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Morality in Law: A Socio-Legal Analysis

SAKSHI¹

ABSTRACT

The relationship between law and morality has been hotly debated since the resurgence of the scientific study of jurisprudence, but the issue has not yet been resolved and possibly never will be. A man's entire life cannot be governed by the law. The same can be said for morals or ethics. It is stated that morality deals with a person's inner conscience, whereas law deals with their outward conduct. Generally speaking, the goal of law is to have people submit to organise societies will. Society is a dynamic concept. The Requirements of society have changed with the passage of time. Therefore we need to amend the laws. So, in this paper researcher has tried to find out the possible ways to harmonize law and morality. The paper also explains the importance of harmonizing law and morality in the present scenario.

Keywords: Internal phenomenon, Morality, Legal norms, Society.

I. INTRODUCTION

There are two systems that control how people behave: law and morality. All individuals are required by law to abide by a set of rules and regulations. On the other hand, morals relate to broad rules or expectations of behaviour that outline social behaviour but are not required to be followed. The connection between morality and the law is nuanced and has changed over time. Initially, the two were thought to be equivalent, but with time and advancement, it has become clear that they are actually two distinct notions with some interdependence.² They were not separate concepts in ancient India; there was no separation between morality and the law according to the Hindu jurists. The connection between morality and the law has been viewed in various ways by different legal theorists. On the one hand, there are numerous individuals who contend that morality and law are separate, if not unconnected, concepts. This first group believes that a law cannot be ignored only because it is immoral. On the other hand, some contend that morality and the law are intertwined.³ Any rule that tries to control behavioural expectations must, in the eyes of the second group, be consistent with moral principles. Roman

¹ Author is a Ph.D Research Scholar at Department of Laws, Central University of Haryana, Haryana, India.

² Srimanglam, *Law and morality: Ralationship including critical analysis*, Legal service India E-Journal, (last visited Nov. 25, 2022, 9:10 AM), <https://www.legalserviceindia.com/legal/article-7081-law-and-morality-relationship-including-critical-analysis.html>

³ Arthur Scheller Jr., *Law and Morality*, Marquette Law Review, Vol. 36, 3Winter 1952-1953, 319, chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=3196&context=mulr

jurists acknowledged specific moral principles as the cornerstone of law under the heading of natural law; much like the Greek philosophers had done with the doctrine of natural rights.⁴ During the Middle Era, Christian Morals were considered as the basis of law after reformation in Europe, they distinct the law and morality, and law derived from state, not from Morality.

II. DEFINITION

According to John Austin, “Law had nothing to do with morals and he defined law as of the Sovereign, law alone was the subject matter of jurisprudence”. Morality, law, and heavenly rules are all interconnected. Their content overlaps on many instances, and there are "many cases where Law and morality are so intimately and indissolubly related, that, although they are of different natures and ought to be scrupulously divided, it is important to analyse them together." In particular, because positive law cannot be understood without positive morality, it is sometimes advantageous to include a portion of it in the corpus juris.

According to Paton, “morals or ethics is a study of the supreme good. In general, morality has been defined to include: all manner of rules, standards, principles or norms by which men regulate, guide and control their relationships with themselves and with others.” Law and morality share the same ancestor. Laws were actually borne out of morals. The State supported moral laws and upheld their observance. Law is the word given to these regulations.

According to Kelsen, A norm is a guideline that specifies a particular behaviour. He distinguishes between moral and legal laws. A legal norm, according to him, specifies that if a person breaks the norm, the state would punish them, whereas a moral standard only states "what a person should do or not do." He said only legal norms are the subject matter of jurisprudence.

According to Hart, Law and morality or coercion have no logically required relationship to one another. He argues that categorising all laws as either moral mandates or coercive directives oversimplifies the relationship between law, coercion, and morality. Law regulates and controls the External human conduct within the society. It has no concern with inner morality and it is universal in the particular society.⁵

According to Vingradroff

Law has a different goal than morality. While the aim of morality is to subjugate the individual

⁴Shardach Etin, *A Critical Analysis of the Relationship between Law and Morality*, Munich, GRIN Wissen finden & Publizieren (2021) (last visited Nov. 28, 2022, 11:30), <https://www.grin.com/document/1038415>

⁵ 71 H.L.A HART, POSITIVISM AND SEPARATION OF LAW AND MORALS, Harvard Law Review Association 593 (1958) , <https://www.jstor.org/stable/1338225>

to the will of organised society, the intention of law is to do the opposite.

Differentiating between morals and the law⁶

- (i) Man is regarded as a person in law because he possesses free will, but in morals, we determine if that will is inclined toward good.
- (ii) In contrast to morals, law solely takes into account a person's ability to live in a community. Even if he were alone himself, offer advice.
- (iii) While morality focuses on intention or inner will, law deals with the object of the law. The object of law is the submission of the Individual to the will of organized society while the tendency of morality is subject of the Individual.
- (iv) Law governs and imposes by External coercion whereas morals seek free self-determination towards good.

III. LEGAL VIEW OF HART REGARDING LAW AND MORALITY

Natural law must prevail over human law whenever they are in conflict. Natural law requires that all rules produced by humans in this regard must adhere to its core tenets, such as Aquinas' ideas of acting righteously, abstaining from wrongdoing, and advancing the common good.⁷ The supporter of natural law contends that in order for something to be considered "law" at all, it must first be morally justifiable. However, there have been instances where proponents of natural law have unfairly disparaged legal positivism.⁸

Due to the separation of powers doctrine, the United States and Great Britain are less conducive to applying Hart's ultimate rule of recognition. There is no written constitution in Britain. Furthermore, the idea of parliamentary supremacy is the foundation of British constitutional law. Of course, in the United States, this is not the case. We have a written constitution in our nation. Through the process of judicial review, the US Supreme Court interprets and applies the US Constitution. As a result, in the United States, our final standard of approval is more akin to "what the Constitution states as construed by a majority of the members of the Supreme Court is law," as opposed to "what the Queen in Parliament enacts is law."

In addition to being a critical moral philosophy, Hart is a legal positivist. Though it is true that

⁶ Mohd Aqib Aslam, *Important Concepts Of Law, Morality, Right and Duties, Legal Personality And Theories*, Legal Service India E-Journal, (last visited Nov. 28, 2022, 12:28 AM), <https://www.legalserviceindia.com/legal/article-4065-important-concepts-of-law-morality-right-and-duties-legal-personality-and-theories.html#:~:text=According%20to%20Vinogradoff%2C%20%22Law%20is,dictates%20of%20his%20own%20conscience.%22,X>

⁷ Supra note 4 at 597-600

⁸ Supra note 4 at 604-606

laws frequently do reproduce or satisfy certain moral objectives, legal positivism typically holds that this is not a necessary truth. It is important to note that he doesn't really agree with all of the claims that legal positivism is known for.⁹ He definitely take morals seriously, he claimed that while not necessarily connected, law and morality are extremely closely intertwined. He is quite receptive to what he refers to as "the core of good sense of natural law" and thinks that moral evaluation of the law should be ongoing.¹⁰

In any legal system, according to Hart, the formal justice principle is desirable. This fundamental fairness principle underlines the need for laws to treat similar circumstances similarly and dissimilar cases differently. To establish a legal system of moral legitimacy, this stability is required.¹¹

IV. DISTINCTION BETWEEN MORALITY AND LAW BY H.L.A¹²

Harts on the basis of some points He makes reference to the four fundamental characteristics that set morality apart from other types of social standards as well as from legal rules.

- a) Important legal rules may not have the same importance as moral rules have, for legal rules may be thought to maintain or agreed to repeal it.
- b) Immunity from deliberate change legal rules can be inserted or can be repealed. However, moral values cannot be brought into existence or alerted or done away with the consent of the legislature.
- c) Voluntary character of moral offences: Morals are connected with Internal conduct while law is connected with External conduct A legal system would be open to serious moral criticism If this were not so, at any rate in case of serious crime carry severe punishment.
- d) Form of moral Pressure: If anyone breaks the rule of law, there is threat of Punishment however, in case of morals, Individual concentrates on mounding his character, reputation in society.¹³

V. LEGAL VIEW OF ROSCOE POUND REGARDING LAW AND MORALITY

Interpretation is a one point at which morality and the law intersect. The process of developing

⁹ Supra note 4 at 610-615

¹⁰ 8(3) JEROME E. BICKENBACH, *LAW AND MORALITY*, Symposium on Legitimacy of Law 291(1989), Springer, <https://www.jstor.org/stable/3504589>

¹¹ A.W. CRAGG, *VIOLENCE, LAW, AND THE LIMITS OF MORALITY*, Law And Philosophy 301(1989), <https://www.jstor.org/stable/3504590>

¹² PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS*, *Morals & contemporary social reality* 126, (1959)

¹³ Id. At 130-136

new rules for unique circumstances or altering existing ones for common ones has been deemed to be a part of interpretation. In the analytical theory of the previous century, the law was comprehensive and all circumstances were at least covered by the logical implications of existing laws or the logical substance of legal principles.¹⁴ As a result, this is referred to as "interpretation" by a dogmatic fabrication. Under the guise of "spurious interpretation," Austin set it off. Here, it is clear where morality and the law intersect. Another point on which both intersect is application of standards. Legal analysts have favoured the idea that applying the law is merely a mechanical operation.¹⁵ They didn't like things like the leeway in applying equitable remedies, the ethical justification for equitable maxims, and the ethical component of equitable doctrines like those relating to unfair deals, mistakes made in sharp practice, and the like. In the final quarter of the nineteenth century, partly as a result of their impact and partially due to the same spirit of the development of law that prompted an analytical style of thinking.¹⁶

In modern roman laws, Existimationisminutio-impairment of civic honour is another area where law and morals intersect. This could be turpitude, de facto existimationisminutio, or infamia, legal existimationisminutio. The loss of civic honour was infamia. Its roots can be found in the censor's authority to label someone as notorious in the Roman republic when their behaviour or way of life went against righteous values.¹⁷ In other words, censorian power protected and implemented bonimres as a social control mechanism. According to Roman law, it may be the result of a censor's notice or a praetor's decree. Loss of the suffragii (the ability to vote), iushonorum (the right to hold office), postulatio (the right to be an agent for litigation-to practise law as an attorney), and ineligibility to be a witness were all implicated. Praetorian infamia served as a tool for enforcing just obligations.¹⁸ Turpitude denotes the fact that a person is unworthy of civic dignity, and as such, this situation should be taken into account when using discretion, such as when appointing a guardian. On the one hand, thinking of this as a legal institution at all is the endeavour of natural law to link the moral and the legal.¹⁹

VI. RELATIONSHIP BETWEEN LAW AND MORALITY BY ROSCOE POUND²⁰

¹⁴ 51MICHAEL MARTIN, *ROSCOE POUND'S PHILOSOPHY OF LAW*, ARSP 37(1965), Franz Steiner Verlag, <https://www.jstor.org/stable/23678246>

¹⁵ Supra note 13 at 40-44

¹⁶ Supra note 13 at 48-50

¹⁷ 73(2) ISAAC HUSIK, *LAW AND MORALS BY ROSCOE POUND*, University of Pennsylvania Law Review and American Law Register 218 (1925), <https://www.jstor.org/stable/3314604>

¹⁸ 27(3) ROSCOE POUND, *THE END OF LAW AS DEVELOPED IN LEGAL RULES AND DOCTRINES*, The Harvard Law Review Association 195 (1914), <https://www.jstor.org/stable/1325958>

¹⁹ Id. At 224-228

²⁰ 23 ROSCOE POUND, *LAW AND MORALS- JURISPRUDENCE AND ETHICS*, North Carolina Law Review 204

He refers to three angles which discuss how law and morality Connect.

- a) **Morals as Basis of law:** According to Roscoe pound, there was no difference between law and morals, and both terms have common origin, but they come to differ in course of development. Though law and morals are not the same, many things are immoral but not illegal.
- b) **Morals as test of law:** This view is supported by Greek & Roman Jurists. In the society, Morals occupy an important place, Christian fathers maintain law to conformity with moral & did not conform which was invalid. All laws come from customs & morals.
- c) **Morals as end of law:** Morals have often been regarded as the end of law, and many eminent Jurists have described law in terms of Justice. The immediate end of law is to secure a social interest which means that the conflicting interests of members of society should be evaluated & weighted.²¹

VII. LEGAL VIEW OF FULLER REGARDING LAW AND MORALITY

Despite common opinion to the contrary, Lon Fuller claims in *The Morality of Law* that a set of standards should be utilised to determine the appropriateness of legal concepts. Fuller calls for greater acceptance of the idea that law is fundamentally a method of balancing mankind's conflicting goals rather than advocating for expanded acceptance of the techniques put forth by jurimetrics proponents and the use of physical scientists' tools in the formulation of legal rules.²² He contends that law cannot be assessed using absolutes. If administrators, lawmakers, or judges are asked to declare a rule of law, Fuller advises them to keep in mind that, regardless of the concept they finally choose to uphold, it was typically just one of many options. He asks that the arbiter keep in mind that in order to reach his conclusion, he was forced to engage in a process of compromise and accommodation of opposing goals. His ultimate decision shouldn't be taken as the lone course of action.²³

Fuller grapples with the issue of the connection between morality and the law early in his work. He chooses to categorise morality into four distinct categories, combining them into what might be described as two distinct sets of morality, each of which has two opposing components.²⁴ The "morality of obligation" and the "morality of aspiration" are both included in one set. The

²¹ *Id.* At 213-220

²² 27(1) JENNIFER NADLER, *HART, FULLER AND THE CONNECTION BETWEEN LAW AND JUSTICE*, *Law and Philosophy* 1 (2008), Springer, <https://www.jstor.org/stable/27652636>

²³ *Id.* At 25-30

²⁴ 8(3) HEMIN IBRAHIM QADI, *LEGAL MORALITYI FULLERIAN JURISPRUDENCE*, *Journal of Raparin University* 15, (2021), <https://www.researchgate.net/publication/354943336>

division's components have some similarities to the strategy used by other authors to differentiate between the terms morality and ethics.²⁵ They used the term 'ethics' to denote a desired standard of behaviour separate from any consideration of real current human activities, whereas the term 'morality' has been used to describe the standards actually observed by humans at a specific time and place. There is not enough detail in Fuller's difference between "external morality" and "interior morality."²⁶ Fuller acknowledges the lack of such accuracy, concluding that it is inevitable given the design of our legal system. According to Fuller, maintaining an orderly society necessitates having the bare basic necessities. Therefore, he contends, the "morality of duty" should serve as the foundation for any legal rules developed to achieve this goal.²⁷

VIII. IDEOLOGY OF HART AND FULLER

Both of these legal Jurists sought justice, but they did so in different ways. Real-world examples can help us better understand their views. Consider a scenario in which parking a car somewhere is against the law.²⁸ Although it is clearly not morally wrong to leave your car parked there, it is nonetheless against the law. This implies that law can exist outside of any moral duty to meddle with or to be dependent, as established by Hart.²⁹

On the other hand, Fuller believes that injustice results when laws do not match moral principles. If we examine somewhere at Nazi dictatorship, whose laws Hitler passed without regard for morality or ethics. We can all agree that the Nazi government was unjust and terrible to humanity, and that's why there wasn't justice.³⁰

Morals as Part of law

If we distinguish law from morality, we will see, morality is an integral part of law or legal development system. According to him, law is not just a set of laws but also entails the application of certain ideas. External coercion will fill the gap of implementation between laws and morals.³¹

Legal Enforcement of morals

²⁵ 6 JOSEPH ASOMAH, *THE IMPORTANCE OF SOCIAL ACTIVISM TO A FULLER CONCEPT OF LAW*, Western Journal of Legal Studies, (2015), <https://www.researchgate.net/publication/31722984>

²⁶ 17(2) MATTEW H. KRAME, *ON THE SEPARABILITY OF LAW AND MORALITY*, Canadian Journal of Law and Jurisprudence 315,(2004), <https://www.researchgate.net/publication/305941863>

²⁷ Id. At 320

²⁸ LON L. FULLER, *THE MORALITY OF LAW*, Hart's the concept of law 119 (1964)

²⁹ Id. At 122-125

³⁰ *Ibdi*, P-127

³¹ RONALD DWORKIN, *Law's Empire*, Hart publisher 254, (1998)

Lord Devlin said, there is public morality which provides the cement of any human society and law, especially criminal law, must regard it as its primary function to maintain this public morality. Prof. Hart concurs that morality must be upheld by the law. Where the line should be drawn is the true issue at hand. The rules essential for particular societies may also be enforced.³²

Influence moral considerations and the law

Law and morality influence, react to, and shape one another. Morals have wormed their way into the fabric of law in the name of justice, equity, good faith, and conscience. Law is a tool for successfully enforcing moral standards.³³ The moral is an internal phenomenon, whereas the law is an exterior phenomenon. If someone does not act morally, it will not have any consequences, but if they defy the law, they will be punished.³⁴ A bill that goes against societal morals won't be dared to be passed by the legislature. All human conduct & social relations cannot be regulated and governed by law alone and very relations are left.³⁵

IX. LAW AND MORALITY AND CONTEMPORARY ISSUES

Sexual orientation and morality³⁶

The Indian Penal Code, 1860, Section 377, relates to homosexuality. This section criminalizes all sexual acts that are not in accordance with the nature of a punishable offence and prescribes punishment for the same.³⁷ These acts include all non-vaginal or non-productive sexual acts. Because of this section, members of the LGBTQ (lesbian, gay, bisexual, transgender and queer) community experience social discrimination due to their sexual orientations that differ from what is typically accepted. Every human being should have the same rights to determine how they will meet their requirements if we see this legislation morally. But law speaks in a different way; in this case, it takes precedence over the idea of moral principle.

Refugees and morality

It is right and moral to assist the people who are needy. In the world today, certain nations have more resources than others, and vice versa. In light of this, it is morally appropriate for the

³² Id. At 267-269

³³ AUTER KRISHEN KOUL, A TEXTBOOK OF JURISPRUDENCE, Satyam Law International 315(2nd ed. 2014)

³⁴ Id. At 318-320

³⁵ Id. At 325

³⁶ JOHN M. FINNIS, MORALITY AND "SEXUAL ORIENTATION", Kresge Law Library, 69 Notre Dame Law Review 1049(1994), (last visited Dec. 3, 2022), https://scholarship.law.nd.edu/law_faculty_scholarship/205

³⁷ DISHA PATHAK, MORAL, SOCIAL AND LEGAL LENS: THE RIGHTS OF LGBTQIA+ COMMUNITY OF INDIA, Academike Articles on Legal Issues, (last visited Dec. 4, 2022, 4:PM), <https://www.lawctopus.com/academike/lgbtqia-rights-india/>

nations to cooperate in situations like this. However, the current situation is different, with countries implementing laws that restrict refugees from entering. Threats to national security, resource depletion, and other factors are cited as the cause.³⁸ For instance, the United States government prohibited the admission of trash from seven Islamic nations.³⁹

X. CONCLUSION

Laws come from morality and customs. Legislatures make the law which is followed by society continuously and mold it according to the requirements of the society. Morals provide perfection to the law. If law is to remain closer to the life of the people, it cannot ignore morals. Morals are the initial stage of any law and after consensus it becomes codified law. We saw some morally wrong things that are part of the law. From Austin's extreme belief that morality and law are inseparable for judicial purposes to the nearly opposing views that morality and law are one, every possible viewpoint has been considered. The answer to this crucial issue will rely on the ramifications of the response that is supplied. The issue is incredibly real-world in nature.

If you look back in the history of the world, there are numerous instances of laws that were not according to the present standards and were utterly unethical. Among many other instances, the US has expropriated Native American territory, held Black people in slavery for decades. In India before Navtej Singh judgment, society had discriminated against LGBTQ community. Citizens demand that their laws reflect their updated sense of what is moral as society gets more informed and open. Even though not everyone concurs with the rulings, amending the legislation is a significant step in the direction of a general social revolution. The new notion of what is acceptable is communicated to society by changing the legislation. Morality and law frequently influence one another and modify each other. Morality is also changing with the passage of time

The people must stand up and fight for what is right when laws are unfair or out-of-date, to put it simply.

³⁸ NICHOLAS RESCHER, MORAL OBLIGATION AND THE REFUGEE, 6(1) PUBLIC AFFAIRS QUARTERLY 23(1992), <https://www.jstor.org/stable/40435794>

³⁹ 2021 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: IRAN, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S DEPARTMENT OF STATE,(last visited Dec.11, 2022) <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/iran>