

LAW AND MORALITY AN ANALYSIS

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ABSTRACT

Law and morality are 2 words with immense capacity to make and break society. Law and morality at times are considered to be commodities analogous and occasionally fully different from one another. At times there are situations to either choose the law or the morals one is brought up with. A man is considered a barbaric human, period ago but as and when the society has evolved now a man is considered to be a social human being. A person is considered to have his morals, ethics, heart, and his value systems and when a law contravenes the same, would that lead to peaceful concurrence between the law that needs to be followed and the morals one upholds? This is a question of justice, and the same kinds of questions will be dealt with in this exploration paper. This exploration paper is also trying to find a nexus between law and morality and estimate if the other seminaries of justice give place to morality in its high station like the Natural Academy of Law or not. this exploration paper will help in giving a brief understanding of what law and morality Are and will connect it to colorful cases and try and understand it in terms of Composition 14 The rule of law. Law and morality hold a lesser position in the interpretation of our legal system and indeed understanding of the legal system we live in. This exploration paper will also include felonious justice to clarify generalities that are tough to understand and backed by common law judgments. This exploration paper will try to clarify the generalities of law and morality in a better way.

Keywords: Law, Morality, Common Law, Justice, Felonious Justice, Interpretation, Legal Systems.

INTRODUCTION

Law is a veritably wide conception, if we consider India and substantially the Hindus, before any law came into the picture it was Dharma that acted as a law of conduct which was followed as law in the Hindu Law and Hukum was followed under Islamic law. Dharma or Hukum isn't

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an untouched word, every layman knows what Dharma is as it has been followed from time old, and from that surfaced Law and every other aspect like morality, ethics, heart, etc.

But when we ask a layman “What is law?”, we get all kinds of answers about what all laws are current, and how important is law in society, we get all similar answers but is it the meaning of law? No. Law to a common man’s understanding is that law is rules and regulations backed by warrants by the autonomous authority. If we say this statement as well one might not know what autonomous or warrants mean. Autonomous authority means the loftiest authority or the supreme reality of the state. In a popular country like India, through the preamble of India, we can easily notice the first five words, WE THE PEOPLE OF INDIA, these 5 words principally mean that we Indian citizens upon a social contract have given up our rights to one autonomous reality to take opinions for us handed we handpick our representatives.

Our notion of law was fully different 1000s or 100s of times ago, it followed, may it be Dharma or indeed the law made by the British for British India. numerous prestigious justices also have given veritably prominent and veritably important delineations of what law is and have defined it according to the stylish of their capacities. One similar prestigious justices was **Blackstone**¹ he defined law as follows “Law in its broadest description refers to a rule of conduct that applies to all feathers of conditioning, whether alive or insensible, rational or fallacious.”

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According to **Salmond**² “Law perhaps defined as the body of principles fete and applied by the state in the administration of justice”.

Law and administration of justice, a veritably important discrimination of these two terms would be that the law is done by the legislative, the prosecution of the law is by the superintendent, and interpreting the law and the Judiciary does administering justice.

This principally determines the separation of powers as well as how law builds a path to administer a person justice of who’s rights have been violated or infringed. Now let’s decipher another important conception of this exploration paper, Morality. Morality is defined as a person's or society's idea of what's right or wrong, especially regarding a person’s actions. This

¹ Mr. William Blackstone is an English jurist and scholar whose commentaries on Laws of England had an immense impact on the US Constitution.

² Mr John Salmond was a lawyer, lecturer and solicitor general and judge of the supreme court, he was also a famous international reputed legal theorist from the New Zealand.

is such an important concept to deal with when it comes to this exploration paper because we need to find a connection or indeed a distinction between law and morality.

Morality is such a conception that can shake the roots of law as well and it always arises whether law must be given significance or morality because of the veritably introductory belief moralities hold. These moralities haven't been a part of a human's life from present periods, it's been there for periods now and indeed a layman knows what his morals are and how he must act in agreement with it indeed if he does not know if there's a law backed for it or not. Law and morality are veritably important concepts in understanding the legal system of our country.

INTERSECTIONALITY AND RIFT PRESENT BETWEEN LAW AND MORALITY

In India, morality holds a lesser significance as everyone knows, every community consists of its morals and beliefs, and anything done contravening it is considered to be going against the morals of the whole community as well. But is the community morals important or is the law made important, that's one of the most important jurisprudential questions when it comes to understanding the knowledge with which the law is made.

Morality is an abstract conception that can't be touched or seen but is a conception that can be felt. Morals are universal and constant, there are group morals, there are individualistic morals also there are morals held high by communities as a whole. Law is in no way an abstract conception, it is what it is and not what ought to be, and in a society without moral values, there would neither be social order nor what we know and denomination, specified in the preamble of the constitution. preliminarily, centuries ago, Indian society cherished two introductory values of life that's " satya " and " ahimsa ". Nonviolence can be seen to be followed by great, honored people like Mahavir, Gautam Buddha, and Mahatma Gandhi and engrained the same in the lives of the people. Truth has been ingrained as an integral value in a person's daily life. But in the post-independence period, verity has indeed been overshadowed by materialistic values and selfish interests. That's what has made it strenuous to understand what exactly happens between the lines of morality and law. Materialism has overshadowed the old morality and the hunt for particular gain has become so violent that those involved in the action do not

vacillate to take sanctum of falsehood, misrepresentation, and repression of data in court proceedings³.

INTERSECTIONALITY OF LAW AND MORALITY

A study from colorful legal systems has exhaustively made it clear that there indeed lies a relation between law and morality with occasional dereliction and judicial separation but it is in no way fully disassociated. The view of Stammler is that justice depends substantially on moral grounds as just a law needs some ethical grounds or foundation to stand altitudinous. C.K Allen observes this on the relationship of law and morality, “ Our judges have kept their fritters delicately but forcefully upon the palpitation of the accepted morality of the day. ” Lord Mansfield says that “ the law of England prohibits everything which is contra bonos mores ”

But it's safe to say that it's true that the law has developed substantially through a profound influence of conventional morality and the ideals a particular social group holds and also from the moral review of those people who have helped the development of the new kinds of morality that is presently accepted. Let us take a veritably simple illustration of Socrates, he was condemned for numerous reasons and put in captivity, his pupils or the votaries had planned everything to escape him from the captivity but he refused to escape. He refused because what he allowed to people would just turn to insincerity from his conduct. He devoted his life to educating people about justice and devoting themselves to the law. Then when we look at it, innocently for him it was easy to escape but he didn't want to go against the law and do it. The station of morality was then reduced and the station for law and abiding by it became his motive.

When we look into the middle periods, European law simply developed under the church, which is the natural law or the law of god or lex aeterna. If any law was against the law of the god it would be considered to not be a law under the godly authority. The law at that time could no way be bandied without a background of morality or religion in it.

Indeed to this day, we consider morality to be one of the most important sources of law because numerous a law are indeed grounded on moral grounds if not explicitly, implicitly morals are indeed considered.

³ Dalip Singh v. State of U.P., (2010) 2 SCC 114

For illustration A person committing theft with a malafide intention of stealing plutocrats from it is wrong and also punishable under the Indian Penal Code, 1860 but if the same case had a different story attached to it. If that person committed a theft because he was unfit to feed his family indeed a one-time proper mess to his family and perhaps committing theft was malafide, but his reasons gave the answer of why he did it. This is a stage where the law or the morality, the person should be punished with a fine or imprisonment, but if the same judge looks into the case and interprets it in such a way that the same person shall not. If it's the law that wins to be penalized for trying to feed his empty family, morality wins. It's upon the judge to assess the situation and give the judgment consequently. But it's necessary to note that whenever a law is indeed interpreted, moral grounds are also looked into.

Morals have been considered to be the base of transnational law as well because they work on the base of moral principles.

THE RELATIONSHIP BETWEEN LAW AND MORALITY IS GROUNDED IN THREE ANGLES

1. Morals as the base of law preliminarily as bandied, laws were grounded on Dharma in ancient India, and everything in violation to it was struck down and everything in line with Dharma used to proceed. This was because morals in itself or Dharma in itself was considered as law. But when the state came into being similar laws were legislated and enforced similar laws and hence it's easier to tell that morals and law had the same origin but were diverged in their development.

2. Morals as a test of law Law must always abide by morals, may it be Rome, the church, any law made in violation was struck down if it didn't abide by the natural proposition. In the 17th and 18th centuries, it was son contended that the positive law ie law made by the council must abide by the natural law and if it didn't and because the natural law was defied, not just the positive law but indeed the government that passed such a law was to be overthrown. It was so rigid. But now formerly the state conception surfaced, moralities aren't fairly binding nor in the natural law indeed if similar laws aren't in conformity to the morals. Paton extensively writes “If the law lags behind popular norms, it falls into reproach if the legal norms are too high, there are great difficulties of **enforcement** ⁴.”

⁴ Paton, A textbook of Jurisprudence

3. Morals as the end of law Law are there to give justice to people who are fairly injured or some kind of wrong has happened to them, and the purpose of morality is to look into what's right and wrong and also remove the conflict of interest from the society. It might look like two different statements but what law and morality want is nearly the same. Hence from this, we can see that law and morality have a lot in common that one can anticipate.

DISTINCTIVE RELATION BETWEEN LAW AND MORALITY

When we looked at the parallels or the intersectionality of the 2 generalities we looked substantially at how Dharma or the Natural or the Divine law played a major part. Then when we look at the Isolation between the two, it can be seen to be substantially grounded on the positive law.

When we look at the distinction the first thing that could be noticed is how the laws are made, executed, and interpreted in the state but whereas with morality, it's just the belief system one holds as a group or as an individual, it's followed at the call of the institution. When one violates a law it's handed that the law itself has specified a discipline for the same whereas if one goes against the morals held by an institution he or she isn't liable to any discipline unless those morals have taken the shape of a law. At the utmost one can be transacted from the group that holds analogous morals.

When we look at morals it judges both the internal and external conduct of a person, for illustration, being ungrateful, this could be an internal issue that he didn't learn to be thankful for and hence didn't make such a character and the external action would be that he acted on similar a character. Whereas Law judges a person's external action, for illustration, A theft is committed by a person, the law indeed looks at the malafide intention of a man that made him commit such a crime but it does not go to the foundation of why he must have erected such a character unlike morality.

In law, numerous aspects are considered to be legal as well as illegal which might be against the morals one holds. For Example, Adultery under IPC was a felonious offense preliminarily but lately, it was interdicted. Adultery under morals is a completely immoral gesture, having a sexual relation piecemeal from bones is considered to be wrong which the law doesn't accept. So anything moral may not be legal and anything immoral may not be illegal under the law.

When we look at the law, it's applied widely, may it be in a republic or Communist country, laws for that nation-state are universal and every country has its laws. Laws are universal but when we look at morals, they differ what might be immoral for us may not be immoral in another country itself. Hence, morals aren't universal but laws are. In the case of **S. Khushboo v. Kanniammal**⁵. The Supreme Court of India countries, sundries of social morality are innately private and the felonious law cannot be used as a means to overly intrude with the sphere of particular autonomy Morality and crime are not coextensive.

In the case of **T. A. Quereshi v. CIT**⁶, Cases are to be decided by the court on legal principles and not on bones to enjoy moral views. Law is different from morality, the positivist justices Bentham and Austin refocused. The case of **R v. Dudley and Stephens**⁷ is a leading case that questions law and morality distinctively, in this case, four men were stranded in the ocean on a yacht and had no minimum survival, when food became scarce they decided to kill Richard Parker who was the youthful of the group. For their survival, they killed him and ate his meat for their survival. After their deliverance when the case came to the Queen's Bench, the questions raised were whether the similar act was innocently respectable and if yes would that be fairly respectable?

The Queens Bench, under Lord Chief Justice Coleridge, stated that necessity wasn't a defense against murder either on the base of legal precedents or on the base of morality. They were doomed to death but later on, the decision was reduced and the discipline was reduced to six months on the mercy plea. From this, we can try to understand that there's a lot of difference prevailing between law and morality and it can no way be the same

STAND OF MORALITY IN THE RULE OF LAW

Rule of Law, these words hold one of the topmost important in popular countries like India. In a popular nation, the will of the people is vested with the government to produce a wealthy nation. But no one, not indeed the Congress is above the supremacy of our Constitution. Dicey is one of the justices who came up with the topmost conception of all time which is indeed now followed in utmost of the corridor of the world. The Rule of Law.

⁵ S. Khushboo v. Kanniammal, (2010) 5 SCC 600

⁶ T.A. Quereshi v. CIT, (2007) 2 SCC 759

⁷ R v. Dudley and Stephens, (1884)

The Rule of Law can be explained through 3 angles which work together as a whole:

1. The Supremacy of the law The Constitution of India is considered to be the supreme authority of the nation and the law is known to be the supreme law of the land. Any law breaching the Constitution is considered as struck down or void ab initio. The law is considered supreme and everyone irrespective of everything must abide by it.

2. Equality before the law The rule of law considered equivalency to be veritably important, this is so because equivalency is necessary to every person irrespective of his rank or condition, he is subordinated to the governance and ordinary law of the land. No man shall be above the law and the principles of natural justice look into that no man's rights are violated in the courts of law.

3. Judge written constitution or the ascendance of legal spirit Numerous nations do not believe in a written constitution because when it's written its area becomes narrowed it gets tough to interpret everything handed and if not written, the laws can be altered in case to case base and this authority can be held by the judges while interpreting cases of tedious issues and get a landmark judgment out of it. This can prevail when the country follows an independent bar.

The reason why the rule of law is spoken of in this exploration paper is that it gets easier to explain the moral grounds while understanding the conception on a case-to-case base. Ronald Dworkin has argued that both the laws and constitution are ineluctably embedded in political and moral principles. The law isn't deduced logically from accepted true moral principles. Rather, It's established by houses that agree on public rules that are shaped by a political agreement about right and **wrong**.⁸

But, we can see that in the ultramodern world, there's considerable influence of morality over the laws made because it's considered that morality is "buried and interstices" of the legal system.

It is considered that the law in action is not a bare system of rules but involves certain principles similar to equivalency and the good. By veritably smart operation of these principles to legal rules, we can see that morality and law mould each other. In recent times, morality has sneaked into the fabric of law in the forms of Justice, Equity, and Good heart. Morals do at times act as a restraint upon the power of the council because they cannot make a law against the morals of

⁸ Morality in Rule of Law (legalserviceindia.com)

the society and face the mischievous consequences. Yet, when laws are made they are in no way looked at the viewpoint of the public morality but it's looked through the prisms of indigenous morality.

Paton writes “ In marriage, so long as nut persists, there's little need of law to rule the relations of the hubby and woman - but the solicitor comes in through the door as love flies out of the **window**⁹ ”

It is substantially considered that morality has no indigenous value. To an extent, we can consider in the prevailing society that indeed the public morality has not expanded itself but it's the indigenous morality that gave rise to justice, equity, and good heart.

Indigenous morality is not yet defined anywhere but it principally means adherence to the core principles of the constitution that's the moral obligation of an individual to uphold the indigenous values with the utmost quality in a republic. It principally means that when the society evolves the interpretations of the constitution shall also evolve with a better understanding because individualistic or group moralities are not the concern but abiding by the indigenous morality is extremely important.

In the case of **Government of NCT of Delhi v. Union of India**¹⁰, The court was called upon to interpret and decide what power the Lt. Governor of Delhi wields in the Indian indigenous scheme. Then, in this case, the court equated indigenous morality to an ‘alternate introductory structure doctrine’ and the courts observed that it isn't just the forms and procedures of the constitution but provides an enabling frame that allows a society the possibility of tone–renewal”

In the case of **Navtej Singh Johar v. Union of India**¹¹, in this case, the Apex court passed a verdict permitting Section 377 of the Indian Penal law of 1860 which made “ carnal against the order of nature ” including homosexuality not a crime. Applying the doctrine, the judges set up that the court must not be ever guided by the popular viewpoint but by indigenous morality and they also discerned between public and indigenous morality and stated that the indigenous morality shall have an overriding effect on the popular public morality.

⁹ Paton, A Textbook of Jurisprudence

¹⁰ Government of NCT of Delhi v. Union of India,(2018) 8 SCC 501

¹¹ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

In the case of **Joseph Shine v. Union of India**¹², the court struck down and de-criminalized infidelity under Section 497 of the Indian Penal Code, 1860, the courts upheld the right to equivalency and then it was noted that the indigenous validity of felonious law shall not be grounded on public opinion and moralities. Women being subjects to their misters and misters being the master of the woman was supposed contrary to the indigenous angles and ideas hence this case was a clear notion of separating indigenous morality and public morality.

In the case of the **Indian Young Attorneys Association v. State of Kerala**¹³, in this case, the court held that the rejection of menstruating women in the Sabrimala tabernacle is violative of four crucial morality tests, which include Justice, Liberty, Equality, and fraternity. The court in this case also noted that the term 'morality' in Articles 25 and 26 does not mean public morality but indigenous morality and the structures of social demarcation must be estimated through the glass of indigenous morality and not public morality.

CONCLUSION

India being a different nation it is given that there is a lot of culture and religious beliefs each follow. Similar religious beliefs were the foundation for Dharma centuries ago and indeed now. The conception of Hukum and Dharma has indeed given an epitome of understanding whether an act is right or wrong but now in the ultramodern period we see a beachfront that has come to be known as Morality. Morality is indeed a great concept to learn from in the jurisprudential aspect.

Morals have acted as the base, test, and end of law but with the necessity to interpret the cases that come to the court, it's indeed necessary to change the hand of morality into a deeper sense because indeed similar moralities can not and shouldn't go against the constitution of India for which indigenous morality has to supersede all other moralities prevailing. This exploration paper would like to conclude that morality may have acted as a foundation on which law was made but now law supersedes all moralities of an individual or indeed the group morality. Law has its standing in society that is; it must be abided by at all costs, and if not there is a discipline about it. Hence, the conclusion would be that law supersedes all beliefs one holds and hence laws must be made, legislated, and interpreted in such a manner that it neither affects the morality of the cantina nor the indigenous morality, and indeed if it affects the indigenous

¹² Joseph Shine v. Union of India, AIR 2018 SC 1676

¹³ Indian Young lawyers Assosciation v. State of Kerala, AIR 2019, 11 SCC 1; 2018

morality will prevail as the society has evolved to accept such an interpretation and come out of the unwarranted grounds for not suitable to accept those laws. The country should progress as society evolves and not deteriorate.

