

The Extent of Cultural Impact on Legal Institutions

Aadya Sinha

Student, Step by Step School

Abstract:

This paper aims to examine the importance of restriction on cultural practices, taking the examples of the cultural relativity between India and Saudi Arabia. It explores interrelationship between culture and law, both important for maintaining order and will look at which is overpowering the other around the issues of violent challenging, laws reducing cultural autonomy and law hurting cultural beliefs. Attested by different perspectives, this report attempts to analyse the arguments in support and in opposition to the question, "Can culture overpower law" on a global level, to understand whether or not culture has an overpowering effect on law.

Introduction:

Living standards in the world today are growing, because of which individuals are offered more and more choices. This causes the need to choose to arise.

However, this is nothing new. The constant power struggle between two options pitted against each other is an age-old conflict. One of the oldest perhaps being the power struggle between culture and law - which to choose, which to follow and which one can overpower the other?

Both culture and legality exert power, they create rules which govern the lives of individuals, the choice though causes issues such as laws hurting cultural beliefs, violent challenging of unpopular laws and laws reducing cultural autonomy arise. For example, France continues to enforce a national ban on full face coverings in public (Pew Research Centre) which restricts religious freedom. Such clashes form the need to create a balance.

Cultural and legal institutions must analyse clashes and impose restrictions. Culture, although fluid, can overpower law without restrictions. For instance, some cultures practice female infanticide, but laws restrict such practices. Culture, defined as "the set of values or conventions associated with a particular field," exists everywhere (Merriam-Webster). In contrast, law, defined as "any judgement, order, ruling, or other restriction of Governmental Authority," regulates cultural practices (Law Insider). The question arises: "Can culture overpower law?"

Culture's impact is absorbed, while law is learned, leading to different impacts. Culture shapes interpretations and compliance with laws, influencing actions like honour killings and child marriage globally (Coram International). Law restricts these practices, emphasising the importance of compliance. In specific, this paper aims to examine the importance of restriction on cultural practices, taking the examples of the cultural relativity between India and Saudi Arabia. It explores interrelationship between culture and law, both important for maintaining order and will look at which is overpowering the other around the issues of violent challenging, laws reducing cultural autonomy and law hurting cultural beliefs. Attested by different perspectives, this report attempts to analyse the arguments in support and in

opposition to the question, “Can culture overpower law” on a global level, to understand whether or not culture has an overpowering effect on law.

How can culture overpower law?

Individuals often develop a deeper understanding of culture from a young age, as cultural beliefs are instilled during formative years when minds are impressionable. In contrast, legality is typically introduced closer to adulthood. Consequently, cultural beliefs may become deeply ingrained, leading individuals to prioritise these beliefs over laws (Law Insider). Namely, societal notions such as "women belonging to the kitchen" may be internalised more quickly than an understanding of the right to equality (The Guardian).

Cultural practices, often carrying religious and social significance, are passed down through generations, leading individuals to continue following them regardless of conflicting laws. In many families, cultural impact is a prominent consideration, with an emphasis on prioritising culture over other factors, including the law.

According to Time, advocates of cultural autonomy argue that the imposition of external legal standards infringes upon cultural autonomy, causing the prioritisation of cultural values over legal frameworks, thereby causing culture to overpower law. Alternatively, individuals may feel compelled to adhere to cultural practices even if they may conflict with the law due to fear of social exclusion and ostracization. Additionally, according to UNICEF, weak legal enforcement can allow cultural practices that violate the law to go unpunished, undermining the authority of law and allowing culture to overpower legal frameworks.

Legal systems that are not understood by citizens, or in cases where there’s a lack of awareness around certain laws, may lead to communities not being fully aware of the legal implications of their practices, allowing cultural practices that are against the law to persist due to ignorance. For example, at least 1.5 million girls under 18 get married in India (UNICEF).

Laws may be enacted to address harmful cultural practices, such as female infanticide and child marriage in India, for which bans on sonography for prenatal sex determination and Section 12 have been legally applied, respectively (National Institution for Health). While some believe this limits cultural autonomy, it’s essential to restrict practices that do more harm than good. However, it’s important for laws to control this, as without it, societies would become increasingly unfair.

What are the consequences of culture overpowering legal restrictions?

Dr. Jennifer Mervyn, an expert on indigenous issues asserts that crime, influenced by collective beliefs, is damaging to society. Cultural influence shapes responses to crime, with different cultures viewing it as a violation of divine laws. In cultures where culture supersedes law, such as Aboriginal indigenous cultures, criminal behaviour is seen as a breakdown of community relationships, emphasising the need to repair relationships rather than impose exile or incarceration (Mervyn, 193). Showing cultures influence.

When culture dominates law, it can perpetuate social inequality, contradicting principles of equality, human rights, and gender equity, leading to community marginalisation and undermining efforts towards inclusivity. This can result in oppression and lower living standards. Prioritising culture over law can suppress individual rights, allowing harmful practices to persist without legal consequences, perpetuating human rights abuses and hindering efforts to ensure well-being (UNICEF).

Moreover, allowing cultural practices to persist without consequences can erode accountability, leading to a belief that communities can act outside the boundaries of the law without facing repercussions. This weakens trust in the legal system and may encourage illegal actions, contributing to a society rife with crime and lacking belief in the law (Mervyn, 191).

Global Perspective:

Many globally hold views on whether culture can override law. Believers in cultural knowledge might prefer customary law over statutory law, resulting in different legal rules for those following different cultural laws. Cultural relativists advocate for cultural autonomy, opposing the idea that law may restrict culture, and believe cultural practices should be seen in their own contexts. In countries like India and Tanzania, cultural laws hold sway in family law, leading to legal pluralism. Activists worldwide push for legal changes due to cultural shifts, highlighting culture's impact on law.

Despite cultural influence on law, international bodies like the ICC and the UN establish rules that prioritise legal justice while incorporating cultural elements. These rights, enshrined in international treaties, deem practices violating them unlawful and subject to punishment. This demonstrates law's dominance over culture. Moreover, international trade operates under legal principles transcending cultural boundaries, illustrating law's prevailing authority in such contexts.

National Perspective:

The national perspectives that address the agenda for this report vary from Saudi Arabia, the law of which is customary – there being a lack of restriction, contrasting with India which is a legally pluralistic country in which the overpowering effect of culture may or may not be present in different contexts.

Saudi Arabia's legal framework is based on Islamic Law, Sharia - significantly influencing aspects of life, law and personal conduct (International Journal of Law). Conservative Islamic traditions prevalent in Saudi Arabian society guide the implementation of laws, impacting areas such as gender segregation, dress codes and social behaviours (Life in Saudi Arabia). In cases, cultural practices may appear to overshadow certain legal principles, particularly in areas such as women's rights, freedom of expression, and the treatment of religious minorities (Pew Research Centre).

Saudi Arabia's cultural influence is evident in the strict adherence to the country's laws, based on Islamic beliefs. Even foreign individuals living in Saudi Arabia must comply with Islamic laws, including prohibitions on pork and alcohol consumption, with violations carrying the risk of severe punishments (GOV.UK). Non-Muslims are not allowed to build temples, churches, or other religious structures in Saudi Arabia, and non-Muslim practices must only be performed in private. (Middle East Monitor). These restrictions affect non-Muslims and foreigners, underscoring the dominant influence of culture in Saudi Arabia on various groups.

In India, cultural factors can influence the implementation of laws, especially in personal laws regarding marriage, divorce, and inheritance, reflecting the country's legally pluralistic nature. While the law typically supersedes conflicting cultural practices, there are instances where cultural beliefs impact legal decisions or lead to amendments to accommodate cultural sensitivities. For example, the banning of female foeticide demonstrates the law overpowering culture.

Shifts in culture like movements for LGBTQ+ rights, led to instances of culture overpowering law, such as section 377 being abolished by the Supreme Court of India (Indian Code). The diversity in the relationship between culture and law in India is evidence in the BJP's interesting stance on same-sex

marriage. Here, the party ensures that it does not lose support of the LGBTQ+ community while avoiding the alienation of conservative voters. Furthermore, India's legally pluralistic nature is reflected in its laws specifically designed for smaller communities such as Muslims; while other communities without special sections are required to rigorously follow the law.

Courses of Action:

Countries across the globe along with institutions like the United Nations must take numerous measures to ensure action.

Firstly, to strengthen individual rights and to prevent legality posing dominance against culture, citizens individually and citizen forums should actively advocate for cultural shifts in law. Laws which restrict individual religious freedom and cultural autonomy must be opposed in a concerted manner by these forums.

Secondly, at the national level, governments and lawmakers need to recognise the sentiments of their citizens around culture as these are an integral part in shaping individual beliefs. Hence if culture is given its due importance when laws are framed, compliance to laws may become more voluntary instead of forced. This reduces conflict too.

Thirdly, to offset the second point mentioned above, legal professionals must be intentionally cultural sensitive which may be done through education and training. This must be integrated into existing legal studies frameworks to reduce biases within the system which would ensure a fair understanding of both culture and law.

Source Evaluation:

The information collected varies in reliability. While most resources include specific dates, boosting their reliability, they often exhibit a bias favouring the notion that culture obscures a comprehensive understanding of law. The chosen sources, authored by specialists in criminology and cultural studies enhance the authenticity of the materials. For instance, Mohamed Babar, a professor of comparative and international criminal and Islamic law, provided valuable insights into Sharia Law and its interaction with cultural beliefs. Additionally, United Nations, a highly reputable platform, published documentation of resolutions made by member countries, offering a global perspective on the topic.

I utilised a report published by Georgetown University, associated with the Yale Journal of Law, to gain statistical insight into the topic. However, since the report was written in 2001, it may not reflect current cultural changes. I also considered sources like Al Jazeera, but acknowledged potential reliability issues due to censorship.

Also referencing "Indian in Saudi Arabia" to understand non-Muslim perspectives, but noted its lack of authorship and date. Furthermore, I found that some websites describing Saudi Arabian laws focused more on opinions than facts. In contrast, "Introduction to Criminology" by Dr. Shereen Hassan, a criminology PhD and experienced professor, provided valuable insights based on qualitative research methods. My source on Boston University was written in 2021, making it relevant to today's times and reliable as written by individuals well educated in the field – while also containing various citations.

Personal Perspective and Conclusion:

Living in culturally diverse India, I've always believed in the power of culture. However, I didn't fully grasp the implications of cultural rules leading to crimes that hinder societal development. Before my

research, I had limited knowledge of how cultural beliefs shape law, beyond my family's emphasis on culture. While my belief in culture's influence wasn't wrong, I now understand its greater impact on law. I've realised the urgent need for laws, despite conflicting with cultural sentiments. Culture can do harm and legal systems must minimise these effects.

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