



Pratidhwani the Echo

A Peer-Reviewed International Journal of Humanities & Social Science

ISSN: 2278-5264 (Online) 2321-9319 (Print)

Impact Factor: 6.28 (Index Copernicus International)

UGC Approved, Journal No: 48666

Volume-VII, Issue-IV, April 2019, Page No. 216-224

Published by Dept. of Bengali, Karimganj College, Karimganj, Assam, India

Website: <http://www.thecho.in>

Influence of Popular Culture in the Modern Law Making Process

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Abstract

Be it any part of the world, law making process is always influenced by the dynamics of the society. The dynamics in the society on other hand, is governed by various factors of which popular culture, commonly referred to as “Pop Culture”, serves as an important factor. There may be numerous meanings associated with the term ‘popular culture’ depending on who is defining it and in what context. In common parlance, it may be referred to as the vernacular or common people’s culture that predominates in a society at a given point of time.

In the course of this paper we will see how the popular culture, broadly accepted by a large population has an impact on the formation of laws globally and domestically. There is no denying that the media such as television, music, movies have also contributed in framing and developing the popular culture across the world. Be it the case of promoting gay relationships or preventing sexual abuse, the social messages sent out through these media influence not only the people but also our policy makers and legislators. This in turn has the effect of influencing the law making process throughout the world.

This paper seeks at understanding what is meant by popular culture, its acceptance by a large section population and endeavor to determine how the popular culture in the world impacts the fresh legislations made and in general, influences the law making process.

Introduction: Understanding the Meaning of Popular Culture: Simply put, pop culture relates to the culture that is widely favoured or well liked by many people. As Brummett explains in *Rhetorical Dimensions of Popular Culture*, *pop culture involves the aspects of social life most actively involved in by the public.*¹ As the ‘culture of the people’, popular culture is determined by the interactions between people in their everyday activities: styles of dress, the use of slang, greeting rituals and the foods that people eat are all examples of popular culture. *Popular culture is also informed by the mass media.*²

¹ Popular Culture Association/American Culture Association: Lifetime Memberships are now available in the Popular Culture Association and/or the American Culture Association., 32 *The Journal of Popular Culture* 163–163 (1998).

² *Ibid.*

Whilst the above-mentioned definitions are more common way to understand the meaning of pop culture, there is another way in which pop culture can be defined – it is the culture that left after we have decided as to what is high culture. According to this definition, popular culture refers to inferior culture that is what is not determined by the elite and educated class of people.

Customs and Traditions as Popular Culture: It is pertinent to note that ‘popular culture’ is the culture or tradition followed by a majority of population; it is further notable that the law-makers are also a section of the same population. Hence it is indisputable that some if not all would also be impacted by the popular notion held by the rest of the large section of population. Their belief in a particular notion shall impact their decision for the formulation of any law. This is something which we have seen throughout our history. An illustration of the same is the practice of “sati” in India in early 1800s. How did this practice come into being in the first place? It wouldn’t be far from the truth to say that this practice was the result of the popular belief amongst Indians during those times, according to which it was a bad omen for a woman to survive the death of her husband. So strong was the belief of the people in this ancient tradition, that they developed a practice of the wives being set on fire on the funeral pyre of their husbands.

Here the practice of Sati was the popular culture existent in the 19th Century and it led to great thinkers like Raja Ram Mohan Roy and SaraswathichandraVidyasagar, revolting against it. The result of these oppositions was that the Law of the country banned “sati”. Similar is the case of female infanticide. In the present times, practices such as Sati and female infanticide have been banned by the Indian Law. This is a clear example of how customs and traditions form the part popular culture which in turn help in formulating new laws for the betterment of the society at large.

Another example is that of the caste system existent in India during the Aryan period. Initially according to this system, people were classified as Brahmins, Kshatriyas, Vaishyas or Shudras according to the professions that they practiced. It was a matter of choice of vocation pursued by an individual. However generations later, what was found that sons of a Brahmin ended up being a Brahmin and that Kshatriya, a Kshatriya itself. This became the popular practice and culture of the society. A given profession now customarily followed by all generations of that family (“Kul”). This Popular culture unfortunately gave way to discrimination in the society to the detriment of the Shudras. Society was now divided into upper and lower castes. This continued till the reformative movement took place in India which impacted the law making process. The Indian Constitution grants to all its citizens the fundamental right against being discriminated against on the basis of cast, creed, race etc.³This is yet another instance where customs generated through pop culture has led to the making of new laws.

³ Article 15, Constitution of India.

Now that we have established that popular culture is nothing but the customs and traditions prevalent at a particular point of time in a given area, let's try and understand what the term "custom" actually means. Custom is regarded as an authentic expression of needs and values of the community at any given time.⁴ According to Webster Dictionary Custom can be defined as "*a usage or practice common to many or to a particular place or class or habitual with an individual*" and "*a long-established practice considered as unwritten law*"⁵ The Statute of International Court of Justice, defines Custom as a source of International Law.⁶ The said provision also explains that customary law is created by the actual actions of states (called "state practice") when they demonstrate that those states believe that acting otherwise would be illegal.⁷

These definitions succinctly makes a suggestion at the inter relation between popular culture and customs at one hand and between customs and law making process at the other hand. To illustrate the same, consider the case of ambassadors. For thousands of years, ambassadors have been given protection by countries and their rulers. In ancient Greece and Rome, ambassadors from another country were not harmed while on their diplomatic missions, even if they represented a country at war with the country they were located in. Throughout history, many countries have publicly stated that they believe that ambassadors should be given this protection. Therefore, today, if a country harmed an ambassador it would be violating customary international law. Similarly, throughout modern history, states have acknowledged through their actions and their statements that intentionally killing civilians during wartime is illegal in international law. Thus, customs and popular culture have also shaped the International Humanitarian law.

Impact of Television and Movies on Law Making System: Lately, the field of law and mainstream popular or as we commonly call it POP culture has made a stride as to something worth some serious study. Law professors are drawn into the material because it appears to be both excessively rich and excessively pervasive, making it impossible ignore and disregard.

The relationship between pop culture and law is somewhat complex. This culture is sending out messages through music, TV series, movies etc to the audiences who perceive it as a mirroring reality as to what is actually happening in the world. Especially when pop culture portrayed as drama has been incorporated on a legal setting, people perceive it as this is how law actually works which can be really misleading most of the times.

⁴Marlon Konchellah, LEGAL MIND CUSTOMS AND TREATIES AS A SOURCE OF INTERNATIONAL LAW (1970), <http://mkonchellah.blogspot.in/2011/03/customs-and-treaties-as-source-of.html> (last visited Feb 19, 2019).

⁵ Custom, Merriam-Webster, <http://www.merriam-webster.com/dictionary/custom> (last visited Feb 19, 2019).

⁶ Article 38(1)(b) of ICJ Statute.

⁷ Ibid.

Before going through examples the authors will try to explain the relationship between law and justice. According to Oxford dictionary, justice is defined as “*Administration of law or equity: Maintenance of what is just or right by the exercise of authority or power; assignment of deserved reward or punishment; giving of due deserts.*”

From a legal perspective law and justice appears to be closely related. Justice forms a larger subset under which law comes. Justice has to do more with what is right and wrong and Law is considered with written black letters of justice which has to be followed by people and non-obligation to which would result into punishment. Punishment is rendered because that’s justice for not following the law.

Now we will see how pop culture has influenced the idea of justice and how various interpretations have come from it.

Let’s consider the batman and superman story structure: The two heroes epitomize the cultural paradox that have been constructed by their respective mythologies. With his immigrant beginnings, patriotic red and blue costume, almost unlimited super powers, and unwavering commitment to "truth and Justice" he stands for and represents the hope and idealism and offers much more realistic construction whereas born of violence, Batman adopts the mantle of the bat to strike fear into street criminals like the one who murdered his parents. His dark gray and black costume, his reliance on technology, and his willingness to resort to violence to accomplish his ends suggest that the new face of crime necessitates a more retributive, street level form of justice.

We can in a way say that superman connotes the idea of justice being what is right and wrong and instead of going after punishing everyone who has done the wrong, he wants to stop the wrong as whole. He thus tilts towards the reformative justice.

Whereas batman is the very epitome of retributive justice. He is the paragon of justice in the corrupt world. He not only fights crime but is one of the mortal superheroes and also the coolest with super nerdy gadgets.

Their stories: Superman was not originally from this planet, he was an extraterrestrial. He was born on planet Krypton. He was sent to earth on a rocket where he was adopted by Kent family and named Clarke and lived in Smalville. As he grew older he found his superpowers that he had super strength, super speed, x-ray eyesight, impenetrably strong skin, and the ability to fly. As he continued to mature, he learned to use these powers for good. His father, on his deathbed, implored Clark to "become a powerful force for good" and warned "there are evil men in this world...criminals and outlaws who prey on decent folk! You must fight them...in cooperation with the law!"⁸. Orphaned for the second time, Clark moved to Metropolis and got a job as a reporter on a newspaper, which, he felt, would keep him in touch with those who need his help. He vowed to spend his days fighting crime and injustice, and helping those in need.

⁸National Periodical Comics, 1971, p. 207

As we could see Clarke or Superman was the super hero who lived amongst humans and fought against the crimes not crossing the law. He defined or limited his activities in the black letters of law. Superman works within the boundaries of the law and in cooperation with official law enforcement. Superman fights for justice as defined by lawmakers.

Batman's story began when he was eight years old. The young Bruce Wayne, son of wealthy socialites, witnessed the killing of his parents during a botched robbery on the way home from the theater. Standing over his parents' graves, he proclaimed "*I swear I'll dedicate my life and inheritance to bringing your killer to justice...and to fighting all criminals! I swear it!*"⁹ As we can see here Batman's idea of justice started with more of personal claim. Rather than justice the idea was of vengeance for the evil that had happened. Again our society need not get the idea that justice incorporates vengeance too. For example just because someone's daughter or sister is raped, justifying it with raping the rapist daughter or sister is not justice or even morally correct. The idea of retributive justice is entirely and completely a wrong.

Also Batman was technically very advanced, completely rich almost owned the city and together with his detective friend Gordon would help to fight the crimes. We can see his role being represented as the meaning-quadrant of 'enforce law/criminal' which is the opposition to a corrupt cop. Likewise the law/enforcer, in Police Commissioner Gordon, is opposed by the anarchist criminality of the Joker. When writer's talk of Batman and the Joker being different sides of the same coin, that coin is in how they relate to law as both being not-legal. Batman fights to protect the innocents from an impotent system; whilst the Joker is almost post-moral thought the intensity of his insanity. Together, Batman and Gordon are a different reflection on being a 'detective' for good from within and outside of the system.¹⁰

Batman has always worked outside the boundaries of the law and considers himself an arbiter of justice. Due to the distrustful of law enforcement in his city, Batman takes it upon himself to uphold justice and fight crime. Batman is a vigilante himself and fights for justice on his own terms and in the context of what he considers to be just. Batman is motivated by his own values and his obsession with vengeance, while Superman is motivated primarily by the American justice system and democracy. Both superheroes are fighting for the same things—justice and social order, but their methods in responding to crime could not be more different.

We have many drama series now which portray violence and their arena of what's right and wrong. "Game of Thrones", a dramatic series full of extreme violence and nudity and the fact the fan following that series has is in millions. Even children are at that early age

⁹Batman #47, 1948 in Kane, 1988

¹⁰Is Popular Culture influencing our perception of Justice?, :: CULTURE DECANTED ::(2014), <https://culturedecanted.com/2014/12/13/is-popular-culture-influencing-our-perception-of-justice/> (last visited Feb 19, 2019).

witnessing such horrors in the name that this actually happened in our world. Definitely it will have an impact on young minds and their idea of justice and to top it all we actually have series now like “how to get away with murder” and “Dexter” where murdering the criminals by no emotion man and his urge to kill has been justified. It’s horrific to think that young minds would perceive this as a form of justice.

Though there are positive aspects to pop culture too. There are various Television series, movies and shows the central plots in which revolve around homosexuality. The popularity of this media has also helped in shaping the international culture. The fact that some jurisdictions across the world have infact accepted gay relationships and same sex marriages, which was once a taboo in the society, shows how pop culture is influencing the law making process. To illustrate, in America, the acceptance of same sex marriages, have increased after the popular show “Modern Family” and shows like the “The Ellen Degenres Show”. A 2012 *Hollywood Reporter* poll found that 27 percent of likely voters said that depictions of gay characters on TV made them more pro-gay marriage, and there are news accounts of people crediting their newfound sympathy toward gay people to *Modern Family*.¹¹

Obergefell v. Hodges,¹² is a case in United States where same sex marriages have been legalized in a 5–4 decision that held that “*fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution*”.

Film and TV have helped generate this idea of gay couples being normal. But this idea of normal is a dangerous one. Incestuous relationship in Game of thrones cannot be said to be normal. Hence the idea of what is right and wrong and what is just is greatly influenced by the pop culture in today’s era.

We also have movies like *To Kill A Mockingbird* (1962) , the movie was an instant classic, where a lawyer Atticus Finch rises above the leud racism of Depression-era in Alabama to defend a crippled black man (Brock Peters) falsely accused of rape by a lonely, young white woman. Finch’s quiet courage is seen through the eyes of his 6 year old daughter of Scout (Mary Badham), and embraced by an emerging generation of lawyers as the epitome of both moral certainty and unyielding trust in the rule of law.

Philadelphia another one of the classics was a movie that recognized issues like HIV/AIDS, homosexuality and homophobia. In 1993 a movie on such issues was quite pragmatic for that era. But the way it changed people minds and started the process of accepting HIV and homosexuality was impressive.

¹¹ Is Popular Culture influencing our perception of Justice?, :: CULTURE DECANTED ::(2014), <https://culturedecanted.com/2014/12/13/is-popular-culture-influencing-our-perception-of-justice/> (last visited Feb 19, 2019).

¹² 56 U.S 2015

Another example being “Amistad”, a movie that talks about people as slaves and that their owners could demand property rights for them. Though the movie had violence and nudity, but the overall effect was understandable when the lawyer frees the slaves. Also scenes depicting where the pregnant slaves child is born in the ship and she doesn’t want her child to witness that life, she takes her child with her and jumps out of the ship. We get an idea how atrocious the lives of these slaves were and how the courage of one lawyer to stand by something which just, right, moral and most of all required at that particular time where no one stepped up or even considered these so called Black people as even humans, to bring about a change in this world greatly influences minds.

Also we have depictions like “V for Vendetta” where justice has been depicted in the form of vengeance. Here we see another side of popular belief of justice, though the debate of it being right or wrong is entirely a different issue, but changes like this which bring a sense of revolution under people to fight for their lives is ecstatic to watch and kind a patriotic too.

The lists can go on. Since the very inception people are watching and following popular trends. Be it fashion, smoking the ideas and philosophies and many other revelations which have an effect on minds. Branches of movies, music and dramas are changing drastically and are now more accessible to people with globalization and advent of internet and its fast reaching hands to every section of the society.

People migrating to different countries, want to know what the country’s history was, what the perception of law for them is. Popular culture is becoming the fastest growing way where world are uniting to each other’s traditions, cultures and laws. It as we have seen having both pros and cons, but in an overall effect has a positive impact on modern law. Gay marriages have been legalized in countries like USA, Netherlands, Belgium even South Africa for that matter. In a country like India which is very primitive and orthodox in its opinions is seeing and witnessing changes with gay parades and revolution for the same starting. AIDS which was perceived as a taboo, and literary their patients are shunned as outcasts, these people have better lives now and regarded as a part of society because of this popular culture and their AIDS patients acceptance dramas. Adoption and surrogacy laws have been formulated in various countries. People are becoming more open to the idea and there is a change seen in the world.

Impact of Pop Music on Law Making Process: Plato in his famous book *The Republic*, wrote that “The ways of poetry and music are not changed anywhere without the change in the most important laws of the city.”¹³

It is an undisputable fact that popular music artists have a huge fan following internationally. Be it rock music or rap, the popularity of the corresponding musicians transcends beyond national borders irrespective of the genre. Music by itself is hardly a detrimental element for the society, but there are certain aspects of popular music that has

¹³<http://spectator.org/articles/40193/music-and-morality>
Volume- VII, Issue-IV

become inseparable from it – like the persona and lifestyle of the pop artists. People especially the younger crowd, who are the fan followers of pop music, inevitably have the tendency to ape these artists. If this had been confined to body piercings and dubious sense of dressing, it wouldn't be much of a problem. But that is not the case. Lots of these artists are involved in drug abuse. It would not be entirely wrong to say that their disposition makes the aspect of drug abuse seem 'cool' specially amongst the youth. This has led to the increased stringency of the laws against drug abuse across various nations.

Conclusion: There has been a hypothesis going around over the last decade as to considering the erosion of morals as to the perception of justice in the present generation. There has been influential shift in cultural and social fabric with the advent of globalization. The increased impact that POP culture has towards this generation can be amongst many reasons for the changed perception or to put it in better words transforming the perception of justice. Law making process has eventually transformed through these changing ideas of morality, the distinction between right and wrong, how certain wrongs have been justified through necessity of time and how sometimes a revolution is actually required to force our law making authorities to actually bring about that change.

Also according to the authors POP culture being a sought of practice accepted by a majority of the population can be said to have transformed into a customary practice. Be it the fashion trends by various artists, or be it the problems of drug abuse in the pop music industry, one does find that that a preconceived notion brews in the minds of the people about the lifestyle of these artists. Even the practices like Sati, which were embedded in our customary practices and recognized as something moral was changed through a revolution which was the result of the progressiveness amongst people at large – something that can also be referred to as popular thought process or popular culture.

So we do find that pop culture has a significant influence in the world on law and law making mechanism across nations, however such influence cannot be attributed only to negative developments in the society. As has been pointed out earlier, a wide acceptance towards homosexuality, treatment towards HIV patients, awareness about their legal rights and the society today, raising their voices not against but in favour of these people can largely be said to be attributed to popular culture.

Considering the discussion so far, it may well be concluded that popular culture may generate either positive or negative thought process. The same may be done by customs and traditions that come to be followed by people at large or through the influence of pop media viz. television, movies and music. In both cases, such pop culture has the effect of influencing the law making process. Naturally, the laws of any nation are representative of the needs of the society at that given time. The ideas of justice and morality form an essential part of societal norms and these norms are influenced by the customs – the common, popular culture. Pop culture can thus be said to have brought about many social changes directly or indirectly which then transform into legal changes. These legal changes are obviously brought about through fresh legislations.

However what needs to be noted that the idea of good or bad culture is subjective. The question that thus arises is that is the impact of pop culture of law making process an advantageous proposition? Considering the examples discussed throughout this paper, it may be said that despite the subjectivity of perception of pop culture, it is possible to put this culture to the benefit of the mankind by following the Benthamite principle of ‘greatest happiness of greatest number of people’. In doing so, pop culture’s impact on law can be given a positive direction, ensuring progressive governance of a progressive society.

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