

## IS LAW SPIRITUAL?

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### Abstract

Today, major disciplines (including psychology, philosophy, science, etc.) are seeking to forge a deeper connection with spirituality/spiritual values. Emanating from these efforts are clues about the role of spirituality as an inspiration, a fertile source, and a benchmark for research, policy-making, and reforms.

In the case of law/the law, scholars explore its relationship with spirituality in light of diverse topics including human rights, crime prevention, family relations, humanitarianism, development, education, security, conflict resolution, and freedom. A few of these works offer fascinating insights, and a few emphasize the need for more detailed analysis.

This chapter seeks to highlight a few aspects of the relationship between law and spirituality. First, it highlights the importance being given to spirituality or spiritual values across disciplines, including law. Second, it aims to map the influence of spirituality in the working of laws and legal systems. This exercise will be undertaken in light of the expressions such as spiritual needs, spiritual rights, the spiritualization of law, etc. Third, the chapter raises a few questions of conceptual and practical importance.

**KEYWORDS:** Law, Spirituality, Spiritual Rights, Divine, Faith, Reforms.

### Introduction

Today, it is no longer unrealistic to pose a question about the spiritual nature of law.<sup>1</sup> Nor is it unrealistic to advance and protect the spiritual interests of individuals and societies. The concerns, if any, pertain mostly to the subject matter of study i.e., spirituality.<sup>2</sup> With its vast landscape of meanings, values, and practices, spirituality demands an approach that is transcendental and exploratory.<sup>3</sup> Across disciplines, there is a great longing for understanding

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<sup>1</sup> In this chapter, the term "law" includes codified law including provisions of international and domestic laws. In addition, it also covers legal and policy interventions made under different fields of law.

<sup>2</sup> In this chapter, the term "spiritual" refers to a set of meanings about individuals and societies (for example, all beings are spiritual in nature and spirituality is the essence of human life etc. ). In addition, it also includes a reference to spiritual values and terms such as spiritual development, etc.

<sup>3</sup> A dive into the world of spirituality and law is likely to take one to a world of concepts and meanings arising from non-legal settings. For example, Clark while discussing the intersectionality of law and spirituality, refers to

spirituality and spiritual values. The research and explorations into the world of spirituality are led mostly by the search for benchmarks to determine the depth, scope, and impact of spirituality in the world and in the everyday lives of people.

While speaking of the law, its entire domain including the philosophy of law, the rules, the interpretations, and reform interventions can be seen coming under the influence of spirituality. As explained by Domingo, spirituality is an autonomous and fertile source of legal inspiration, in which not just meaning and reason but consciousness and purpose, goodwill, and unity play an important role.<sup>4</sup>

## About Spirituality

*Spirituality* is a word attributed with many meanings. To a few, spirituality is about living in accordance with certain values. To others, it is about *searching* for higher values or *truth* about life.<sup>5</sup> Irrespective of what meaning is attributed to the word, there are a few questions that are most commonly raised, including what does it mean to be spiritual? Where do spiritual values come from? How does spirituality manifest in one's life? Are spirituality and religion the same? Is spirituality the absence of materialism, etc?

Today, *spirituality* has been universalized as a subject matter of study, experimentation, measurement, and assessment across various disciplines.<sup>6</sup> As explained by Josephson, the interest in the inner landscape of individuals is no longer simply philosophical, it is rather experimental.<sup>7</sup>

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the psychological concept of self-transcendence experienced through mystical and emotional peak experiences. See K.E. Clark, *Demarginalizing The Intersection Of Spirituality And Law: Oppositional Cultural Practice Theory, Self-Transcendence, And Social Change*, 40(2) WESTERN NEW ENGLAND LAW REVIEW 225, 229 (2018). Also see a report of the New Zealand Law Commission which refers to spiritual values as those "typically seen as passed down from ancestors, enforced by the spirit world, and directed to maintaining social cohesion". See New Zealand Law Commission, *Converging Currents: Customs And Human Rights in the Pacific*, STUDY PAPER 17 (2006).

<sup>4</sup> Rafael Domingo, *Why Spirituality Matters for Law: An Explanation*, 8 (2) OXFORD JOURNAL OF LAW AND RELIGION 326, 329 (2019).

<sup>5</sup> On spirituality, Buzzard writes, some have viewed it primarily as a rejection of this world, thus making it an abstention from worldly practices. For others, spiritual life is built around the study of the scriptures and a life of prayer in the form of daily devotions. Lynn Robert Buzzard, *The Quest For Spirituality*, 3 CHRISTIAN LEGAL SOCIETY QUARTERLY 3, 3 (1982).

<sup>6</sup> Underwood writes about the qualitative research being undertaken on spirituality in everyday life. An example cited in the work is the Daily Spiritual Experience Scale (DSES), an instrument being used in health and other settings, designed to provide a self-report measure of spiritual experiences as experienced in daily life. DSES includes a sixteen-item scale inclusive of constructs such as awe, gratitude, mercy, sense of connection with the transcendent, compassionate love, and desire for closeness to God. See Lynn Underwood, *Ordinary Spiritual Experience: Qualitative Research, Interpretive Guidelines, and Population Distribution for the Daily Spiritual Experience Scale*, 28(1) ARCHIVE FOR THE PSYCHOLOGY OF RELIGION 181-218 (2006).

<sup>7</sup> Brian Josephson, *Physics And Spirituality: The Next Grand Unification?* 22 PHYS. EDUC15,19 (1987). Available at

The idea supporting these designs for measuring spirituality is that spirituality is a lived experience of individuals, and communities, reflected deeply in their actions, thoughts, and decisions.<sup>8</sup> Further, spirituality is an "important foundation for human individual development."<sup>9</sup>

The various studies in spirituality are thus led by several ideas and considerations involving the exploration of spiritual values, experiences, and practices of individuals. A few studies are also catering to forging a cross-cultural view on spirituality<sup>10</sup>, and others on mapping the role of spirituality in law, policy, and other interventions.<sup>11</sup> While all disciplines would offer a unique perspective on matters related to spirituality, the following objectives are integral to most:

- a. To discover the *spirit* in the spirituality of individuals and societies.
- b. To engage in the process of identifying and honoring spiritual values, for introducing positive interventions in the field.
- c. To retain the integrity of spirituality as a distinct subject matter as that of morality, law, religion, and others.

## Spirituality and Law

The theme of spirituality and law is about the relationship between law and spirituality, particularly the extent to which the law accommodates the spirituality of individuals and societies in its work. To explore the relationship, one can delve into the domain of legal philosophy, legal rules, interpretations, and reform agendas.

In this regard, Flamingo captures the essence of the relation between law and spirituality in the expression "spiritualization of law"<sup>12</sup>. According to Flamingo, most legal developments imply

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<http://Www.Tcm.Phy.Cam.Ac.Uk/~Bdj10/Articles/Physicsandspirituality.Pdf>

<sup>8</sup> In the field of neuroscience, studies are being designed to understand the influence of spirituality/spiritual beliefs in matters of healing and recovery. See Brigham And Women's Hospital, Brain Circuit For Spirituality Identified, 2021. Available at [Ampproject.Org](http://Ampproject.Org)

<sup>9</sup> Kaili Chen Zhang, Charlene Tan, *Exploring the Spiritual Needs of Adolescent Girls, Religion & Education*, 37(2) RELIGION AND EDUCATION 146, 148 (2010).

<sup>10</sup> Simranjit Khalsa, Brenton D. Kalinowski, Elaine Howard Ecklund, *Indian Scientists' Definitions of Religion and Spirituality*, 11 RELIGIONS (2020). Available at <https://www.mdpi.com/2077-1444/11/7/355>

<sup>11</sup> One example is the field of business ethics and management. In the field of business, concepts such as the "spirituality of the workplace" are taken into consideration (a) individual spirituality i.e. self consciousness, and (b) workplace spirituality i.e. the care one gives to others. These concepts are being employed for re-designing the workplace of business enterprises. See Putu Indah Rahmawati, Min Jiang, Alexandra Law, Agung Suryawan Wiranatha and Terry Delacy, *Spirituality And Corporate Social Responsibility: An Empirical Narrative From The Balinese Tourism Industry*, 27(1) JOURNAL OF SUSTAINABLE TOURISM 156, 159 (2019).

<sup>12</sup> *Supra* note 4.

some degree of spiritualization of the law and evolve through spiritualization in many different ways, such as (i) promoting the dematerialization of the legal system, (ii) encouraging the limitation of domination, (iii) inspiring the reduction of coercion, (iv) stimulating the primacy of human communion and love, (v) provoking a stronger interaction between human and non-human animals and the environment, and (vi) increasing respect for the law and legal systems. Flamingo's contribution comes in the form of benchmarks or parameters that can be used to assess the spiritualization of law.<sup>13</sup>

On spirituality, Maples writes about the overlaps in the fields of spirituality, law, morality, and religion, all of which have been seen to play an integral role in the life of people and societies.<sup>14</sup> The following are a few themes that allow for a closer look at the relationship between law and spirituality. While making a specific reference to human rights, the following themes explore concepts such as spiritual needs, spiritual rights, the sacredness of beings, personal transformation, and spiritual development.

## **Spirituality and Human Rights**

In the first instance, the importance of spirituality in the field of law is assessed in light of existing rules. The most commonly cited text is human rights law (international and domestic law), which is home to basic rights including freedom of conscience, right to health, cultural rights, etc. Through the lens of human rights, one can engage with an emerged idea of there being a human rights approach to spirituality.<sup>15</sup>

The Universal Declaration of Human Rights (UDHR 1948) can be a good starting point. Lefebvre attributes a unique functionality to the provisions of the UDHR by calling them a source for spiritual exercises. Spiritual exercises, according to Lefebvre, "are simply the techniques and practices by which an individual becomes a philosopher—that is, someone who loves and pursues wisdom—and strives to bring about a complete change in his or her way of living. Such exercises, we will see, can take on many different forms, including physical (for example, dietary regimes), discursive (for example, dialogue with a teacher), and intuitive (for

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<sup>13</sup> Also see Alexander Sieber, *Protecting Spiritual Rights In The Era Of Empire*. Available at [https://www.academia.edu/32882379/Protecting\\_Spiritual\\_Rights\\_in\\_the\\_Era\\_of\\_Empire](https://www.academia.edu/32882379/Protecting_Spiritual_Rights_in_the_Era_of_Empire)

<sup>14</sup> Mary Finn Maples, *Cornerstones Of A Civilized Society: Law, Morality, Faith And Spirituality*, 47(3) JUVENILE & FAMILY COURT JOURNAL 41 (1996).

<sup>15</sup> The Human Rights Principles adopted by the UNFP provide a rights-based approach to spirituality. It is provided that "human rights are interrelated and interdependent. And each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs...". See United Nations Population Fund, *Human Rights Principles*, 2005. Available at <https://www.unfpa.org/resources/human-rights-principles>

example, mediation, and contemplation)."<sup>16</sup> Hence, by being the source of spiritual exercises, human rights are deeply concerned with personal transformation.

In light of the international human rights framework, Sieber advocates for the inclusion of spiritual rights, which are rights reflecting on the essence of an individual i.e. the spirit, body, and emotions.<sup>17</sup> According to Seiber, a denial or violation of the human right to spirit amounts to a violation of the dignity, freedom, and equality of humanity of an individual.<sup>18</sup>

In several other contexts, the lens of spirituality has been utilized to explore and redefine the domain of human rights. On individual dignity, the New Zealand Law Commission (in light of the belief systems in Pacific states) stated- "individual dignity arises from the belief that all are imbued with a spiritual essence, as the descendants of primeval beings or a supreme deity, or that all are the children of God, as it is sometimes expressed today."<sup>19</sup> The views of the Commission on the spiritual essence of individuals are also being employed in different human rights settings.

## Spiritual Needs and Rights

The understanding of the spiritual essence of individuals brings in the concept of spiritual needs. According to Zhand and Tan, spiritual needs have two aspects- the search for personal meaning, purpose, and identity in life, and connectedness with others, whether divine or human.<sup>20</sup> Thus, spiritual needs include but go beyond emotional and psychological concerns to broader and fundamental issues relating to one's soul and existence.<sup>21</sup>

The concept of spiritual needs has been greatly emphasized in relation to the human rights of children.<sup>22</sup> Under the Convention on the Rights of the Child (CRC) for instance, Conrad puts forth a bio-psycho-social-spiritual perspective on the needs of the human family with particular emphasis on the needs and rights of children.<sup>23</sup> Conrad, while raising several questions on the role of law and society, advocates for the review of the CRC based on biological, biological,

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<sup>16</sup> Alexandre Lefebvre, *Human Rights as Spiritual Exercises*, in THE SUBJECT OF HUMAN RIGHTS 194 (Danielle Celermajer and Alexandre Lefebvre ed., 2020).

<sup>17</sup> *Supra* note 13.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> New Zealand Law Commission, *Converging Currents: Customs And Human Rights In The Pacific*, STUDY PAPER 17, 50 (2006).

<sup>20</sup> *Supra* note 9 at 148.

<sup>21</sup> *Ibid.* at 149.

<sup>22</sup> For spiritual rights of children see the African Charter on the Rights and Welfare of the Child, 1999 and the UN Declaration on the Rights of Indigenous People, 2007. The latter provides for "specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development..."

<sup>23</sup> Ann Patrick Conrad, *Needs, Rights, and the Human Family: A Bio-Psycho-Social-Spiritual Perspective*, 85(9) CHILD WELFARE (2010).

psychological, social, cognitive, and spiritual perspectives.<sup>24</sup> The mandate for protecting the spiritual essence of spiritual needs has led to a strong defense for recognition and respect for "spiritual rights" and for the embodiment of spiritual needs in human rights.<sup>25</sup> Spiritual rights would include the protection or fulfillment of a set of conditions of human life.<sup>26</sup>

In the case of children in conditions of extreme vulnerability, human rights advocacy in terms of spiritual rights is strong and influential.<sup>27</sup> For instance, Maples and Stephenson raise concerns over the spiritual abuse of children outside parental care. Such a scenario, according to the authors, requires a rights-based approach for protection.<sup>28</sup> The case for providing protection is advanced under the provisions of the CRC (Article 14). In light of Article 27 of the CRC, Ojalehto and Wang pose several questions for the children affected by displacement.<sup>29</sup> "How is spiritual development to be conceptualized, and how may it be protected and implemented? What are the cognitive and cultural processes of spiritual development that allow children to develop an integrated understanding of self, others, and the world in a meaningful way?" The authors advocate for a right to spiritual development as a central feature of human rights law.<sup>30</sup>

As indicated above, the expression spirituality, spiritual needs, spiritual rights, and spiritual development are being advanced as the building blocks for renewal in the field of human rights law.

## Conclusion

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<sup>24</sup> *Ibid.* at 193.

<sup>25</sup> See Janet Seden, *The spiritual needs of Children*, 10(4) PRACTICE 57 (1998). Available at <https://doi.org/10.1080/09503159808411504>

<sup>26</sup> Zhang and Tan discuss four key spiritual needs of adolescent girls- *body image, a sense of self, relationships, and future*. *Supra* note 9 at 150.

<sup>27</sup> Under the Indian law The Protection of Children from Sexual Offences Act, the concerned government adopted a set of principles for all experts and professionals assisting the child at the trial and pre-trial stages. The first principle in the chapter on trial and pre-trial stages includes the right to life and survival. The right includes the right to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect; and to a chance for harmonious development and a standard of living adequate for physical, mental, spiritual, moral and social growth. See Ministry Of Women And Child Development, *Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012- Guidelines for the Use of Professionals and Experts*, 2013.

<sup>28</sup> Glenn Miles, Paul Stephenson, *Children, Spirituality, Human Rights and Spiritual Abuse*, in CHILDREN OUT OF PLACE AND HUMAN RIGHTS, CHILDREN'S WELL-BEING: INDICATORS AND RESEARCH 15, 200 (A. Invernizzi, M. Liebel, B. Milne, and R. Budde ed. 2017). Available at [https://doi.org/10.1007/978-3-319-33251-2\\_12](https://doi.org/10.1007/978-3-319-33251-2_12)

<sup>29</sup> Bethany Ojalehto, Qi Wang, *Children's spiritual development in forced displacement: A human Rights Perspective*, 13(2) INTERNATIONAL JOURNAL OF CHILDREN'S SPIRITUALITY 129 (2008). Available at : <https://doi.org/10.1080/13644360801965933>

<sup>30</sup> *Id.* at 137.

Considering that the subject matter of this chapter is vast, here is a humble attempt at responding to the question- is law spiritual?

Firstly, it is difficult to argue that the law has no spiritual flavor or features. One may look at the legal provisions which speak of spirituality, and also the legal norms that overlap with spiritual values.<sup>31</sup> The legal reforms which are advanced by some scholars also aim to place spirituality at the heart of the law, legal reforms, and the various interventions for the cause of justice and protection.<sup>32</sup> Secondly, it is difficult to argue that law has a strong spiritual flavor. While spirituality is being linked to different domains of law (corporate, human rights, environment, conflict, education etc.), the depth of this relationship is unknown or simply unexplored. The legitimacy of the law, according to a few scholars, should be evaluated based on its capacity to respond to the spiritual values and needs of individuals.<sup>33</sup>

To sum up, the relationship between law and spirituality can be understood in light of two larger pursuits. First, is the pursuit of individuals for a deeper understanding of themselves and their role in the world.<sup>34</sup> Second, the pursuit of systems (social, economic, political) to understand, honor, and respect the spiritual nature and aspirations of human beings. The law's churning for spiritualization can be seen as deeply linked to these larger pursuits.

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<sup>31</sup> Another area to explore is environmental law, particularly the human right to a healthy environment, which is strongly being advocated to include the spiritual sacredness of nature and all its forms. The Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017 of New Zealand can be taken as an example here. The New Zealand law declared the Whanganui River as a spiritual and physical entity, a living whole.

<sup>32</sup> Putu Indah Rahmawati, Min Jiang, Alexandra Law, Agung Suryawan Wiranatha, Terry Delacy, *Spirituality And Corporate Social Responsibility: An Empirical Narrative From The Balinese Tourism Industry*, 27(1) JOURNAL OF SUSTAINABLE TOURISM 156 (2019). Available at <https://doi.org/10.1080/09669582.2018.1513006>

<sup>33</sup> *Supra* note 29 at 137.

<sup>34</sup> See Halyna Shevchenko, Milena Bezuhla, Tetiana Antonenko, Iryna Safonova, *Spiritual Awakening of the Personality as key to Spiritual Security in the Context of Postmodernism*, 12(1) POSTMODERN OPENINGS 185 (2021).