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Approaching International Law as if *Context Matters*: Towards an Integrated Framework of Compliance

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**Approaching International Law as if Context Matters:
Towards an Integrated Framework of Compliance**

Shubhangi Roy

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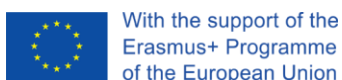
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Abstract

As international law engages more directly and frequently with individuals and communities, this article attempts to develop an integrated framework of compliance to study how it can create behavioural and attitudinal change on ground. Using Kelman's framework of social influence, it emphasizes the institutional conditions under which any social communication (in this case, law) can persuade individuals to amend their behaviours and attitudes. Understanding the three motivational processes through which individuals may respond to a law, the nature of change induced in each of these three processes as well as the conditions necessary to trigger them can assist the international legal regime as well as states and communities in developing policy mechanisms more likely to create enduring change. It allows for creative solutions, with and without state interventions, that often get ignored in international law discourses due to its lack of understanding on how individuals respond to laws. The article uses CEDAW and the response of African states to address the problem of Female Genital Mutilation on the continent to highlight a potential application of such a behavioural approach to IL.

Keywords

Behavioural Approach to International Law; Social Influence; Persuasion, CEDAW; Female Genital Mutilation; Compliance; Integrated Framework of Compliance

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1. Introduction

Quite often, it is presumed that international or national law will have an influence individual and government decisions. Whether it does successfully create the desired change varies considerably. UN Convention on the Elimination of Discrimination against Women was enacted in 1979.¹ It specifically refers to and prohibits dowry and Female Genital Mutilation. Presently in India, 20 women die every day of the year due to dowry related deaths.² Around 3 million girls are at risk of being subjected to FGM every year with more than 200 million female alive today who have undergone FGM.³ Most countries where these practices are prevalent are signatories to the treaty and have laws against these practices. If the goal of these international instruments is to create change on ground, it is crucial to understand how law influences behaviour.

Research indicates that non-compliance with these international legal commitments can also exist in situations where the state has the political will to comply with the treaty due to how individuals and communities respond to these laws.⁴ For example, when it comes to abolition of the practise of Female Genital Mutilation, all African states except Lesotho have committed to eradicating the practise.⁵ Yet, despite these states enacting and implementing laws criminalizing these practises, they still remain prevalent in these countries which are often considered non-compliant with their obligations due to their failure to eradicate these forms of violence against women.⁶

Most recommendations and international legal interventions focus on how to better improve the laws and their enforcement in these countries. A similar legalistic approach to improving

¹ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

² Surbhi Chaudhary, *Dowry and Dowry Death*, TIMES OF INDIA (April 15, 2022)

³ United Nations Children’s Fund, *Female Genital Mutilation/Cutting: A global concern*, UNICEF, New York, 2016.

⁴ Sonia Harris-Short, *International human rights law: Imperialist, inept and ineffective? Cultural relativism and the UN convention on the rights of the child*, 25 HUMAN RTS. Q. 1, 130–181, 134 (2003).

⁵ Julie Fraser, *Challenging State-Centricity, and legalism: promoting the role of social institutions in the domestic implementation of international human rights law*, 23 INT. J. HUMAN RTS. 6, 974-992 (2019).

⁶ *ibid*

compliance with human rights commitments has been followed with respect to protection of child rights, political participation of women and other human rights commitment.⁷ States are usually critiqued for the status of these vulnerable groups in their societies and are required to respond with 'better laws' to create change in accordance with their commitments. As citizens and communities become objects and subjects of international law more frequently in international law, a similar linear understanding of law and its influence on behaviours and attitudes is being transplanted into these new approaches as well.⁸

This approach fails to consider the underlying processes through which laws create any change. What laws say in the books and how they are animated in societies are different. Many scholars recently have argued that compliance with these treaties need to be studied through approaches that consider the contextual conditions of the societies in which these treaties are to be implemented.⁹ This article proposes an integrated framework that can identify and systematize the contextual conditions essential for laws to create desired changes through different motivational processes.

Conceptualizing law as a type of social communication, in section 2, this article builds on a framework of social influence developed by Kelman (social psychologist) to study the contexts under which law creates change, as well as the underlying social and institutional conditions necessary for it to create such change. It focuses on the CEDAW Convention, and specifically the prohibition on FGM practices, to highlight how the social and institutional conditions can shape how laws influence behaviours in different contexts. It concludes, in section 3, with potential applications of this framework in international legal research.

2. Identifying the motivational processes underlying compliance

Individuals receive multiple communications every day. These communications can directly target us through online advertisements. They can also be indirect cues we pick from behaviours and conversation of others like long queue outside restaurant or gossip about the loud neighbour. They may also be a UN Treaty ratified by our home country committing to reduce violence against women and a domestic law on the issue. Or a religious tenet. Individuals will respond differently to each of these communications. Some will create behavioural change but no attitudinal shift, others may create no change. Some of these communications may create both behavioural and attitudinal change. The question for legal scholars, then, is how law can create the desired change.

In the 1950s, Herbert Kelman focused on the social and psychological conditions underlying an interaction that influences individuals.¹⁰ He identified three important aspects of the

⁷ Julie Fraser, *Challenging State-Centricity, and legalism: promoting the role of social institutions in the domestic implementation of international human rights law*, 23 INT. J. HUMAN RTS. 6, 974-992 (2019).

⁸ See, for review: CHIARA MACCHI, BUSINESS, HUMAN RIGHTS AND ENVIRONMENT: THE EVOLVING AGENDA (2022); EYAL BENVENISTI, & GEORG NOLTE, COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW (2018).

⁹ Andrew Cortell & James Davis, *Understanding the domestic impact of international norms: A research agenda*, 2 INT. STD. REV. 1, 65-87 (2000); Tom Zwart, *Using local culture to further the implementation of international human rights: The receptor approach*, 34 Human Rights Quarterly 2, 546-569 (2012);

Sussane Zwingel, *How do norms travel? Theorizing international women's rights in transnational perspective*, 56 INT. STD. Q. 1, 115-129 (2012).

¹⁰ See: Herbert Kelman, *Processes of Opinion Change*, 25 PUB. OPINION QTRY 1, 57-78 (1961). (This framework has been used to study behaviors of individuals during the My Lai Massacre, Watergate

interaction. First, what is the motivation underlying the individual's decision to be influenced by the communication. Second, what is the nature, power, and relationship of the influencing agent in relation to the individual. Third, why is behavioural/attitudinal change the most potent response among the alternative responses available to the individual within the interaction. While rooted in methodological individualism, it incorporates structural aspects like individual's group identities, power structures and state control as well. Much like the realities of the world we inhabit, it recognises that individuals are a product of, both, their individual traits, and interests as well as structural influences.

He proposed three motivational processes through which individuals can be influenced to change their behaviours and, sometimes, attitudes. These processes are influence through (1) acquiescence, (2) identification and (3) internalization. These processes are adapted to study how laws can influence individuals.

2.1. Compliance through Acquiescence

The first motivation underlying compliance with any law can be to avoid legal repercussions from non-compliance. This underlying motivation to comply is avoiding sanction. For international law to have this force, states will need to enact domestic laws, or the international regime will need to create individual/group liabilities.

This condition will not be sufficient to create compliance. The individual/state should also believe that the legal regime has the capacity to enforce this law (ability to detect and punish). This belief can be influenced through increased, visible enforcement/surveillance. Even widespread compliance by others around us can act as proxy about the agency's capacity to enforce these laws.¹¹ The influencing agent (or a state or international organization) must appear to be in a position of power to enact and enforce its legislative will. In countries with weak compliance and limited state capacity, this perception may be difficult to achieve. Additionally, it may be difficult to create this condition in reference to practises which require some levels of voluntary compliance and reporting, like domestic violence, when they are widely prevalent in the society. The Sudanese government representative, for example, noted that in the case of FGMs, most victims never reported the crime, and it was, therefore, difficult to enforce the law.¹²

Lastly, to trigger pre-potency of compliance over non-compliance, the individual should also believe that the cost of non-compliance is higher than that of compliance. If this is not the case, this cost will be absorbed as price of the behaviour.¹³ Dong Hongwei, for example, highlighted how companies in China prefer to pay the fine for non-compliance with environmental regulations for this reason.¹⁴ Atkinson, similarly, proposes that fines imposed under Clean Air

scandal, individual attitudes to national identities, and conflicts (Israel vs Palestine, Rwandan genocide.)

¹¹ Shubhangi Roy, *Theory of Social Proof and Legal Compliance: A Socio-Cognitive Explanation for Regulatory (Non) Compliance*, 22 GERMAN L.J. 2, 238-255 (2021).

¹² Summary Record of the 89th Meeting: Sudan, U.N. COMMITTEE ON THE RIGHTS OF THE CHILD, U.N. Doc. CRC/C/SR.89, at 18 (1994).

¹³ U. Gneezy, and A. Rustichini., *A Fine is a Price*, 29 J. OF LEGAL STUDIES 1, 1-17 (2000).

¹⁴ Hongwei Dong, *Why does environmental compliance cost more than penalty?* 1 FRONT. ENVIRON. SCI. ENG. CHINA, 434–442 (2007).

Act in the United States need to be five times higher for it to remove economic benefits from non-compliance.¹⁵

For compliance through acquiescence to be triggered all three conditions need to be fulfilled. Note also that this compliance will be superficial since it does not create change at the individual level. The individual is only behaviourally complying with the law to avoid legal repercussions. For continued compliance, each of these three conditions need to exist in the long run.

2.2. Compliance through Identification

Active enforcement is not always required for compliance. McAdams et al have shown how law can provide us information on how to coordinate with others or inform us about socially acceptable behaviour.¹⁶ There is an inherent desire to socially anchor our behaviour (for esteem, reputation, or coordination). In international law, as well, this desire has been extended to explain how states may be motivated to comply with international norms to maintain reputation, avoid shame and other tangible repercussions from being viewed as a non-cooperative state.¹⁷ Within Kelman's framework, this desire is captured in compliance through identification.

This desire is only one of the three conditions required to trigger compliance through identification. It has two additional antecedent conditions. The regulatory agency should be attractive for the relevant identity. Lastly, the content of the law should be clarifying one's role within these identities rather than shaming our peers.

There are two ways in which the law can be attractive for anchoring our behaviours. First, there is a perception that abiding by the law is attractive within the reference group. Kaushik Basu summarizes this requirement well when he states - *if we live in a society in which law has salience in the sense of everybody expecting everybody to expect a law-abiding outcome to occur, then law will influence behaviour.*¹⁸ Second, there is compliance/public commitment to compliance by members of the relevant group. This is especially crucial when the legal prescription is affecting behaviour rooted in a specific social identity.

The law does not have expressive powers in itself but its endorsement by the 'accurate reference group' can create compliance. An individual has multiple identities. One can be an India, woman, mother, expat living in Europe as well as an academic simultaneously. While her decision to comply with traffic regulation may be dependent on a general sense of abiding by the law, her decisions in a marital relation will (more likely) be defined by the practices of her family and peers.

¹⁵ Nathan Atkinson, *Do Corporations Profit From Breaking The Law? Evidence From Environmental Violations* ETH ZURICH CENTRE FOR LAW AND ECONOMICS (2022).

¹⁶ See: RICHARD MCADAMS, EXPRESSIVE FUNCTION OF LAW (2015); Eric Posner, *Symbols, Signals and Social Norms in Politics and the Law*, XXVII J. OF LEGAL STUD. 765-98 (1998).

¹⁷ See: JACK GOLDSMITH & ERIC POSNER, THE LIMITS OF INTERNATIONAL LAW (2005); ANDREW GUZMAN, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY (2008).

¹⁸ KAUSHIK BASU, REPUBLIC OF BELIEF at 75 (2018).

This explains why, for example, educating girl-child in India did not automatically lead to falling in dowry practise or frequency of family arranged marriages.¹⁹ Women were able to access education and, perhaps, even financial independence but their perceptions about who to marry and how continue to be shaped by their families and communities. Similarly, in a study conducted by Kizilhan on German residents who were in jail for honour killing of their family members, he concluded that for most of them the need to avoid family shame was more important than any costs associated with imprisonment.²⁰ While other aspects of their lives like taxation, driving etc. may be shaped by the German Legal system, the family and their role within it were entrenched deeply in their social identity. Identifying the salient identity, therefore, is crucial.

It also creates possibilities for international organizations and human rights advocates to create ground-level change independent of state intervention. Foot-binding practices in China, practiced for centuries, was eradicated in one generation. One of the ways in which it was achieved was by creating public commitment ceremonies where families pledged not to bind their daughter's feet or marry their sons to women with bound feet.²¹ Having members of our communities endorse behaviors and commit to it informed as that boycotting foot-binding was socially acceptable and, in fact, encouraged. Considering many families were practicing it to ensure good marriage prospects for their daughter in their communities, this changed perception on what was desirable for this community shaped their own behaviors and attitudes.

This has created demands by legal advocates to replicate similar ceremonies for FGMs in African countries and Dowry in India.²² As far back as in 2007, UNICEF recommended a similar intervention to address FGM practices in African countries. Instead, due to the emphasis that the international discourse places on reforming laws, countries like Egypt are till date amending the laws to address the issue.²³

There is a third condition that helps capture both the potency of influence through identification and prevents alienation – laws should be aimed at delineating existing roles rather than shaming one's identity. For laws to create compliance through identification they should help clarify internalised roles and rules of one's identity rather than shame it. While our identities are internalised, what are the roles/rules of these group stay fuzzy.²⁴ What it means to be an Indian or Hindu or woman has evolved considerably over time but we may internalize these identities, many decades ago, in our childhood. While the identity is internalized (and so we

¹⁹ Soumyanetra Munshi, *Education and Dowry: An Economic Exploration*, 1 IIM Kozhikode Society & Management Rev 2, 111 (2012).

²⁰ JI Kizilhan, *The Impact of Culture and Belief in So-Called Honor Killings A Comparative Study between Honor Murders and other Perpetrators of Violence in Germany*, 7 J. of Inv. Forensics 1 (2019).

²¹ Gerry Mackie, *Ending Footbinding and Infibulation: A Convention Account*, 61 AM. SOCIOLOGICAL REV. 6, 999-1017 (1996).

²² See: UNICEF, *Technical Note: Coordinated Strategy to Abandon Female Genital Mutilation in One Generation*, 2007; CHRISTINA BICCHIERI, *NORMS IN THE WILD* (2016); Shubhangi Roy, *When Law Defeats its Purpose: How Anti-Dowry Legislations (fail to) address the Norms that motivate dowry payments in India*, 13 J. IND. L & SOC'Y 1, 51-66 (2022).

²³ It, for example, strengthened criminal punishments under law recently in attempts to address the practice of FGM, which was already criminalized in 2008. Mena Farouk, *Egypt's cabinet toughens law banning female genital mutilation*, THOMAS REUTERS, 21 January 2021, (last accessed 3rd March, 2023), <https://www.reuters.com/article/egypt-women-law-idUSL8N2JW26Z>.

²⁴ C. TURNER, M.A. HOGG, P. OAKES, S. REICHER & M. WETHERELL, *REDISCOVERING THE SOCIAL GROUP: A SELF-CATEGORIZATION THEORY* (Blackwell Publishing, 1987)

also have psychological reasons to comply), the roles can evolve quickly if the conditions for compliance through identification are fulfilled. An attractive influencing agent (Donald Trump) convinced many voters that 'building the wall' was an important part of the American identity over a matter of days.

However, any law which constantly shames one's identity or our identified group can create alienation and identity threat. When we sense an identity threat, it can entrench us further into the proscribed behaviour.²⁵ Laws and policies should therefore be designed and publicised as delineating pre-existing roles/rules to be successful. As Kahan puts it, nudges rather than hard shoves are more effective.²⁶ In fact, understanding influence through identification explains why hard-shoves may worsen outcomes.

Compliance through identification can be a powerful mechanism to create change because it can create not only behavioural changes but also deeper attitudinal ones. While we may have normative pressures to comply with the law, we also has a psychological desire to adhere to the roles we have and be well-regarded by the those we identify with for self-esteem maintenance. If a new law, prohibiting FGM/dowry, successfully communicates to parents that a good parent ought to protect their child from such harmful practices, then the parents will comply with the law irrespective of external surveillance.²⁷ We comply with this law voluntarily because it helps us act in accordance of an internalized role of a good parent.

2.3. Compliance through internalization

The third motivational process is compliance through internalization. It relies on the desire of individuals to behave in ways that align with their pre-existing value system. A nutritional label can inform vegans what products to avoid. A law requiring recycling can inform an environmentally conscious individual how to better protect the environment. A law prohibiting FGMs can communicate to a parent how medically dangerous and unnecessary genital mutilation may be. In these examples, the law is utilised as a source of information for individuals to better align their behaviours with their pre-existing values. In the pandemic, for example, mobile locations of individuals indicates that Japanese citizens were utilising the government regulations as guidelines on how to remain safe during the pandemic and self-regulating.²⁸ However, as the pandemic experience of different countries indicates, not all laws managed to trigger compliance through internalization even though staying alive/safe can be a universally valued motivation.

Triggering compliance through internalization requires two additional conditions: the credibility of the regulating agency as an expert and the adequacy of information to alter the pre-existing cost-benefit framework of the individual. The politicisation of science and the credibility of international organizations such as the WHO during the pandemic severely affected compliance through internalization. The deliberative process of creating legislations, public engagement and scientific involvement can all contribute towards creating this perception of

²⁵ C.M. Steele, S. Spencer, and J. Aronson, *Contending with group image: The psychology of stereotype and social identity threat*. In ZANNA, M. P. (ED.), 34 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 379-440 (2002).

²⁶ Dan Kahan, *Gentle Nudges v. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. OF CHI. L. REV 3 (2000).

²⁷ Richard McAdams, *The Origin, Development and Regulations of Norms*, 96(2) MICHIGAN L. REV. 338..

²⁸ Tsutomu Watanabe and Tomoyoshi Yabu, *Japan's Voluntary Lockdown*, 16 PLOS ONE 6 (2021).

expertise. And this perception is crucial to create further compliance through internalization. International law, especially, suffers from credibility in global south countries.²⁹

The adequacy of information is also crucial. Research on recycling behaviours, for example, indicates that the ease of recycling considerably increases recycling even among individuals who are sensitive to the need for it.³⁰ In the example of the recent Pandemic, individual may utilize the law and know that wearing masks and social distancing prevents infection but if the disease was trivialized to a mild flu, then complying with the laws would seem unnecessary. In the case of FGMs, families may be convinced that the practice is unnecessary but the social cost that their daughters might have to suffer from for not having undergone the FGM may be too high.

Compliance through internalization creates deep-rooted change in the individuals' behaviour and attitudes. It also requires no external enforcement. However, in many everyday decisions, we still rely on the behaviour of those around as informational proxy on the veracity of the information we receive.³¹ Most importantly, the law should update information about a pre-existing internalized value of the individual to create compliance through internalization.

A brief summary of the three motivational processes is provided below. In the next section, the article applies this framework to help understand why, despite legal intervention, African states fail to comply with their commitments under the CEDAW Convention and how can the issue be better addressed.

²⁹ See: ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* (2017); Makau Mutua, *What Is TWAIL?*, PROCEEDINGS OF THE 94TH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 31 (2000); B. S. CHIMNI, *INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES* (2 ed., 2017).

³⁰ Olle Hage, Patrik Söderholm, Christer Berglund, *Norms and economic motivation in household recycling: Empirical evidence from Sweden*, 53 *RESOURCES, CONSERVATION AND RECYCLING* 3, 155-165 (2009).

³¹ Roy, *supra* n. 11.

Fig 1: An Integrated Framework of Compliance

	Compliance through Acquiescence (Compliance)	Compliance through Identification	Compliance through internalization
Antecedents			
1. What motivates behavior: <i>Basis for importance of adherence</i>	Concern with the direct cost/benefit of compliance decision <i>'We abandon FGM practice to avoid imprisonment'</i>	Concern with social anchorage of behaviour <i>'Since the law prohibits it, FGM must no longer be desired or necessary for our daughter's marriage prospect, so we needn't practice it'</i>	Concern with value congruence of behavior <i>'Undergoing FGM puts our daughter at risk and, therefore, we should comply with the law'</i>
2. Who motivates adherence and how? - <i>Source of power of the influencing agent</i>	Means-control: The state has the capacity, intention and means to detect and punish non-compliant behavior	Attractiveness: The state can influence individual through identification in one of two ways – a. Law/State is relevant and attractive for the salient identity. <i>'Law-abiding' citizen is, in itself, a prominent identity</i>	State's credibility as a source of Information
3. Why it is the preferred behavioral path: <i>Manner of achieving prepotency of the induced behavior</i>	Limitation of choice-behavior: The individual should believe the cost of non-compliance is higher than any benefits accrued from non-compliance.	To maintain a self-satisfying relationship with the salient collective identity. The identity can be the citizen identity as well.	The law provides us information that changes what we consider is the best behavioral approach to an issue.

3. Scope for Further Research and Application

Non-state actors such as individuals, communities and corporations are increasingly becoming, both, subjects, and objects of international law. Scholars and activists, for example, are utilising international instruments to create change in labour regulations in other countries.³² In matters of environment and global climate change, as well, there is a growing recognition of the role communities can and should play.³³ Yet, our understanding how the state and international organizations influence behaviours and attitudes at the micro-level is rudimentary within the international legal scholarship in comparison to the level of sophistication with which other social science disciplines approach the issue.

Kelman's framework, adapted to study compliance with laws, provides a critical conceptual tool that can incorporate within it, both formal and informal conditions through which these influences may shape individual behaviour and attitudes. The realities of the society in which laws attempt to influence behaviour may not always fit as neatly into a framework. It, nonetheless, provides a systematized approach and common language to incorporate multiple conditions, mechanisms, and study outcomes from different legal regimes.

³² See, for review: CHIARA MACCHI, *BUSINESS, HUMAN RIGHTS AND ENVIRONMENT: THE EVOLVING AGENDA* (2022); EYAL BENVENISTI, & GEORG NOLTE, *COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW* (2018).

³³ *Ibid*; EYAL BENVENISTI, & GEORG NOLTE, *COMMUNITY INTERESTS ACROSS INTERNATIONAL LAW* (2018).