

A Critical Analysis of Law and Morality

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ABSTRACT

A person is considered to have his own morals, ethics, conscience, and his value systems and when a law contravenes the same, would that lead to peaceful coexistence between the law that needs to be followed and the morals one upholds?

This is a question of jurisprudence, and the same kinds of question will be dealt with under this research paper. This research paper is also trying to find a nexus between law and morality and evaluate if the other schools of jurisprudence give place to morality in its high stance like natural school of law or no. this research paper will help in giving a brief understanding of what law and morality is and will connect it to various cases and try and understand it in terms of Article 14 The rule of law.

Law and morality, 2 words with immense capacity to make and break the society. Law and morality at times are considered to be something similar and sometimes completely different off one another. At times there are situations to either choose law or the morals one is brought up with. A man is considered a barbaric human, ages ago but as and when the society has evolved now a man is considered to be a social human being. Law and morality hold a greater position in interpretation of our legal system and to even understand the legal system we live in. This research paper will also include criminal jurisprudence to clarify concepts which are tough to understand backed by common law judgements. This research paper will try to clarify the concepts of law and morality in a better way.

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KEYWORDS: Law, morality, common law, jurisprudence, criminal jurisprudence, interpretation, legal systems

1. INTRODUCTION

Law is a very wide concept, if we consider India and mainly the Hindus, before any law came into picture it was Dharma that acted as a code of conduct which was actually followed as law in the Hindu Law and Hukum was followed under Islamic law. Dharma or Hukum is not a word that is untouched, every lay man knows what Dharma is as it has been followed from time immemorial and from that emerged Law and every other aspect like morality, ethics, conscience etc.

But when we question a lay man “what is law?”, we get all kinds of answers about what all laws are prevalent, how important is law in the society, we get all such answers but is it actually the meaning of law?

Law to a common man’s understanding is, Law is rules and regulations backed by sanctions by the sovereign authority. If we say this statement as well one might not know what sovereign or sanctions mean. Sovereign authority means the highest

authority or the supreme entity of the state. In a democratic country like India, through the preamble of India, we can clearly notice the first five words, WE THE PEOPLE OF INDIA, these 5 words basically mean that we Indian citizens upon a social contract have given up our rights to one sovereign entity to take decisions for us provided we elect our representatives.

According to Salmond : “Law maybe defined as the body of principles recognize and applied 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. by the state in the administration of justice” Law and administration of justice, a very important demarcation of these two terms would be that the law is done by thee legislative

and the execution of the law is by the executive and interpreting the law and administering them justice is done by the Judiciary.

Morality is such a concept which has the ability to shake the roots of law as well as it always arises whether law must be given importance or morality because of the very basic belief moralities hold. These moralities have not been a part of a human's life from present ages, it's been there for ages now and even a lay man knows what his morals are and how he must act in accordance with it even if he has no knowledge if there is a law backed for it or not. Law and morality become very important concept in understanding the legal system of our country.

1.1. Research Problem

Law and morality are 2 such concepts which is very generic and is the tip of the ice berg but if researched and in dept study is done on them there is lot more than it seems to be. The research problem for this research paper is that when a thorough study was done on these two topics it did not just connect to one entity but many of them may it be criminal or civil jurisprudence, morals can be found there as well and. There is indeed a rift present between the two but it gets difficult to understand the rift present so this research paper will look into that and also look upon such instances where there is an intersectionality as well as the rift.

1.2. Literature Review

A. Max Weber, *Economy and Society* (New York: Bedminster Press, 1968)

In a journal the main eyecatcher would be the citation drawn to the following work of Max Weber, who channelled the moral and law to the central jurisprudential issue of normative validity or legitimacy of law. Legitimacy of law when it has moral content, it is given that law is dependent on the morals and when law lacks moral values then the legitimacy of the law cannot be linked to the moral values. This paper has helped understand the connection between law and morality in a deeper sense and hence played a major role in formation of the research problem and the question as well.

B. Ronald Dworkin, *Law's Empire* (1988) and Bernard Williams, *Utilitarianism For and Against*

In the same journal this was one of the other important works that stated that the law possesses immanent authoritativeness and it must be in the control of its own rationale and its aims. This journal stated that the law must have integrity that is drawn from sources internal to it rather external. This journal believed in supremacy and legitimacy of law being integral part of its own.

C. Reddy, A. R. (2007). *ROLE OF MORALITY IN LAW-MAKING: A CRITICAL STUDY.*

This journal takes a lot of input from the cases dealt with morality in common law nations including the united states of America and also have explained a few cases where the judiciary had a dilemma whether to uphold morality or the law and gives the judgements for the same. This research paper also deals with the criminal jurisprudence in relation with law and morality.

D. Cane, P. (2012). *MORALITY, LAW AND CONFLICTING REASONS FOR ACTION.*

This journal has looked at four features of morality that distinguishes it from law namely; importance, immunity from deliberate change, the nature of moral offences and the form of moral pressure. But no one of these features actually demarcates law and morality until the broader sense Hart adopted. The fifth feature adopted by Hart was namely the role played by morality in practical reasoning as ultimate standards for assessing human conduct. And based their research paper upon the fifth feature provided by Hart.

1.3. Scope of the Study

This research paper pertaining to law and morality includes the countries following common law system including India. It shall only take references from those nation following common law system and mainly focus on the jurisprudential aspect of India and its common law system to look at the concept of law and morality. Article 1 of the Constitution provides a clause pertaining to the territory of India and the same shall be applied throughout this research paper.

1.4. Objective of the Study

The objective of this research paper is as follows:

1. Understand the wider concept of law and morality.
2. Analyse the intersectionality and the rifts present in them.
3. Critically analyse if morality creates a dogma while administering justice.

1.5. Research Question

- A. Whether there is an intersectionality or rift present between law and morality?
- B. Whether morality has a stand in The Rule of Law adopted by India?

1.6. Hypothesis

The concept of Law and Morality has both rifts and intersectionality while understanding them but when it comes to having a stand in the rule of law, it can be said the morality complements law but is never the basis of decision making and inducing morality as a

decision maker is nearly impossible as it is involved mainly in making and modifying the law but is never legally binding and doesn't procure constitutional validity.

1.7. Research Methodology

In this research paper descriptive and critical analysis method is followed throughout the paper. The study is based on both primary and secondary data. Primary data being the Statutes, Cases and Books while secondary data or the sources being articles, blogs, websites, journals have been used to refer for the formation of this paper. All these data has been used to understand the background of the paper and also is a part of the formation of the research questions as well. These data or sources has helped the paper in understanding the current scenerio in the society with respect to the research topic and helped in, indepth srudy for this research paper. This study is basically more of existing scenerios and the laws made hence no field study has been done.

2. INTERSECTIONALITY AND RIFT PRESENT BETWEEN LAW AND MORALITY

In India, morality holds a greater importance as everyone knows, every community consists of their own morals and beliefs and anything done contravening to it is considered to be going against the morals of the whole community as well. But is the communitis morals important or is the law made important, that's one of the most important jurisprudential question when it comes to understanding the knowledge with which the law is made. Morality is an abstract concept which cant be touched or seen but is a concept that can be felt. Morals are universal and constant, there is group morals, there is individualistic morals then there is morals held high by communitis as a whole. Law is never an abstract concept, it is what it is and not what ought to be and a society without moral values, there would neither be social order or what we know and secularism, prescribed in the preamble of the constitution.

Previously, centuries ago, Indian society cherished two basic values pf life that is "satya" and "ahimsa". Non violence can be seen to be followed by great, honoured people like mahavir, Gautham Buddha and Mahatma Gandhi and engrained the same in the lives of the people. Truth has been ingrained as the integral value in a persons daily life. But in the post Independence era, truth has indeed been overshadowed by materialistic values, and selfish intrest. That's what has made it strenious to understand what exactly happens between the lines of morality and law. The materialismhas overshadowed

the old ethos the old ethos and the quest for personal gain has become so intense that those involved in the litigation donot hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings.

2.1. Intersectionality of law and morality:

A study from various legal systems has comprehensively made it clear that there indeed lies relation between law and morality with occassional desertion and judicial separtaion but it is never completely divorced. The view of Stammler is that, jurisprudence depends mainly on the moral grounds as just a law need some ethical grounds or foundation to stand tall. C.K Allen observes this on the relation of law and morality that, "Our judges have kept their fingers delicately but firmly upon the pulse of the accepted morality of the day." Lord Mansfield says that "the law of England prohibits everything which is *contra bonos mores*" But it is safe to say that it is true that the law has developed mainly through a profound influence of conventional morality and the ideals a particular social group holds and also from the moral criticism of those people who has helped the development of the new kinds of morality that is currently accepted.

When we look into the middle-ages, European law exclusively 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 divine authority. The law at that time could never be discussed without a background of morality or religion in it. Even to this day, we consider morality to be one of the most important sources of law because many a law or indeed based on moral ground even if not explicitly, implicitly morals are indeed considered.

For an example: A person commits theft with a malafide intention of stealing money 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 unable to feed his brother even a one time proper meal to his brother and maybe committing theft was malafide, but his reasons gave the answer of why he did it. This is a stand where the law or the morality wins. If it is the law that wins, the person should be punished with fine or imprisonment, but if the same judge looks into the case and interprets in such a way that the same person shall not be punished for trying to feed his hungry brother, morality wins. It is upon the judge to analyse the situation and give the judgement accordingly. But it is necessary to note that whenever a law is indeed interpreted, moral grounds are also looked into.

Morals has been considered to be the basis of International law as well because it works on the basis of moral principles.

2.1.1. The relationship of law and morality are based on three angles:

- A. *Morals as the basis of law:* Previously as discussed, laws were based on Dharma in ancient India, and everything in contravention 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 such laws were enacted and enforced such laws and hence it is easier to tell that morals and law had the same origin but were diverge in their development.
- B. *Morals as test of law:* Law must always abide by morals, may it be Rome, the church, any law made in contravention was struck down if it did not abide by the natural theory. In 17th and 18th century it was soon contended that the positive law i.e. law made by the legislature must abide by the natural law and if it did not and because the natural law was disobeyed, not just the positive law but even the government that passed such a law was to be overthrown. It was so rigid. But now once the state concept emerged, moralities are not legally binding neither in the natural law even if such laws are not in conformity to the morals. Paton extensively writes: "if the law lags behind popular standards, it falls into disrepute: if the legal standards are too high, there are great difficulties of enforcement."
- C. *Morals as the end of law:* Law is there to provide justice to people who are legally injured or some kind of wrong has happened to them, and the purpose of morality is to look into what is right and wrong and then remove the conflict of interest from the society. It might look as two different statements but what law and morality wants is almost same. Hence from this we can see that law and morality has a lot in common that one can anticipate.

2.1.2. Relation between Law and Morality

When we looked at the similarities or the intersectionality of the 2 concepts we looked mostly on how Dharma or the Natural or the Divine law played a major role. Here when we look at the Differentiation between the two it can be seen to be mainly based on the positive law.

In law many 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 criminal offence previously but recently it was

decriminalized. Adultery under morals is a complete immoral behaviour, having a sexual relation apart from one's spouse is considered to be wrong which law doesn't accept. So anything that is moral may not be legal and anything immoral may not be illegal under the law.

When we look at law, it is applied to universally, may it be in a democracy or in Communist country, laws for that nation state is universal and every country has its own laws. Laws are universal in nature but when we look at morals, they differ what might be immoral for us may not be immoral in another country itself. Hence morals are not universal in nature but laws are.

In the case of *S. Khushboo v. Kanniammal*⁵ The Supreme Court of India states, notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality 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 one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out.

3. STAND OF MORALITY IN RULE OF LAW

Rule of Law, these words hold one of the greatest important in democratic countries like India. In a democratic nation the will of people is vested with the government to create a welfare nation. But none, not even the parliament is above the supremacy of our Constitution.

A.V Dicey is one of the jurists who came up with the greatest concept of all time which is even now followed in most of the parts of the world. The Rule of Law.

The Rule of Law can be explained through 3 angles which works 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 contravening 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 equality to be very important, this is so because equality is necessary to every person irrespective of his rank or condition, he is subjected to the jurisdiction 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 predominance of legal spirit: Many nations do not believe in a written constitution because when it is written it's area becomes narrowed and it gets tough to interpret everything provided and if not written, the laws can be altered in case to case basis and this authority can be held by the judges while interpreting cases of tedious issues and get a landmark judgement out of it. This can prevail when the country follows independent judiciary.

The reason why rule of law is spoken of in this research paper is because it gets easier to explain the moral grounds while understanding the concept on a case to case basis.

Ronald Dworkin has argued that both the laws and constitution are unavoidably rooted in political and moral principles. The law is not derived logically from accepted true moral principles. Rather, it is established by legislatures that come to an agreement on public rules that are shaped by a political consensus about right and wrong. But, we can see that in the modern world there is considerable influence of morality over the laws made because it is considered the morality is “secreted and interstices” of the legal system. It is considered that the law in action are not a mere system of rules but involves a certain principles such as equality and the good. By very smart application of these principles to legal rules we can see that morality and law mould each other. In recent times morality has infiltrated into the fabric of law in the forms of Justice, Equity and Good conscience. Morals do at times act as a restraint upon the power of legislature because they cannot afford to make a law against the morals of the society and face the detrimental consequences. Yet, when laws made they are never looked at the view point

Constitutional morality is not yet defined anywhere but it basically means adherence to the core principles of the constitution that is the moral obligation of an individual to uphold the constitutional values with utmost dignity in a democracy. It basically 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 constitutional 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 as to what power does the Lt. Governor of Delhi wield in the Indian Constitutional scheme. Here, in this case the court equated constitutional morality to a ‘second basic structure doctrine’ and the courts observed that it is not just the forms and procedures of the constitution but provides

an enabling framework that allows a society the possibility of self – renewal” In the case of *Navtej Singh Johar v. Union of India*¹¹, in this case the Apex court passed a verdict decriminalizing Section 377 of the Indian Penal code of 1860 which made “carnal against the order of nature” including homosexuality not a crime. Applying the doctrine, the judges found that the court must not be remotely guided by the popular view point but by constitutional morality and they also differentiated between public and constitutional morality and stated that the constitutional morality shall have an overriding effect on the popular public morality.

4. CONCLUSION

India being a diverse nation it is given that there is a lot of culture and religious beliefs each follow. Such religious beliefs were the foundation for Dharma centuries ago and even now. The concept of Hukum and Dharma has indeed give a epitome of understanding whether an act is right or wrong but now in the modern era we see a strand of which has come to known as Morality. Morality is indeed a great concept to learn from in the jurisprudential aspect. Morals have acted as the basis, test and end of law but with the necessity to interpret the cases that come to the court it is indeed necessary to change the facet of morality into a deeper sense because even such moralities cannot and should not go against the constitution of India for which constitutional morality has to supercede all other moralities prevailing. This research paper would like to conclude that morality may have acted as a foundation on which law was made but now law supercedes all moralities of an individual or even the group morality. Law has its own standing in the society that is, it must be abided at all cost and if not there is punishment in relation to it. Hence, the conclusion would be that law supercedes all beliefs one hold and hence laws must be made, enacted, interpreted in such a manner that it neither affects the morality of the public neither the constitutional morality and even if it affects the constitutional morality will prevail as the society has evolved to accept such an interpretation and come out of the baseless grounds for not able to accept those laws. Country should progress as society evolves and not deteriorate.

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