

THE UNSTABLE ALLIANCE: LAW AND MORALITY

Poorvaja Vella*

ABSTRACT

This paper seeks to discuss the concept of law and morality, the relationship between them, and the conflict between legality and morality, through various perspectives and other concepts of sexuality and morality in law.

INTRODUCTION

Law and morality are both too uncertain terms. From ancient Greece to the present, many jurists and philosophers have attempted to define these two concepts. These terms vary in magnitude, and the lack of a precise meaning for these terms could be because they are both dynamic, with the meaning and value of these terms changing with time, context, and location. In this paper, we will discuss, what is law and morality and the relationship between them through various cases.

THE CONCEPT OF LAW

In its most literal sense, the law is a command of a sovereign authority that specifies what sort of behaviour is required of individuals, as well as what they should and should not do. Law assists a state in establishing adequate order in society and protects the citizens' rights. In a civilized community, the law is defined as a set of rules and regulations that govern human behaviour. Law is a tool for enforcing the rule of law. Law was once thought to be a divinely inspired set of principles that governed human behaviour.

According to Salmond, the law is "the collection of principles recognized and used by the state for the administration of justice." "Law is classified not as an end but as a prescribed means, as an instrument of coercion to which no political or ethical value adheres as such, law machinery whose value derives rather from some end which transcends the law," Kelson explained. All of these definitions have similar components, such as a law-making authority, a set of rules and regulations, an instrument of justice, civil rights protection, a social

*FIRST YEAR, BBA LLB, NMIMS, HYDERABAD.

organization technique, and the core principle of law is that what one does should be approved by the social group one belong to.

THE CONCEPT OF MORALITY

Morality, simply put, is the distinction between what is wrong and what is right. Morality is a concept that distinguishes between right and wrong. And morality is a broad concept; various people can have different moral principles by which they judge behaviour. Morality can be influenced by a variety of factors, including your religion, culture, society, community, and family values. As a result, morality is subjective, with different moral standards held by different people. Female genital mutilation, for example, may go against the moral principles of some groups while yet being by the moral values of others. As a result, morality doesn't have the same status as the law. Morality is a personal belief held by an individual under the social group to which he/she belongs. Because man is a social animal who cannot live in isolation, this can be said as the reason for the foundation of moral principles, because if you live in a social group, your behavior should be accepted by them. This is where morality comes into play; however, if you live in isolation, you are not required to check your conduct against moral parameters.

RELATIONSHIP BETWEEN LAW AND MORALITY

Law and morality can overlap at times; they cannot be mutually exclusive. For example, something can be against the law but moral, or something against morals can be legal. For example, if a starving and desperate person took a piece of bread, stealing is against the law, but if we look at this case from a moral perspective, it is acceptable because the person was attempting to meet his essential need to survive. Another example is when a country refuses to allow refugees to take refuge in that country to defend its inhabitants' rights and passes a law to that effect. This is against morality because we should help the poor, but it is legal. Law can also be used to enforce moral ideals and principles. For example, every person should pay a tax to help the state thrive, but if there is no law in place, there will be fewer taxpayers. Even when driving on the road, we should follow traffic rules to safeguard people who are also traveling with us; however, if there are no consequences, no one will follow these rules.

Though law and morality are not identical, there is an intimate relationship between these two. Law is a powerful instrumentality for the maintenance of peace and to balance public interests,

so as to reduce, to the minimum, conflicts between rival claims in society. If the law is based on public policy, that public policy itself is based on some healthy principles dear to the community concerned at a given time and a given place. No doubt some laws may be the result of totalitarian enforcement on the downtrodden subjects, in a totalitarian State; but living in democracies, as we do today, our laws, on the whole, are the outcome of public opinion. Even though law and morality are not synonymous, they have a close relationship. It can't be denied that law is a powerful tool for maintaining peace and achieving a harmonic balance of interests to keep disputes between competing claims in society to a minimum. If the law is based on public policy, then the public policy is based on certain healthy principles that are important to the community at a specific time and place. Some laws may be the consequence of totalitarian enforcements on oppressed subjects in a totalitarian state; but, when we live in democracies, such as we do today, our laws are largely the result of popular opinion. And, on the whole, public opinion is founded on sound moral values. Though the law is nominally a command, it is intended to sustain the healthy principles of the moral law or the positive morality of the people concerned, in substance (that is, in terms of the material or substantive base). Law is a tool for achieving an altruistically utilitarian goal: providing a large amount of good to a huge number of people. As a result, the law is a handmaid of ethics, and it is intended to maintain morality, at least on a materialistic or necessary level.

Though there are many laws, legal principles, decisions, and rules that are based on definite and well-recognized moral principles and are meant to serve, protect, and preserve morality and promote justice in the real (rather than the positivistic) sense, there are many laws, legal principles, decisions, and rules that are based on definite and well-recognized moral principles and are meant to serve, protect, and preserve morality and promote justice in the real (rather than the positivistic). Natural law is still alive and well, and it is the foundation of most legal systems. Positivism is the outer garment or formal instrumentality, which is primarily used to impose punishments. In this regard, it is worth noting what Professor Ralph Newman has said so eloquently. *That Despite the differences in opinion as to what is right or wrong in many situations, and despite the need for uniformity in the law, there are moral duties by specific coercion, and though there is a need for uniformity in the law, there remains a large area in which the enforcement of generally accepted ethical standards is perfectly practicable. The substantive principles by which equity restored the law in the early stages of its development and later developed into a separate system are among the moral standards set forth certain*

minimal decencies of life, on which most men agree, and which are particularly related to problems within the scope of effective legal control. These principles can be articulated accurately.

They are that rights should be based on substance rather than form, that the law should not interfere with the unscrupulous in carrying out their plans, that fully intended agreements should be carried out, that advantages gained through accident or mistake should be relinquished, and that hardship resulting from accident or mistake should be fairly distributed, even if strict legal rights are sacrificed. Equity and natural law, as Dean Emeritus Roscoe Pound so eloquently stated, demand high morality. In terms of fairness, strict law emphasizes form, equity, and natural law; in terms of responsibilities, strict law emphasizes remedies, equity, and natural law; and in terms of reason, strict law emphasizes rule, equity, and natural law. Though law and morality are inextricably linked, and one cannot exist without the other, it is important to remember that the two are not the same¹¹, especially because the law may exist legally, even if it is unsocially and is not meant to protect morality, but only to satisfy what is expedient or what is an arbitrary dictation.

If a law is constitutionally tenable, it is legally presumed to be a valid law that can be fully enforced (even though it may be unenforced). Second, it is important to remember that the law cannot guarantee everything good and right in life. Other than the law, some other means and principles are much more powerful, such as religion and education. What psychological re-education or the socializing force of good moral culture may accomplish, legal punishments alone cannot, because the negative roots must be permanently eradicated, not just suppressed: otherwise, action and reaction are equal and opposite. Rather than relying just on the coercive powers of the law to repress, let us also consider higher values, which will likely yield better long-term results. So the law has its limitations; it cannot create a man saintly or even good through coercion; yet, to keep morality on a decent level, the law is a helpful handmaid.

On the necessary association test, Joseph Raz claims that two innocent legal truisms are at the root of most of our confusion about the relationship between law and morality. The law is important, but it can also be a source of a lot of bad things. Not everyone agrees with these axioms, and it is quite acceptable to question them or examine their credentials. There are no contradictions between axioms. When we ask whether it is wholly contingent, whether the laws are the source of good or harm in many communities, or how much good and how much

evil there is in it, we get into trouble. The argument that the relationship between law and morality is not contingent has received support. Some strands of political anarchism believe that law is intrinsically amoral since it is like a law to include qualities that make it ethically incompatible, but another view considers law as beneficial in its very nature. Is there an essential connection between law and morality? Both sides of this debate accept that the law can do some good and that it can also be a source of evil. Should this question be used as a litmus test for determining the basic orientation of various theories? When the Imus test is used, legal positivists like Austin, Bentham, Keisen, and Hart exhibit negative results, whilst natural lawyers like Thomas Aquinas, Michael More, Soper, and Dworkin show good results.

Three examples of how law and morality are inextricably linked:

(1) Given human nature and life conditions, no legal system can be stable unless it provides some protection for life and property to some of the people to whom it applies.

(2) Given that only living animals can have sex, rape cannot be committed by the law nor by legal institutions.

(3) Given value pluralism, the State and all of the vices that exist in the legal system must unavoidably manifest to their fullest degree all of the vices that exist.

The first one is a natural requirement, whereas the other two can be considered conceptual, theoretical requirements. In any case, they're vital links for natural requirements. There are various forms of required linkages (claimed or purported) between law and morality, according to certain other writers.

For instance,

- (a) Everyone has a responsibility to obey the Law of his nation.
- (b) Everyone, by definition, has a reason to follow his country's laws.
- (c) If the law is just, all of its subjects are required to obey it.
- (d) If a country's government is democratic, all of its citizens are required to obey it.

(f) It is a moral obligation to support a just legal system.

These ostensibly required links reveal something significant about the relationship between law and morality if they are accurate. Is a comparable approach warranted in moral philosophy? Ronald has long asserted that there is a uniquely valid answer to every legal dispute that might occur in any given jurisdiction. Dworkin's view of law determinacy is based on his belief that, at least in a legal system similar to the United States, the answers to legal questions are determined not only by the familiar materials of law, such as statutes, adjudicative rulings, regulations, and provisions but also by the most appealing moral principles. In every situation, he maintains, the only acceptable legal answer is the only correct moral response to the dilemma highlighted by the case. In his article, Kramer concludes that Dworkin's arguments concerning the existence of a uniquely true response to every (or almost every) moral question should be treated seriously. Nonetheless, his statements are exaggerated. Indeterminacy in the area of morality is unavoidable due to the ambiguity of some moral notions and qualities.

Morals, in general, are concerned with an individual's conscience and establish guidelines for shaping one's character. Law, on the other hand, is concerned with establishing laws that control people's interactions with one another and with the government. According to Bodenheimer, law rules men's external relationships, whereas morality governs their interior lives and impulses. As "We cannot reclaim our former greatness unless we recognize the role of morality in our current legal system," that the application of law and morals differs. The application of morals takes into account unique instances, whereas the application of the law is consistent. Though both law and morality are normative and prescriptive, and both strive to regulate individual behavior, the rules of law are often applied to the broader population where the state supports them. Moral principles, on the other hand, are substantive since they are supported by public opinion and social pressure. A lot depends on how the law is defined when it comes to the link between law and morals.

Law has been defined by jurists from analytical positivist, historical, philosophical, and sociological schools of jurisprudence, and these definitions differ. A definition of law as the sovereign's order would leave no place for morals to play a part in the establishment and development of law. . On the other hand, a definition that takes into account all norms and principles controlling or affecting human behavior recognizes the crucial role morals play in the establishment and development of law. The origins of law and morality are similar, yet

their growth differs. Because morals and law share a common ancestor, many norms apply to both. For example, killing a man and/or stealing are both illegal and immoral. On this basis, the law is sometimes described as having minimum ethics.' Though law and morality are not synonymous, and many immoral activities are not necessarily criminal, a complete separation of law and morality would be deadly.

This principle was established in 1949 in the case of the **Speluncean Explorers**, in which four defendants were members of the Speluncean society who were engaged in cave exploration. They made their way inside a limestone cave's interior. A landslide happened, and large stones fell, completely blocking the cave's single entrance. It was discovered that on the twenty-third day of their incarceration, Roger Whetmore, the group's youngest member, was slaughtered and eaten by his companions. The defendants claimed that they had signed a contract to do so. Roger, on the other hand, withdrew from the deal at the last minute, and the defendants accused him of breach of contract. Defendants continued to eat him, and he did not object. The defendants were found guilty of murder by the majority of the Court, and they were sentenced to prison. The example of the Speluncean Explorers brilliantly illustrates the intricacies inherent in the relationship between law and morality. Various opinions presented in this case highlighted how morality influences law formation and implementation, and how legislation has its morality that may or may not be in line with the notion of general morality. However, other judges were positivists because they were opposed to enforcing morality through the law. This ruling portrays a circumstance in which positivists judges' consciences were bound, and they were obliged to take no firm views. Therefore, the Court was divided equally on this issue.

POINTS OF DISTINCTION BETWEEN LEGALITY AND MORALITY

- a. Morals are concerned with the individual and establish guidelines for shaping his character. Law is primarily concerned with society and establishes norms governing people's interactions with one another and with the state.
- b. Morals examine the intrinsic value of behaviour, or, in other words, motive. The law is concerned with the individual's behaviour, for which it establishes norms.
- c. Morals are a goal in and of themselves, should be followed since they are beneficial in their own right. Law exists for the sake of convenience and practicality, and its primary goal is to aid in the smooth operation of society.

d. Moral observance is a matter of individual conscience. Law depicts the state's entire machinery, in which the individual bows to the will of organized society and is obligated to observe its laws.

e. Morals are seen as universally valuable. Because the law is linked to time and place, it differs from one civilization to the next.

f. Once again, the application of law and morals differs. The application of morals takes into account unique instances, whereas the application of the law is consistent.

HISTORICAL ORIGIN OF MORALITY AND ETHICAL FOUNDATIONS IN LAW

The idea of natural rights, developed by the ancient Greeks, provided a theoretical moral underpinning for law. Greek ethical theory was used in Rome during the classical period. The Roman jurists set out to find and declare the content of natural law. They provided us with an ideal version of Roman legal principles in the shape of an ethical philosophical natural law. Natural law was given a theological underpinning in the Middle Ages, and Christian virtues were regarded as the foundation of law. In the seventeenth and eighteenth centuries, natural law systems with a logical moral ground became increasingly popular. With the establishment of the court of chancery and the development of equity in England, ethical ideals from sixteenth-century case law literature and general views of good and evil held by chancellors were transformed into liberalizing agents.

The philosophical views of juristic writers on the rule of nature were applied in the same way in Continental Europe in the seventeenth and eighteenth centuries. As a result, moral obligation became a legal obligation. The moral unit, the individual human being, became the legal unit. It was thought that a moral principle should also be a legal rule and that moral concepts should evolve into legal ideas as a result. It clearly shows how a moral principle became an equitable principle and then a rule of law in all legal systems of the world. At the end of the eighteenth century, Kant replaced the rational foundation with a metaphysical natural law, which is used to demonstrate the obligatory force of the legal order. The analytical jurists argued that no foundation was needed for law as the law stands upon its basis as a system of precepts imposed or enforced by the sovereign. Down to Kant, positive law had been contrasted with a body of ideal moral law on the one hand and natural law on the other.

Kant instead set over against positive law the immutable principles governing the making of law, by which law and law-making must be judged.¹¹ Kant wrote that positive law and doctrines were regarded as products of human wisdom. Few Historic cases where the conflict between law and morality can be traced are as follows

R VS. STEPHENS AND DUDLEY

[Law and morals – the law does not recognize necessity as a defence]

Three sailors and a cabin boy were shipwrecked and stranded 1600 miles from land on an open boat. After eight days without food and six days without water, DD concluded that the only way for them to survive was to kill and devour the cabin kid, which they did. They were apprehended by a passing ship four days later and convicted of murder when they returned to England.

Held: Necessity can never be used as a justification for murder.

Their sentence was later reduced to six months in prison

Guilty

OPPENHEIMER V ATTORNEY GENERAL

[Legislation and morals—an unfair law should take precedence over morality]

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Mr. Oppenheimer was a German national who worked as a teacher in his home country. He was held at the Dachau concentration camp for a brief time. He then moved to Britain and became a British subject. German authorities were adamant about compensating Jewish religious community personnel. Mr. Oppenheimer received that pension as well as a second pension when he reached the age of 65. The question now is whether he is required to pay tax on his benefits to the British government. If he is the sole British citizen, he must pay; but, if he is also a German citizen, he may be free from this obligation. The case was initially decided by the Special Commissioners for Income Tax in the United Kingdom. And lost his G citizenship and was obligated to pay taxes, according to their law from 1913, "when there were no complexities of the countries being at war, which specified that a German lost their German nationality if they gained a foreign nationality without permission."

Let us understand the issue of the relation between law and morality through the following terms:

Polygamy: Polygamy is when a person involves in more than one marriage or has more than one spouse. Any man who has more than one wife or any woman who has more than one spouse can engage in polygamy and polyandry respectively. And Bigamy is prohibited by Section 494 of the Indian Penal Code of 1861, which declares polygamous marriages null and void. If a man does more than one marriage or engages in polygamy, he is endangering his wife/wives' feelings and sentiments. Polygamy is prohibited in India and is a criminal offense. However, if we look at the Muslim culture, we can see that polygamy is accepted because it's registered in their sacred book, the Quraan. If a man follows Islam, he is allowed to marry four wives; however, this is not the case for women who follow Islam though. According to them, polygamy is not morally wrong nor does it fall under the notion of moral wrong.

Abortion: Burning alive is the most terrible death there could be in the world, followed by giving birth to a child as the second most painful act. Abortion is the process of ending a pregnancy by killing the fetus or embryo inside the woman's body. When it comes to abortion, morals, and legislation collide. Abortion is viewed as a social evil by many religions, who consider it an act against humanity and morality. Christianity is entirely opposed to abortion and views it as a curse on women because they regard a kid in the womb to be a human being, and they believe that killing humans or a baby inside the womb is immoral. Abortion is condemned in both Hinduism and Buddhism. They believe that life begins at conception and that abortion, in and of itself, terminates the lives of future generations. Because Jainism adheres to the principle of "live and let the others live," they are likewise opposed to abortion. In India, the Medical Termination of Pregnancy Act, 1971 regulates the termination of pregnancy in a variety of situations. This law/act goes against many citizens' moral values, however, it is vital to protect women all around the country from unwanted pregnancies and to provide help to rape victims.

Prostitution: Prostitution is one of the world's oldest professions, in which a person exchanges money for sexual services. This ancient practice of selling one's body was even practiced in India. Various European countries, such as the Netherlands, Germany, and others, have decriminalized prostitution, although it is still illegal in some countries, such as India. This profession is also considered immoral by those that do it, and they do not want to pass it on to

the next generation. In India, law and morality have developed a close relationship, whereas, in other countries, the conflict between law and morality persists. Prostitution is a business activity because it pays well and provides work for millions of prostitutes who would otherwise be unemployed. Prostitutes have legal status in only a few nations, and in the vast majority of the world, prostitutes are persecuted and humiliated. As a result, the divide between public morality and the law has yet to be bridged.

LAWS ON HOMOSEXUALITY

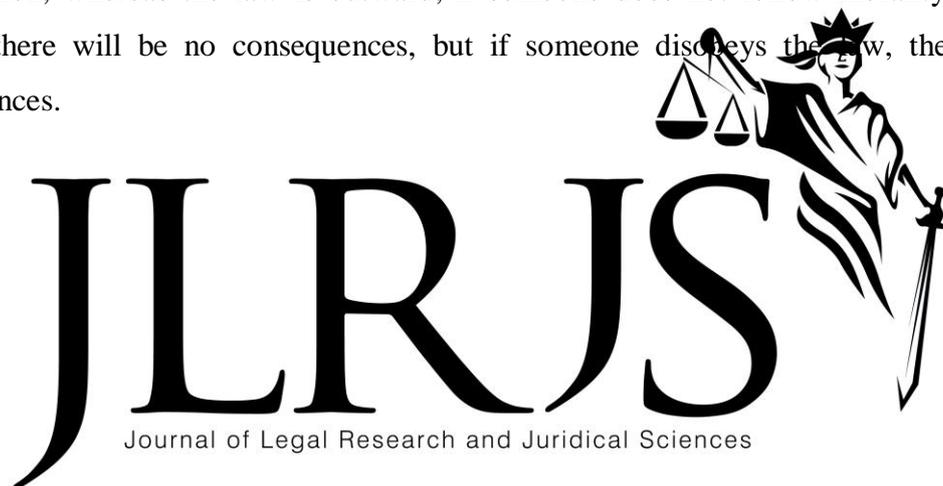
Homosexuality is defined as a sexual attraction and fondness for another person of the same gender. One who practices homosexuality is condemned by the Bible. Not only does the Bible condemn and reprimand homosexuality, but so do other religions, citing immorality, sociality, and a violation of nature's order. Homosexuality, they believe, is incompatible with mankind, the divine, purity, reality, and genetics. Previously, same-sex orientation was illegal in India, but a judgment by the Supreme Court of India in 2018 decriminalized homosexuality by striking down Section 377 of the Indian Penal Code, 1861 to some extent and establishing a relationship between morality and law. However, homosexuality's legal status remains bleak. Only a few legal regimes have ever permitted close relationships between people of the same sex, even in the most contemporary era of humanity. Therefore, law and morality are inextricably linked. For a law to be followed, it must be compatible with the morality of the people who are meant to follow it. The law will hold in that group as long as it is reasonable in its conformance with group morality and any divergence is suitably justified and gains approval in the group.

CONCLUSION

The state or legislature that enacts the laws is ultimately responsible for the outcome of this debate. The state must create laws that will raise society's moral standards while also favoring the ethical principles of each individual who is a member of that society. The legislation must protect the citizens' independence and freedom. Also, society and the medical community must demonstrate love and moral support to women who get pregnant unintentionally and assist them in discovering compassionate alternatives to abortion, as well as respect for LGBTQ activists. Prohibitive laws have failed in India because people's moral consciences are opposed to them. So, what legislators do is codify laws that establish a link with the public's underlying moral values and attempt to explain the laws' goal, reasoning, and applicability. There are

certain values related to the law; yet, morality should be minimally involved in the law. To ensure that individuals obey the law, it must be justified.

Finally, if people do not follow the law, the system will fail. This justification has a moral foundation. According to Hart, a minimal level of morality must be included in the system to ensure consistency. This legal morality must adhere to the constitution and be in harmony with other laws. When it comes to interpretation, however, Hart's position on judges functioning inside the legal system and using other laws to interpret what interpretation might be meant is persuasive since it would prevent judges from legislating. Human behavior is governed in some way, either by moral standards or by a man-made law. They should be progressive and capable of distinguishing between right and bad. An 'individual' basic needs should not be impacted by any sort of legislation. Law is a tool to enforce moral standards. Morality is an internal phenomenon, whereas the law is outward; if someone does not follow morality in his/her actions, there will be no consequences, but if someone disobeys the law, there will be consequences.



REFERENCES

- Law and Morality: A Socio-Legal Perspective (2012).
- Relation between Law and Morality- Dr. Avtar Singh & Dr. Harpreet Kaur: Introduction to Jurisprudence, 5th ed.
- Prof. Rangunadha Reddy, 2007, 'Role of Morality in Law Making A Critical Study' 49 JILI. Pp 93-99.
- 2009, CONSENSUAL HOMOSEXUALITY AND THE INDIAN PENAL CODE: SOME REFLECTIONS ON INTERPLAY OF LAW AND MORALITY- KI Vibhute*Professor of Law.
 - Bluebook 21st ed Richard Taylor, Law, and Morality, 43 N.Y.U. L. REV. 611 (1968).
 - McGill Guide 9th ed Anthony Mason, Law, and Morality, 4 GRIFFITH L. REV. 147 (1995).
 - Arthur Scheller Jr., Law, and Morality, 36 MARQ. L. REV. 319 (1952).
 - Adil Ahmad Haque, "Law and Morality at War," *International Review of the Red Cross* 100 (2019): 445-[ix].

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