



Title- The Dilemma of Law and Morality

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Abstract

Law and morality are two phrases that possess significant power to shape and disrupt society. There are instances where law and morality are perceived as similar, yet there are also times when they are perceived as entirely distinct from one another. In certain situations, individuals must decide whether to abide by the law or adhere to the moral principles instilled within them. In the past, a person may have been deemed barbaric, but as society has progressed, individuals are now regarded as social beings. Each person possesses their own set of morals, ethics, conscience, and values. However, when a law contradicts these principles, can peaceful coexistence be achieved between the law that must be followed and the morals that one upholds? This question falls under the realm of jurisprudence, and this research paper will address similar questions. The objective of this paper is to establish a connection between law and morality and assess whether other schools of jurisprudence, such as the natural school of law, prioritize morality to the same extent. Additionally, this research paper will provide a concise understanding of the concept of law and morality and examine it in relation to various cases, particularly in terms of Article 14, which pertains to the rule of law. Law and morality play a crucial role in interpreting our legal system and comprehending the legal framework we inhabit. Furthermore, this research paper will delve into criminal jurisprudence to elucidate complex concepts supported by precedents established in common law. Its aim is to provide a clearer understanding of the concepts of law and morality.

Introduction

Law is an expansive and comprehensive concept, particularly when considering India and its predominantly Hindu population. Prior to the establishment of formal legal systems, the code of conduct known as Dharma served as the prevailing law in Hindu society, while hukum governed the Islamic legal framework. Dharma and hukum are not unfamiliar terms; even common individuals possess a basic understanding of these concepts, as they have been ingrained and adhered to since ancient times. From these foundational principles, the concept of law emerged, encompassing not only legal regulations, but also moral, ethical, and conscientious considerations. However, when asked to define law, the responses obtained from lay individuals vary greatly and often revolve around prevalent laws and their societal significance. Yet, these responses fail to capture the true essence of law. In the common understanding, law is perceived as a set of rules and regulations enforced by the highest authority, generally backed by sanctions. However, even this definition may be unfamiliar to some, particularly terms such

as "sovereign" and "sanctions". "Sovereign authority" refers to the supreme entity or highest governing power of a state. In the case of a democratic nation like India, the preamble of its constitution clearly declares "WE THE PEOPLE OF INDIA" as the foundational principle, where citizens willingly surrender certain rights in exchange for the decision-making authority of a sovereign entity, which is chosen through the electoral process. Our perception of law has evolved significantly over the course of thousands or hundreds of years, whether through the adherence to Dharma or the legal system imposed by British rule in India. Eminent jurists of the past have made invaluable contributions to our understanding of law, providing notable and significant definitions. One such jurist is Blackstone, who defined law in its broadest sense as "a rule of conduct that applies to all sorts of activities, whether animate or inanimate, rational or irrational¹." Morality on the other hand refers to an individual or society's understanding of what is considered right or wrong, particularly in relation to behaviour. This concept is particularly relevant because we aim to establish a connection or distinction between law and morality. Morality has the potential to challenge the foundation of law, as it raises the question of whether law should prioritize moral values. These moral values have existed for centuries and are ingrained in individuals lives. Even a layperson is aware of their own morals and acts in accordance with them, regardless of whether there is a corresponding law. The understanding of the legal system in our country necessitates a profound consideration of the concepts of law and morality.

The synthesis of law and morality entails the integration of legal principles and ethical values.

In the Indian context, morality assumes a significant role as it is widely known that every community adheres to its own set of morals and beliefs. Any action that contradicts these morals is considered to be in violation of the entire community's moral code. However, the question arises as to whether the morals of the community hold more importance or if it is the law that takes precedence. This question is crucial in understanding the basis on which laws are formulated. Morality, being an abstract concept, cannot be perceived through touch or sight but rather is something that is experienced. Morals are universal and unchanging, encompassing both collective and individualistic values. Furthermore, communities as a whole uphold certain moral standards. On the other hand, the concept of law is concrete and not abstract. It represents what is, rather than what should be. A society devoid of moral values would lack social order and the principles of the preamble of the Constitution. In the past, Indian society cherished two fundamental values - "satya" (truth) and "ahimsa" (non-violence). These values were exemplified by revered figures such as Mahavir, Gautam Buddha, and Mahatma Gandhi, and were deeply ingrained in the lives of the people. Truth held immense significance as a guiding principle in daily life. However, in the post-Independence era, materialistic values and self-interest have overshadowed the importance of truth. This shift has made it arduous to comprehend the intricate relationship between morality and law. The prevalence of materialism has eclipsed the traditional ethos, and the relentless pursuit of personal gain has become so intense that individuals involved in legal disputes do not hesitate to resort to falsehoods, misrepresentation, and suppression of facts in their daily conduct.

¹ Blackstone's Commentaries were originally published from 1765-1769 in England.

A comprehensive study of various legal systems has established the undeniable connection between law and morality, despite occasional divergence and judicial separation. According to Jurist Stammler, jurisprudence heavily relies on moral foundations, as laws require ethical grounds to maintain their legitimacy. C.K. Allen supports this view by stating that judges closely monitor and reflect the prevailing moral values of society. Lord Mansfield further emphasizes that English law prohibits actions that are contrary to good morals. Thus, it can be asserted that the development of law has been greatly influenced by conventional morality, the ideals of specific social groups, and moral criticisms that have contributed to the acceptance of new moral standards. To illustrate this point, we can consider the example of Socrates, who was convicted and imprisoned for various reasons. Despite the plans made by his disciples to help him escape, Socrates chose to refuse their assistance. He believed that such an action would be hypocritical and go against his teaching of justice and obedience to the law. Although it would have been morally acceptable for him to escape, he prioritized abiding by the law. In this instance, the emphasis shifted from morality to the importance of adhering to the law. During the Middle Ages, European law predominantly developed under the influence of the church, which espoused the concept of natural law or the law of God (lex aeterna). Any law that contradicted divine authority was not considered valid. Even today, morality continues to be recognized as a significant source of law. Many laws are implicitly or explicitly grounded in moral principles.

The correlation between law and morality is founded upon three perspectives.

1. **Morality as the spine of law:** As discussed, laws in ancient India were founded on the principle of Dharma. Any action contrary to Dharma was deemed invalid, while actions in accordance with Dharma held precedence. This arrangement existed because Dharma itself was regarded as the embodiment of law and morality. However, with the establishment of the state, new laws were introduced and enforced. Consequently, it becomes apparent that morality and law share a common origin, yet diverge in their subsequent development.
2. **Morality as a test of law:** Morals must always be upheld by the law, whether it is the law of Rome, the church, or any law that goes against this principle is invalidated if it does not adhere to the natural theory. During the 17th and 18th centuries, it was argued that positive law, meaning laws made by the legislature, must conform to natural law. If this was not the case and natural law was violated, not only would the positive law be nullified, but even the government that enacted such a law would be overthrown. This rigidity existed at that time. However, with the emergence of the concept of the state, moralities are no longer legally binding, even if such laws do not align with morals. Paton extensively writes: "If the law fails to keep pace with societal norms, it loses respect; if legal standards are set too high, enforcement becomes greatly challenging."

3. **Morality as the end of law:** The law exists to deliver justice to individuals who have suffered legal harm or wrongdoing, while morality aims to discern right from wrong and eliminate conflicts of interest within society. Although they may appear as distinct concepts, the goals of law and morality are closely aligned. Consequently, it is evident that law and morality share many similarities that can be foreseen.

When examining the similarities or intersectionality of the two concepts, Dharma, the Natural law, and the Divine law are found to play significant roles. However, when considering the differentiation between the two, it becomes apparent that the main basis lies in positive law. The distinction can be observed primarily in how laws are formulated, enforced, and interpreted within a state. On the other hand, morality is simply the belief system held by a group or an individual, and it is followed based on personal conviction or institutional guidance. If one violates a law, there is a prescribed punishment, whereas going against the morals of an institution does not entail any punishment unless those morals have been codified into law. In such cases, the individual may face consequences such as being ostracized from the group that shares similar morals. Morality evaluates both the internal and external actions of a person. For instance, being ungrateful can be seen as an internal issue stemming from a lack of gratitude and the external action would be the manifestation of this character trait. In contrast, the law solely focuses on a person's external actions. For example, if a person commits dacoity, the law considers the malicious intent behind the crime but does not delve into the underlying reasons for the development of such a character, unlike morality. In the realm of law, various aspects are deemed legal or illegal, which may conflict with one's personal morals. For instance, the Indian Penal Code (IPC) previously classified adultery as a criminal offense, but it has recently been decriminalized. From a moral standpoint, engaging in adultery is considered entirely immoral, as it involves having a sexual relationship outside of one's marriage. However, the law does not necessarily align with this moral perspective. Therefore, it is possible for actions that are morally acceptable to be illegal, and vice versa.

When examining the concept of law, it is important to recognize its universal application. Whether in a democratic or communist country, the laws of a nation state are universally applicable, albeit with variations. Each country has its own set of laws, tailored to its specific needs and values. Laws possess a universal nature, as they are designed to govern and regulate society. On the other hand, morals are subjective and can differ across different cultures and societies. What may be considered immoral in one country may not be viewed as such in another. Consequently, morals lack universality and are contingent upon cultural, social, and individual perspectives. Unlike laws, which are universally applicable, morals are not universally consistent and can vary significantly. In order to better understand the notion of law and morality; some relevant case laws need to be mentioned here:

In *S. Khushboo v. Kanniammal*² sheds light on numerous essential matters including pre-marital sex, cohabitation, freedom of expression, among other things. Expressing one's opinions on pre-marital sex, living together, and

² (2010) 5 SCC 600.

similar subjects does not constitute defamation towards a society or a specific gender. Engaging in discussions about these subjects is crucial, although there are individuals who feel uneasy about such conversations. The focal point of this judgment lies in the significance of free speech and the standards employed to assess the indecency of a given statement. By elucidating the criteria for determining the obscenity of a statement, this judgment provides clarity on the matter. It is important to note that expressing cautious opinions on social matters does not render one accountable for defamation. In fact, openly discussing topics such as pre-marital sex and cohabitation is not a criminal offense; rather, it holds great importance as only a limited number of individuals are able to openly address such matters in public. Furthermore, educating society about these topics is crucial for societal progress. The Supreme Court of India has declared that the concept of social morality is inherently subjective, and it emphasizes that the criminal law should not be employed as a tool to excessively encroach upon personal autonomy. It is important to note that morality and criminality do not always align with each other.

In another different case titled *R v. Dudley and Stephens*³ The case under consideration presents a unique intersection of law and morality, where four individuals found themselves stranded at sea on a yacht with minimal provisions for survival. Faced with the grim reality of dwindling food supplies, the group made the controversial decision to sacrifice the youngest member, Richard Parker, in order to sustain themselves by consuming his flesh. Following their eventual rescue, the case was brought before the Queens Bench, prompting a critical examination of the moral and legal implications of their actions. Lord Chief Justice Coleridge, presiding over the case, unequivocally declared that the defense of necessity could not absolve the individuals of the charge of murder, neither in accordance with established legal precedents nor ethical standards. Consequently, the defendants were initially sentenced to death. Therefore, it can be inferred from this that there exists a significant distinction between law and morality, indicating that they will never align in its entirety.

In the case of *Navtej Singh Johar v. Union of India*⁴ the Supreme Court made a ruling to decriminalize Section 377 of the Indian Penal Code of 1860, thereby removing the criminalization of acts deemed “carnal against the order of nature,” including homosexuality. Through the application of the doctrine, the judges determined that the court should not be influenced by popular opinion, but rather by constitutional morality. Furthermore, they distinguished between public morality and constitutional morality, asserting that the latter should take precedence over the former.

In the landmark case of *Joseph Shine v. Union of India*⁵, the court made a significant ruling by striking down and decriminalizing Adultery as per Section 497 of the Indian Penal Code, 1860. This decision upheld the principle of equality, emphasizing that the constitutionality of criminal laws should not be determined by public opinion or moralities. The court recognized that the traditional notion of women being subservient to their husbands and husbands being the masters of their wives was inconsistent with constitutional principles and ideas. Therefore, this case served as a clear illustration of the distinction between constitutional morality and public morality.

³ 14 Q.B.D. 273 (Queen’s Bench Division. 1884).

⁴ AIR 2018 SC 4321.

⁵ AIR 2018 SC 1676.

The *Indian Young Lawyers Association v. State of Kerala*⁶ This case was referred by a three-Judge Bench to a Constitution Bench of the Supreme Court to determine the constitutionality of Rule 3(b) of the Kerala Hindu Places of Worship (Authorisation of Entry) Act, 1965 (KHPW Act). This rule prohibited women between the ages of 10-50, i.e. those of menstruating age, from entering the Sabarimala Temple dedicated to Lord Ayyappan. The Court was tasked with issuing directions to the temple authorities and local government representatives to facilitate the entry of such women.

In its majority decision, the Court invalidated Rule 3(b) as it impeded women from exercising their right to religious freedom under Article 25(1). The Court found that there was no justification for granting an exemption to this rule as an essential religious practice of a distinct religious denomination. Despite Article 26 (b) allowing religious institutions to manage their own affairs, the Court did not consider the devotees of Lord Ayyappa as constituting a separate religion. As Hindus, they were subject to the provisions of Article 25(2)(b), which allowed for the reform of Hindu religious institutions. The Court emphasized that any practice that discriminated or segregated individuals based on biological characteristics could not be deemed constitutional. Such practices infringed upon the dignity, freedom, and autonomy of women. The Court specifically highlighted that a woman's menstrual status was a personal and private matter, and compelling disclosure of this information violated a woman's right to privacy under Article 21. Therefore this case established that the exclusion of menstruating women from the Sabarimala temple violates four essential morality principles: Justice, Liberty, Equality, and Fraternity. The court clarified that the interpretation of 'morality' in Articles 25 and 26 should be based on constitutional morality rather than public morality. Additionally, the court emphasized the importance of evaluating existing structures of social discrimination through the lens of constitutional morality rather than public morality.

Conclusion

India, being a nation of diverse cultures and religious beliefs, has a rich tapestry of traditions that have shaped its society for centuries. The ancient concept of Dharma, rooted in religious beliefs, has long served as a guiding principle for moral conduct. However, in contemporary times, the notion of morality has emerged as a significant factor in legal discourse. Morality, as a concept, plays a crucial role in the field of jurisprudence, serving as a yardstick to determine the rightness or wrongness of actions. While morals have traditionally influenced the development and interpretation of laws, it is essential to recognize that the legal system must evolve to address the complexities of modern society. In this context, the concept of constitutional morality takes precedence over individual or group moralities. This shift reflects the need for a deeper understanding of morality within the framework of the Constitution of India. It is evident that while morality may have historically informed legal principles, contemporary law must take precedence over individual beliefs. The legal system, as a cornerstone of society, demands strict adherence and compliance. Any deviation from the law is met with consequences, underscoring the paramount importance of legal norms in governing societal behavior. Therefore, it can be inferred that the supremacy of law surpasses any personal beliefs one may hold. Consequently, laws should be

⁶ (2019) 11 SCC 1.

formulated, implemented, and interpreted in a manner that does not compromise the moral values of the general public or the constitutional morality. Even if there is a conflict between the two, constitutional morality should prevail, as society has evolved to embrace such interpretations and move away from unfounded reasons for rejecting these laws. It is imperative for a country to advance as society progresses, rather than regress.

