

## **SOCIO-LEGAL APPROACH TO RESEARCH**

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### **ABSTRACT**

Law and Society are intrinsically tied together primarily because laws cannot be divorced from the society. It is widely believed that law does not require one to be creative for it is mostly centred on application- which is made use of in the interpretation of statutes. This entails, the application of mind in order to make sense of the already existing laws and find its right utilization to the best of the person's advantage.

Rooted essentially in the amalgam of social sciences, socio-legal research may be viewed as pragmatic, methodological and theoretical. A socio-legal investigation of sorts essentially entails that the legal researcher undertakes the task to manoeuvre through the profound complexities entrenched in the society.

To a great extent, the social understanding of the way things 'ought to be' in turn, forms the cornerstone for the formulation of laws, and by a corollary of that, law largely helps shape the society and its understanding. Hence, it can be inferred that Law exists for the people and is therefore, socially motivated.

In order to make a sincere attempt to bring about social reforms, a deep understanding of the laws is a pre-requisite. Similarly, a conscious attempt to adopt a multi-disciplinary approach needs to be made to bring about legal reforms. While navigating through the labyrinth of societal conducts, there arises an urgent need to anticipate the sociological, psychological, economic and jurisprudential repercussions of the legal reforms that are proposed and then make an informed decision.

The paper seeks to bring forth the trans-disciplinary approach to research, for it strives to emulate the overlapping of law and the social sciences. The paper sheds light on the development of the approach to legal writing and research that specifically undertakes to determine the complex social structures which form the basis for the laws to evolve so as to accommodate the dynamic social responses of the society in its entirety. The paper attempts to critically analyse the intricacies in the narrative that shape the understanding of laws, interspersed with elements from Literature and the various social sciences.

**Keywords:** Research, Social, Legal, Socio-legal, Methodology, Laws, Social Sciences

## INTRODUCTION

Research necessitates an investigation or inquiry undertaken in a systematic manner so as to put forth new ideas or perspectives and/or building on the existing literature available on the subject. As far as the socio-legal approach to research is concerned, it is pertinent to note that, the key social variables that play a pivotal role in the formulation, interpretation and implementation of laws are economics, psychology, jurisprudence and sociology. It can be painstakingly determined that, within the matrix of the society, the aforementioned social variables coupled with the structural aspects help shape not just societal perspectives but also, laws.

In this frame of reference, it is pertinent to note R.N. Glichrist's views, according to which, *"the various sciences dealing with the man as social entity are called social sciences and more fundamental of them is sociology,...that deals with fundamental facts of social life,"*<sup>i</sup>

Therefore, it can be effectively inferred from the aforesaid that, the social sciences in their totality are a group of intimately connected and mutually inclusive group of disciplines that investigate the different aspects of human pursuits.

## THE SOCIOLOGICAL IDEA OF LAW AND JUSTICE

Law, when viewed from a jurisprudential lens, may be viewed as the study of legal principles<sup>ii</sup> in relation with other disciplines, such as, Philosophy. However, when viewed from a

sociological perspective, it may be perceived as a social phenomenon altogether, the very existence of which stems from the school of thought which regards social welfare as its ultimate goal.

Further, it may be said that, Religion, Politics, Philosophy, and other such disciplines, invariably form the underlying foundation for the laws in force in the State. That is primarily because, the idea of law and justice is inseparable from the social aspects that govern the formulation or applicability of the laws for the time being in force.

Further, as a social phenomenon, Law reaches a crescendo in its interdependence with Economics, as a discipline. For, Policy formulation and economic welfare at the ground level essentially warrants the requirement to take into consideration the needs of the society at large.

### **FROM THE WOMB-TO-TOMB: OF THE PEOPLE, BY THE PEOPLE, AND FOR THE PEOPLE**

The Constitution of India provides for Fundamental Rights which secure the political freedom of the citizens of India *and* Directive Principles of State Policy, which though non-justiciable, confer social and economic freedom on the citizens.

Hence, it may be said that, in an attempt to establish an egalitarian society and promote economic growth, the Constitution confers exemplary powers on the State by way of Directive Principles of State Policy, and on the citizens by way of Fundamental Rights. The Directive Principles and Fundamental Rights have been provided for by the framers of the Constitution with the view to safeguard the social interests of the Nation in its entirety and the promote socio-economic welfare.

From the vantage point of socialism, the Directive Principles though not enforceable by law, have to be adhered to, by the lawmakers whilst formulating the laws so as to bring about equality of status, income and opportunities<sup>iii</sup> among the different sections of the society. The Socialist DPSPs seek to effectuate '*equal pay for equal work*'<sup>iv</sup>, provide adequate means of livelihood<sup>v</sup>, services such as Free Legal Aid<sup>vi</sup>, maternity benefits<sup>vii</sup>, etc., thereby ensuring a

decent living standard for all<sup>viii</sup> that includes within its ambit- the Right to Food<sup>ix</sup>, the Right to Education<sup>x</sup> and just and humane work conditions<sup>xi</sup>.

The Fundamental Rights have been accorded to the citizens of India for their protection, and are essentially Negative Rights, for in case of their infringement, they are enforceable in the court of law- thereby providing the citizens an effective recourse to the citizens aggrieved by the violation of their Fundamental Rights.

These Constitutional provisions therefore, serve as the means for an end, that is, to combat social menaces such as sexism<sup>xii</sup>, casteism<sup>xiii</sup>, untouchability<sup>xiv</sup>, child labour<sup>xv</sup>, and human trafficking<sup>xvi</sup> and the like. The provisions therefore, seek to provide the Right to equality<sup>xvii</sup>, the Right to life and personal liberty<sup>xviii</sup>, the Right to Constitutional Remedies<sup>xix</sup>, and in turn achieve Equality before law<sup>xx</sup>, and Equal Protection of Law<sup>xxi</sup>.

In this frame of reference, the case of *Maneka Gandhi v. Union of India*<sup>xxii</sup> (citation) becomes especially pertinent, for the Rule of Golden Triangle<sup>xxiii</sup> was propounded in this case, according to which, Articles 14, 19 or 21 are mutually inclusive and together these articles form the “Golden Triangle”. Hence, in this case, the judges of the Apex Court categorically held that the procedure established by law under Article 21 should be fair and not arbitrary within the meaning of Article 19 and in keeping with equality before law, as enunciated in Article 14 of the Indian Constitution. Therefore, when one of these Articles is violated, the other two in the triangle are automatically violated.

The close knit-nexus between the society and law comes forth in the analysis of these aforementioned Constitutional provisions, for the Fundamental Rights though not absolute in nature, are absolutely essential for the dignified existence of the citizens and are available against the State. It can be said that, the framers of the Constitution intended to cover a wide array of social situations whilst formulating these legal provisions so as to strengthen the society and effectively curb the practices that jeopardize the peaceful existence of citizens of the country.

## **LITERATURE, SOCIETY LAW AND JUSTICE**

The metanarrative of literature synthesises the Legal Research, lends the narrative, coherence, clarity of thought and expression, thereby, making its legal application more relatable on the social front, for it resonates with the public at large.

The Indian Judiciary, in the recent years seems to have partaken in this process and one such incident came to light with the judgment in the *Kathua Rape Case*<sup>xxiv</sup>, wherein, the opening lines of the judgment by Justice Tejwinder Singh, read as under: -

*“Pinha tha daam-e-sakht qareeb ashiyaan ke,  
Udhne hi nahi paye the ki giraftaar hum hue,”<sup>xxv</sup>*

The aforesaid lines, a touching couplet by Mirza Ghalib loosely translates to, “the hunters placed the net so close to the nest, the young one got caught before it could even take its first flight.”<sup>xxvi</sup> The Kathua Rape Case was “*an unfortunate kidnapping, drugging, wrongful confinement, rape and murder of the eight-year-old girl*” which “*had set the criminal law into motion*” and “*had put the accused persons under the “sword of Damocles” for a fair trial.*<sup>xxvii</sup>”

In this context, it may be pertinent to notes that, the grand magnitude of the social impact of a piece of legislation was witnessed most recently when the Modi Government rolled back the three Farm Laws<sup>xxviii</sup>, which when enacted, were met with a huge social backlash. The scathing critique of the Farm Laws came the fore at the Singhu Border, in a way, that shook the entire Nation, and disrupted people’s lives to a great extent. It is apposite to note that, people from all walks of life voluntarily uprooted their lives and stood in solidarity with the farmers of the country at the Singhu Border Protests. It may not be far-fetched to say that had the protests went on for a while longer, it indeed would have led to anarchy, culminating in catastrophic repercussions.

On repealing the three contentious Farm Laws, the Prime Minister stood in front of the nation and said that, “*Today, while apologizing to the countrymen, I want to say with a sincere and pure heart that perhaps there must have been some deficiency in our efforts, due to which we could not explain the truth like the light of the lamp to some farmers.*<sup>xxix</sup>”

Durkheim’s understanding of the social structures becomes especially relevant in this frame of reference for, “*by the “structure” of society, Durkheim means a certain “solidarity” or “cohesion” among its members*”<sup>xxx</sup>. Therefore, the social unity of the citizens who came forth in support of the farmers is at par with the criteria laid down by *Durkheim*, in this context.

Along the similar lines, *Upendra Baxi* critiques the law-making techniques, owing to “*the feeble supportive structures in the handling of social change*”<sup>xxxi</sup>. Further, he acknowledges in

this context, that the impact of laws must be determined not just by their compliance with the established policies of legislations but also, their unintended consequences must be taken into consideration.

The fact that there are no pre-legislative social enquiries, indicates a conspicuous lack of consideration on the part of the law makers and that in turn, jeopardizes the interests of the primary stakeholders in the law-making process. The social repercussions of a legislation can be of a vast magnitude as well. *Navtej Singh Johar's case*<sup>xxxii</sup> becomes especially pertinent at this juncture, for it was largely perceived as light at end of the tunnel. The country, on 6<sup>th</sup> September, 2018, was overjoyed at the instance when Section 377 of the Indian Penal Code<sup>xxxiii</sup>, which problematized the already precarious stance of the LGBTQIA+ section of the society, was decriminalized for all intents and purposes, that pertained to the homosexuals classifying carnal intercourse between them as an 'unnatural offence'.

The unanimous decision was delivered by a five-judge bench headed by India's former Chief Justice Dipak Misra. Justice Misra was of the view that, "*Criminalizing carnal intercourse is irrational, arbitrary and manifestly unconstitutional.*" Justice Indu Malhotra said that, she believed "*history owes an apology to LGBT people for ostracizing them.*"

Justice DY Chandrachud put for that, "*the state had no right to control the private lives of LGBT community members and that the denial of the right to sexual orientation was the same as denying the right to privacy*"<sup>xxxiv</sup>. The ruling effectively allows gay sex among consenting adults in private.<sup>xxxv</sup>

Therefore, it can be inferred that, the Laws enacted must have social merit and must, necessarily evolve with the society. The Laws cannot be passed in a vacuum, for they are not devoid of social bearings, in fact, the laws impact lives of the people in the society in very intrinsic and specific ways. Hence, it is essential to anticipate the social implications of the Laws before they are enacted for all intents and purposes.

## PSYCHOLOGICAL IMPLICATIONS

The interdependencies of the various social systems, laws, and, psychology comes forth in the psychological analysis of crimes. Laws are reflective of the society and at various levels, represent the collective conscience of the people that together form the society. The fact that

laws and society are invariably intertwined becomes apparent on eliciting the psychological aspects of a crime.

Criminologists often investigate the social and psychological patterns that propel the criminals to commit crimes, the process may entail investigating the mind of the criminals, studying empirical patterns and drawing conclusions to fairly ascertain the cause of commission of the crime.

Victimology, as a branch has gained popularity and become significant of late for it has been observed and acknowledged only that recently, victims are doubly victimized given that, the usual victim shaming and blaming after having been at the receiving end of a crime coupled with some sort of stigma that is attached in being the victim of certain crimes, especially for women.

The troubles of women who are victims of rape, for instance are further perpetuated by the society's ostracization and stigmatization, judgmental outlook of the society and the media trials that follow after such an incident has taken place, furthering the grievances of victims, often pushing them off the edge.

Hence, victimology attempts to secure the interests of victims of crime by means such as restitution, assistance (both financial and psychological), forming advisory groups to cater to their specific needs, etc<sup>xxxvi</sup>.

Law may be viewed as an instrument for social control, for it is precisely at this juncture that the various theories that govern the understanding of penology come into play. The rapid advancements in the society have propelled newer forms of punishment that are centred around reformation and rehabilitation of criminals.

Penology essentially attempts to theorize the various forms of punishment. This entails delving into the root cause of crimes and determining the mindset of the criminals- thereby giving a philosophical and psychological bent to the newly emergent reformatory forms of punishment that are centred around co-opting the criminals back into the society instead of ostracizing or incarcerating them in prison cells by removing them from the society.

## THE SOCIO-LEGAL REVERBERATION

On analysing the society closely, the *lawlessness* that is inherent in it, can be delineated by adopting a of socio-legal approach, for it can in turn, help pave way for social reforms and effectively combat the social menaces from which the society is plagued.

*Upendra Baxi* proposed the Socio-legal approach in the mapping of the legal systems<sup>xxxvii</sup> that essentially entails a close investigation of the various legal systems and their potency at different geographical locations. These social control systems are backed by the State and hence form the backbone of the ISAs<sup>xxxviii</sup> of State. This correspondence between the social structures of the society and legal structures within the State comes forth in the process of socio-legal approach to research.

Julius Stone in this frame of reference, notes that, on analysing the relations between law and the society, it is essential to place importance in the “cognition of the social and economic order in its complex unity”<sup>xxxix</sup>.

## IMPEDIMENTS AND DISSONANCE IN THE SOCIO-LEGAL APPROACH TO RESEARCH

While an insular approach to legal research may be viewed as ‘limited’ and rather dated, or as *B.S. Murty* puts it, “*the visceral affinity with other disciplines has led some legal scholars to extend their range of investigation beyond "law" into other disciplines, to bring out the wider implications of legal rules and to recommend more meaningful policies.*”<sup>xi</sup>

In the process of achieving that, the various pitfalls that the researchers are confronted with range from the limited knowledge of expert in a particular field to the research being contingent on the issue at hand, the research problem and the research objective.

While the transdisciplinary or interdisciplinary approaches to research are slowly gaining momentum, evidently, there is a lack of coalescence among the different Disciplines and not much is being done to bridge that gap. An effective recourse to bridge this gap would be to make conscious measures to establish strong linkages between the society and law right from



the outset, that is, the University level where research takes shape in the most basic yet effective mechanism.

## CONCLUSION

To conclude, an analysis of the social systems, their compliance with the various laws and statutes in force, their functionality at various social institutions can be proved extremely effective in transforming the field of law into a multi-disciplinary domain. Jurisprudential law is especially helpful in this regard, for it presupposes the blend of socio-cultural aspects of law by theorizing the idea of social justice. It is apposite to note that, Legal research can sustain itself and remain relevant only if it evolves with the society and socio-legal approach makes that possible.

Further, it is pertinent to note that while the socio-legal approach can be employed while undertaking any kind of research, a pursuit in that direction should be made only after a careful analysis of the Research Problem, and the Research Objective. Further, factors such as the costs that may be incurred during the course of the research, research patterns and the target audience must also be taken into consideration.

Enquiries into the law and whether or not it possesses that which *Professor Lon Fuller* calls the “inner morality of law”, may be tested against various indices such as clarity, consistency and practicability of its implementation<sup>xli</sup>. Hence, legal research sheds light on the essence of differences that the law sets up, the ambiguities that it carries and the hardships that are likely to be encountered in the process of its implementation thereby, proving an extremely useful method or approach to research.

## ENDNOTES

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<https://doi.org/10.2307/795152>
- <sup>iii</sup> The Constitution of India, 1949, art 38
- <sup>iv</sup> Supra note 4, art 39(d)
- <sup>v</sup> Supra note 4, art 39(a)
- <sup>vi</sup> Supra note 4, art 39A
- <sup>vii</sup> Supra note 4, art 42
- <sup>viii</sup> Supra note 4, art 43
- <sup>ix</sup> Supra note 4, art 47
- <sup>x</sup> Supra note 4, art 41
- <sup>xi</sup> Supra note 4, art 42
- <sup>xii</sup> Supra note 4, art 15
- <sup>xiii</sup> Supra note 4, art 15
- <sup>xiv</sup> Supra note 4, art 17
- <sup>xv</sup> Supra note 4, art 24
- <sup>xvi</sup> Supra note 4, art 23
- <sup>xvii</sup> Supra note 4, art 14-18
- <sup>xviii</sup> Supra note 4, art 21
- <sup>xix</sup> Supra note 4, art 32
- <sup>xx</sup> Supra note 4, art 14
- <sup>xxi</sup> Supra note 4, art 14
- <sup>xxii</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597
- <sup>xxiii</sup> *ibid*
- <sup>xxiv</sup> Mohd. Akhtar vs The State of Jammu And Kashmir W.P.(Crl.) No.86/2018
- <sup>xxv</sup> Couplet by Mirza Ghalib; The Quint, "Judge Quotes Mirza Ghalib to Decry 'Law of Jungle' in Kathua Case", *The Quint*, 11-06-2019, available at: [https://www.thequint.com/news/india/kathua-case-judgement-mirza-ghalib-couplet?utm\\_source=whatsapp&utm\\_medium=social&utm\\_campaign=whatsapp\\_feed#read-more](https://www.thequint.com/news/india/kathua-case-judgement-mirza-ghalib-couplet?utm_source=whatsapp&utm_medium=social&utm_campaign=whatsapp_feed#read-more)
- <sup>xxv</sup> [https://www.thequint.com/news/india/kathua-case-judgement-mirza-ghalib-couplet?utm\\_source=whatsapp&utm\\_medium=social&utm\\_campaign=whatsapp\\_feed#read-more](https://www.thequint.com/news/india/kathua-case-judgement-mirza-ghalib-couplet?utm_source=whatsapp&utm_medium=social&utm_campaign=whatsapp_feed#read-more) (last visited on 25-01-2022).
- <sup>xxvi</sup> *ibid*
- <sup>xxvii</sup> *ibid*
- <sup>xxviii</sup> The Farm Laws Repeal Act, 2021 (Act 40 of 2021)
- <sup>xxix</sup> Nonika Sharma, "Let's Start Afresh," PM Tells Farmers: Top 10 Quotes", *Ndtv*, 19-11-2021, available at: <https://www.ndtv.com/india-news/pm-narendra-modi-addresses-nation-top-quotes-2616683> (last visited on 21-01-2022)
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- <sup>xxxiii</sup> Indian Penal Code 1860, s. 377
- <sup>xxxiv</sup> Supra note 33
- <sup>xxxv</sup> Editor, "India court legalizes gay sex in landmark ruling", *BBC News*, 06-09-2018, available at: <https://www.bbc.com/news/world-asia-india-45429664> (last visited on 24-01-2022)
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- <sup>xxxvii</sup> Supra note 2
- <sup>xxxviii</sup> Stands for Ideological State Apparatus
- <sup>xxxix</sup> David N. Schiff 1966 *Israel Law Review* I at p. 176, *The Age of Roscoe Pound*

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<sup>xii</sup> Ibid.

