

UNVEILING THE LAW AND SOCIETY INTERRELATIONSHIP: AN IDEOLOGICAL AND PHILOSOPHICAL APPROACH**Rupesh Chandra Madhav**

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I. INTRODUCTION

Law and society share a complex inter-relationship that can be approached from philosophical and ideological perspectives. The way law operates and interacts with society is influenced by philosophical underpinnings and ideological frameworks. Philosophically, the relationship between law and society upholds primary questions concerning the nature of law, its purpose, and impact on social dynamics. The philosophical and ideological dimensions of the law and society inter-relationship are essential to comprehend the dynamics of legal systems and their impact on societal structures. Exploring these dimensions allows us to critically analyze the underlying assumptions, biases, and power dynamics inherent in legal systems. It also helps us understand how legal changes and reforms reflect broader shifts in societal values and aspirations.

Law has a class, an ideology, and a particular way of thinking, which is influenced by the social and economic setup of the social system.¹ Jurisprudence, as a field of study, holds relevance across various disciplines. Its principles and concepts extend beyond the confines of law and have implications in other areas of knowledge and practice.² Whether one is a student of political science,³ history,⁴ economics,⁵ or sociology⁶ studying jurisprudence helps enhance research skills and logical reasoning⁷ in arguments. Jurisprudence brings much-needed clarity, effectiveness, and organization to an individual's work. Understanding society is crucial in solving many problems, and jurisprudence facilitates this understanding. Even before the formulation of Darwinian doctrine, Comte advocated for the study of social institutions as a science with its own methodology.⁸ Law has a sociological basis, and according to the philosophy of natural law,⁹ rights already exist in society, with law being

¹ See, Lauren B. Edelman, "Rivers of Law Contested Terrain: A Law and Society Approach to Economic Rationality" 38 *Law & Soc'y Rev.* 181 (2004).

² John Norton Moore, "Prolegomenon to the jurisprudence of Myres McDougal and Harold Lasswell" 54 *Va. L. Rev.* 662 (1968); See also, Edgar Bodenheimer, "Modern analytical jurisprudence and the limits of its usefulness" 104 *U. Pa. l. Rev.* 1080 (1955); "The impact of other social disciplines on the law is closely related to this inquiry. As ... attempt to interpret them needs the assistance of all relevant disciplines."

³ See also, Frank B. Cross, "Political science and the new legal realism: A case of unfortunate interdisciplinary ignorance" 92 *Nw. UL Rev.* 251 (1997); Cross makes a strong case stating: "Legal scholars cannot ignore this political science research on grounds of social scientific weakness. To the contrary, political scientists ... , far more than legal scholars have mustered on ..."

⁴ See, John H. Langbein, "Chancellor Kent and the history of legal literature" 93 *Colum. L. Rev.* 547 (1993).

⁵ As study of law and economics in society— where both are an essential factors of society; See, Richard Swedberg, "The case for an economic sociology of law" 32 *Theory and society*, 1-37 (2003).

⁶ As Sociology of Law, See Georges Gurvitch, *Sociology of law* (Transaction publishers, 1942); Mathieu Deflem, *Sociology of Law visions of a Scholarly Tradition* (Cambridge University Press, 2008); See the latest literature also, Lynn McDonald, *Sociology Of Law & Order* (Routledge, 2019).

⁷ Edward H Levi, *An introduction to legal reasoning* (University of Chicago Press, 2013).

⁸ C K Allen, *Law in the Making* 20 (Oxford University Press, 1964).

⁹ Mark C Murphy, *Natural law in jurisprudence and politics* (Cambridge University Press, 2006).

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the means to ensure these rights within the social system. Law governs defined relationships within society and serves the purpose of upholding rights and duties within the social system.¹⁰

Law requires investigation and analysis of society through a social positivistic approach.¹¹ It encompasses various dimensions, including naturalistic, positivistic, and sociological aspects. The fundamental aim of law is to promote social solidarity.¹² Society can be examined by focusing on social interactions, which constitute the core purpose of law. Every law pertains to interactions, as it regulates the relationships between the state and citizens, as well as interactions within society. Ernest Barker has emphasized that law is crucial for governing the relationships between the state and individuals, as well as between individuals themselves.¹³

Ideology forms the foundation of law,¹⁴ society, and the state. Every law is influenced by subtle and prudential ideological considerations.¹⁵ The Indian Constitution, for instance, has an underlying economic ideology in the Directive Principles of State Policy that leans towards socialism. Supreme Court has been held that:¹⁶

“This is not mere semantics. The edifice of our Constitution is built upon the concepts crystallised in the preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice — social, economic and political. We, therefore, put Part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved.”

Mumbai Kamgar Union,¹⁷ D.S. Nakara,¹⁸ Olga Tellis,¹⁹ Bandhua Mukti Morcha,²⁰ and similar cases reflect the economic and socialistic interpretation of constitutional ethnography and philosophy. These cases have had a significant impact on modern Indian jurisprudence, influenced by the historical background of Indian society. The constitution incorporates schemes for equality,²¹ justice,²² freedom, and rights, drawing upon ancient concepts of dharma and principles found in the Upanishads, Vedas, Shrutis, and Smritis.²³

¹⁰ Paul Bohannon, "The differing realms of the law" 67 *American Anthropologist*, no. 6, 33-42 (1965).

¹¹ See, Brian Z. Tamanaha, "Socio-legal positivism and a general jurisprudence" 21 *Oxford Journal of Legal Studies*, no. 1, 1-32 (2001).

¹² Herbert LA. Hart, "Social solidarity and the enforcement of morality" 35 *The University of Chicago Law Review*, no. 1, 1-13 (1967).

¹³ Ernest Barker, *The political thought of Plato and Aristotle* (Courier Corporation, 2012).

¹⁴ Available at <https://plato.stanford.edu/entries/law-ideology/>

¹⁵ Alan Hunt, "The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law" 19 *Law & Society Review*, no. 1, 11-37 (1985), Available at JSTOR, <https://doi.org/10.2307/3053393>, (last visited on 8 June 2023).

¹⁶ *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625 at page 654.

¹⁷ *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai* (1976) 3 SCC 832.

¹⁸ *D.S. Nakara v. Union of India*, (1983) 2 SCR 165.

¹⁹ *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

²⁰ *Bandhua Mukti Morcha v. Union of India & Ors.* (1997) 10 SCC 549.

²¹ Social equality in the Indian Constitution refers to the equality of opportunity for the development of all classes of people without any discrimination based on caste, gender, sex, political affiliation, etc. The Constitution emphasizes achieving social equality through government policies and the rule of law. For US comparison See, Nicole Lillibridge, "The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States" 13 *Wm. & Mary Bill Rts. J.* 1301 (2004); Robert B. Charles, "American

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Law is shaped by both material and intellectual factors, and legal theory is not confined to alphabetical proximity but also draws upon geographical context for its functioning. The purpose of every theory, science, and principle is to serve humanity and promote the political and inner liberty of human civilization. Law serves the purpose of ensuring the existence and well-being of human beings. Justice K. Ramaswamy stated that:²⁴

“... .. Jurisprudence is the eye of the law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment.

... ..The concept “social justice”, which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is thus an integral part of ‘justice’ in the generic sense. Justice is the genus, of which social justice is one of its species.”

II. Efficacy of Law in Society

Indeed, the pursuit of human happiness and human freedom is a common objective found in all laws, philosophies and theories²⁵ worldwide. The fundamental question underlying these disciplines is the understanding of life itself. Various approaches such as naturalism, empiricism, and sociological dimensions contribute to comprehending the idea of life. Law plays a key function in enabling individuals to express their lives and also provide direction. Its purpose is to regulate our lives with the aim of achieving human well-being and happiness²⁶. Law is not a destination but a continuous process that should manifest in human actions. It operates within the framework of the social system, social structure, social order, social choice, social relations, and social selection.

influence on the Indian constitution: Focus on equal protection of the laws”¹⁷ *Colum. Hum. Rts. L. Rev.* 193 (1985).

²² The idea of justice is firmly established in the preamble. The Indian Constitution’s drafters made sure that justice was included because they understood the importance of establishing justice in a nation. The Constitution stipulates justice, namely social justice, economic justice, and legal justice, which are an integral part of the theory of distributive justice. The concept of justice depends on the interpretation of the constitution. Within the borders of India, this article ensures equality before... Constitutional Provisions Relating To Social Justice. See, Kalpana Kannabiran, *Tools of justice: Non-discrimination and the Indian Constitution* (Routledge, 2013). See also, Zoya Hasan., Eswaran Sridharan, *et.al. (eds.), India's Living Constitution: Ideas, Practices, Controversies* (Orient Blackswan, 2004); For Social Justice Approach, See; Divya Tiwari, "Resonance of Ambedkar's Idea of Social Justice in Indian Constitution-A Solution Oriented Analysis"²⁷ *Supremo Amicus* 111 (2021); From the lens of Critical Legal Studies, It is hold that “though the Indian Constitution is founded on the idea of distributive justice, it neither supports a pure libertarian form of justice nor supports a purely strict egalitarian form of distributive justice.” See, Rishabh Jain and Utsav Srivastava, "The illusionary scheme for distributive justice in Indian constitution" *All India Reporter Online* (2020).

²³ M.Rama Jois, *Seeds of Modern Public Law in Ancient Indian Jurisprudence* 10 (Eastern Book Company, 1990).

²⁴ *Consumer Education & Research Centre v. Union of India* (1995) 3 SCC 42 at page 67.

²⁵ Ruut Veenhoven, "Greater happiness for a greater number: Is that possible and desirable?" 11 *Journal of happiness studies* 605-629 (2010); See also, Zerine Tasnim, "Happiness at workplace: Building a conceptual framework" 6 *World*, no. 2, 66-75 (2016).

²⁶ Emer De Vattel, *The law of nations*, T. & JW Johnson, 1883, suggests that law of nations has been formed with “practical importance to the well-being, happiness, and ultimate peace.”

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While there are various classifications of jurisprudence, three commonly recognized types are Observational Jurisprudence,²⁷ Experimental Jurisprudence,²⁸ and Comparative Jurisprudence.²⁹ Observational Jurisprudence involves the study and analysis of existing legal systems and their principles. Experimental Jurisprudence explores new legal theories and concepts through experimentation and practical application. Comparative Jurisprudence focuses on comparing different legal systems and their approaches.

Jurisprudence can be seen as the science of distinguishing just and unjust laws, as stated by Ulpian.³⁰ It acts as a bridge between law and society and the legal framework with the social context in which it operates. Law does not solely confine to written texts but encompasses various elements such as legislative authorities, the executive responsible for enforcement, and other entities that ensure compliance and sanction for wrongdoers. Together, these aspects provide a concrete basis for the growth and development of law. Through the study of jurisprudence, a comprehensive analysis of law can be conducted, allowing for a deeper understanding of its principles and implications.

Jurisprudence, despite appearing to have limited theoretical value, holds immense practical utility.³¹ In the field of economics, where money, taxation, and currency regulation are prominent, there is a significant potential for corruption and fraudulent practices. To address these issues and regulate the economy, numerous laws have been enacted, such as those pertaining to foreign exchange regulation,³² consumer protection,³³ payment of wages³⁴

²⁷ See, Julius Stone, "The Province of Jurisprudence Redetermined (Concluded)" 7*The Modern Law Review*, no. 4 177-192(1944).

²⁸ "experimental jurisprudence scholars have been studying the law from the outside—theorizing what its doctrines are doing, criticizing its doctrines for what they are not doing—rather than from the inside, helping to sharpen traditional legal analyses" in Roseanna Sommers, "Experimental jurisprudence" 373 *Science*, no. 6553, 394-395 (2021). See for example, Frederick K. Beutel, "Some implications of experimental jurisprudence" 48 *Harv. L. Rev.* 169 (1934); Felipe Jimenez, "The limits of experimental jurisprudence" *Cambridge Handbook of Experimental Jurisprudence, Forthcoming* (2022); David F. Cavers, "Science, Research, and the Law: Beutel's Experimental Jurisprudence" 10 *J. Legal Educ.* 162 (1957).

²⁹ F. C. Auld, "Methods of Comparative Jurisprudence" 8 *The University of Toronto Law Journal*, no. 1, 83-92 (1949).

³⁰ Thomas Erskine Holland, *The elements of jurisprudence* (H. Frowde, 1900).

³¹ Lawrence Maxwell, "The Practical Utility of the Study of the Science of Jurisprudence" 2 *Mich LJ* 305 (1893); See also, B. E. King, "The Concept of a Lawyer's Jurisprudence" 11 *The Cambridge Law Journal*, no. 2, 229-239 (1952).

³² Foreign Exchange Management Act, 1999 (Act 42 of 1999).

³³ Consumer Protection Act, 2019 (Act 35 of 2019).

³⁴ Wages Code, 2019 (Act 29 of 2019).

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land and wealth ceilings, negotiable instruments,³⁵ bonuses,³⁶ insurance,³⁷ and more. Laws related to welfare measures have also emerged in response to poverty and population concerns.³⁸

Jurisprudence brings a methodological,³⁹ organizational, and structural framework to an individual's thoughts and expressions. It does not have an objective approach but has been interpreted and understood differently by various jurists, philosophers, and academics. The understanding of jurisprudence is largely influenced by the socio-legal circumstances prevalent at the time a particular definition or interpretation was formulated. Law is a dynamic concept.⁴⁰ Law keeps changing and with the change and evolution of law the interpretation given to jurisprudence also evolves.⁴¹

Jurisprudence is like a quest for knowledge.⁴² It enables law students to appreciate the intricacies of law and present better arguments. It helps legislators and policy makers to understand the dynamics of the society and make laws that can adapt to the change that the society is experiencing. The foremost of all judges like Justice Cardozo and Justice Bhagwati⁴³ laid emphasis on jurisprudence and strived to make an impact with their analysis of law and their interpretation of the otherwise lifeless words on papers. Due to this understanding, they developed sound legal reasoning, and contributed to the ongoing evolution and improvement of the law.

When studying specific legal subjects like contract law, tort law, and criminal law, the focus is primarily on the provisions outlined in legislation and applying them to practical scenarios. Jurisprudence, on the other hand, delves into the analysis of the underlying principles behind the laws, the historical context in which they were established, and the objectives and motivations behind their creation. In criminal jurisprudence, mens rea is implied because the objective of criminal law is to punish offenders who can be proven to have a guilty mind⁴⁴

³⁵ Negotiable Instruments Act, 1881 (Act 26 of 1881).

³⁶ The Payment of Bonus Act, 1965 (Act 21 of 1965).

³⁷ The Insurance Act, 1938 (Act 4 of 1938), The Life Insurance Corporation Act, 1956 (Act 31 of 1956), The Insurance Regulatory and Development Authority Act, 1999 (Act 41 of 1999) and Motor Vehicle Act, 1988, (Act 59 of 198).

³⁸ The National Food Security Act (NFSA), 2013; The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005; The National Social Assistance Programme (NSAP), 1995

³⁹ Andrew Halpin, *The Methodology of Jurisprudence: Thirty Years off the Point*, 19 CAN. J. L. & Jurisprudence 67 (2006).

⁴⁰ Jaap Hage, and Bart Verheij, "The law as a dynamic interconnected system of states of affairs: a legal top ontology" 51 *International Journal of Human-Computer Studies*, no. 6, 1043-1077 (1999).

⁴¹ Id.

⁴² Benjamin van Rooij, "Behavioral Jurisprudence: The Quest for Knowledge about the Ex-ante Function of Law and Behavior" 22 *Jerusalem Review of Legal Studies*, no. 1, 57-77 (2020).

⁴³ Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation Before the Supreme Court of India" published in V.R.Krishna Iyer, Rajeev Dhavan *et.al.(eds.)*, *Judges and Judicial Power*, 306 (Sweet & Maxwell, London, 1985). Prof. Baxi stated that "The Supreme of India is at long last becoming, after thirty two of the Republic, The Supreme Court for Indians".

⁴⁴ *State of Maharashtra v. Mayor Hans George* AIR 1965 SC 722; In *Russell on Crime*, 11th Edn., Vol. 1, it is stated at p. 64: "... there is a presumption that in any statutory crime the common law mental element, mens rea, is an essential ingredient." In *Sherras v. De Rutzen* [(1895) IQB 918, 15, 921] J. Wright observed:

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and not to punish every person who commits an offense. It ensures that only those with criminal intent are held accountable. While a study of penal provisions may suggest that every wrongdoer should receive the maximum punishment, judges exercise discretion to avoid imposing sentences that exceed what is necessary. The underlying principle is that punishment should be reformatory in nature,⁴⁵ aligning with the values ingrained in Indian jurisprudence and society since ancient times. Jurisprudence provides the foundation for understanding these broader principles and considerations within the legal system that upholds justice, fairness, and societal values.

III. Various Dimensions of Legal Philosophy

Indeed, jurisprudence encompasses various relationships and dimensions, including the relationship between law and custom,⁴⁶ law and equity,⁴⁷ law and language,⁴⁸ law and justice,⁴⁹ law and liberty, law and experience, law and freedom and law and order. Both law and justice serve as the foundations of society, and their absence can lead to social distress. Justice is a concept that is relative in nature, and the test for law is often based on its alignment with justice. Natural law philosophy provides a basis for judging justice, and as Justice VR Krishna Iyer stated, "law exists for the benefit of humanity, rather than the other way around."

Legal philosophy has two dimensions. The first dimension focuses on the development of legal institutions,⁵⁰ the establishment of the state,⁵¹ and the creation of numerous institutions within society. The second dimension deals

"There is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

⁴⁵ *Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287; See also, Divya Yajurvedi and Damodar Hake, "Efficacy of the Reformatory Theory of Punishment in India" 25 *Cardiometry* 368-377 (2022); for global approach see Hamda Akhtarul Arfeen, "Rebooting Criminals: Reformatory Theory vis-a-vis Restorative Justice" 4 *Int'l JL Mgmt. & Human.* no.1, 1367 (2021).

⁴⁶ The relation of law and custom is ancient and intrinsic. See, Henry Sumner Maine, *On Early Law and Custom*. J. Murray, (1890); Melissa Demian, "Dislocating custom" *POLAR: Political and Legal Anthropology Review* 38, no. 1, 91-107 (2015); Paul Bohannan, "The differing realms of the law" *American Anthropologist* 67, no. 6, 33-42 (1965).

⁴⁷ Samuel L Bray and Paul B Miller "Getting into Equity" 97 *Notre Dame L. Rev* 1763 (2021).

⁴⁸ John Gibbons, "Language and the law" 19 *Annual Review of Applied Linguistics* 156-173 (1999); See also, for historical introduction, Peter Goodrich, "Law and language: An historical and critical introduction" 11 *Journal of Law and Society*, no. 173-206 (1984); For "*Language of Law*" approach see, Vijay K. Bhatia, "Language of the law" 20 *Language teaching* 20, no. 4, 227-234 (1987); and Yon Maley, "The language of the law" 11 *Language and the Law* 25 (1994); Clark D. Cunningham, "A tale of two clients: thinking about law as language" 87 *Michigan Law Review*, no. 8, 2459-2494 (1989); For language perspective, see, Deborah Cao, *Chinese law: A language perspective* (Routledge, 2017); Christopher. Hutton, *Language, meaning and the law* (Edinburgh University Press, 2009)

⁴⁹ Costas Douzinas, "Critical jurisprudence: The political philosophy of justice" (2005); See also, Jerold S. Auerbach, *Justice without law?*, Vol. 762 (Oxford University Press, 1984)

⁵⁰ The relationship of law and legal institutions for ensuring effective criminal and regulatory management and order and development, cannot be denied. See Kanishka Jayasuriya, *Law, capitalism and power in Asia: the rule of law and legal institutions* (Routledge, 2006); See also, Jonathan Jackson, "Why do people comply with the law? Legitimacy and the influence of legal institutions" 52 *British journal of criminology*, no. 6, 1051-1071 (2012).

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with the practical application and execution of justice in society.⁵² John Rawls' philosophy of fairness⁵³ revolves around the administration of justice which pertains to the equal distribution of liberties and freedoms in society and equitable distribution of opportunities. Rawls posits that justice is fairness, and fairness leads to transparency, accountability, and good governance within society.⁵⁴ Fairness involves understanding the structural aspects of society, including its social, economic, and political systems.⁵⁵

Open and Free Society

Another idea within society revolves around the concept of an open and free society, where individuals have the freedom to express themselves and participate in public affairs. It recognizes and respects all cultures, values, and ways of life without discrimination. Justice V.R. Krishna Iyer's perspective is referenced in the *NALSA* judgment that:⁵⁶

“The purpose of law is the establishment of the welfare of society —and a society whose members enjoy welfare and happiness may be described as a just society. It is a negation of justice to say that some members, some groups, some minorities, some individuals do not have welfare: on the other hand they suffer from ill-fare. So it is axiomatic that law, if it is to fulfil itself, must produce a contented, dynamic society which is at once meting out justice to its members.”

In an inclusive society, no single idea dominates, and all thoughts are accepted without prejudice. All individuals, regardless of their backgrounds, are considered integral parts of society. The right to respect is an essential aspect of human dignity, and the dignity of one's thoughts is another dimension of this concept. Human dignity⁵⁷ is a process that encompasses the journey from mere existence to realizing one's essence. Jurisprudence revolves around the idea of human dignity,⁵⁸ recognizing its importance in legal discourse. A democratic society serves as

For development approach, *See*, Thomas M Franck, "The new development: Can American law and legal institutions help developing countries" *Wis. L. Rev.* 767(1972); Karl N Llewellyn, "The effect of legal institutions upon economics" *The American Economic Review*, no. 4, 665-683 (1925).

⁵¹ State as regulatory force is need of the ordered society, *See*, Sabino Cassese, "Administrative law without the state-The challenge of global regulation" *37 NYUJ Int'l L. & Pol.* 663 (2004); *See also*, Hans Kelsen, "Law, state and justice in the pure theory of law" *57 Yale LJ* 377 (1947).

⁵²Friedrich Dürrenmatt, *The execution of justice* (Pushkin Press, 2018); *See also*, Leslie Vinjamuri and Jack Snyder, "Law and politics in transitional justice" *18 Annual Review of Political Science* 303-327 (2015); Robert A Kagan, *Regulatory justice: implementing a wage-price freeze* (Russell Sage Foundation, 1978); *See further*, Lindsay F Wiley, "Health law as social justice" *24 Cornell JL & Pub. Pol'y* 47 (2014).

⁵³John Rawls, "A theory of justice" (Cambridge, 1971); *See also*, John Rawls, *Justice as fairness: A restatement* (Harvard University Press, 2001) also, John Rawls, "Justice as fairness: Political not metaphysical" *Equality and Liberty: Analyzing Rawls and Nozick* 145-173 (1991); for a discussion *see*, Andreas Follesdal, "John Rawls' theory of justice as fairness" In *Philosophy of Justice*, 311-328. (Dordrecht: Springer Netherlands, 2014).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 at Paragraph 127

⁵⁷ Aharon Barak, *Human Dignity - The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015)

⁵⁸ Leslie Meltzer Henry, "The jurisprudence of dignity" *160 U. Pa. L. Rev.* 169 (2011); For contribution of Indian Supreme Court, *See*, Maxine D Goodman, "Human dignity in supreme court constitutional jurisprudence" *84 Neb. L. Rev.* 740 (2005).

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an example of the aforementioned principles of human respect and human participation in society.⁵⁹ These principles emphasize the value of human dignity and promote the idea that individuals should be treated with respect and have the opportunity to participate in shaping their society. Man exists for the well-being of fellow human beings, and life is not solely about restrictions but also about achieving eudemonia (flourishing) and a hedonistic approach to human experiences.

Law, too, is designed for the benefit of humans, and its role is influenced by the nature of society. Within society, there are elements that regulate the nature, behavior, interpretation, and phenomenological aspects of law.⁶⁰ These factors shape the relationship between law and society,⁶¹ reflecting the interplay between legal norms and societal dynamics.⁶²

Justice is a fundamental value in society and plays a crucial role in maintaining social order and harmony.⁶³ In the context of the Indian constitution, social justice is addressed in several articles, including Articles (15-18).⁶⁴ These articles aim to ensure equal rights and opportunities for all individuals, regardless of their caste, religion, gender, or other social factors. The administration of justice requires a judicial process,⁶⁵ and it can be categorized into criminal and civil. The criminal process deals with offenses committed against society and the civil process deals with disputes among individuals. In a particular legal system, judicial process seeks to ensure fairness,⁶⁶ uphold rights,⁶⁷ and resolve conflicts⁶⁸ with its various models.

Jurisprudence provides the foundation for legal principles and guides the application of laws in various contexts. Law and society are commonly dominant.⁶⁹ Law serves as a mechanism to regulate human behavior. It establishes

⁵⁹Christoph Möllers, "Democracy and human dignity: limits of a moralized conception of rights in German constitutional law" 42 *Israel Law Review*, no. 2, 416-439 (2009).

⁶⁰Anatoliy Kostruba, "Law enforcement as a form of realization of right: Phenomenological analysis experience (Civilized aspect)" 5 *Revista de Derecho Civil*, no. 1, 177-190 (2018); See also, Michael Salter, "Towards a phenomenology of legal thinking" *Journal of the British Society for Phenomenology* 23, no. 2, 167-182 (1992).

⁶¹David M. Trubek, "Back to the future: the short, happy life of the law and society movement" 18 *Fla. St. UL Rev.* 1 (1990).

⁶²See, Gunther Teubner, "Breaking Frames: the global interplay of legal and social systems" 149-169(1997).

⁶³For a discussion on the topic, See, Emil Brunner, *Justice and Social Order* (James Clarke & Co., 2002)

⁶⁴Article 15 of the Constitution of India provides "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". Article 16 of The Constitution of India is about "Equality of opportunity in matters of public employment"; Article 17 of The Constitution of India envisions "Abolition of untouchability"; Article 18 The Constitution of India states about "Abolition of titles".

⁶⁵Benjamin Nathan Cardozo, *The Nature of Judicial Process*, (1921); John Chipman Gray also had similar ideas. He set forth three ways of approaching legal decision making: the historical; the systematic, analytic or dogmatic; and what he called deontological or ethical law as it ought to be; John Chipman Gray, *The Nature and Sources of the Law* (Routledge, 2019).

⁶⁶Lea Brilmayer, "Rights, Fairness, and Choice of Law" 98 *The Yale Law Journal*, no. 7, 1277-1319 (1989).

⁶⁷John Finnis, *Natural law and natural rights* (Oxford University Press, 2011)

⁶⁸Carrie Menkel Meadow, "From legal disputes to conflict resolution and human problem solving: Legal dispute resolution in a multidisciplinary context" *Journal of Legal Education* 54, no. 1 (2004): 7-29.

⁶⁹Peter Fitzpatrick, "Law and societies" 22 *Osgoode Hall LJ* 115 (1984); See also, Brian Z Tamanaha, *A general jurisprudence of law and society* (Oxford University Press, 2001).

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rights and obligations, and enforces social norms. And societal values, customs, and public opinion shape the interpretation of laws. Understanding of social change,⁷⁰ social stratification⁷¹ and social structure⁷² is crucial for the legal system to adapt and address emerging needs and challenges.

The study of jurisprudence also involves exploring the relationship between customs and public opinion.⁷³ Customs reflect the social practices and traditions within a community, while public opinion represents the collective beliefs and attitudes of the society. Analyzing this hermeneutical ontological relationship helps in understanding the dynamics between customary practices and evolving societal norms, thus shaping the interpretation and application of the law.

It is true that perfection is not typically achievable in human life or culture. Human societies and legal systems are complex and inherently imperfect. Jurisprudence, as the study and interpretation of law, often grapples with finding a balance between the ideal or perfect legal system and the realities of the imperfect social system it operates within.

Social change refers to the transformation of society, including changes in its social structure, values, and beliefs.⁷⁴ It encompasses various dimensions, such as economic, political, and social aspects of a society. As societies evolve and face new challenges, their institutions, including constitutional frameworks, often need to adapt to meet the aspirations of the people they serve. Supreme Court observed in basic structure case that⁷⁵

“Every Constitution is expected to endure for a long time. Therefore, it must necessarily be elastic. It is not possible to place the society in a straightjacket. The society grows, its requirements change. The Constitution and the laws may have to be changed to suit those needs. No single generation can bind the course of the generation to come. Hence every Constitution, wisely drawn up, provides for its own amendment.”

Gap between law and society is created by executing agencies. Faith in the law is core issue of civilized society. Trust of law is depending on the philosophical and sociological discourse of legal principles, legal rules and social rules.

IV. Crossroads of Law and Sociology

The sociology of law is indeed a relatively recent field of inquiry, emerging in the late 19th century as a discipline that explores the relationship between law and society.⁷⁶ While Auguste Comte, a prominent figure in the early

⁷⁰John Henry Merryman, "Comparative law and social change: on the origins, style, decline & revival of the law and development movement" *The American Journal of Comparative Law* 457-491 (1977).

⁷¹Reva B Siegel, "Discrimination in the eyes of the law: how color blindness discourse disrupts and rationalizes social stratification" 88 *Calif. L. Rev.* 77 (2000).

⁷² David Nelken, *Beyond law in context: developing a sociological understanding of law* (Routledge, 2017).

⁷³ Frederick Schauer, "The Jurisprudence of Custom" 48 *Tex Int'l LJ* 523 (2012).

⁷⁴ Sally Falk Moore, "Law and social change: the semi-autonomous social field as an appropriate subject of study." 7 *Law & Soc'y Rev* 719 (1972); See also, John Henry Merryman, "Comparative law and social change: on the origins, style, decline & revival of the law and development movement" *The American Journal of Comparative Law* 457-491(1977); See also, L. Sharyn, Roach Anleu, *Law and social change* (Sage, 2009); Joel F Handler, "Social movements and the legal system: A theory of law reform and social change" 241-256 (1978).

⁷⁵ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 at page 473.

⁷⁶Eugen Ehrlich, *Fundamental principles of the sociology of law*, Vol. 5. (Transaction Publishers, 1975); See also, Georges Gurvitch, *Sociology of law* (Transaction publishers, 1942); Eugen Ehrlich and Nathan Isaacs, "The sociology of law" 36 *Harvard Law Review*, no. 2, 130-145 (1922); Philip Selznick, "The sociology of law" 12 *J.*

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development of sociology, wrote during a time when French jurists associated law with the Napoleonic Code, the explicit connection between sociology and law came later.

Emile Durkheim,⁷⁷ Karl Marx,⁷⁸ Max Weber⁷⁹ and Eugen Ehrlich⁸⁰ made significant contributions to the sociology of law. These sociologists sought to understand how social factors and dynamics influenced the creation, implementation, and function of legal systems. They examined how social structures, norms, and power relations shaped legal institutions and practices.

The theory can justly be regarded as classic in the sociology of law a field of enquiry which matured as a discipline only in the late 19th century at the hands of Emile Durkheim, Karl Marx, Max Weber, Eugen Ehrlich and was later more specifically nurtured by Karl Llewellyn, Roscoe Pound, Georges Gurvitch and Julius Stone among other. Bentham brought that central tenant of sociology of law into focus by his insistence that the object of the government and law ought to be the greatest happiness of the community or the happiness of society. This notion about sociology of law examines how law and legal systems can contribute to societal well-being, social harmony, and the fulfillment of collective interests.

Philosophy serves as a cultural element within society, while law encompasses ideological, philosophical, and sociological foundations. Law functions as both an instrument for maintaining social stability and a catalyst for bringing about change. It can be viewed as a dialectical science, as it interacts with society in an opposing manner. In an ideal scenario where society conducts itself righteously, there would be no need for extensive regulation through law.⁸¹ However, controlled change requires a comprehensive understanding rooted in philosophy, sociology, and realism.

Legal Educ. 521 (1959); A. Javier Treviño, *The sociology of law: Classical and contemporary perspectives* (Routledge, 2017).

⁷⁷Emile Durkheim, *Emile Durkheim on institutional analysis* (University of Chicago Press, 2013); See also, Alan Hunt, "Emile Durkheim-Towards A Sociology of Law" *The Sociological Movement in Law* 60-92 (1978); Jonathan H. Turner, "Emile Durkheim's theory of social organization" 68 *Social Forces* , no. 4, 1089-1103 (1990); Steven Lukes and Andrew Scull, *Durkheim and the Law* (Bloomsbury Publishing, 2017).

⁷⁸ See, Karl Marx and Friedrich Engels, *The communist manifesto* (Penguin, 2002) and, Karl Marx, and Serge L. Levitsky, *Das Kapital: A critique of political economy* (H. Regnery, Washington 1965); See also, John A Gueguen, "Origins: Karl Marx on Justice and Law" 14 *Persona & Derecho* 279 (1986); Vincent, Andrew "Marx and law" 20 *JL & Soc'y* 371 (1993); Betty A Sichel, "Karl Marx and the rights of man" 32 *Philosophy and Phenomenological Research*, no. 3, 355-360 (1972).

⁷⁹ Max Weber, *From Max Weber: essays in sociology* (Routledge, 2009); See also, David M Trubek, "Max Weber's tragic modernism and the study of law in society" 20 *Law & Soc'y Rev.* 573 (1986); David M Trubek, "Max Weber on law and the rise of capitalism" *Wis. L. Rev* 720 (1972).

⁸⁰ Eugen Ehrlich, *Fundamental principles of the sociology of law* Vol. 5. (Transaction Publishers, 1975); See also, Eugen Ehrlich and Nathan Isaacs, "The sociology of law" 36 *Harvard Law Review*, no. 2, 130-145 (1922); for commentary and discussions, See, David Nelken, "Eugen Ehrlich, living law, and plural legalities" 9 *Theoretical Inquiries in Law*, no. 2, 443-471 (2008); Cotterrell, Roger, "Ehrlich at the edge of empire: centres and peripheries in legal studies" 3 *Queen Mary School of Law Legal Studies Research Paper* 75-94 (2009); Marc Hertogh, ed. *Living Law: Reconsidering Eugen Ehrlich* (Bloomsbury Publishing, 2008); Brian Z Tamanaha, "A Vision of Social Legal Change: Rescuing Ehrlich from "Living Law"" 36 *Law & Social Inquiry*, no. 1, 297-318 (2011).

⁸¹ William Twining, *General Jurisprudence Understanding law from a Global Perspectives* 226 (Cambridge University Press, 2009)

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Growth, social change, and development are fundamental aspects of life. Law represents the very essence of the human condition and human existence. Any form of injustice goes against humanity as a whole. The sociological approach to law is centered around establishing a harmonious and sophisticated relationship between law and society.

All types of injustice are against the humanity. Sociological approach is based on the smooth, swanky and ritzy relationship between law and society. Sociological approach of law is about the balancing of interest in the society. There are three types of conflicts in the society, conflict of interest, conflict of values and conflict of reason; and law has to adjust all these conflicts in a humanitarian way. Philosophy of law is internally or externally connected with the reasoning, discretion and wisdom. Sociology of law is relying on social change, social ordering, social planning and social engineering.⁸²

Law can be changed but we cannot change the culture of the society. The transformation of the society is a cultural element. Laws can be same in its developmental stage but different in their application, execution and implementation. Law is a social matrix, heuristic and algorithm of society. Theory has become the material forces when it grapples the masses.

The power of theory becomes evident when it resonates with and mobilizes the masses. When ideas and theories connect with and inspire the general population, they can transform into material forces capable of driving social change.

Law exists for human beings. Society is a lab of law where the law has been tested with socio-economic telescopes. Law came into existence for the welfare of the society. Judicial activism is a bridge between constitutional values and dynamic society. Judicial activism promotes human life in a more dignified and meaningful life. Society has legitimate grievances when normative laws are not adequately applied. A robust and rights-based society requires a combination of legislative arrangements, constitutional structures, and social frameworks. These elements are crucial for creating a vibrant and just society. It has been held that:⁸³

“The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.”

V. CONCLUSION

In the era of globalization, the concept of law and development has gained significant importance. Upendra Baxi,⁸⁴ while examining the impact of globalization, made the following observation:

“Judges are explicitly and implicitly asked to make the Indian Constitution compatible with the sacred text of globalization. In this process a whole new order of juristic and judicial ingenuity is summoned; a disposition of globalization has to be accommodated somehow within the constitutional utopia.”

The law is a dignified means for social change and transformation. It serves as the matrix, heuristic, and algorithm of the legal and social system. Furthermore, it is a tool for the liberation, salvation, and emancipation from human suffering. The development of society can be achieved through the implementation of law, as it regulates almost all areas of development. It is crucial to inquire whether these laws promote or hinder development, as it is the need of the hour.

⁸² Roscoe Pound, "The lawyer as a social engineer" 3 *J. Pub. L.* 292 (1954); also *See*, William L Grossman "The legal philosophy of Roscoe Pound" 44 *Yale Lj* 605 (1934).

⁸³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

⁸⁴ Upendra Baxi, "Judicial Activism: Legal education and Research in Globalized India" 46 *Mainstream* 16 (February 24, 1996).

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Law is a socially driven force that encompasses various aspects of holistic social development. In the present state of knowledge and the role of law in society, it is evident that studying law in isolation based solely on doctrinal principles and philosophical inquiries is insufficient. Law is intricately linked to the social context and should be examined in terms of social dynamics. Therefore, empirical, pragmatic, realistic, and practical approaches have become imperative for the study of law.

Law, culture, and development constitute essential components of civilization. When a society relies solely on punishment, fines, and penalties for regulation, it represents the lowest level of human achievement. Law exists to foster civilization, to humanize and democratize society. It serves as a tool for social sensitivity, aiming to address and alleviate social problems and suffering. The legal system should prioritize the sensitization of these issues, making them its manifesto. Law incorporates human emotions, reasoning, discretion, and morality. Therefore, it is crucial to approach the study of law with scientific rigor, examining it systematically and in detail to encompass all its dimensions. A scientific study of law enhances our understanding of its true nature and helps eliminate any ambiguity.