

Law, Morality And Social Order: A Critical Examination

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Abstract:

Law is a system of rules which is recognized by a particular country or community for regulating the actions of its members and enforce by the imposition of sanctions. Law and morality are interrelated. Law represents the formal rules and regulations established by a recognized authority. The relationship between law and morality continues to evolve, with ongoing debates on issues such as human rights, social justice, and the role of moral values in shaping legal frameworks. Some jurists argue that laws inconsistent with moral principles are unjust and may warrant disobedience or even resistance. This perspective underscores the idea that moral standards serve as a crucial measure for evaluating the legitimacy of legal systems. From a historical standpoint, it is widely acknowledged that laws often originated from moral principles.

There was no difference between law and morality in ancient period.. The Rule of Law has a rich and diverse heritage, shaping modern understandings of governance and justice. The concept of rule of law has been refined by the contributions of numerous scholars and theorists.

Keywords: Law, Morality, Interconnection, Obligatory, Recommendatory, Differences, Nature.

Introduction:

Every society has some purpose. A society is a unity of order to determine its objectives.. Every society is classified according to their aim. There is relation between political society and purpose of human. In any society laws are very essential. The main objective of the law is common good and to attain the end of the state. The primary purpose of society is to enable individual to lead fulfilling lives. This involves ensuring peace in the immediate sense and fostering the conditions for rational living within the community as a whole. The common good of a state lies in providing the opportunity for individuals to pursue their own perfection through reason. While the common good differs from individual or private good, it is not necessarily quantitatively superior but rather distinct in nature. Unlike private goods, common good can be shared among members of the community. Law and morality are two foundational pillars that shape societies, providing structure and guiding human behavior. While often intertwined, they represent distinct concepts, each with its own principles and sources. There is a intricate relationship between law and morality by exploring their intersections, conflicts and the implications of their coexistence within legal systems. Law and morality are two foundational pillars that shape societies, providing structure and guiding human behavior. While often intertwined, they represent distinct concepts, each with its own principles and sources.

The ancient Hindu jurist also did not make any distinction between law and morals but in Mimansa it found differences between obligatory and recommendatory rules. Early societies codified moral norms into legal statutes, with the state enforcing these rules through its legal apparatus. In Europe the Greeks also formulated theoretical moral foundation of law in the name of the doctrine of natural rights; similarly, Roman jurists gave recognition to certain moral principles as the basis of law in the name of natural law. During middle period, Christian morals were considered as the basis of law. But after reformation in Europe, it was contended that there was distinction between law and moral. It was stated that law derived its authority from the state not from morals. The source of moral is religion or conscience.

During 17th and 18th centuries, the law was linked with moral, as well as natural law theory had moral foundation. John Austin in 19th century defined law as command of the sovereign. He maintained that law had nothing to do with moral. Many jurists supported to Austin. According to Kelson only legal norms were the subject matter of jurisprudence. In modern times sociological approach indirectly studies morals however, there is a difference between law and morals and subject matter of study is law alone.

Concept of Law:

The concept of law is multifaceted. It has crucial distinctions for understanding the complexities of a society. Law is described as rational directives. Its aim is for promoting the common good and it is established and communicated for the well being of the society. Law may be divided

Including the everlasting, natural divine and good. Each has a unique origin and consequences. Law also acts as a structure for social harmony and directs human conduct. It fosters harmony and fairness. Laws might fall into one of two human categories. For Example- 'The Rule of Law' and 'A Rule of Law'. There are some specific legal rules. Such as, the rule against perpetuities or the requirement that taxes must be filed by a specific day, are referred to as the Rule of Law. The precepts of our political morality are referred to as the rule of law, which includes the superiority of the law and the institutions of our legal system of government. A number of formal and procedural concepts have been enshrined by the rule of law. The formal principle deals with the universality, transparency, publicity, stability and perceptibility of social norms. The manner in which these standard are administered is covered by the procedural guidelines. Additionally, it addressed the needs of institutions like courts and an independent judiciary, which are essential for its administration. The Rule of law has some specific substantive ideals, like the presumption of freedom and respect for private property rights¹.

Concept of Morality: Morality is the establishing of an order and directing human behavior towards specific goal. It separates among right and wrong, good and bad. Its object, purpose and context are three main components of the morality. The quality of a moral act is judges by how well it confirms to as standard with human reason serving as the immediate norm and the eternal law serving as the ultimate standard.

Absolute and relative may be two categories of moral principles

1. Absolute Principles are universal and immutable. It is based on the universal truth of human nature. For example, murder is wrong as it violates the natural order of the events. This is known as normative moral concept or those that are widely held by the community. It depends on the circumstances.
2. Relative Principles change depending on the situation. They are based on the opinions and circumstances that may change over time, from person to person or for different situations. This principles are depend on a person's belief, relative to what people perceive as good or bad in relation to themselves. In other words, when someone says something is good in most cases, they are really saying it is good for them or perhaps it contributes to their well being².

Human rationality serves as the benchmark for moral behavior, with morality being the adherence to a known hierarchy of values. In essence, morality boils down to the conformity with the rational principles governing human life. Ultimately, the essence of morality lies in humanity's journey towards its spiritual and moral perfection, with the ultimate goal being union with the divine³.

This relationship is articulated by legal scholars like H.L.A. Hart, who emphasized the influence of social morality on legal systems. The distinction between law and morality, however, is also recognized. While many laws align with moral principles, not all immoral actions are necessarily illegal and not all laws are rooted in morality. This is where the perspectives of thinkers like Jeremy Bentham come into play, highlighting that while there may be overlap between law and morality, they operate within different spheres⁴.

Law and morality have similarities, but there are some differences between the two concepts:

- Authority creates and enforced the law but morality having an informal value system by individuals and societies.
- Law can be enforced with penalties but morality recognized through social pressure and self-regulation.
- Laws are clear and specific, but moral values are different and interpreted differently among individuals.

The law and morality both have contribution in governance of human behavior. There is not a clear-cut relationship between the two. The intersection between law and morality is not always clear or constant, but it

¹ Jurisprudence And Legal Theory by Dr. V.D. Mahajan, Fifth Edition Eastern Book Company.

² Law and morality by Arthur Scheller Jr., Marquette law review, volume36, issue3

³ ibid

⁴ ibid

tends to change according to time, as social values and attitude evolve. Law and morality intersect in following ways:⁵

- Legal rules may be based on moral values because laws are enacted that reflect their ethical principles. For example, laws prohibiting murder and theft are enshrined in moral beliefs for sanctity of human life and the importance of respecting individual property rights.
- Moral values can influence legal interpretation and decisions. Judges, lawyers and other legal professionals may rely on moral principles when faced with the issues which are not explicitly comes under the existing laws, or in case when laws result in apparent injustice or inconsistencies.

The law acts as a catalyst for moral change in society. Legal reform may be implemented to promote more progressive or egalitarian moral values, as evidenced by the introduction of laws decriminalizing homosexuality or permitting same sex marriage in many countries⁶.

Law may be change for moral pressure. Societal consensus about moral values shifts, it can result for legal system to adopt accordingly, as seen in movements for environmental protection, gender equality or drug policy reform etc.

Source: Law is derived from recognized authorities such as, government and legislative bodies which enact amend and repeal any legal rules and regulations. But morality is an informal system of values, norms and beliefs that are culturally and socially influenced, often deeply rooted and not codified in the manner as laws.

Enforcement: Legal rules and penalties are enforceable by the State and the institutions like, courts, police and regulatory bodies. But morality is not strictly enforced by a central authority; it relies on individual conscience, social pressures and informal sanction to guide and correct behavior.

Scope and Application: Laws tend to be specific and relatively uniform, it provide guidance on what is legally permissible or prohibited. In case of morality, it can be subjective and may be difference from culture to culture or person to person and difficult to codify and implement universally⁷.

Flexibility: Legal rules are rigid and required formal changes or amendments if they are to be adjusted. But morality can be flexible and adoptive. It can evolve over time and respond to changing social values and priorities⁸. There are two theories in evolution of law-

1. Positivism Theory (Analytical Theories).

2. Natural Law Theory.

According to natural law theory any law which is unjust or infringes the rule of morality can not be considered a law. Supporter of natural law theory were Augustine, Thomas Aquinas, Lon Fuller, John Lock etc. they said that law and morality are interconnected. Morality in human beings is derived from nature which took the form of rules and regulations. It embodies moral principles which depend upon the nature of the universe and can be discovered for natural reasons. Positivism Theory does not discard the impact of moral on laws. According to this theory the laws are created by human, therefore there should have distinction from morality. The supporters of positive theory were John Austin and H.L.A. Hart. This theory emphasizes that laws and morality are two different concepts and laws are the result of sovereign power and not morality. Hart stated that the law is a command and there is separation of positive law from morality. He accepted that judicial decisions are made from the pre-determined rules without recourse to social aims, policies and morality. H.L.A. Hart further said that law is system of two types of rules that provides the key to science of jurisprudence. These are primary rules and secondary rules, Primary rules impose duties but secondary rules give power and the essence of law is enshrined in the union

⁵ Law and morality: From the Perspectives of evil law is illegal or evil law is also law: Journal of education and educational research , May 2023 3(2)- 133-135

⁶ Law and morality: From the Perspectives of evil law is illegal or evil law is also law: Journal of education and educational research , May 2023 3(2)- 133-135

⁷ International Journal of Law, Justice and Jurisprudence 2024, 4(1)- 236-239- an analysis of morality and the law

⁸ www.studysmarter.co.uk/explanations/law/uk-legal-system/law-and-morality/

of these two rules. Primary rules impose duty upon the individuals and these are binding. But secondary rules be conferring powers, empowers the legislators to formulate or modify policies according the needs of the society⁹.

Hart's view on separation of law and morality is criticized by the Lon fuller. According to him the legal system is made for regulating the conduct of human beings and therefore it must have in law the elements of 'it is' and 'it ought to be'. He said that law cannot fully serve its purpose of imparting justice and preventing misery in case they do not conform to the 'internal morality'. There are eight conditions to form the internal morality:-

1. Law should be general. 2. It should be publicly promulgated. 3. Law should be perspective in nature. 4. Law should be clear and intelligible. 5. There should be no contradiction between laws. 6. It should be constant. 7. There must be possibility to obey the law. 8. The law should be administered in a way that should not diverge from its obvious and apparent meaning.

Hart criticized the above these principles and said that these principles are the means of efficiency and are not defining morality. Aristotle laid the groundwork of the importance of law in maintaining order and justice within the society¹⁰.

Interconnection of Law and Morality:

Law and morality are interconnected. Morality encompasses a set of principles, values and belief that dictates what is considered right or wrong within a society. These moral norms often serve as the basis for legal principles, influencing the creation and interpretation of laws. In this sense, law can be seen as a codification of moral standards, reflecting society's collective values and ethics. Law provides a formalized system of rules and regulations enforced by governing authorities. It establishes a framework for resolving disputes, maintain order and protecting individual rights and societal interests. While morality offers subjective guidelines for ethical behavior, law operates within a structured framework of statutes, precedents and legal institutions¹¹.

Despite their shared objectives, conflicts between law and morality are not uncommon. One of the central dilemmas arises when legal requirements diverge from individual or societal moral convictions. Instances such as discriminatory laws, restrictions on personal freedoms, or conflicting cultural norms highlight the tension between legal mandates and moral obligations. Additionally, the evolution of societal values and moral standards over time can pose challenges to existing legal frameworks. As norms shift and consciousness evolves, laws may lag behind, leading to discrepancies between legal statutes and prevailing moral sentiments. This dissonance can undermine the legitimacy and effectiveness of legal systems, necessitating periodic revisions and reforms to align with evolving moral consensus¹².

Implications and Ethical Considerations:

The intertwining of law and morality carries significant implications for both individuals and societies. On one hand, a harmonious relationship between legal norms and moral principles fosters social cohesion, promoting a sense of justice and fairness. When laws align with, prevailing moral values increase the likelihood that the public will embrace and respect them, which fosters legitimacy and compliance. On the other hand, the enforcement of legislation that conflicts with strongly held moral beliefs might cause resentment, disobedience and social upheaval. There are countless instances throughout history of unfair legislation that has led to social movements and revolutions in the quest for moral justice. People may have ethical quandaries in these situations, torn between following the law and following their conscience. As a result, the law and morality share a common origin, but their evolution has varied. Many regulations are shared due to shared backgrounds, such as the prohibition of murder and theft¹³.

The rule established in the case of Queen v. Dudley and Stephen's¹⁴ was brought up this context. The crew of an English yacht having three sailors and a lad were shipwrecked during a storm on the high sea and forced to seek refuge in an open boat that belonged to aforementioned yacht. When they were rescued by a passing boat,

⁹ Law and Morality: An Appraisal of Harts Concept of Law, REV. FR. DR. JOHN S. EZENWANKWOR

¹⁰ ibid

¹¹ Law and Morality Arthur Scheller Jr. Marquette Law Review Volume 36 Issue 3 Winter 1952-1953 Article 12

¹² International Journal of Law, Justice and Jurisprudence 2024, 4(1)- 236-239- an analysis of morality and the law

¹³ Studies in Jurisprudence and legal theory: Dr. N.V. Paranjape

¹⁴ 14 Q.B.D. 273

they had murdered the child and subsisted on the corpse in an attempt to avoid what would have been a fatal scenario given that they had no water or food on board. The jury delivered a unique decision after they attempted to murder the youngster. "To preserve one's life is generally speaking a duty but it may a plainest and highest duty to sacrifice it," remarked Coleridge C. J. when the case was brought before a panel of five judges of the Queen's Bench Division. There are many cases in war where a man's responsibility is not to live but to die. Men are morally obligated by their duties to their crew, to the passengers, to the soldiers, and to the women and children in the event of a ship wreck, not to protect but to give their lives for others. In this instance, the weakest and youngest was selected. Was it more important to murder him than one of the mature men? The response has to be "No." "if two accused were justified in killing a man," Grove J. said in *Commonwealth v. Holmes*. Then, if not saved in time, two of the three survivors would be justified in killing the third, and of the two who remained, the strongest would be justified in killing the weaker, In this case weakest, youthful was chosen, was it more necessary to kill him, than one of the grown up men? The answer must be 'No'.

'The Supreme Court of India observed that where there is conflict of fundamental rights of two persons. The decision would be on the basis of morality'.

In the case of *R v. Brown*¹⁵: The UK House of Lords held that consensual sadomasochistic activities were illegal, despite the absence of harm to non-consenting parties. The ruling relied on moral considerations, noting that such activities were harmful to the public interest and could not be legally condoned.

Donoghue v. Stevenson¹⁶: This case is regarded as the cornerstone of modern Law of Tort in the UK. In this case the 'neighbor principle' propounded that is the foundation for the duty to take care concept. It is relied on moral principles, highlighting the importance of considering the reasonably foreseeable consequences of one's actions on others.

R.v. Dudley and Stephens¹⁷: This is controversial case as defendants were convicted of murder for killing and eating a fellow sailor to survive after a shipwreck. The Court rejected the defence of necessity and stated that the killing could not be morally justified, despite the extreme circumstances.

R v. Wolfenden¹⁸: In this case a Wolfenden Committee was formed which recommended the decriminalization of homosexuality in the UK. The Committee drew a distinction between criminal law, which should concern itself with public order and safety and moral law, which should govern private conduct.

Above these cases show that the law and morality relationship is a complex and evolving process because a legal systems need to balance the demands of justice, fairness and public policy while remaining adoptable to evolving societal norms and values.

Conclusion:

There are numerous aspects to the connection between law and morality, including intersections, contradictions and continuous change. /it also functions inside a separate institutional structure that is governed by legal procedures and precedents, The challenges involved in striking a balance between society order and personal conscience are highlighted by the conflicts between moral beliefs and legal duties. The interactions between law and morality will continue to influence social standards and legal regimes as societies develop and moral viewpoints change. Understanding the inherent conflicts and ethical considerations in this connection is crucial for creating a just and fair society, where the rule of law in harmony with moral principles. Moral principles are the rules that peoples follow in order to ensure that they are acting correctly. These include things like honesty, fairness and equality. Since a person's upbringing and life priorities influence their moral values, they may vary from these of other people. Generally speaking, moral standards are advantageous to both the individual and society. But it can be problematic to blindly adhere to moral rules without thinking about where they come from or using your discretion based on the circumstances. When dealing with a situation. It is often best to follow a

¹⁵ (1994)

¹⁶ (1932)

¹⁷ (1884)

¹⁸ (1957)

vaguely defined set of moral standards that are in line with your values and society at large. Additionally, consider the cost of sticking to your principles in light of how it may affect others. Try to treat you and others fairly so that everyone benefits. At the end, comprehending the connection between law and morality, it is still necessary for resolving complicated ethical and legal problems in society. In legal theory, the notion that laws should be in accordance with morality is a common thread.

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