

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 2 | Issue 2 [2024] | Page 270 - 281

© 2024 International Journal of Legal Studies and Social Sciences

Follow this and additional works at: <https://www.ijlsss.com/>

In case of any queries or suggestions, kindly contact editor@ijlsss.com

THE SIGNIFICANCE OF HISTORY IN THE EVOLUTION OF LEGAL SYSTEMS AROUND THE WORLD

- SAKSHI BALI¹

ABSTRACT

Law is an ancient term, and as the society developed with time, we needed the law to regulate the society. But then it begs a question from where these laws originate. To get an answer to this question we need to study the historical background of our society so that we can gain valuable insights into the evolution of legal systems and the ways in which they shape our society. This research paper sort to provide the information that how history and law are interlinked and also the development of law through various historical events and occurrences that happened around the world which ultimately led to drastic changes and to its consequence the origination of ideas like Equality, Fraternity, Liberty, Social Justice, Democracy, Human Rights and Humanitarian Law, Employment Law and Industrial Action etc. It sorts out to provide the information that both history and law are reflections of each other and it is impossible to understand law and legal trends of any period, without learning and understanding the real-life history during the period. Thus, in this research paper we will discourse about the relation between law and history with its significance and meaning and it will also help us to know the philosophy of different thinkers about the definitions of Law and History and its relevance to our society.

Keywords: History, Law, Revolutions, Nationalist Movements, Equality, Liberty, Fraternity, Human Rights and Humanitarian Law, Democracy.

INTRODUCTION

History and law are deeply intertwined, and the study of history is crucial to understanding the development and evolution of legal systems. Without history, law is a set of bare principle devoid of social meaning and culture orientation. History aims at helping students to understand the present existing social, political, religious and economic conditions of the people and without the

¹ University Institute of Laws, Panjab University Regional Centre, Ludhiana, Punjab.

knowledge of history we cannot have the background of our religion, customs, institutions, administration and so on. Whatever is the present today being history for tomorrow, it is the present of the past. Current life, trends and views cause change in laws, and laws cause changes in everyday life. Thus, Life, law and history are reflections of each other². Laws are created when numerous events or things occur over time, and these occurrences came to be known as history. Even in law precedents, history is considered as an important source as the law is based on the history of a country and their people, by knowing the history of certain country one can have a clear idea about how that law was made³. Hence, it could be concluded that laws are either byproducts of history or that the current rules will stifle future occurrences that will eventually become history.

MEANING OF HISTORY AND LAW

HISTORY

History is a guide to navigation in perilous times. History is Who we are and why we are, the Way we are.

~David McCullough

As historians **James Davidson** and **Mark Lytle** put it, "History is not what happened in the past; rather it is the act of selecting, analyzing, and writing about the past."

History is a means to understand the past and present. The different interpretations of the past allow us to see the present differently and therefore imagine—and work towards different futures. It is the basis of all subjects of study and also, it's the analysis and interpretation of the human past enabling us to study continuity and changes that are taking place over time. It is an act of both investigation and imagination that seeks to explain how people have changed over time. The meaning of the term '**history**' and **the nature of history** in general are certainly some of the sensitive problems that have remained highly debatable among historians and allied scholars. In fact, the debate on "**what is history?**" has continued without resolution for several centuries. The

² Sikandar Ali Usman, The Relationship Between History and Law, Page 1 (2021)

³ Wilson, HH, The Relationship of History to the Study and Practice of Law (1887). Transaction and Report, Nebraska State Historical Society.

term '**history**' has been defined or explained differently by different people at different times and under different circumstances. Following definitions indicate the meaning and scope of History.

- **Burckhardt**: "History is the record of what one age finds worthy of note in another."⁴
- **Henry Johnson**: "History, in its broadest sense, is everything that ever happened."⁵
- **Francesca Morphakis** (*PhD Candidate in History at the University of Leeds*): "History is the study of people, actions, decisions, interactions and behaviors". According to him, History's primary purpose is to stand at the center of diverse, tolerant, intellectually rigorous debate about our existence: our political systems, leadership, society, economy and culture.⁶
- **Marcus Colla** (*Departmental Lecturer in European History at Christ Church, Oxford*): "History is fundamentally a problem-solving discipline". According to him, the historians should embrace the fact that the study of the past could be oriented to the needs of the present.⁷

According to **Faridah Zaman**, *Associate Professor of History, University of Oxford*, "A common starting point might be that histories are useful for telling us how we got 'here'".⁸ Such histories help us know – how did we come to organize our societies and political systems in the ways that we have now. Such an understanding of history conceals within itself a more exciting and fraught – though not necessarily antithetical – possibility. Just as we might look to the past to better understand the myriad, complicated ways in which our present world came to exist, historians might also set themselves the task of illuminating worlds unrealized and of other presents that might have existed, the inevitable changes in human affairs in the past and the ways these changes affect, influence or determine the patterns of life in the society. Thus, history helps us to understand the present-day problems both at the national and international levels accurately and objectively.

LAW

Law is a term that does not have an all-around acknowledged definition, however, one definition is that law is an arrangement of standards and rules which are implemented through social organizations to oversee conduct. Laws can be made by councils through enactment, the official

⁴ Pallavi Talekau, Dr. Jyotrimayee Nayak, Dr. S. Harichandan, *Concept of History*, Page 3,5.

⁵ Id.

⁶ E.H. Carr, *What is History?*, Volume 70, Issue 8, *History Today*, Page 1 (2020).

⁷ Id.

⁸ Id.

through announcements and guidelines, or judges through restricting points of reference. There are some following definitions of law by different philosophers:-

- **Holland** says that law is: “A standard of outside human activity authorized by the sovereign political specialist”.⁹
- **Salmond** says: “Law is the collection of standards perceived and connected by the State in the organization of equity”.¹⁰
- As indicated by **Woodrow Wilson**: “Law is that segment of the built up propensity and thought of humankind which has increased particular and formal acknowledgment in the state of uniform principles sponsored by the specialist and intensity of the administration”.¹¹
- **John Austin's** law definition states "Law is the aggregate set of rules set by a man as politically superior, or sovereign to men, as political subjects." Thus, this definition defines law as a set of rules to be followed by everyone, regardless of their stature.¹²
- **Hans Kelsen** created the '*pure theory of law*'. Kelsen states that law is a 'normative science'. In Kelsen's law definition, the law does not seek to describe what must occur, but rather only defines certain rules to abide by.¹³

So from the above said definitions we can say that law must have three attributes which are given beneath:-

- Law has its sovereign authority,
- Law is accompanied by sanctions,
- The command of law should compel a course of conduct. Being a command the law must flow from a determinate person or group of persons with the threat of displeasure if it is not obeyed.

HISTORICAL LAW DEFINITION

Friedrich Karl von Savigny gave the historical law definition. His law definition states the following theories.¹⁴

- Law is a matter of unconscious and organic growth.

⁹ Dr. V. N. Paranjape, Studies in Jurisprudence and Legal Theory, (Central Law Agency, 9th Edition, 2022)

¹⁰ Id.

¹¹ The Supremacy of Law, 6th August 2019.

¹² By Moh Aqib Aslam, Nature, Sources and School of Law Under Jurisprudence.

¹³ Hans Kelsen, Pure Theory of Law, (The Law Book Exchange Limited, Clark, New Jersey, 2005)

¹⁴ Dr. V. N. Paranjape, Studies in Jurisprudence and Legal Theory, (Central Law Agency, 9th Edition, 2022)

- The nature of law is not universal. Just like language, it varies with people and age.
- Custom not only precedes legislation but it is superior to it. Law should always conform to the popular consciousness because of customs.
- Law has its source in the common consciousness (Volkgeist) of the people.
- The legislation is the last stage of lawmaking, and, therefore, the lawyer or the jurist is more important than the legislator.

REALISTIC DEFINITION OF LAW

The realist law definition describes the law in terms of judicial processes. **Oliver Wendell Holmes** stated - "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."¹⁵

According to **Benjamin Nathan Cardozo** who stated "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law."¹⁶

As the above law definitions state, human behavior in the society is controlled with the help of law. It aids in the cooperation between members of a society. Law also helps to avoid any potential conflict of interest and also helps to resolve them.

THE EVOLUTION OF LAWS THROUGH HISTORY

With the transmogrification of humans several changes in society took place. These changes didn't happen in one day but to make it happen there is a lot done by human innovators. The series of developments have played an important role in expansion of society and its growth which helped to lay down the basis of the current existing laws.

RENAISSANCE

Since the world was ruled by kings and emperors. These kings and emperors loved fighting each other to see who could have the biggest empire, and who could become the most powerful.

¹⁵ By Moh Aqib Aslam, Nature, Sources and School of Law Under Jurisprudence.

¹⁶ Id.

The “*Race of Power*” by them had led to so many wars and also the inauguration of different laws around the world. At that time there was a strict social hierarchy in the society. The class distinction was severe between the social classes. *But here, it begs the question of why people had accepted this system for thousands of years and why they tolerated this discrimination?*

The answer to this would be that most of the people believed that the rulers were chosen by God to rule. This is also known as the ***Doctrine of Divine Rights of Kings***, which means that the kings are selected by God and that is why there should be no accountability of a king. The Clergies of all religions claimed that they were chosen by God to be guardians, therefore the other common people believed that it was because of the sins of their past lives.

But later during the *16th century* people asked themselves should the existing system continue and who gave the right to the ruler to rule? This Era is known as ***Age of Enlightenment or Renaissance***. The Renaissance arrived at different countries at varying times- Italy was the first to experience this movement in the *14th century*, after the end of the Middle Ages, and it reached its height there between the 1490s and the 1520s, a period referred to as the High Renaissance. The Renaissance is the period in European history marking the transition from *Middle Ages to Modernity* (a new learning wave). It places strong emphasis on dialectical reasoning to extend knowledge by interference and to resolve contradictions, verbal debates were given priority and an attempt was made to see from different points of view by applying glasses of reasoning and intellect. In humanism, human centric life was given priority instead of later life, divinity or godly affairs. More importance was given to karma instead of Dharma. Education, classical art, literature and science were appreciated. Instead of theology and superstition there were more emphasis on rational thinking. Literature was started to develop in local vernacular languages instead of the language of the church and it became vaster with development of printing press in the *Mid 15th century*. *Thus, renaissance laid down the foundation of brainpower and wisdom which further laid down the future of the existing laws. In the current legal systems we see more human valuation, individualism and societal norms, the need to protect each other's rights, individual freedoms and liberties, right to life and the right to live with dignity which evolved through renaissance itself.*

HOW DIFFERENT REVOLUTIONS AND THE SPIRIT OF NATIONALISM HELPED IN THE DEVELOPMENT OF THE CURRENT LEGAL SYSTEMS

In Europe the Reformation Movement had inspired the emergence of secular nation states and a simple life and service of poor in church. State, politics and economy had played a role to dissociate religion from them which helped to spread a wave of nationalism after getting freedom from the single authority of the catholic church. This “wave” further helped to inspired French Revolution, American Revolution and Industrial Revolution which played a greater a role in globalization and connecting the whole world.

AMERICAN REVOLUTION

The United States of America (USA) was the first country to adopt *democratic republican system*. Most of the revolutions in Europe were influenced by the American Revolution. The American Continent was discovered by the Spanish traveler **Christopher Columbus in 1492 AD**. He landed in Caribbean islands and named them ‘*West Indies*’. Later a geographer **Amerigo Vespucci** surveyed the entire continent and it was named ‘**America**’. The Europeans called the native inhabitants of the ‘New World’ as ‘*Red Indians*’. A race ensued among European powers to exploit the local natural resources of America. This started the process of colonization of America which saw intense competition among the European countries. 13 Colonies of America were colonized by Britain and were located on the Eastern Coast and these colonies were known as ‘*New England*’. Between 1775 - 1781 these colonies declared War against Britain which is also known as the “**American War of Independence**”. Britain was conclusively defeated and America was declared independent in 1783 under the Paris Treaty. By 1730s a distinct American identity was already born in North American Continent. The American society was more liberal and progressive in comparison of the European society. Religion was treated as ‘*Private Practice*’ in America. The absence of religious violence in the country can also be explained by the fact that the settlers were inspired by the *Renaissance Movement*. More emphasis was given to rational thoughts and scientific thinking and were spread through Harvard University (1639), College of William and Mary (1693), Yale University (1701) & University of Pennsylvania (1745). These universities played a crucial role in spreading ideas such as **Republicanism, Elections, Human Rights, Free Speech etc.** The Constitution of America was created on September 17, 1787 in the aftermath of the American Revolution and came into effect on March 4, 1789. It followed the

Federal Presidential Republic system. So consequently, it could be concluded that the current existing laws in the American society is a result of historical events and occurrences.

FRENCH REVOLUTION

The French Revolution was a period of radical political and societal change in France that began in 1789 and ended with the rise of **Napoleon Bonaparte**. The French society as divided into 3 estates namely; *Members of Clergy, The Nobility and The “commons” (Peasants and workers)*. All the burden of taxes were on the commons which means that the system was highly exploitative and extremely unequal. This inequality among different classes of people led to French Revolution. Philosophers like Rousseau rejected absolute monarchy and promoted **doctrine of equality and people’s sovereignty**. Inspired by Rousseau other enlightenment thinkers also proposed the philosophical and political idea. Rather than ancient regime (feudal orders) more significance to the ideas of **equality, freedom of speech, popular sovereignty and representative government**. These ideas laid the foundation of the 1st French Constitution in 1791 in which the middle classes got the dominant position and the system shifted from *absolute monarchy to constitutional monarchy*. A new government was formed known as ‘*National Convention*’ comprised of *Girondins (liberal) and Jacobins (Radical)*. Jacobins were the extreme radicals and they dominated the National Convention government till the start of 1793. Their policies included the **redistribution of the wealth** of Aristocratic and Nobility. It confiscated the land of churches and nobles and also **abolished slavery**. The National Convention government remained in power from 1792 to 1795 which was the most violent phase of French Revolution, then in 1795 new constitution was drafted in which **voting rights were given to all Middle Classes and a new government was established known as the ‘Rule of Directory’**. The directory government was fully corrupt despite arrangement for checks and very soon, it lost the support of French people. On 9 November 1799 the coup of 18 Brumaire replace the five directors with the French consulate, which consisted of three members. One of the three members was Napoleon Bonaparte who declared himself as Emperor of France in 1804 after conducting a plebiscite which again led France to a *Monarchial system*.

Therefore, it could be concluded that the French Revolution was a watershed movement that gave birth to new ideas inspired from **liberalism, enlightenment, and democracy, and it also helped to create a wave of revolutionary furore in Europe to raise voices against their monarchs. It ended feudalism and broadly defined individual liberties and created ideas of future advancements. The 1795 French constitution laid down the right to divorce to**

women and also the right of women to gain education and work opportunities which were not being provided to them earlier.

INDUSTRIAL REVOLUTION

The Industrial Revolution began in earnest by the 1750-60s in Britain. Britain had more than sufficient coal and iron resources and because of its of Seaports – Manchester and Liverpool, the trade was open for whole of the year. Agricultural production also witnessed, rapid growth in Britain during *16th and 17th century* due to use of new technology- Crop Rotation technology, Sowing seeds through drill, use of fertilizers and improvement in animal breeds, irrigation through canals etc. Profit from agriculture was invested in the industrial sector like scientific invention, textile, coal and iron industry, transportation and communication etc. which led to the expansion of International Trade, Surplus Capital, Joint Stock Company and Banks.

The profits due to industrialization were creating inequalities in society and to resolve such problem trade unions were created for *fixing working hours, increase in wages, educational and health benefits to the workers etc.* By the Chartist Movements the workers demanded *Economic and Political Rights* and through the Labor Movement *Socialism* was increasing. Because of Industrial Revolution there was a development in *Democratic Political Principles*. The General Public demanded *Individual Freedom and Fundamental Rights*. *Liberal Political thoughts* were preferred over *feudalism and aristocracy* in politics. Due to all such demands parliamentary reforms were done in England in the *19th century* and in 1832 *all the Capitalist and Middle Classes got political and social rights in Britain.*

Just like the above-described revolutions, the nationalists movement occurred in other parts of the world as well.

- During the **Unification of Germany**, as nationalism was rising with economic development, people started to demand the *abolition of Monarchial Government* and the *establishment of Democratic Government*. The Revolutionaries also asked for *civil rights* which were given to them and the *King Frederick William IV* was forced to make liberal policies. The Revolutionaries also decided to build a parliament in Frankfurt to represent all German states.
- The French Revolution gave birth to the Republican Movement in Italy. The **Unification of Italy** was the *19th century* political and social movement that resulted in the consolidation

of different states of the Italian peninsula. It created *trade, law code and the abolishment of feudal practices and establishing a Democratic Republic Nation.*

- **The Russian Revolution** of 1917 was one of the most explosive political events of the *20th century*. It led to *abolition of autocracy* and the *Tsar Nicholas II* empire converted to Union of Soviet Socialist Republic (USSR). *Private property was abolished and economic planning was started by the state. 'To Work' was made a constitutional right and also it became the duty of the state to provide employment to all and focus on education.*

THE RELATIONSHIP BETWEEN HISTORY AND LAW

Laws are made when various events or things happen with course of time, these events later came to be known as history. So, it could be said in both ways, either laws are byproducts of history or like present-day laws will curb the future events that later becomes history. As described above we saw that the different events of history has helped to give rise to the different pertaining laws in the society, and it should be noted that **'Constitutions'** are often shaped by historical events, such as revolutions, wars, and social movements, that have influenced the values and principles enshrined in the legal system. Understanding the historical context in which a constitution was drafted is essential for interpreting its provisions and understanding its intended meaning.

- During Renaissance a different wave of critical thinking, reasoning, analysis and scientific knowledge blown out in the society which gave importance to human lives and their abilities to think rationally. The Renaissance helped to inspire various revolutions and nationalist movements. Therefore, during the American Revolution more liberal and progressive notions were adopted and the ideas like Republicanism, Elections, Human Rights, Free Speech were unfolded and put to action which helped to reflect the American Constitution in the present time.
- During the French Revolution, philosophers like *John Locke* opposed the ***Doctrine of Divine Right of Kings***, and said that everyone is equal. No person has the right to rule over others. And if someone is given the power to govern, they should take permission from the people first. This was the original idea of democracy which evolved in those times and now it could be seen in most parts of the world like India, Germany, Switzerland, Norway, Australia, Canada, New Zealand etc. to protect the natural right of the citizens.

The concept of democracy gave power to the people to govern themselves and the right to overthrow the government if they are not able to fulfil the needs and aspirations of the society.

- During the Industrial Revolution the workers faced inequalities and to get rid off from all such sufferings they started with the Labor Movements. As these movements increased, the whim and needs of these laborer's were put forward and they were given the rights demanded by them. All these movements and demands of the labors helped to create a new international body (ILO) for them which looked over their rights at the global level. The ***International Labor Organization (ILO)*** is devoted to promoting social justice and internationally recognized human and labor rights, setting labor standards, developing policies and devising programs promoting decent work for all women and men.

As we saw that Laws are often a reflection of the values, norms, and beliefs of a society at a particular point of time and by studying history, we can gain insight into the social, political, and economic factors that have influenced the development of all the legal systems. The ideas for the current existing laws such as liberty, equality and fraternity, humanity, freedom of speech etc. came from these historical events itself which helped in shaping the legal structures of the society.

Many legal scholars look to history to understand the underlying principles that have shaped legal systems and to evaluate the effectiveness of different approaches to law. Historical perspectives can provide valuable insights into the philosophical foundations of law and help guide discussions about legal reform and development. Many legal systems are shaped by historical traditions that have evolved over time. For example, the common law system, which is followed in countries like the United States and England, is based on legal principles and precedents developed over centuries. These traditions are rooted in historical practices and have a significant impact on how the law is interpreted and applied today. In this escalating world, it really became essential to understand the historical development of these legal principles and how they have been applied in the past for making precise decisions and arguments in the present time.

CONCLUSION

In conclusion, history and law are closely connected and a deep understanding of history is essential for comprehending the development, application, and interpretation of legal systems. By studying the historical context of laws and legal principles, we can gain valuable insights into the evolution of legal systems and the ways in which they shape society. Accordingly, it becomes

essential for the legal practitioners, scholars and researchers to study the relationship of law with history to understand the nature of polity, development of freedom of human rights, the pattern of administration of justice and the nature of legal and judicial institutions for in depth knowledge of the society.

REFERENCES

1. ADJEI ADJEPONG, “What is History?: The Science of the Past in Perspective”, International Journal of Trend in Scientific Research and Development (ITSRD), (2020)
2. Article on Sources of Law, pg-1, [JURISPRUDENCE INTERPRETATION & GENERAL LAW], available at: <https://www.cacsnetwork.co.in> (last visited June 17, 2024)
3. Mrs. Richa Singh (Assistant prof.), History and Law, available at: <https://msbrijuni.ersity.ac.in> (last visited June 17, 2024)
4. E. H. Carr, What is History?, Volume 70 Issue 8, [History Today] (2020), available at: <http://www.historytoday.com> (last visited June 18, 2024)
5. The Inter-Relationship between Law and Society, available at: <https://www.iilsindia.com> (last visited June 18, 2024)
6. Sikandar Ali Usman, The Relation Between History and Law, available at: <https://www.researchgate.net> (last visited June 17, 2024)
7. Aadesh Singh, World History (June 19, 2024, 9:30 PM), available at: https://www.youtube.com/@StudyIQ_IAS
8. Arjun Dev, History of the World, (Orient Black Swan, 1st edn., 2009)
9. B.N. Mani Tripathi, Jurisprudence The Legal Theory, (Allahabad Law Agency, 19th edn., 2022)