

The Relationship Between Law and Morality

Abstract : There was a time when there was no distinction between law and morality. Society was governed by the morals that were law also. Later on distinction was made as obligatory rules and regulatory rules. Law is essentially a set of rules and principles created and enforced by the state whereas morals are a set of beliefs, values and principles and behaviour standards which are enforced and created by society. Morality is a social phenomenon. Morality refers to the set of standards that enable people to live cooperatively in groups. It's what societies determine to be "right" and "acceptable." Morality is the standard of society used to decide what is right or wrong behavior.

The Roman jurists in the name of 'natural law recognised certain moral principles as the basis of law. In the middle Ages, the Church became dominant in Europe. The natural law was given a theological basis and Christian morals were considered as the basis of law. In India, as observed earlier, the ancient Hindu jurists did not make any distinction between law and morals. Later on, in actual practice some distinction started to be observed.

Introduction :

The object of law is the submission of the individual to the will of organized society, while the tendency of morality is to subject the individual to the dictates of his conscience. Law is concerned with the social relationship of men rather than the individual where as ethics concentrates on the individual rather than society. Ethics considers motive and law emphasizes on conduct, but ethical duties of man cannot be considered without considering his obligation to his fellows or his place in society.

Law - rules which are enforced by society. Violations may bring a loss of or reduction in freedom and possessions. **Morality**- rules of right conduct concerning matters of greater

importance. Violations of such can bring disturbance to individual conscience and social sanctions.

The law is the system of norms established or recognized by the state for the purpose of regulating the social relations according to the will of the state, whose observance is guaranteed by the coercive force of the state. Researching various aspects of law highlights the specific and essential features that determine the notion of law and thus delimits the law from other phenomena. However, between law and morality there is a close connection, of mutual conditioning. Thus, the law embodies within it moral principles, protects and guarantees fundamental moral values, and at the same time its fundamental force is given by its moral obligation. For legal rules to be effective, they must comply with moral standards that are accepted by their recipients.

Morality, according to doctrine, represents a set of concepts and rules about good or bad, right or wrong, allowed or not allowed. The norms of morality are the creation of society or social groups. Also, moral norms indicate to people, like norms of law, the necessary conduct and show the consequences of non-observance of this behavior, namely moral sanctions that are different from legal ones.

History of the relationship between Law and Morality

The issue of the relationship between morality and law has been the concern of legal thinking since antiquity. If in ancient Greece there wasn't yet a clear delimitation between the two concepts of social norms, the Roman legal theory, being very preoccupied with the improvement of the legal system, took important steps to conceive the independence of the law in relation to morality. The legal doctrine has had great difficulties from the very beginning in delimiting the concept of law from that of morality. According to a conception of doctrine, the sphere of law

and morals would interpenetrate or the law would be a minimum of morality. Aristotle (1996) believed that there must be a relationship of subordination between law and morality. So he said that as soon as the supreme goal of promoting virtue disappears, “the law becomes a simple convention, being merely a guarantee of individual rights, without any disruption to the morality and personal justice of the cities”.

Also in the philosopher I. Kant's (2013) view in the book *The Metaphysics of morals*, morality is based on the consciousness of individuals, not on the fear of sanction, in the work of *Metaphysics of morals*, but we believe that the moral corresponds to rights which consist in the moral possibility of coercion in the fulfilment of moral obligations with the help of the public opinion. Hegel (2015) considered morality to be a motivation of law, and that it does not separate from it, but gives it substance by securing means within the sphere of law. Morality is an intermediate stage to the idea of law, and both law and morality must be subordinated to ethics. There are also authors who have gone to the other extreme in the sense that they exclude any connection between morality and law. Hans Kelsen (1962), for example, believes that the science of law is pure theory of law and that, in his research he must abstain from moral or political influences over the law.

Law And Morality In The Light Of Jurisprudence

Ever since law has been recognized as an effective instrument of social ordering there has been an ongoing debate on its relationship with morality.

According to **Paton**, morals or ethics is a study of the supreme good. In general, morality has been defined to include: all manner of rules, standards, principles or norms by which men regulate, guide and control their relationships with themselves and with others.

Both, law and morality, have a common origin. In fact, morals gave rise to laws. The State put its own sanction behind moral rules and enforced them. These rules were given the name law. In the

words of Hart The law of every modern State shows at a thousand points the influence of both the accepted social morality and wider moral ideal. Both, law and morality have a common object or end in so far as both of them direct the actions of men in such a way as to produce maximum social and individual good. Both, law and morality are backed by social or external sanction.

Bentham said that legislation has the same center with morals, but it has not the same circumference. Morality is generally the basis of law, i.e. illegal (murder, theft, etc.) is also immoral. But there are many immoral acts such as sexual relationship between two unmarried adults, hard-heartedness, ingratitude, etc. which are immoral but are not illegal. Similarly, there may be laws which are not based upon morals and some of them may be even opposed to morals, e.g. laws on technical matters, traffic laws, etc.

Morals as test of law: several jurists have observed that law must conform to morals, and the law which does not conform to morals must be disobeyed and the government which makes such law should be overthrown.

Specific features

Even though, unlike morals, the law regulates external conduct, there is no difference in nature or purpose between the rule of law and the moral rule. Moreover, even in its most technical appearance, law is governed by moral law. The only difference is character; the moral rule being invested with much more forceful means of enforcement (the possibility of state constraints that may intervene in case of violation). In the attempt to establish a major distinction between ethical and legal, we observe that the sphere of morality is wider than that of law, regulating behaviour in the most diverse social relationships. But this does not mean that all norms of law are included in the sphere of morality. For example, legal rules of a technical nature, such as civil or criminal procedural law, do not usually include a moral appreciation.

Another distinction is that moral norms are not usually written norms, which are not necessarily included in some official documents, because they are the product of the unorganized social collective. Instead, the rule of law has an official form and is the result of the official activity of state bodies. The social environment reacts to the immoral facts through public abuse, contempt, etc., and the one who committed an immoral act and is conscious of it, may have reproofs of conscience, evil opinions, etc.

Mircea Djuvara (1999) argued that “the foundation of law and morality is the same, the idea of obligation” and that “morality has as its object the regulation of internal affairs”, and “the law has as its object the regulation of our external material facts in light of our intentions”. Although the law cannot interfere with the inner processes of the individual because it has as its object the regulation of the external manifestations of the individual, that is, the relations with the other people, the morality needs to penetrate into the law, sanctioning it where necessary.

In Ripert’s (1927) opinion, morality has as fundamental values the principles of good, righteousness, justice and truth, values that are promoted and defended by the law.

Distinction between Law and Moral:

- The morals are concerned with the individual and lay down rule for the moulding of his character. Law concentrates mainly on the society and lays down rules concerning the relationships of individuals with each other and with the state.
- Morals look to the intrinsic value of conduct or in other words, they look into motive. Law is concerned with the conduct of the individual for which it lays down standards.
- The morals are an end in themselves. They should be followed because they are good in themselves. Law is for the purpose of convenience and expediency, and its chief aim is to help a smooth running of the society.

- The observance of morals is a matter of individual conscience. Law brings into picture the complete machinery of the state where the individual submits himself to the will of the organised society and is bound to follow its rules.
- The morals are considered to be of universal value. Law is relative-related to the time and place, and, therefore, it varies from society to society.
- Law and morals, again, differ in their application. The morals are applied taking into consideration the individual cases whereas the application of law is uniform.

Relation Between Law and Morals

In the preceding paragraph the points of distinction between law and moral have been discussed, but due to these points of distinction between the two, it should not be gathered that they are opposed to each other and there is no relationship between the two. Really speaking, they are very closely related to each other. In considering the relationship between law and morals much will depend on how one defines law. Analytical, Historical, Philosophical and Sociological jurists all have defined law in their own way and these definitions materially differ from each other.

A study of the relationship between law and morals can be made from three angles:

1. Morals as the basis of law.
2. Morals as the test of (positive) law.
3. Morals as the end of law.

(1) Morals as the basis of law:

As observed earlier, in the early stages of the society no distinction was made between law and morals. All the rules originated from the common source, and the sanction behind them was of the same nature (mostly supernatural fear).

When state came into being, it picked up those rules which were important from the society's point of view and the observance of which could be secured by it. The state put its own sanction behind these rules and enforced them. These rules were called **law**. The rules which were meant for some supreme good of the individual (in the metaphysical sense) and the state could not ensure their observance continued in their original condition. These rules are known as **morals**.

Thus, law and morals have the common origin but in the course of development they came to differ. Therefore, it could be said that law and morals have a common origin but diverge in their development. As the law and morals have come from the common stock, many rules are common to both. For example, to kill a man or to steal, are acts against law and morals both. It is on this ground that, sometimes, law is said to be minimum ethics.

Queen v. Dudley and Stephen's case:

Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be a fatal consequence.

The principles laid down in **Queen v. Dudley and Stephen's** (14 Q.B.D. 273) are worth mentioning in this connection. In that case three seamen and a boy, the crew of an English yacht, were cast away in a storm on the high seas and were compelled to put into an open boat belonging to the said yacht.

They had no food and no water in the boat and in order to save themselves from certain death, they put the boy to death and fed on the boy's body, when they were picked up by a passing vessel. They were tried for the killing of the boy and jury returned a special verdict.

(2) Morals as the test of law:

It has been contended by a number of jurists, since very early times, that law must conform to morals. This view was supported by the Greeks and the Romans. In Rome, law to some extent,

was made to conform to 'natural law' which was based on certain moral principles and as a result 'jus civil' was transformed into '**jus gentium**'.

Most of the ancient jurists expressed their views in a spirit of compromise and attached sanctity to legal rules and institutions. They said that law, even if it is not in conformity with morals, is valid and binding. During the Dark Ages, Christian Fathers preached forcefully that law conform to Christian morals and said that any law against it is invalid. In the 17th and the 18th centuries, when the 'natural law' theory (which was based on certain morals) was at its highest, it was contended that law (positive law) must conform to **natural law**.

They said that any law which does not conform to **natural law** is to be disobeyed and the government which makes such law should be overthrown. It was this theory which inspired the French Revolution.

In modern times, such views that law must conform to morals and if it is not in conformity with morals, it is not valid and binding are no longer heard. However, in practice to a great extent law conforms to morals.

Generally, law cannot depart far from the morals due to many reasons. The law does not enforce itself. There are a number of factors which secure the obedience of law. The conformity of law with morals is a very important factor. There is always a very close relation between the law and the life of a community, and in the life of the community morals have got an important place.

Paton rightly observes that:

If the law lags behind popular standard it falls into disrepute, if the legal standards are too high; there are great difficulties of enforcement.

(3) Morals as the end of law:

Morals have often been considered to be the end of law. A number of eminent jurists have defined law in terms of, 'justice'. They say that the aim of 'law' is to secure justice. Justice in its popular sense is very much based upon morals.

In most of the languages of the world, the words used for law convey an idea of justice and morals also. According to analytical jurists, any study of the ends of law falls beyond the domain of jurisprudence. But sociological approach considers this study as very important. It says that law has always a purpose; it is a means to an end, and this end is the welfare of the society.

According to this utilitarian point of view, the immediate end of law is to secure social interests, that is, to secure harmony of claims or demands. It means that the conflicting interests (in the society) should be weighed and evaluated and the interests who can bring greater benefit with the least sacrifice should be recognized and protected.

Thus, this all becomes a question of choice. In making this choice and in weighing or evaluating interest, whether in legislation or judicial decision, or juristic writing, whether we do it by law making or in the application of law, we must turn to ethics for principles. Morals are an evaluation of interests; law is or at least seeks to be delimitation in accordance therewith.

Korkunov's view:

He also says that: the idea of value is, therefore, the basal conception ethics. No other terms, such as duty, law, or rights, is final for thought; each logically demands the idea of value as the foundation upon which it finally rests. One may ask, when facing some apparent claim or morality, why is this my duty, I must obey this law, or why regard this course of action as right?

The answer to any of these questions consists in showing that the requirements of duty, law and right tend in each case to promote human welfare to yield what men do actually find to be of value.

Many of the modern definitions of law say that the evaluation of interests is a very important test of law. This can be done properly in the context of socially recognised values which in their turn are closely related to morals. Thus, ultimately morals become the end of law.

This end has been expressed in the constitutions of many countries. If we look at the preamble of our own Constitution, we shall find that the ends which it endeavours to achieve are the morals; of course, they are the morals of the modern age.

Influence of morals on law:

Law and morals act and react upon and mould each other. In the name of 'justice', 'equity', 'good faith', and 'conscience' morals have filtered into the fabrics of law. In judicial law making, in the interpretation of legal precepts, in exercising judicial discretion (as in awarding punishment) moral considerations play a very important role. Morals work as a restraint upon the power of the legislature because the legislature cannot venture to make a law which is completely against the morals of the society. Secondly, all human conduct and social relations cannot be regulated and governed by law alone.

A considerable number of them are regulated by morals. A number of actions and relations in the life of the community go on very smoothly without any intervention by law. Their observance is secured by morals. So far as the legal rules are concerned, it is not the legal sanction alone that ensures their obedience but morals also help in it. Thus, morals perfect the law. In marriage, so long as love persists, there is little need of law to rule the relations of the husband and wife, but the solicitor comes in through the door, as love flies out of the window.

Hart's view:

The law of every modern state shows as at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter into law either abruptly and

avowedly through legislation, or silently and piecemeal through the judicial process. In some systems, as in the United States, the ultimate criteria of legal validity explicitly incorporate principles of justice or substantive moral values; in other systems, as in England where there are no formal restrictions on the competency of the supreme legislature, its legislation may yet no less scrupulously conform to justice or morality.

The further ways in which law mirrors morality which are myriad, and still insufficiently studied: statutes may be a mere legal shell and demand by their express terms to be filled out with the aid of moral principles; the range of enforceable contracts may be limited by reference to conceptions of morality and fairness; liability for both civil and criminal wrongs may be adjusted to prevailing views of moral responsibility.

No positivist could deny that these are facts or that the stability of legal systems depends in part upon such types of correspondence with morals. If this is what is meant by the necessary connation of law and morals, its existence should be conceded.

Conclusion

Most specialists agree that between law and morals there is a close connection, because the moral principles of good, justice and truth are appliances and promoted by the rule of law, even if the right and the moral retains its identity. However, over time, their views on the problem of knowing what is the relationship between law and morals were contradictory. Between law and morals, I consider that there is only an apparent contradiction, because the two concepts are complementary. The right would seem a trap for lawyers in that could make them to resist the temptation to not see beyond the letter of the law, given that the need for law enforcement and understanding of its spirit. A true man of law must not only know the law but also to look beyond it and realize that the main attraction of the moral law. Thus, the principles of law originated in morality, this being the cornerstone of the law. The core of the distinction between legal and

moral norms is that “the law constitutes objective ethics and the moral subjective ethics”. Sometimes, acting in a moral manner means individuals must sacrifice their own short-term interests to benefit society.

In order to be able to correctly determine the relationship between law and morality, we must take into account the fact that only morality, as a duty, is related to the law, it can be transposed into legal norms, but we cannot regard morality as aspiration to be related to law, centred on virtue. Whatever the views of the differences between law and morality, they are nevertheless complementary. Therefore law and morality are interwoven and intermixed. Society is not a machine which can be run by law alone. The judge having knowledge of law devoid of morality, culture and ethics can impart justice according to law no doubt, but it is not justice in real sense. As a result, morality has become an important aspect of good law-making. Morality and morals also influence international law. If the law aims to occupy an important position in the lives of the people, it cannot be ignorant of morals and morality.

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