

Example, and  
conform to all the  
norms



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Example, we do not consider paying fine to the Electricity Board or Municipal Corporation for having not paid the bill amount well in time, as more severe a sanction than facing a 'ridicule' for having worn a shabby dress in a marriage ceremony. In the same manner, a man who deals with illicit trade by violating state laws and who maintains a mistress in addition to the wife by violating mores, may, in practice, be afraid of ridicule. To avoid ridicule, he may dress always in the most conservative manner and conform to all the norms of fashion and etiquette. These examples reveal greater severity of norms does not necessarily ensure greater conformity. A nation like India which is characterised by diversity has a multiplicity of laws and it is not possible for even the most law-abiding citizen to conform to all of them.

If it is a crime to violate a law we are all criminals. We may not pay all kinds of taxes well in time always, we may force our entry into bus or train without waiting for our turn in queue, or we may exceed the speed limit while driving a vehicle, or throw some dirt on the public road at some time or the other, and so on. We violate many such laws with impunity largely because everyone else does so. Though we do not hesitate to violate some laws without fear of punishment, we are not prepared to go against certain folkways or mores or customs. For example, we do not eat peas with knife. No woman is ready to attend a marriage party with a night dress. No organiser of a public programme can ignore to thank the president of the function. No law compels us to observe these practices.

Thus, it could be said that the laws are not necessarily more effective instruments of social control than the folkways, mores and customs. In primitive societies the institution of government is not found and hence they

have no law. Still they have folkways and mores. They are found in all societies without exception. The laws that are found in complex societies are to some extent formed on the basis of the mores and customs present in them. In such societies mores gain formal recognition in the laws. The mores get the additional sanction-that is, the physical force to enforce compliance to them.

Sometimes, mores may change while the laws remain in force. Hence the law may fail to keep pace with the mores. Sometimes the converse may be true, that is, laws may be enacted before their provisions have the support of the community. Folkways, in comparison with laws, are more changeable. Folkways associated with fads and fashions are so dynamic they often get changed from year to year and even from month to month. Most of the folkways do not require any formal legal recognition too. But the laws are more important, stable, and comprehensive. They are so complex in modern societies that some specialists such as lawyers, judges, legislators are professionally concerned with them.

Sometimes, laws and mores may come into a conflict because of some disparity between them. As societies become more and more complex such disparities are unavoidable. If, in an extreme conflict of this kind, one has to 'give' place to another, it is the law that has to make way for mores.

Hence the Roman historian Tacitus exclaimed: " What are laws without mores?" To stress the supremacy of mores someone has spoken of the following principle: " When the mores are adequate, laws are unnecessary; and when the mores are inadequate, laws are useless ". This principle

though sounds interesting is not true. It is not out of place to discuss here the relative validity of this principle. Let us consider Robert Bierstedt's analysis of this principle in the present context. The first half of the statement that is 'When the mores are adequate, laws are unnecessary'-is not true in all situations. In small primitive societies where the institution of government is not there, laws do not exist, they have only mores.

They do not require laws also. But they cannot dispense with mores. In fact, they are necessary even for the civilized societies. Further, the civilized societies can hardly maintain their social order without laws. In these societies mores alone cannot operate by themselves to ensure obedience, because their sanctions are not effective all the times. For example, in modern societies, some are not going to pay the tax if it is legally alright.

Still it is known to us that paying the tax is morally obligatory for us. Here, the mores alone cannot ensure obedience. Thus tax evaders who are not going to be penalised for their tax evasion are actually violating the mores with least hesitation. Tax evader's offences are not going to be discovered and hence his associates cannot bring on him any moral pressure. Thus law is essential in modern society.

Moreover, law in a complex society is a necessity from another point of view. Modern society consists of number of groups and sub-groups as such with its own set of formal and informal rule. When these rules or norms of groups clash among themselves law is needed to adjudicate between them. Law does this function. In this way, the first half of the principle is not correct. The second half of the principle—"When the mores are inadequate, laws are

useless"- is mostly true. It is true that no law could be passed without the support of mores.

When the mores of the majority are strongly opposed to the laws, the laws are bound to give place for mores. A legislation introduced in U. S. A. relating to prohibition had to be withdrawn within a short time because it was opposed to the mores of the majority. In India too legislation relating to smoking has been an utter failure because it could not get the support of the mores of the people. Sometimes what the rules cannot accomplish at all, the folkways, customs and mores can accomplish with ease.

For Example, people avoid illicit sex relations not much because it is illegal, but very much because it is immoral. No law can control our dress habits but folkways and fashions can comfortably do that. No law can prescribe our religious behaviour but customs can, to some extent, do so. We respect authority more as customary rather than as a rule. The question whether law should be used to enforce morality is often debated. Most people believe that these two-law and mores-should control two different aspects or areas of human life in their own way.

If law should deal with crime mores should deal with indecency (or sin). From this point of view, the law for example, should not bother about sexual behaviour between freely consenting adults who are not husband and wife when conducted in private. Because it is not the task of law to enforce morality. Even if it tries to do this function it cannot succeed. Though it is important both for the intellectual and social order to make a clear distinction between what is illegal and what is immoral, it is not easy to do

so. Because some instances or issues such as ‘ bigamy’ or ‘ abortion’ could be listed on either sides. Thus it is clear from our discussion that norms differ a lot depending upon the nature of sanction behind them.

The laws are not necessarily more coercive than the folkways, mores and customs in all instances. When the laws are obsolete, some folkways, or mores may prove to be stronger than them. Laws become useless when the mores are inadequate. Thus Aristotle was right when he said that “ a law derives all its strength from custom “.