

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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# **Social Change and the Law: How the Law Affects Society**

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## **Abstract**

The rule of law serves as the cornerstone and backbone of all organizations and nations, molding and guiding society's operations through its guiding principles. A community or a collection of individuals with similar or shared interests, such as social conventions, habits, beliefs, and culture, is referred to as society in contrast. Therefore, these shared interests serve as the foundation for social norms. People who don't obey society's rules frequently experience social rejection and ostracization.

Law is undoubtedly a crucial element of societal control and has a significant impact on society. The change of society is its main goal. The rule of law cannot, however, eliminate all social evils or criminal activity on its own. Even the law occasionally falls short of its capacity and the goals it was intended to achieve. Even though several laws and significant court rulings have been made throughout the course of history in an effort to eradicate social issues, these problems still exist today. As a result, there is still a long way to go in terms of the law before we can create a society that resembles paradise.

**KEYWORDS:** Law, Society, Social Change

## Introduction

Law is the foundation and bedrock of institutions and countries, molding and shaping the way society functions through its guidelines and principles. In comparison, society is deemed as a community or a group of people with similar or common interests like social customs, habits, beliefs, and culture. The rules of society are hence based on these common interests. Those who fall short on following the rules set up by society generally end up being socially disapproved and ostracized.

Law and society are two inseparable entities of an institution. One cannot survive without the other. A lawless society is a breeding ground for mayhem and chaos, but at the same time, laws also need to adapt as the society progresses in order to sustain itself in the legal world.<sup>1</sup> Thus it is pertinent to nourish a harmonious relationship between law society. The aim of the law is to fulfill two objectives concerning society:

- Maintain peace and stability, provide an orderly life to the citizens.
- Induce societal change and adapt itself according to the needs of the changing society.

Thus, we can say that law is an essential factor to maintain societal order.

The legal guidelines and rules prescribed in any Constitution form the bedrock of democracy. By instilling fear in the minds of the citizens, the law dictates the social order of the society. It modulates the conducts and practices of its citizens by using force to make people follow their legal and moral obligations.<sup>2</sup> Several landmark cases throughout the course of history have been responsible for shaping the society into what it is perceived as today, e.g. **R. v. Morgentaler** [1988] 1 S.C.R. 30<sup>3</sup>, which deal with the then sensitive topic of granting abortion rights to women, **Andrew v. Law Society of British Columbia**<sup>4</sup> which gained prominence for cementing a precedent of having a structured approach to issues pertaining equality and analogous characteristics that deserve protection.

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<sup>1</sup> BOGART, W. A. (2002), *Consequences: The Impact of Law and Its Complexity*, UNIVERSITY OF TORONTO PRESS, <https://doi.org/10.3138/9781442673267>

<sup>2</sup> Austin Sarat, Thomas R. Kearns, (1993), *Law In Everyday Life*, UNIVERSITY OF MICHIGAN PRESS, [https://www.google.co.in/books/edition/Law\\_in\\_Everyday\\_Life/X3nuAAAAMAAJ?hl=en](https://www.google.co.in/books/edition/Law_in_Everyday_Life/X3nuAAAAMAAJ?hl=en)

<sup>3</sup> Her Majesty the Queen v. Henry Morgentaler, 1 SCR 462, [1993] <http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/OrvR1pq7>

<sup>4</sup> Andrews v. Law Society of British Columbia, 1 SCR 143, [1989]

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India is a highly diverse country that inhabits various forms of societies and people from different cultures. The impact of culture on the varied sections of the Indian society is undeniably more than, say, the impact of the culture of other countries on their respective countrymen. Thus, the existence of customs and traditions impact Indian society in a highly effective manner. Law has been very influential for bringing people of different cultures together and for maintaining order in society. In India, several judgments and acts were passed, which affected the functioning of society in various positive ways and transformed society. These laws have also made the general public conscious and aware of the social ills and stated measures to prevent and avoid them. Some of these landmark judgments and acts that changed the face of society are as follows:

1) **Prohibition of Child Marriage:** The practice of child marriage was very prevalent in India across various religious and cultural groups. Plenty of reformers made numerous efforts to change this system but were unsuccessful in bringing change until a law prohibiting Child Marriage was passed. The Hindu Child Marriage Restraint Act<sup>5</sup> was replaced by the Child Marriage Act 2006<sup>6</sup>,

which introduced youngster marriage restriction officers<sup>7</sup> along with the power of the family court to choose an issue under the Act. Failure to comply with Act will result in the imposition of rigorous punishment on the accused, which may extend up to 2 years along with a fine extending up to 1 lakh or both.

2) **Abolition of Sati System:** The age-old practice of the widow burning and buried alive in the fire along with her husband's corpse was known as Sati. This practice has held a high sense of respect and honor among Hindu families since the ancient times. This dreadful ancient practice was criticized and opposed by many prominent reformers like Raja Ram Mohan Roy, but the practice could not be curbed as it was considered a part of the traditions and customs of the

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<sup>5</sup> *The Child Marriage Restraint Act*, [1929],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/5r8iX6H0>

<sup>6</sup> *The Prohibition of Child Marriage Act*, Section 1, [2006],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/6UUvPYdw>

<sup>7</sup> *The Prohibition of Child Marriage Act*, Section 16, [2006],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/bQCQW1p9>

Hindu society. Thus eventually, a law to abolish the practice of Sati was passed by then Bengal Governor-General Lord William Bentick on 4th December 1829. The practice was exclusively barred in Bengal Presidency by Lord Bentick. The practice was formally declared illegal and a punishable offence by the criminal courts. Although in post-independent India, the practice wasn't efficaciously suppressed, and as a result, the Legislature passed the Commission of Sati Act 1987<sup>8</sup> under which abetment to Sati<sup>9</sup> attracted a punishment of life imprisonment. As a result of these enactments to curb this practice over the years, Sati has become a deserted practice in most areas of the country.

3) **Decriminalization of Section 377 of the Indian Penal Code:** India is a country that has been quite backwards when it comes to matters about sex, even more towards issues of homosexuality. The Indian society refuses to acknowledge sexual orientations outside the binary sphere. They deem it as a mental illness. Same-sex couples have faced the harsh reality of homophobia and have had to constantly live under the banner of shame. This regressive approach towards the LGBTQIA+ community was evident in numerous cases of harassment, eve-teasing, rape directed towards the community. Various protests and dissent fueled campaigns were carried out against homophobia but were futile at changing the obdurate homophobic Indian society until the Supreme Court eventually intervened. The Supreme Court of India, on 6th September 2018, in the case *Navtej Singh Johar & Ors v Union of India*<sup>10</sup>, decriminalized Section 377<sup>11</sup> of the Indian Penal Code, thereby legalizing private homosexual relationships. It was a historical landmark judgment for the betterment and progression of the LGBTQIA+ community and called for a stringent change in opinion and views of the Indian society on their draconian opinions on homosexuality.

4) **Widow Remarriage Act:** The Indian society held back the life of widows and prevented them from moving on in life as they had a duty to safeguard their family's honor and property. This patriarchal ideology prevented a widow from remarrying all in the name of society and family honor. The Indian activist Ishwar Chandra Vidyasagar ardently campaigned for the rights of widowed women and rallied against society for employing the regressive custom. The Britishers, upon witnessing the efforts of Ishwar Chandra Vidyasagar, passed the Hindu

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<sup>8</sup> *Commission of Sati (Prevention) Act*, Section 1, [1987],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/254ha3kY>

<sup>9</sup> *Commission of Sati (Prevention) Act*, Section 4, [1987],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/2539X8we>

<sup>10</sup> *Navtej Singh Johar v. Union of India*, 10 SCC 1, [2018],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/8gd9DIY2>

<sup>11</sup> *Indian Penal Code*, Section 377, [1860]

Widow's Remarriage Act in 1856<sup>12</sup>, which allowed a widow to remarry, granted rights and provided legal safeguards to the widow in cases of loss of inheritance. Thus, this Act prevented widows from living in abject austerity and misery, thereby empowering them to claim the fundamental human right of choice without society's influence.

5) **Female Infanticide:** The despicable practice of female infanticide has been prevalent in Indian for centuries. It traces its origin from poverty, dowry, desire for a male child, lack of support for the female child, and postpartum depression. This inhumane practice led to the imbalance in the gender ratio of India. To counter this practice and save the girl child from the shackles from this age-old custom, the Pre-Conception and Pre-Diagnostic Act 1994 (PCPNDT)<sup>13</sup> was passed that banned prenatal sex determination<sup>14</sup>. This Act was brought into force to prevent female infanticide and curb the declining sex ratio. The punishment under this Act was imprisonment extended up to 3 months and a fine that may extend up to Rs. 1000<sup>15</sup>.

6) **Criminalization of Triple Talaq:** Triple Talaq was a form of instant divorce that was quite prevalent in the society of Indian Muslims from the early ages. This custom allowed a Muslim man to divorce his wife legally by just saying the word "talaq" thrice in oral, written or electronic form. This custom was subject to much controversy and debate as it put Muslim women in a position of weakness and vulnerability by denying them fair justice, basic human rights and stirred up the blatant violation of human rights. The matter was up for debate between the Government of India and the Supreme Court of India, keeping into consideration the Indian society. Eventually, on 22nd August 2017, in a landmark judgement of the case of

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<sup>12</sup> *Hindu Widow's Remarriage Act*, [1856],

<http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/H3Gka1F4>

<sup>13</sup> *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection ) Act*, Section 2, [1994],

<http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/UU9f3RiO>

<sup>14</sup> *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection ) Act*, Section 6, [1994],

<http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/wm00H9Qj>

<sup>15</sup> *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection ) Act*, Section 25, [1994],

<http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/Opl3v91C>

*Shayara Bano v. Union of India & Others*<sup>16</sup>, the Supreme Court of India declared the practice of instant triple talaq unconstitutional. Following

this on 31<sup>st</sup> July 2019, The Muslim Women (Protection of Rights on Marriage ) Act<sup>17</sup> was passed, that criminalized Triple Talaq and intended to safeguard the legal rights of Muslim women.

These are the few landmark judgements and Acts that were passed that greatly influenced and had a commendable impact on Indian society positively. Additionally, numerous decisions based on the articles of fundamental rights like the Right to Free Education (Article 21 A )<sup>18</sup> and Prohibition of Child Labour (Article 24)<sup>19</sup> also constructively affected the Indian society and led to the progression and the betterment of the Indian society.

### Analysis

The various judgements passed and Acts enacted primarily acted as a medium of change in Indian society. But many of these judgements and acts garnered controversy. Certain customs and traditions such as Sati, Child Marriage and enactment of the Widow Remarriage Act were not wholly welcomed by the Indian society.

In the case of the Abolition of Sati Act, the Hindu community protested that it was incorrect of the Government to pass such an Act as it directly went against their Hindu customs and traditions.

The Widow Remarriage Act also drew considerable criticism from the Indian society, who cited that it was a sacred tradition that has been followed for centuries. A change in attitude was noticed pertaining to the remarriage of widows, but the issue as a whole still remained stigmatized.

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<sup>16</sup> *Shayara Bano v. Union of India*, 9 SCC 1, [2017],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/UUSuxbTP>

<sup>17</sup> *Muslim Women (Protection of Rights on Marriage)*, Section 2, [2019],

<http://www.sconline.com.eu1.proxy.openathens.net/DocumentLink/1e81ctd3>

<sup>18</sup> *Constitution of India*, Article 21 A

<sup>19</sup> *Constitution of India*, Article 24

A decent number of Indian citizens widely accepted the decriminalization of Section 377 of the Indian Penal Code, but at the same time, it is still not acknowledged by a sizable part of the Indian society. The internalized homophobia still exists within them. Many of them deem homosexuality as

a mental illness that requires a cure. As a result, homosexuality still remains a sensitive and an unacknowledged issue in India.<sup>20</sup>

Female infanticide has, in fact, effectively reduced in many parts of the country, but in certain regions, the practice does exist. Through illegal means, the alleged culprits find out the sex of the fetus and murder it if it is a female child. The driving factors in these backwards regions are the desire of a male child and the preconceived notions of a female child being considered a burden.

The criminalization of Triple Talaq was widely celebrated amongst the masses because of its oppressive measures to deny Muslim women their rights, but the practice was publicly supported by The All-India Muslim Personal Law Board, which conveyed that although it can be considered as a sin by some, it is a "setting the validity of customs and practices of a community is a slippery slope". They asserted that the state should not intervene in matters concerning religion.<sup>21</sup>

## **Conclusion**

Law is an obviously essential component of societal control and wields an enormous amount of influence over society. Its primary function is to effect social transformation. However, the rule of law alone cannot prevent all societal ills and put a stop to criminal activity. Even the law, on several times, fails to live up to its potential and accomplish what it set out to do. Even if a great number of laws and landmark court decisions have been issued throughout the course of history with the intention of eliminating societal ills, these things have not been completely eliminated. Therefore, in terms of the

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<sup>20</sup> Prejudices against Homosexuality and existence of Homophobia, [2020], <https://www.thehindu.com/news/national/two-years-since-article-377-annulment-lgbtq-community-still-battling-prejudice/article32534479.ece>

<sup>21</sup> Criticism of Triple Talaq by All India Muslim Personal Law Board, [2019], [https://www.business-standard.com/article/current-affairs/muslim-personal-law-board-to-challenge-triple-talaq-bill-in-supreme-court-119080100942\\_1.html](https://www.business-standard.com/article/current-affairs/muslim-personal-law-board-to-challenge-triple-talaq-bill-in-supreme-court-119080100942_1.html)

law, there is still a significant distance for us to travel before we can establish a community that resembles a paradise.

