

Conflict between law and morality

Law



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" Conflict Between Law and Morality" * Aakriti Pandey Student of RMLNLU, Lucknow

Introduction In ancient times there was no distinction between law & morals. The Hindu jurist in ancient India did not make any distinction between law & morals. However, later on, some distinction came to be made in actual practice. The Mimansa made a distinction between obligatory and recommendatory rules. By the time the commentaries were written, the distinction was clearly established in theory also, the commentators not only pointed out the distinction but also dropped in actual practice those rules which were based purely on morals. The doctrine of " factum valet" was recognized. That doctrine means that an act which is in contravention of some moral injunction should be considered valid if accomplished in fact. In its decision, the Privy Council made a distinction between legal and moral injunction. The same is the case with Supreme court of India. The same was the condition in Europe. In the name of doctrine of natural rights, the Greece formulated a theoretical moral foundation of law. Like wise, the roman jurists recognized, in the name of natural law, certain moral principles as basis of law. During the Middle ages, Christian morals were considered as the basis of law. After the reformation in Europe, it was contended that law and morals are distinct and separate and the law derived its authority not from morals but from the state. Morals had their source in religion or conscience. During the 17th and 18th century, the theory of natural law had a moral foundation and law was linked morals. During the 19th century, John Austin maintains that law had nothing to do with morals and we define law as command of sovereign. Law alone is the subject matter of jurisprudence. Kelsen emphasized on study of law excluding all other considerations including morals. The sociological approach to law indirectly studies morals also

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although s distinction in law and morals and law alone is considered as the proper subject-matter of study. However, they study other forces also including morals while tracing the origin, development, function and ends of law. **DISTINCTION BETWEEN LAW AND MORALS:-** If we look at the form and content of law, we find that a legal norm may be common with that of religious and moral norm. For example, all religious and moral norms say not to kill or not to steal, and it is the same here in law. So, we have almost the same content between law and morality. Then the question arises that, if it is so, then what is the difference between law and morality? There is a distinction between law and morals. Vinogradoff writes “ law is clearly distinguishable from morality. The object of law is the submission of individual to the will of organized society while the tendency of morality is to subject the individual to the dictates of his conscience. ” Law or morality both are normative systems of our society as both are normative and institutionalized by nature. The only difference between law and morality is that law is coercive by nature but morality is not. Law is enforced by coercion and its constant application on a society leads to the internalization of law in human soul. Initially, law gives only an external behavior or an overt effect, but with the pace of time the forceful obedience of laws takes the shape of an internalized realization of habitual obedience. For example, the road traffic laws, when are applied on a society get internalized in a citizen's behavior after certain time. According to Pollock, “ Though much ground is common of both, the subject matter of law and ethics is not the same. The field of legal rules does not coincide with that of moral rules and is not included in it and the purposes for which they exist are different”. Durguitt writes “ law has a basis in social conduct. Morals go on intrinsic <https://assignbuster.com/conflict-between-law-morality/>

value of conduct. Hence, it is vain to talk about law and morals. The legal criterion is not an ethical criterion. " Acc. to Pound " Law and morals have common origin but they diverge in their development". Bentham says " in a word, law has just the same centre as morals but it has by no means the same circumference". According to Korkunov " the distinction between law and morals can be formulated very simply. Morality furnishes the criterion for the proper evaluation of our interest law marks out the limits within which they ought to be confined".

THE RELATIONSHIP BETWEEN MORALITY AND LAW

- (1) The existence of unjust laws (such as those enforcing slavery) proves that morality and law are not identical and do not coincide.
- (2) The existence of laws that serve to defend basic values--such as laws against murder, rape, malicious defamation of character, fraud, bribery, etc. --prove that the two can work together.
- (3) Laws can state what overt offenses count as wrong and therefore punishable. Although law courts do not always ignore a person's intention or state of mind, the law cannot normally govern, at least not in a direct way, what is in your heart (your desires). Because often morality passes judgment on a person's intentions and character, it has a different scope than the law.
- (4) Laws govern conduct at least partly through fear of punishment. Morality, when it is internalized, when it has become habit-like or second nature, governs conduct without compulsion. The virtuous person does the appropriate thing because it is the fine or noble thing to do.
- (5) Morality can influence the law in the sense that it can provide the reason for making whole groups of immoral actions illegal.
- (6) Law can be a public expression of morality which codifies in a public way the basic principles of conduct which a society accepts. In that way it can guide the educators of the next generation by giving them a clear outline of the values

society wants taught to its children. MORALS AS A PART OF LAW It is contended by some writers that even if law and morals are distinguishable, morality is in some way as an integral part of law or of legal development. we can never deny that a major content of law derives its content from that of morality. Like that criminal law is a product of moral notions. For example, all religious and moral norms say not to kill or not to steal, and it is the same here in law. So, we have almost the same content between law and morality. The actual conclusive situation is that religion, morality or law all have the work of controlling the behavior of individuals of our society, hence we must not exclude the importance of morality in our society. In the case of International Humanitarian Laws, certain moral standards are also recognized as a part of law. So, the absolute separation of law and morality is not possible in these areas where morality produces a positive effect in society which is prospective in nature. Morality is “ secreted in the interstices” of the legal system and to the extent is inseparable from it. this viewpoint has been put forward in various ways. It is said that law in action is not a mere system of rules but involves the use of certain principles, such as that of equitable and the good. By the skilled application of these principles to the legal rules, the judicial process distils a moral content of the legal order, though it is admitted that this does not permit the rules itself to be rejected on the grounds of morality. Another approach confers upon the legal process an inherent power to reject immoral rules as essentially non legal. What the positivist insists is that once the rule is laid down or determined, it does not cease to be law because it may be said or shown to be in conflict with morality. Legal Enforcement Of Morals Prof. Harts also accepts the need for law to enforce some morality. The real area of dispute where the line

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should be drawn. J. S. Mill drew it for harm to others. According to Hart, some shared morality is essential to society. If any society is to survive, any legal system is to function, then there must be rules prohibiting, for eg. Murder. Is law responsible for the enforcement of morality? Discussion of three important cases where there was total conflict between law & morality Case 1) Mr X v Hospital Z Case2) Sreerangayee case Case 3) Riggs v Palmer In all the above cases , sometimes it was law which prevailed over morality or sometimes its morality which became more important for the judges to take into consideration than law. Discussion on case 1: The facts of the case in brief were as follows: 1. The Appellants blood was to be transfused to another and therefore a sample thereof was taken at the Respondents Hospital. 2. The Appellant was found to be H. I. V.(+). 3. On account of disclosure of the fact that the Appellant was H. I. V.(+) by the Hospital authorities without the express consent of the Appellant, the Appellants proposed marriage to Ms A which had earlier been accepted, was called off. 4. Moreover, the Appellant was severely criticized and was also ostracized by the community to such an extent that he had to leave his place of work and residence and shift to a new city. 5. The Appellant approached the National Consumer Dispute Redressal Commission for damages against the Respondents on account of injury and damages suffered to him because of disclosure of information required to be kept secret under medical ethics by the Hospital authorities. 6. The Commission however dismissed the complaint on the ground that the Appellant could seek his remedy in the Civil Court. 7. The Appellant thus appeared before the Supreme Court contending that the principle of Duty of care applicable to persons in medical profession included the Duty to maintain confidentiality and the said duty had a

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correlative right vested in the patient that whatever came to the knowledge of the doctor would not be divulged. 8. The Appellant contended that for violating the above duty as well as the Appellants right to privacy, the Respondents were liable to pay damages. Issues Before The Supreme Court: 1. Whether the Respondents were guilty of violating the Appellants right to privacy guaranteed under article 21 of the constitution? 2. Whether the Respondents were guilty of violating their duty to maintain secrecy under medical Ethics? Judgement Of The Supreme Court: The Judgement of the Supreme Court was as follows: 1. In deciding the first issue, the Court held that in the event of a conflict between the Appellants fundamental right to privacy and Ms As fundamental right to be informed about any threat to her life/health, in such an event the Latters right to be informed will override the Appellants right to privacy. Hence the Court held the Respondents not guilty on the first count. 2. In deciding the second issue, the Court held that the duty to maintain secrecy in every Doctor-Patient relationship was also not absolute and such duty could be broken and hence secret divulged where compelling public interest so requires. Hence the Court held the Respondents not guilty on the second count as well. 3. The Court further held that The Appellants right to marry was suspended until complete cure of the Appellants dreadful disease. The Court based this decision on various Statutes which give right to spouse to seek divorce on ground of the other suffering from a communicable venereal disease such as AIDS. 4. The Court held that in the event the Appellant did decide to marry while suffering from such dreadful disease, he shall be punishable under section 269 & 270 of the Indian Penal Code. 5. The court held that AIDS is the product of undisciplined sexual impulse. This impulse being a notorious human failing if not

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disciplined can afflict and overtake anyone however high or low he may be in social strata. The Court cannot assist that person to achieve that object. The Court held that the 6. The Court held that the Hippocratic Oath taken by medical men at time of entering profession is not enforceable in the Court of law as it lacks statutory force. Though to some extent it was morally right on the part of the court to held that decision as to life of A was coming to danger but on other hand we can't even say what happened to Mr. X was correct . With reference to the Courts decision on the second issue of whether the Respondents were guilty of violating their duty to maintain secrecy, the Court held them not guilty as such duty of maintaining secrecy could be broken in public interest. Here the Court failed to take into account the fact that India has over 2 million reported AIDS infected patients and maybe more unreported persons. By setting such a precedent whereby a Hospital gets license to break their duty to secrecy in so called public interest leading to the ostracizing of an entire community of AIDS infected persons, the Court erred to take into account that compelling public interest lied in favour of the Appellant and the rest of such community consisting of a sizable population of over 2 million. The court failed to recognize the havoc such precedent would have over the entire community of such AIDS patients who were already dealing every moment of their lives with certain death. The Court held that the Hippocratic Oath taken by medical men at the time of entering the medical profession could not be enforced as it lacked Statuary force. Here it is worth noting that the Court applied failed to recognise the principle as to why such a Hippocratic Oath was required to be taken by medical me in the first place. Here the Court applied a very narrow minded approach and hence missed out on the larger picture. Discussion <https://assignbuster.com/conflict-between-law-morality/>

about case 2 The confessional statement of the accused-woman recites a tragic tale of stark poverty, driving her and her five children from semi-starvation to utter starvation month after month (for the past six months.) It also reveals the cruel neglect of her and her five children by her own husband who was indulging in illicit amorous liaison with One Or two concubines without his realising his responsibility towards his wife and children. Her children were stricken by disease and at least one child became blind as a result of smallpox afflicting the child. The other children also were disabled by disease, privation and starvation. She displayed a rare virtue of chastity when she thwarted the illicit amours of her brother-in-law accompanying some little financial help which she spurned with womanly dignity. At long last, finding nothing rewarding or justifying in this world for the continued existence of herself and her five children, she was driven to such a mood of utter desperation and she killed her five children one after another by drowning them in a tub of water and after successfully completing her mission of mercy for her children by killing them one after another journeyed to a dismal well and plunged herself into that well to go the other unknown world, but she was unfortunately rescued by a passer-by. The appellant was charged with an offence of murder under Section 302 of the Indian Penal Code, in that she on 9th April, 1971 between 8 and 10 a. m. committed murder of five of her children aged between 11 and 1 1/2 years and lastly with an offence under Section 309 of the Indian Penal Code, in that she at about the same time in the course of the same transaction attempted to commit suicide by jumping into a well. On the question of sentence the learned Sessions Judge directed the accused to undergo imprisonment for life under Section 302, Indian Penal Code, under charge No. 3 in respect of <https://assignbuster.com/conflict-between-law-morality/>

murder of each of her children and also sentenced the accused to undergo simple imprisonment for one year under Section 309. In this case, law is given so much preference by the learned judges that the woman who was such a great sufferer is not taken into account & was awarded with life imprisonment. The plight under which she was leading the life was more pathetic. If the judges would have seen it with the morality the judgement would have been definitely different. The condition in which she was living forced her to do the murder of her children & to end her own life. Even if any punishment is not given then also it would put a wrong impression on the society, as every person comes with his own personal problem to defend himself. So, every aspect needs to be taken into consideration before delivering any judgement as it proves to be a role model in the society.

Discussion On Case 3 In the case of *Riggs v. Palmer*, the issue at hand is whether or not Elmer Palmer, a man who purposely poisoned his grandfather, should be allowed to collect his 'Riggs' was a probate suit brought before the Court of Appeals of New York in 1889. The plaintiffs, Mrs. Riggs and Mrs. Preston, sought to invalidate the will of their father Francis B. Palmer; testated on August 13, 1880. The defendant in the case was Elmer E. Palmer, grandson to the testator. The will gave small legacies to two of the daughters, Mrs. Preston and Mrs. Riggs, and the bulk of the estate to the Elmer Palmer to be cared for by his mother, another daughter named Susan Palmer, until he became of legal age. Knowing that he was to be the recipient of his grandfather's large estate Elmer, fearing that his grandfather might change the will, murdered his grandfather by poisoning. The plaintiffs argued that by allowing the will to be executed Elmer would be profiting from his crime. While a criminal law existed to punish Elmer for the murder, there was no

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statute under either probate or criminal law that invalidated his claim to the estate based on his role in the murder. Judge Earl wrote the majority opinion for the court which ruled in favor of the plaintiffs. The court reasoned that tenets of universal law and maxims would be violated by allowing Elmer to profit from his crimes. The court held that the legislature could not be reasonably expected to address all concerns in crafting laws and that had they reason to suspect one might behave in the manner of Elmer they certainly would have. Judge Gray dissented. He argued that the criminal law established punishment for the murder of Francis Palmer. For the court to deny the estate to Elmer was to, in effect, add significant punishment to what Elmer received under the criminal statute, something the court was not permitted to do without the express, written statute. The written statutes that existed did not sanction the action of the court and the court cannot simply create or imagine such statutes so as to obtain a morally pleasing result. inheritance. It is the responsibility of Mr. Palmer's lawyer to give sound legal advice so that heIn the case of Riggs v. Palmer, the issue at hand is whether or not Elmer Palmer, a man who purposely poisoned his grandfather, should be allowed to collect his inheritance. It is the responsibility of Mr. Palmer's lawyer to give sound legal advice so that he may make a decision, on his own, as to whether or not he wishes to fight for his inheritance. In order for our legal system to be upheld, and as immoral as it may seem, Mr. Palmer must receive the money. Yet the court in Riggs v Palmer consciously decides not to apply the rule and does so by relying on a general principle that a wrongdoer should not be allowed to profit from his own wrong. It is not judicial discretion which operates to defeat the ordinary rule but an interpretation of the rule in the light of a governing legal

principle. According, to morals it was right on the part of the judges not to give the property to the convicted as it would give bad effect on the society & set a wrong precedent , that the person accused of murder gets the property. Otherwise every other person who comes to know about the bequeath would murder his near & dear one in greed of property. A Brief Commentary On Naz Foundation Case In India In a landmark judgment, Delhi High Court on July 2, 2009, recognised the right of adults having consensual physical relationship with same sex. Article 377 of Indian Penal Code (IPC), a pre-colonial law, prohibiting what it terms as unnatural sex kept intact by the Indian state until the high court accepted that it is against the fundamental right of liberty and life. With the high court judgment, the voice of protest had been heard from the same corner of conservative section who interprets the judgment as something against the Indian tradition, morality, religion and culture. Surprisingly, different religious leader are united on this front and decided to fight against the judgment of the high court, but the Supreme Court as of now has declined to put stay orders on HC's verdict. Custom and Time: India is a fast changing country and our society is in the phase of transition, thus the need is more open and free debate on these issues. Tradition and customs are not something permanent and change with time and it is irrational to think that once established, a norm in society will remain forever. Even in India, many customs and religious beliefs have changed with passage of time. The best example is the change in the Hindu belief that anyone who crosses the ocean is considered as impure but with time, this concept was rejected. Child marriage, Sati system, Purda system are other very strongly practiced traditions of medieval India but reformers raised their concern and led struggles for abolition of these rigid and

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inhuman traditions. Likewise, in the contemporary India, there is a serious need for discussion and debate on issues including one on homosexuality.

CONCLUSION ABOUT 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 infiltrated into the fabric of law. Moral consideration plays an important part while making law, interpreting law and exercising judicial discretion. Morals act as a restraint upon the power of legislation. No legislature will dare to make a law which is opposed to morals in the society. All human conduct and social relations cannot be regulated and governed by law alone and varying many relations are left to be regulated by morals and law does not interfere with them. Morals perfect the law. Paton writes “ in marriage, so long as love persists, there is little need of law to through the door as love flies out of the window. ” The sociological approach is very much concerned with the ends to be pursued by International law. The brutalities committed during the world wars have forced the people to turn back to morals and efforts are being made to establish standards and values which must be followed by The result is that morals have become a very important subject of study for good law making. Morals also exercise a great influence on nations. If law is to remain closer to the life of the people, you cannot ignore law. -----

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