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An analysis of morality and the law

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Abstract

Law and morality exert significant influence on society, capable of shaping or destabilizing its foundations. While often perceived as closely connected, they can also diverge considerably. Individuals frequently confront the dilemma of choosing between compliance with the law and adherence to their personal moral code. In the past, humans were often depicted as primitive, yet societal progress emphasizes the importance of social unity and acknowledges each individual's role in the community. Every person maintains their own moral values, ethics, conscience, and beliefs. When legal regulations conflict with these deeply ingrained principles, achieving harmony between the law and personal morality becomes challenging.

This examination delves into jurisprudence, exploring similar inquiries within legal theory. Its objective is to unravel the intricate relationship between law and morality and assess the extent to which morality is prioritized in other jurisprudential schools, such as the natural school of law. By scrutinizing various legal cases and grounding the investigation in Article 14 of The Rule of Law, this research seeks to illuminate the intersection of law and morality.

The significance of law and morality in interpreting our legal framework cannot be overstated. This study will also encompass criminal jurisprudence to elucidate complex concepts, drawing on pivotal common law precedents. Through comprehensive analysis, this research aims to offer a clearer understanding of the dynamic interplay between law and morality.

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

Introduction

In India, especially within the Hindu community, law has historically been closely linked with Dharma, serving as a fundamental code of conduct even before formal legal systems were established. Similarly, Islamic law governed societal behavior through adherence to Hukum. Dharma and Hukum are widely recognized terms, forming the basis for legal systems and related concepts like morality and ethics.

However, when asked to define "law," laypeople offer varied responses, often discussing prevalent laws and their societal significance, but do these responses truly capture the essence of law? Not entirely.

To the average person, law is often perceived as rules and regulations enforced by the highest authority, supported by sanctions. Yet, terms like "sovereign authority" or "sanctions" may not be fully grasped. In a democratic country like India, the preamble emphasizes the collective authority of the people, indicating a social contract where citizens entrust decision-making to a sovereign entity elected through representation. Our understanding of law has evolved over centuries, influenced by Dharma, British colonial law, and the interpretations of eminent jurists.

For example, Blackstone^[1] defined law as a broad rule of conduct applicable to all activities, while Salmond^[2] described it as a body of principles recognized and applied by the state in administering justice. The distinction between law and the administration of justice is significant, with legislation enacted by the legislative branch, execution handled by the executive, and interpretation and administration carried out by the judiciary. This underscores the separation of powers and how law provides a pathway to deliver justice to those whose rights have been infringed. Regarding morality, it refers to an individual's or society's understanding of right and wrong behavior.

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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.

Morality is a crucial consideration in this research, as it prompts exploration of the relationship between law and morality, which can often challenge legal foundations. Morality, deeply ingrained in human behavior for ages, compels individuals to act in accordance with their moral principles, regardless of legal support. The research problem at hand delves into the complex interaction between law and morality across various legal domains such as criminal and civil jurisprudence. While a divide exists between the two, this study aims to explore instances of convergence and divergence, shedding light on the nuanced relationship between law and morality.

Literature Review

- Max Weber's work in "Economy and Society" delves into the intricate relationship between morality and law, particularly focusing on the normative validity or legitimacy of law when it incorporates moral content. Weber's insights underscore the dependency of the law's legitimacy on moral values, shaping the formulation of the research problem and questions.
- Ronald Dworkin's "Law's Empire" and Bernard Williams' "Utilitarianism For and Against" advocate for the inherent authority of law, emphasizing its control over its rationale and objectives. They argue for the internal integrity of the law, rejecting external sources of authority and highlighting its supremacy and legitimacy.
- R. Reddy's study explores the role of morality in lawmaking, drawing from cases in common-law nations such as the United States. It examines instances where the judiciary faced dilemmas between upholding morality and legal principles, offering insightful analyses and judgments. Additionally, the paper delves into criminal jurisprudence concerning law and morality.
- P. Cane's paper identifies key features distinguishing morality from law and analyzes their implications. It highlights morality's role in practical reasoning, particularly as an ultimate standard for assessing human conduct, based on Hart's perspective on the interplay between law and morality.

Scope of the Study

This research focuses on common law systems, with a primary emphasis on India's jurisprudential aspects of law and morality. It references nations adhering to the common law system and primarily examines India's legal framework in this context.

Objective of the Study

The research aims to comprehend the broader concepts of law and morality, analyze their intersectionality and conflicts, and critically evaluate morality's role in administering justice.

Research Questions

- 1 Does an intersectionality or conflict exist between law and morality?
- 2 Does morality hold significance in India's adopted Rule of Law?

Hypothesis

Acknowledging both conflicts and intersections between

law and morality, the hypothesis suggests that while morality complements law, it does not serve as the primary basis for decision-making. Although morality influences lawmaking, it lacks legal binding and constitutional validity.

Research Methodology

The research employs descriptive and critical analysis methods, utilizing primary sources such as statutes, cases, and books, along with secondary sources like articles, blogs, websites, and journals. It draws on existing scenarios and laws, with no fieldwork conducted, to offer an in-depth examination of the research topic.

Intersectionality and divide between law and morality

In India, morality carries significant weight, with each community holding its distinct set of morals and beliefs, deviations from which are viewed as transgressions against collective moral standards. However, a fundamental jurisprudential question arises: is community morality paramount, or does the law take precedence? This inquiry lies at the heart of understanding the foundations of law.

Morality, an abstract concept, is grasped through emotions rather than tangible attributes. It encompasses universal and steadfast values, ranging from communal to individual morals and those endorsed collectively by communities. Conversely, the law is explicit and prescriptive, governing societal behaviour. A society lacking moral values would lack social order and the secularism enshrined in the constitution's preamble.

Centuries ago, Indian society esteemed core values of "Satya" (truth) and "ahimsa" (non-violence), epitomized by revered figures like Mahavir, Gautama Buddha, and Mahatma Gandhi, who embedded these values into societal consciousness. However, in the post-independence era, materialistic pursuits and self-interest have overshadowed these ethical ideals, making it challenging to discern the interplay between morality and law. Materialism has eroded traditional values, leading to deceit, distortion, and fact suppression in legal proceedings^[3].

Intersectionality of law and morality

Research across various legal systems elucidates the interconnectedness between law and morality, despite occasional deviations and judicial separation. Stammler argues that jurisprudence heavily relies on moral foundations, as laws require ethical grounding for legitimacy. C.K. Allen observes that judges assess prevailing societal morality, while Lord Mansfield asserts that English law prohibits actions contrary to "bonos mores" (good morals).

It is evident that law has significantly evolved under the influence of conventional morality and the ideals upheld by specific social groups, as well as moral critique fostering the acceptance of new moral standards.

Consider the case of Socrates, who, despite the opportunity to evade prison, chose to uphold the law rather than compromise his principles. His commitment to justice and adherence to the law exemplify prioritizing legal principles over personal morality.

During the Middle Ages, European law was deeply intertwined with church doctrines, reflecting the influence of natural law or divine authority. Any law conflicting with

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

divine law was deemed illegitimate, highlighting the inseparable connection between law and morality.

Even today, morality remains a fundamental source of law, with numerous laws implicitly or explicitly grounded in moral principles.

Consider this scenario

If someone commits theft to take money, it's deemed wrong and punishable under the Indian Penal Code, of 1860. However, if the context reveals a different story—perhaps the theft was driven by the desperate need to feed a hungry brother—the situation becomes more nuanced. While the act remains wrongful, the underlying motivation sheds light on its complexity. In such cases, there's a dilemma where either the law or morality may prevail. If the law takes precedence, the individual might face fines or imprisonment. Conversely, if the judge considers the act in light of the individual's intent to provide for their family, morality might influence the decision. Ultimately, it's up to the judge to analyze the situation and deliver a judgment. It's worth noting that moral considerations often play a role in legal interpretation, and morality is also a fundamental aspect of international law.

The relationship between law and morality can be viewed from various angles

- **Morals as the basis of law:** Historically, laws were rooted in concepts like Dharma in ancient India, where adherence to moral principles determined legal validity. However, with the establishment of the state, enacted laws began to diverge from their moral origins.
- **Morals as a benchmark for law:** Throughout history, laws were expected to align with moral principles. Deviations from these principles often faced scrutiny, particularly in the 17th and 18th centuries when laws contradicting natural law risked societal upheaval^[4].
- **Morals as the objective of law:** While law seeks to administer justice for legal wrongs, morality aims to establish what is right and wrong, thus resolving societal conflicts. Despite their distinct objectives, law and morality often intersect in their pursuit of similar ends.

Differentiating the relationship between Law and Morality

Despite their commonalities, the differences between law and morality are primarily observed in positive law:

Lawmaking, enforcement, and interpretation processes in the state contrast with the voluntary adherence to morality by individuals or groups. Violating a law incurs legal penalties, whereas transgressing moral norms may lead to social ostracization but lacks legal repercussions unless codified into law.

While morality evaluates both internal and external actions, law primarily concerns itself with external conduct. For instance, while immorality may stem from ingratitude, the law focuses solely on the action itself, such as theft.

Legal standards may diverge from moral norms. Acts considered immoral, like adultery, may not be criminalized under the law.

While the law applies universally across jurisdictions, morality varies culturally. What's deemed immoral in one

society may not hold true in another, underscoring the universality of law but the cultural specificity of morals.

Legal precedents, such as *S. Khushboo v. Kanniammal*^[5] and *T.A. Quereshi v. CIT*^[6], emphasize the subjective nature of social morality and the distinction between law and morality, respectively.

A notable case, *R v. Dudley and Stephens*^[7], highlights the stark contrast between law and morality. While the men's act of killing for survival was morally contentious, it was deemed unlawful under legal precedents.

In conclusion, while law and morality share certain similarities, they remain distinct concepts with differing origins, applications, and consequences.

The Rule of Law stands as a cornerstone in democracies like India, where governmental authority derives from the people and is subservient to the supremacy of the Constitution. A.V. Dicey introduced this concept, embodying three primary tenets:

- **Legal supremacy:** The Constitution reigns supreme, with any law conflicting with it deemed invalid. The law applies universally, obligating all individuals to adhere to its dictates.
- **Equality before the law:** Ensuring all individuals are subject to the same legal jurisdiction and principles of natural justice.
- **Judge-driven constitution or the predominance of legal spirit:** In certain nations lacking a written constitution, judges interpret laws based on prevailing legal principles, particularly in complex cases.

This study explores the Rule of Law to elucidate moral considerations within legal frameworks. Ronald Dworkin posits that laws and constitutions are inherently entwined with political and moral principles^[8].

While laws aren't logically derived from moral truths, they're shaped by societal consensus on ethical standards. Morality significantly influences laws, with principles such as justice, equity, and good conscience permeating legal systems.

Paton suggests that when love endures in marriage, legal regulations become unnecessary for governing the relationship between spouses. However, as love wanes, legal interventions become more prevalent, symbolized by the solicitor entering through the door as love departs through the window^[9].

While laws are crafted with constitutional morality in mind, they're not solely based on public morality. Constitutional morality, characterized by adherence to constitutional principles, evolves with societal changes, ensuring dignity and upholding constitutional values. In cases like *Government of NCT of Delhi v. Union of India*^[10] and *Navtej Singh Johar v. Union of India*^[11], courts have underscored the primacy of constitutional morality over public morality, signalling a shift towards interpreting laws in alignment with constitutional principles.

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)

⁸ *Morality in Rule of Law* (legalserviceindia.com) (visited 26.02.2024)

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

⁴ Paton, *A textbook of Jurisprudence*

The case of *Joseph Shine v. Union of India* ^[12] further illustrates the differentiation between constitutional morality and public morality. The court decriminalized adultery under Section 497 of the Indian Penal Code, 1860, based on constitutional principles of equality and individual rights, rather than public opinion or moral norms.

In the legal case *Indian Young Lawyers Association v. State of Kerala* ^[13], it was determined that the exclusion of menstruating women from the Sabarimala temple violates fundamental moral principles such as Justice, Liberty, Equality, and Fraternity. The court clarified that the term "morality" in Articles 25 and 26 of the Constitution refers to constitutional morality rather than public morality. It emphasized the need to assess existing social discriminatory practices through the perspective of constitutional morality.

Conclusion

India's rich cultural and religious diversity has historically been guided by concepts like Dharma and Hukum. However, in contemporary legal discourse, morality has gained significance. While it has traditionally influenced the foundation, assessment, and objectives of the law, a deeper moral examination is now warranted. It's essential to align moral considerations with constitutional principles, prioritizing constitutional morality in legal matters. This research concludes that while morality may have shaped legal evolution, the supremacy of law over individual or collective moralities is paramount. Laws should uphold both public and constitutional morality, with any conflicts resolved in favor of the latter to reflect societal progress. India's advancement should align with evolving societal values rather than regress due to outdated beliefs.

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