

LAW AND MORALITY: A COMPARATIVE ANALYSIS

Written by **Vartika Rungta**

2nd Year BBA LLB Student, School Of Law, Christ (Deemed to be University)

This article deals with the question of law and morality- whether they related or whether law and morality can be separated. It shows various instances where law and morality are complementary to each other and hence cannot be separated. Further it will also reveal situations where law and morality independent of each other.

The first step is to define the terms 'law' and 'morality'. Law has been defined in different ways by different schools. Natural school of thought presupposes the notion of nature, and the notion of nature is not coeval with the human thought. Therefore, natural law determines what is right and wrong and that has power or is valid by nature. Law according to various naturalists is the moral standard which governs the human behavior and is derived from the behavior and nature of the world. Furthermore, according to this school law and morality are dependent on each other which mean that morals are basis of law. Basically, it is just difficult to maintain that morally bad law is not law. The idea that law must pass, as it were, a kind of moral filter in order to count as law strikes most jurists as incompatible with the legal world as we know it. Contemporary natural philosophers maintain that the moral content of norms, and not just their social origin, also forms a part of the conditions of legal validity. A law would be effective only if it has passed the test of morality. For example John Finnis in his views says that natural law is not a constraint on the legal validity of positive laws, but mainly as an elucidation of an ideal of law in its fullest, or highest sense, concentrating on the ways in which law necessarily promotes the common good. One is tempted to say that the Stoic philosophers treat the study of law as if it were a moral virtue, i.e. as something, which could be demanded from most men. Law is 'the guide of life and the teacher of duties' it is the dictate of reason regarding human life.

On the other hand, the view about the necessary moral content of law is at odds with the tenants of legal positivism. According to positivist school of thought laws are the norms made by legislators or the sovereign authority which is backed by sanction. These are not based on

divine commandments, reason or human rights. Legal positivists denies, that the law is, by necessity, morally good or that the law must have some minimal moral content. Legal validity of law does not depend on the moral content of the norms in question. The philosophical origins of legal positivism are Jeremy Bentham and John Austin, former said that law was supposed to provide greatest happiness to the greatest number of people. This came to be known as utilitarian theory.

Thomas Hobbes insight of law is essentially, an instrument of political sovereignty, and they maintained that the basic source of legal validity resides in the facts constituting political sovereignty. Law, they thought, is basically the command of the sovereign. Moving on, morality is the implied rules of conduct connected with same kind of social and psychological quantities. Henceforth, morality is a particular system of values and principles of conduct.

The issue of law and morality is a lifetime discussion and will remain an egg or chicken question. There are a number of distinctions between law and morality. The **first** being laws are created and enforced whereas morals are inculcated in a person since childhood. Unlike laws, morals are not enforced upon an individual. Morals are left to the discretion of the individual whether he wants to adhere to morals and not. In case of laws if someone disobeys a law he will have to face sanction or punishment which is made by the sovereign i.e. the state. In certain scenario, the concept of law and morality contradict each other. For example: law says if an individual does a heinous crime such as rape, for instance he is awarded with death penalty or life imprisonment. He is awarded with this because the sovereign had made law in section 376¹ of Indian Penal Code, 1860. Since the individual violated the right of another person therefore a sanction is brought against him. This contradicts with the concept of morality because according to morality 'thou shall not kill' i.e. you shall not kill. No individual has the right to take away any person's life and in the case of rape we are taking away the right to life and personal liberty² of the lawbreaker. This goes against the spirit of morality.

The **second** difference between law and morality is that morals guide our external as well as internal behavior whereas laws guide only our external behavior. For example: committing a murder is a crime when both the essentials i.e. mens rea and actus rea are present in the act.

¹ Punishment of rape

² Article 21 of the Indian constitution

Mens rea is a Latin word which means ‘guilty mind’. A person's awareness of the fact that his or her conduct is criminal is the mental element. It refers to what the accused individual was thinking, and what his intent was at the time the crime was committed. Actus rea means the wrongful act or omission which forms the physical element of crime. In *Schad v. Arizona*³, it was held that actus rea includes only the willed bodily movements (i.e. voluntary acts). Thus, if a defendant acted on reflex, then the defendant's conduct does not satisfy the actus reus requirement. In case of morals, morality is killed the moment an individual thinks about hurting or killing other person. Thus, even if he hasn't caused any harm or done any external injury to other person morality of the person internally thinking to harm another is killed at that very moment. In case of laws, only the external act of the individual will be taken into picture. Unless he does the wrongful act he cannot be punished. Mere ill intention of harming someone does not violate any law. Only when he/she breaks a norm can he/she be punished. Thus, morals guide our conscious and law punishes a person through sanction when they violate the laws by their external actions.

The **third** distinction is that in many circumstances an act maybe not be illegal but morally wrong. For example: telling lies, feeling greedy, not helping the needy. These are all sins but do not come under the ambit of crime. Law cannot punish a person for telling lies unless it could be proved beyond reasonable doubt. Similarly, law cannot punish a person for being greedy unless this greediness leads to a violation of law. If it happens then it will be a crime and hence punishable. Let's take another example of corporeal punishment. Corporeal punishment is a kind of punishment which involves physical force with the intention of causing pain and discomfort. It involves hitting, spanking, slapping with a hard object. Corporal punishment is legal in India for the offenders. This is legal but morally wrong as it causes pain and injury to the person. Taking another example to justify properly, suppose a person in drowning, and there are two persons ‘A’ and ‘B’ watching him. ‘A’ is the life guard and ‘B’ is a common person. Thus, in this case, it is the moral duty of ‘B’ to save the person from drowning but it becomes a Legal duty for ‘A’ to save the person drowning failing which he would be punished. On the part of ‘B’ there was only moral obligation to save the drowning man's life failing which he cannot be punished. Thus, this is morally unaccepted but legally

³ [501 U.S. 624](#) (1991)

accepted. Law demands subjection to rules and commands while morals demand a sense of ethical duty.

The **fourth** distinction says contrary to third distinction there are situations in which an act is illegal in the eyes of law but are acceptable to morality. Machiavelli said ‘even the immoral practices are legal, if they are applicable for the benefit of society.’ For example: taking away the child away from his abusive parents is legally wrong in eyes of law but morally it is right as the parents did not take care of child and rather abuse him. It is in the best interest and welfare of child. Let’s take another example cheating on tax return in order to save the money for supporting the old parents is legally wrong but morally right. It is for a good and bonafide purpose. A third instance which is highly debated is of euthanasia. Euthanasia is an act of painfully killing a person who is suffering from an incurable disease. This act is completely illegal in India but killing a patient for his own peace is morally good. This question was raised in the famous case of Aruna Ramachandra Shanbaug vs Union of India⁴ where the lower court rejected the plea for euthanasia taking into consideration the laid down laws, the Supreme Court giving morality a greater weightage allowed euthanasia in this case. The Supreme Court also said that this is a sui generis case and cannot be taken as a precedent.

From the above instances it is pretty clear that morality is subjective. What maybe moral for one person may turn out to be immoral for another? This could be explained with a simple example: a large number of people think that it is immoral to eat meat and drink wine. Thus, morality differs from person to person. There is absence of any binding force. Morality is guided by every human act but this is not the case with laws.

Moving on to **fifth** distinction which says that unlike laws, morals are not enforceable by any sovereign. Laws are guided by the court of law but there no such institution to guide morals. It is the individual’s internal thinking owing to which they follow some morals and due to the practices followed by the society. In case of laws there are sanctions if a person breaks laws whereas in case of morals such sanctions are absent. For example: it is our moral duty to touch the feet of our elders as a way of paying them respect. This act not guided by act law or does it carry any sanction with it. It is left at our pleasure whether we want to follow or not. Touching of feet is a customary practice going on since ages and has no punishment attached with it.

⁴ (2011) 4 SCC 455

Let's take another example: worshipping of gods, visiting temples and doing charity and donation are all examples of morals. Law considers everyone equal in his eyes. Neither there is norm made in any legislation that law court will differentiate between those who believe in god and those who don't nor has it made giving donation or charity essential. In case of taxes if anyone tries to evade taxes he will be punished under various legislation. It also violates his morality because he is escaping his duty through bad means. Thus, any act or omission done to harm the benefit or interest of society or an individual or certain group of people or a community it will shake the pillar of morality and laws.

We have seen how morality and law are distinct, now let's see how there is no distinction between them. It is true that law is the subject of study of political science and morality is the subject matter of ethics yet there is close affinity between the two. Law and morality are complimentary to each other. These two are inter-related so much so, that sometimes morals are converted into laws. In the view of my eyes law and morality are the two sides of the same coins. Morality seeks to influence our behavior by way of our desires, whereas law is the backup option and targets our beliefs⁵. For example: it is wrong to lie to your parents, it is morally wrong but out of the scope of law because law is of no help when it comes to petty and small issues like this. This establishes a connection between the two.

Morality and law are both related to our behavior. This could be understood at three levels⁶:

1. Ensure fair play and harmony between the individuals.
2. To help us make good people in order to have a good society
3. To keep us in good relationship with the power that created us

From the above mentioned three points it could be made out that both law and morality focuses on guiding the behavior of every person in the society. *Point 1* is simple and explains that both law and morality believes in maintaining harmony and peace in the society. They both try to maximize the satisfaction (sociological school of thought) between the conflicting parties and resolve the problem by balancing and keeping in mind the benefit and interest of both the parties. Laws are made for the benefit of the community. Similarly, morals all morals are in the best interest of society. Without morals and laws in their perfect place society cannot

⁵ LAW AND MORALITY (AUGUST 16,2015,4:05 pm)

⁶ C.S. Lewis (thinker, scholar and author)

survive. Thus, it is necessary that both exist in their authorized fashion. *Point 2* morals and laws by guiding our behavior try to make every individual a better and responsible person in life. The problem arises when he takes decision which a bad personal decision? For instance he thinks of killing himself. This is both morally and legally wrong. Every drop makes an ocean; similarly every good person makes a good society. When a person behaves according to the laid down laws he results in becoming a proficient human. *Point 3* in case of morals the supreme authority on whom all the power lies is the God. A moral always insists to maintain a good and humble relation with our parents, elders, god, and community. This helps in creating a better world to live in. In case of laws the supreme power lies with the state. If an individual has a good relation with the state he won't be punished with any kind of sanction. Good relation means when an individual adheres to all the rights and follows all his corresponding duty.

For example: *firstly*, charity to trust is a moral principle, and income tax (laws) has recognized and exempted certain percent (%) of income tax towards charity from total income. *Secondly*, it has been made compulsory by law for big corporation to denote 2% of their profit for social purpose. *Thirdly*, it is our moral duty and drive slow according to the specified speed limit. Theoretically, the ultimate end of the state is to promote welfare of the people. The relationship between law and morals could be seen in corporate world as well. Let's take for instance whistle blowing. Whistle blowing is an act by employee to report the employer's misconduct. This has both morals and law involved. Employee is legally bound that he must report to any external agency about the conduct of his superior. But ethically if it is seen he is breaching the trust of his own organization by digging a hole in his town. Going a little deeper it is morally and ethically right on his part by not accepting any kind of fraud. He is following his duty of being a responsible citizen. What he may do maybe best on him but maybe worse for another. Laws are made by keeping in mind the morals of the society. For example: same sex marriages are considered to be immoral, instituting brothels and legalizing commercial surrogacy are all considered to be immoral by the society hence they are illegal. However, in many foreign countries these are considered to be moral and hence legal also. The only purpose for which power can be rightfully exercised over any member of a civilized society against his will is to prevent harm to others⁷. Therefore the power exercised by law is for the existence of morals in the society. Law and morals are both normative i.e. they define what ought to be done. It

⁷ John Stuart Mill

demarcates a line of differentiation between what is right and what is wrong. Even the natural law philosophers like St. Thomas Aquinas believed in relationship between law and morals. Thus, we can say that there lies close intimacy between laws and morality.

CONCLUSION

Furthermore, a state can be an ideal state only when it works on ideal morality. If the laws are moral its citizens will automatically emerge as moral human beings. If the state is liberal and appreciate crimes it will ultimately lead to its degradation and chaos but if it takes stringent actions against the offenders it will lead to progress and a wealthy nation. Plato in this regard said 'The best state is that which is nearest in virtue to the individual. If any part of the body politically suffers the whole body suffers.' The values of the society cannot be alienated from the law; the law comes as a reflection of these values. Law is the test of crime against immorality. Morals highly influence the laws of the nation. As the morals of society changes so does the laws. With emerging morals emerges a new law. Thus, I would like to conclude by saying that despite the fact law is constantly looking to maintain and advance morals and it remains a nonstop fight to discover a harmony between the legitimate applications and good perspectives in such a different pluralist society.