

# THE CONCEPT OF MORALITY AND LAW - CRITICAL LEGAL STUDIES

## APPROACH

*Written by Deepika Kulhari*

*Final year student - BALL.B., UPES Dehradun*

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### ABSTRACT

There are three perspectives on law. Murder, rape, negligence, and speeding are all illegal in the fullest definition of the word. The law expresses itself in this manner. In the second definition, law is one of many rules that govern how people should act and how they should be controlled. Politics, business, morality, and philosophy are among the topics discussed. Another way to look at law is to look at it as a whole. The term "law as a system" refers to this. The law shapes and is shaped by what people value and how the world functions.

In our lives, the rule of law is incredibly important. Without ever realising it, we come into contact with the law. Take the bus, a cab, get a bank loan, or purchase or rent a house. We employ a variety of regulations when completing one of these jobs. Individuals are regulated, protected, and guided with their help. Law is a system by which societal, technological, and philosophical changes can alter or adjust standards and norms of behaviour. In this sense, law is a tool for defining guidelines for topics like morals, family values, cultural norms, and business practises.

**Keywords** – Law, Morality and Justice.

## **INTRODUCTION**

It is the process of establishing norms that regulate how people should behave. It's also true that other constraints, such as government laws, professional standards, or government-created norms, underpin the rule of law. Overall, it serves as the principal forum for debating how justice is administered in both regulatory and non-regulatory forms, as well as how law and justice work in our government. So don't try to separate law from other issues like politics, the economy, or other principles and beliefs. In reality, law and society have a two-way relationship, therefore don't try to separate them.<sup>i</sup>

Laws are made up of a variety of ideas based on ethics, politics, economics, and jurisprudence, often called as legal philosophy by attorneys.

## **PHILOSOPHY OF LAW**

Jurisprudence is the study of the nature of law and how it interacts with other disciplines. Jurists have tackled this topic in a variety of ways, employing a variety of approaches in order to identify what the jurisprudence and its concept represent. The public refers to these techniques as "schools of jurisprudence." The everlasting principles serve as a legal guide for those who attend a natural law institution. Law is made by people for people, according to one school of thought. Law, according to history, is a product of the past.

Law is a fact in the world, according to the sociological school. The law, according to realists, is determined by court decisions. He was the first to break down the barriers between ethics, politics, history, and sociology to create a clear picture of how law works logically. Sir John Austin He had the hubris to say that the law was made by people for people. This shows that the state is more powerful than the church. Austin's theory has a lot of truth to it, but it isn't perfect, according to Salmond. It recognises that civil law is a state product and that it necessitates the state's physical authority to exist through judicial courts. As long as there is no state that uses physical force to govern a community, there can be no civil law. Paton Austin believes that a mature legal system usually has a state-like legal order, but we can't say for sure that there can't be any law without the state.<sup>ii</sup> Prof. Julius Stone agrees that the analytical

approach is uninterested in justice and social truths. When law is analysed, synthesised, and classified, it is seen as apart from the rest of the world, allowing these things to be performed.<sup>iii</sup>

Kelson examines the law as it is, rather than as it should be. This is just how it ought to be. You must isolate law from other subjects such as ethics, history, sociology, and philosophy in order to understand it. As a result, positivists do not refer to law as law since they do not include morals in their view of it. The command theory of law is something that Prof. Hart opposes. This indicates that he feels the law does not apply to gun owners. The command cannot be given by someone wielding a weapon.

Law is not something that politicians can create or alter, according to Savigny, the founder of the historical school of law. It is not driven by reason, order, or will of the Sovereign. It's the result of internal forces at work behind the scenes, with no one's knowledge. Everyone believes in the law since it is based on their common beliefs, practises, and traditions. Law, like language, is a living thing that changes with time.

According to Prof. Dias, Volkgeist has some reality because there is a stream of continuity and tradition, but maintaining it in precession is challenging. It was something Savigny believed could be discovered. Even in small groups, people have differing viewpoints, and "The Spirit Does Not Exist."

Some legal scholars dispute about what it means to be a "lawyer." They've just looked at one thing thus far. Their perspectives on the law, for example, differ. Law was viewed by analytical jurists in terms of its source, which was the sovereign's order. The historical school refers to this as "continuity of law from custom." They argue that the law has evolved over time as a result of how people have behaved. Law is made by obeying it, not by thinking about it. Law takes precedence over legislation. Before you do anything, take a look around.

Sociological jurists use social engineering to look at how legislation can be used to balance opposing interests with the least amount of friction and waste. Realists believe that judges have the power to repeat the law, implying that legislation has no bearing on the law. The law is what the judges say, called "dog's law" by some. As a result, we can observe that each judge dealt with a different legal issue.

## **CRITICAL LEGAL STUDIES APPROACH ON MORALITY**

1977 marked the first Conference on Critical Legal Studies (CLS) at the University of Wisconsin - Madison. There, a group of legal scholars, practitioners, professors, and students discussed forming a new organisation because they disapproved of the Law and Society Association's emphasis on empirical and behavioural research. In the 1960s, when they participated in antiwar and civil rights activities, many of the participants at the conference had been students or radical lawyers.<sup>iv</sup> In 1977, they moved to Madison because they desired equitable social and economic systems, disliked the typical law school curriculum, and disapproved of "septic" ways of thinking about the law. In contrast to the dry reasoning of conventional legal theory, CLS researchers sought a critique of law that could explain and transform both the legal system and the society it was a part of.<sup>v</sup>

CLS, like the majority of other schools and movements, has not produced a massive library of ideas. Despite the fact that many of the concepts and themes in the works of many faiths are identical. First, we will discuss how legal factors such as statutes and case law do not always determine the outcome of legal conflicts.<sup>vi</sup> The second concept is that "law is politics." The arguments attempt to eliminate the positivist conception of law from politics and ethics. The third conventional argument is that the law frequently serves the interests of the wealthy and powerful by shielding them from the "justice" demands of the poor and subaltern, women, ethnic minorities, working class, indigenous people, disabled persons, and others.<sup>vii</sup> The fourth argument is that legal documents are inherently conflicting. Lastly, they question the fundamental legal concept that a judge or an attorney is a separate entity. That people are capable of making rational decisions, unaffected by politics, society, or money. Researchers at CLS believe that a person's menstruation, financial status, gender, race, and other temporary or permanent life circumstances are inextricably related. Therefore, they cast doubt on the concept of "free" and partial decision-making.

## **THE LAW AND MORALITY**

Jurists, philosophers, and legal experts fall into two groups when it comes to the relationship between law and morality. One school of thought holds that law and morality should be kept distinct, while the other holds that they are intimately interwoven.

Morality has traditionally been seen as a prerequisite for all human endeavours. The moral sense is the instinctive feeling that leads us to select one thing over another. Morals are ideas that make us think about what is right and what is wrong. Morality teaches us how to behave in a proper and ethical manner. Morality is a force that develops from within the body and appeals to the human conscience, yet it has mostly internal repercussions.

When society fails to follow its own laws and principles, Bentham refers to "social punishments." The term "social penalties" refers to the consequences that arise when society fails to follow its standards and values. These aren't the correct consequences from an ethical standpoint. The ultimate moral code's laws, like God's law's norms, stay constant and unchanged across time. However, society does not do so because it does not follow God's standards or the highest moral laws. Many people in society follow the general rules of happiness or unhappiness. These rules are referred to as "positive law." "Positive morality" refers to what a community thought was best to impose as compulsory on the people's conscience at a certain time and place. People and places have different morals. Positive morality incorporates natural law principles as well as religious conceptions of what is good and right. People are motivated to do good by social sanctions. Moral norms, on the other hand, are backed up by the inner conscience, or natural conscience, that we all possess. In any community, there is a link between social morality and the way things work in the legal system. This means that law and morality can never be completely separated in a civilised society. Law has an essential part in the establishment of social morality in today's more organised and vocal society. Any legal theory that claims law is a set of rules that may be implemented must take this relationship into account. According to positivist theories, such as those advanced by Kelson and Austin, law and the legal order are not built on moral principles. Instead, they argue that "the metalegal foundation" is the cornerstone of law and the legal system. Law and morality are often confused, but they are not the same thing. The rule of law is based on the government's assessment of what is best for the people. This means that public policy should be based on health concepts that the community considers are relevant at the time and place in

question. In a modern democratic society, laws are made based on public opinion, or should be made based on public opinion.

### **FULLER VS HART – DEBATE ON MORALITY**

Sound moral values are regularly used to guide public opinion. Some, but not all, of these are beneficial in terms of moral standards in all civilised societies. A legal system does not work on the basis of coercion. The core law-making process is made up of a collection of fundamental and agreed-upon norms. People believe that these norms are more like laws of morality than rules of law since they must represent what society deems to be fair and just. Fuller believes that law is moral in and of itself. Many laws are not based on natural law or ultimate morality, and some are even based on the morality of individuals who enacted them. This type of legislation can only exist because it has been authorised by others. Many laws and legal concepts are founded on well-known moral ideals that serve, defend, and uphold morality and justice in its purest form.

The cycles of law, positive morality, and ethics, according to Paton, can never be completely closed.<sup>viii</sup> No, we do not believe that good morals and the rule of law are intimately linked. If the law isn't in accordance with what they believe is right, people argue over it. Getting things done is incredibly tough due to high legal standards. It is possible to claim that there is a distinction between law and morals, yet there is none. Denise believes that the law and morality work together to create the social fabric.<sup>ix</sup>

Identifying the difference between a good and a terrible order Prof. Hart defines good order as "the manifestation of ideas of justice, morality, or what people believe should happen. " As a result, the desired order is to be a functioning order under all regimes, whether democratic, fascist, or communist, and it must be a working order. In this perspective, law is regarded purely as an order with its own morality. We must display this ethic of order if we are to develop something that can be called law. Even if the law is ineffective. Morality cannot be created solely by the application of the law. One of two things must happen before you can declare an order is good.<sup>x</sup>

The power that makes the law, first and foremost, must be moral. Second, we won't be able to have decent order unless our legislators agree on the law's morality. Both the morals and the law that exist outside and within a country have an impact on one another in the life of a country. Prof. Fuller did not see the eight principles of interior morality that he devised as substantive natural law laws, as he did with other natural law principles. They are more related to procedural natural law rules than substantive natural law rules.<sup>xi</sup>

In any type of government, however, if the eight elements of Prof. Fuller's inner morality are taken into consideration while establishing laws, and those in power adhere to their own sense of morality, the legal system can contribute to the creation of a healthy socio-political environment.

What is the most effective way for a society to survive? As far back as 1957, many in England expressed concern that the legal faction was attempting to pry into people's private lives or force them to follow a specific set of rules and regulations.

The report of the Wolfenden Committee was published in 1954. According to the committee, people who have sexual relations with one another in secret should not be punished because the law should not be concerned with people's private lives. Individuals' morality or immorality should not be investigated by the law, unless the authorities consider that crime and sin are synonymous.<sup>xii</sup> Specifically, the committee indicated that it would be accepted that the law does not deal with private morals or ethical implications, and that no act of immorality should be considered a criminal offence without the presence of another element, such as indecency, bribery, fraud, or exploitation. In spite of this, the committee stated that prostitution should be kept out of sight of the general population. The "Street Offences Act" was passed in 1957, and it is still in effect today. Despite the fact that prostitution was not officially proclaimed criminal, the Act did so in the following year. In 1955, a commission proposed that all consensual relationships between adults that take place in private be free from prosecution under the law. A draught model of the Penal Code was then published by the American Law Institute, which said that this should take place. It was declared that having sex in private between two consenting persons does not jeopardise the secular interests of the community in any manner. The majority of Americans, however, do not believe this to be the truth.

Despite the fact that there is no law forbidding people from dancing naked in nightclubs, the Supreme Court declared in 1974 that doing so has an adverse effect on public morals. Additionally, they advised that wine should not be consumed at night unless absolutely necessary.

Students of law and morality differ on how the law should be used to enforce morals on the public. Prof. Hart's research is based on the article "On Liberty" by John Stuart Mill. A community's ability to impose its will on a man, according to John Stuart Mill, can only be justified by the need to safeguard others from harm.<sup>xiii</sup> Due to the fact that homosexuality and prostitution have no effect on the rest of society, there is no reason to restrict someone from being gay or to make prostitution illegal. However, according to Lord Devlin, the law should nonetheless maintain a fundamental amount of morality in order to function well.<sup>xiv</sup> The author asserts that each culture has created a set of moral structures that are an intrinsic element of how it conducts its daily life. Marriage, for example, can be found in every culture, yet it is not required to be monogamous in every one of these communities. Society must be able to sustain its moral goals during the course of legal events. Because of the lust of their customers and the customers' own moral weakness, the prostitutes take advantage of their customers' own moral weakness. When it comes to exploiting people's defects, it's impossible to separate morality from the law, but that doesn't rule out the possibility of such behaviour. Laws grant society the ability to defend itself. When it comes to the survival of civilization, the government must be well-established and free from the threat of violent overthrow. A well-established morality, on the other hand, is just as important for the well-being of society as a well-run government.<sup>xv</sup>

Similarly, Prof. Hart believes that the rule of law does not need to be assessed on moral grounds in some legal systems. His views are similar to those of Stuart Mill, who argues that legal matters should not be entangled with individual morality or immorality. As a result, he backed the decision of the British Parliament to pass laws making homosexuality illegal under British law. He added that judges will not be able to invalidate it based on whether or not it is rational. When Prof. Fuller interacts with Prof. Hart, he expresses his belief that society is predicated on a fundamentally important moral principle. It is possible that people will ruin their society's culture if they do not adhere to specified moral ideals. This will be bad to both them and the rest of the world. When Fuller says that law is moral, he is referring to the fact that it reconciles the law as it currently exists with the law as it ought to be.



On the other hand, it may be claimed that the rule of law is important in order to maintain respectable morals. Law, on the other hand, has its limits and is not intended to instil morality in individuals through physical force. Despite the close and intimate relationship that exists between law and morality, it is important to remember that no amount of morality can be enforced by legislation if the people in the community are not moral themselves. If the citizens of a community are not moral, moral laws appear distant to the common people in that community. Too much effort put forth in the service of the law is not a good thing. As a result, it should delegate many obligations to other values, such as societal culture and the art of living, rather than to itself. Every culture is bound together by one moral thread that runs through the fabric of the multicultural society.

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