move. It clearly speaks a lot about the change in social attitude.

It is often noticed in the Indian Society that people follow a course of action blindly without giving a calm thought to the same. They do not bother to delve into the fact of it being just or unjust. At such junctures law has to intervene so that the societal hazy view can be cleared. Sabrimala issue is a similar juncture.

The above elaboration is sufficient to establish successfully that there exists an interconnection between our two variables. And law utilizes numerous tools to bring this social change. The economics involved the punitive sanction, or striking at the very basis of the blind custom etc.

The Effect Social Attitude cast on Law:

[As to make out how different social stature designs law, we need to have an interstate approach]

This head indicates towards the prevailing outlook or collective mindset of the society influencing the law –makers to either amend an old law or enact a contemporary one. We are not concerned with the dominance exercised by political groups or social activists on law. Neither are we dealing here with the self-interest swaying law-making in one's own square.

But we'll have a bird's eye view at the theme. And try to infer what the parameters which are

³The Liquor Ban Effect? This Study Says People In Bihar Are Now Splurging On Food, Clothes (inuth.com)

⁴ Shayara Bano v. Union of India, (2017) 9 SCC 1

acting beneath this divergence in law.

Adultery:

The following map reflects the countries where adultery is a crime. These largely constitutes of the Islamic nations. But not just them, there are others like Taiwan, few states from US. For instance, Malaysia despite being dominate despite being Muslim community, it hasn't criminalized adultery. The rationale behind decriminalizing adultery in most of the countries has been gender equality. Mostly, a tilt has been observed towards making law favorable for women in the country. This change emanated from England in 1857. Followed by South Africa in around 1914, France, Mexico etc. This chronology reveals that as and when the wave of human rights, gender bias, and concept of privacy rights emerged, the country concerned liberalized law relating to adultery.



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Countries which criminalize it like Canada puts forth the logic that it has a bad effect on the children in the wedlock, also breakdown the institution of marriage.

In India also adultery has been decriminalized because of the same reason i.e., recognition of the personhood of a woman. It again has been done by judicial activism⁶. As clearly provided in the judgment that there was an age in which wives had lesser view in law, and they were shadowed by their husbands. And legislation which stick to such orthodox believes is violative

⁵ Source: sexualrightsdatabase.org.PewResearchCentre.mediaReports; Graphic: Karthis Ryer

⁶ Joseph Shine vs Union Of India, Writ Petition (Criminal) No. 194 Of 2017

of the basic human rights. Promotion of such thoughts by institutionalizing the same through law is unacceptable by the Indian Constitutional values.

Same sex marriage:

Denmark was the first country to recognize it back in 1989. Followed by Norway (1993), Sweden (1995), Iceland (1996), the Netherlands (1998), the United Kingdom (2005), Ireland (2011) and likewise. What lead to this recognition? As to Europe this doubt is answered by a research done in this regard (later discussed in this paper).

The following map shows the countries which has legalized Same- Sex Marriage, and India is yet to legislate on this front.

Same-sex marriage worldwide

Taiwan's government is the latest to extend marriage to same-sex couples, a first for Asia.



An elaborate study conducted in Europe, concluded that the relationship between Social Legitimacy and Legal Recognition. An observation was made that with the policy being made towards recognition of such marriages, the social outlook towards the LGBTQ community too changed, and people started accepting such incidents out-loud in the society.

That is social legitimacy followed legal recognition.

Although there are no laws expressly providing for the marriage between same-sex person, the

Indian Judiciary has taken the baton and legalized such marriages by its weapon of constructive interpretation.

In the case of *Shafin Jahan v. Asokan K.M. and others*⁷, court upheld that the right to marry person of one's choice. It categorically provided as under; "Art 21. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. Society has no role to play in determining our choice of partners."

Thereby the court added a new dimension to the art 21 and widened the scope some more. Such a course wasn't taken all at ones, but a series of cases can be enumerated, which resulted in this outcome⁸.

Narcotics:

Portugal is the first country to decriminalize it, and considers it more of a health hazard then a crime. Therefore, people are put to therapy sessions and not in jails.

In Cambodia on the other hand, drugs are equivalent to vegetables. And is consumed with food and served in every restaurant. This is an astonishing fact.

In Mexico, drugs usage was decriminalized in 2009 on the pretext of reducing the number of deaths due to the black marketing and drug cartels involved. It was thought that such a move would make people safer in Mexico.

Uruguay decriminalized it in the year 2012, considering it a personal choice of the citizenry to consume or shun it. It recognized the autonomy of a person and expanded its realm.

Argentina also on a similar premise legalized it. Reasoned that adults have the mental capability to decide what is best for oneself. And law should not intervene in such decision-making of the

⁷ · CRIMINAL APPEAL NO. 366 OF 2018

⁸ *Shakti Vahini v. Union of India*, Writ Petition (Civil) No. 231 Of 2010,

Justice KS Puttaswamy (retired) and another v. Union of India and others., Writ Petition (Civil) No 494 Of 2012

society.

It was observed in Portugal that after decriminalizing it, the number went down of the drug abusers. A reverse psychology might be at play. And Cambodian outlook is absolutely different from all others. Therefore, we see variations from State to State. Rationale for each remains absolutely divergent from other. At some places it is a technique to remedy the usage, for some legal intervention is negated etc.

In India, drug usage is highly controlled and criminally punishable. It is governed by the Narcotic Drugs and Psychotropic Substances Act, 1985. No such psychological technique or other rationale is affirmed in Indian Setup, rather it is looked down by the social strata and right from the birth a child is grown with a negating attitude towards it. It does not mean that people do not consume it or get addicted. In fact it is becoming more and more popular with advancement made.

Similarly, Live-in relationships are being recognized by countries. And it is more of a western wave that is creating this change. And a similar interaction is seen in this aspect as that in Same-Sex Marriage.

Hence, we can precisely demarcate the parameters or variables which give rise to such varied laws. They are; literacy, social legitimacy, religious wiring, extension of human right conception, gender awakening, to name a few. These are the parameters which are the actual forces which form the social attitude of a State and thereby influence law.

Suggestions cum Conclusion:

From the above discussion we can reckon the relationship our variables carry and thereby the reason and acting force behind the reciprocity. It can play crucial role in designing law to a greater extent if fully realized.

We can conclude from the study that combining economic with the law can fruitfully modify social attitude, but it won't be long lasting or willful acceptance. On the other hand, if law reason out a way to associate self-interest of the society within law in other words, uses the internal factors to bring about the change, it will be more appropriate and suitable. It is not mandatory that always suppress the societal instincts to bring social change, it also tunes the people's behavior by understanding their psychology. The actual and persistent change can only

be brought developing a rationale, in other words convincing the society in adopting a change, and not necessarily by fear of sanction.

Therefore, whenever a sweeping modification in people outlook is needed and the phenomenon is static (there is more or less negligible change with passing time), law is an efficient tool to transform it. It can be utilized to bring about positive reformatations in the Indian Society. The new stir in the society to out-law the practice of polygamy in Muslims one such concern where we can utilize our study to come up with a solution. If one needs to regulate and suppress such a deep-rooted socially recognized phenomena, legal policy is surely a way out.

And when we see at the inverse relation, we can extrapolate the reason behind the existing disparity in law from nation to nation. There from too we can constructively utilize this social attitude tie-up with law in molding the later in a better way and in conformity with the former. As inferred from the pattern shown by countries in relation to the same-sex marriage, there exists a cause-and-effect relationship. Each of such country has first recognized the rights of LGBTQ Community thereby moving on to extend this right as well. It is evident that such countries which became the fore-runners in this regard are those which are relatively sounder in legal and justice system prevalent. That is social legitimacy followed legal recognition.

The driving force behind in this case is the literacy rate. The more the literacy in the Nation the quicker it has adopted favorable law. The statistics reflect the same.⁹ Therefore, first certain literacy level is reached, and then the legal recognition; subsequently the opposing social clan too developed social legitimacy. It is an ideal example to establish the reciprocity.

Social groups compete to establish laws that they perceive as expressing high social standing for their group; likewise, they oppose laws that symbolize low social standing for their group. Richard McAdams calls this view the “expressive politics theory of law.”¹⁰

From the stance of countries upon adultery laws we see there is no relation of literacy to the incongruent laws. Besides it is the status of women in the society which is determining the legal

⁹CIA World Factbook (2020-05-14).

¹⁰McAdams, Richard H. forthcoming. *Expressive Powers of Law*. Harvard University Press. ———. 1997. “Origin, Development, and Regulation of Norms, The.” *Michigan Law Review* 96: 338.

position. The legal fraternity is motivated towards making this law gender neutral and not biased, in case they do not wipe it off entirely.

It is difficult to eliminate a practice or habit at once, instead law can effectively check it by providing an alternative or substitute to the people, so that they by shift from one habit to another escaping the possibility of any revolt against the law-makers. This mechanism can prove effective in areas like switching to solar power, adoption of cashless modes of payment, pooling of vehicles or use of public transport etc. Such are the areas where the loss in choosing the alternative is made good by making the later more convenient and resourceful.

From the results shown in Portugal, we can deduce that sometimes stringent laws are not the key to control and curb a condemnable act. Instead, sometimes it is possible that a legal backing helps in bring the problem to forefront and then it can be resolved better. In evils of society such as drug or liquor use, this approach might be adopted. As it is often revealed by studies that banning doesn't uproot such habits, just put a veil around it. Therefore, a better way has to be adopted.

Tools of Psychology can be utilized to bring a swift change in people's choice. It again reflects the proposition that law can't be read in isolation. If we adopt and associate human psychology with law, better outcomes can be realized.

Our hypothesis that there exists reciprocity between Law and Social Attitude holds good and stands proved in affirmation. The discussion hovered around not just the two variables of concern but the factors behind these variables too, so that we can effectively rethink upon the Legal Policy in India. The study was more scientific in nature, as the researcher tried to substantiate the premise through innumerable instances from round the globe. Hopefully, such a study would play its part and aide however meager, in designing better, this dynamic socio-legal milieu

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