

The Relationship between Morality and Law: Special Emphasis on the Indian Legal System

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Abstract: *The question of morals in the legal sector is a matter of utmost importance and debate. The scope of this paper is to discuss the role of morals in the current legal system with a special emphasis on recent judgements in India and its intimation on the society. The paper also focuses on the debate between liberty and security, importance of intentions in deciding whether a certain act is a crime or not and the role of state in propagating and safeguarding certain moral standards. It further discusses the impact the idea of morals will have in the coming times and the way forward, differentiating between illegal and immoral. Judgments which marked a significant change in the belief system of the country, such as decriminalization of adultery, recognizing rights of LGBTQ+ community and the right to die with dignity have also been discussed in detail. The aim of the paper is to bring forth the relationship between laws and morals in a society and examine its current relevance, with a special emphasis on the Indian Legal System.*

Keywords: morality, law, judgments, intention

1. Introduction

Morals have played a significant role in determining the legal structure of any nation state. It not only defines what freedom norms a society will uphold but also the restrictions that it will justify putting forward in the community. The issue that arises here is of 'how much' could anyone be protected, keeping in mind the liberty of the person. One example can be offining a person for not using seat belt in the car while driving. Where one can take it as securing the right of life to a person the other can take it as restricting the liberty of that very person. Another point while considering morals in law is that morals are dynamic in nature. What might be considered wrong a few centuries back maybecome a new norm today. A major example of this can be seen from the development of the movement of the LGBTQIA+ community.

2. Liberty Versus Security

The basis for the introduction of laws was to ensure and safeguard the rights of the people. Hence it can be considered that these laws were constructed to protect the members of a society from harming one another and the property of the other person. Therefore, security as a concept can be seen restricting the freedom of a person in the name of protecting her/his rights. It is here that the liberty of a person comes in question. The extent to which laws provide uswith security can be seen overlapping with the restrictions imposed on a society in the name of security. In India, a major example can be of various girl hostels throughout the country, wherein women are not allowedto go outside their hostels after 8pm in nameof ensuring their security. Where the society treats this to be a method of ensuring the security of women, many find it as a restriction to their liberty. The nexus of both these concepts results in a conflict between the individual and the society, where in case of the given example it can be seen through the rise of various social movements such as Pinjra Tod in the University of Delhi.

The Role of 'Mens Rea'

Mens Rea or "Guilty Mind" plays a pivotal role in deciding whether an act or the omission of an act is a crime or not. It is of extreme importance to find whether there is an intention to commit harm to a being or the society at large. Various crimes, defined in the Indian Penal Code (IPC) specifically mention the role of intention in deciding whether the commission of an act or its omission can be considered a crime or not such as accident (Section 80 of IPC) or in case of a minor below the age of seven years, where section 83 of IPC states that nothing done by a minor below the age of seven can be considered a crime. Thus, an act, no matter how immoral it might be portrayed to the society, shall not be considered a crime if there was bona fide intention behind it. Morals in such case thus take a back seat and are left to the mercy of intention. Thus, though morals play a deciding role on what should and should not be a crime, the intention behind it drives the decision in major cases. For example, a person drives her/his car on a road with all legal means, in a legal manner, hits a child, who jumps on the road out of nowhere, resulting in his death. The person is then let go without any punishment. Though the act causing the death of the child might be considered immoral, it is yet not an illegal act, if it was done in a lawful manner, with lawful means and without knowledge of accident. The society might still consider the letting go of the man as an immoral act. What can then be the difference behind an illegal act or an immoral act?

The Difference between Illegal and Immoral

Legality and morality do not always go hand in hand. Where legality depends upon the laws of a land, morality works on the beliefs and norms of the society or an individual. Thus, an act which might be considered illegal in terms of laws of the land might be considered a rule to be followed in a society. In fact, morals change as they transcend from one society to another. Thus, where it might be considered immoral to marry outside one's caste, in yet another society it would be an acceptable norm. In any case, it is not illegal to marry outside one's caste system. Thus, morals are highly dynamic in nature. There is, however, no ground for the stand that laws are always moral. Various laws in history

stand as example to this, namely the Nuremberg laws in Nazi Germany or the Fugitive Slave Act in pre-Civil War America.

Role of State

The role of state in such circumstances acts like a deciding factor. If the state starts interfering in trifling matters, then there would be no liberty and only restrictions. Consider a situation where you had plans for dinner with a friend and you did not show up for dinner without informing your friend. Although it was an immoral act to do from your side you would still not want the state to interfere in it. Thus, not acting in some cases is also an act of state, wherein it provides us the freedom that is needed. However, in history, the various legal systems set up by the state have pointed out that various decisions that would be considered immoral in a society were given the stamp of legality and hence were implemented in the society. Slavery is one such example. Chattel slavery (where one person is the property of another) is illegal but still exists in the West African country of Mauritania. India holds the largest number of people involved in slavery (estimated range: 14 million to 18 million people). Many do work in the brick kiln industry as slave labour. Slavery has been abolished in India by Indian Slavery Act, 1843. Despite the legal regulations, many find themselves stuck in the vicious cycle of poverty and are therefore drawn into slavery. Here morality takes a backseat in case of survival. It is in such cases that the role of state is needed to ensure that both adults and children employed in such industries are not exploited due to economic benefits. It becomes the moral responsibility of the state to ensure the right to live with dignity to all its citizens.

Where does our legality come from?

Every society has its own set of morals that it advocates. Individuals who form the society have their own morals that they believe in. The culture within every society is different and hence the beliefs that are propagated by them stand different too. Religion is an intrinsic part of any society and religious texts have often been the basis of forming law in a society.

Laws have been formed based on various religious texts such as Bible or Quran. Since then these principles have been passed on from one generation to another. Thus, rules such as of not eating non-vegetarian food as described in the 'sanatan dharma' or going to church as written in Bible can be seen that were formed within a society over a period. However even religion has not gone unnoticed by the wrath of time and adapting itself with time. For example, the 30 years of war which resulted in the signing of the Treaty of Westphalia (1648) founded a new world order in which religion was no longer the sole basis of forming laws in any state. It also led to the rise of the protestants who believed in the liberal norms of industrialization. Another difference in the morals of various religious sects can be considered in case of marriage. Where marriage is a holy sacrament in Hindu law, the Muslim law treats marriage to be simply as a social contract.

Earlier, most people followed the principles as stated in their religious textbooks. Religious institutions such as church or temples acted as structures that ensured the implementation

of the principles. India is known as the land of religions. Before the British came, various Indian rules governed their states in accordance with the principles of their religion. These rules depended solely on the king, where some rulers acknowledged the existence of other religions while others refused to do so. As the British took over, laws from different regions were brought together and coded into different books to form a unified code of conduct for the society throughout. This can be seen from the various law books in India, namely, the Code of Criminal Procedure 1973, Indian Penal Code 1860 and the Code of Civil Procedure 1908 in India. These have been formed as an amalgamation of the various laws that were in function in India within the various princely states to ensure an ease in administration of the colony by the Englishmen.

3. Judgements that Changed Our Morals – Focus on India

1) Decriminalisation of Adultery:

JOSEPHINE SHINE V. UNION OF INDIA, WP (Cr.) No 194/2017 (decided on 27-09-2018)

The supreme court decriminalized adultery in a landmark judgement which aimed at upholding the right to equality and freedom. This judgment scrapped a law first brought under British colonial rule in 1860.

The bare act of IPC mentions adultery as: "Adultery - Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor." Adultery was thus considered as a criminal offence against marriage, committed by a third person against a husband with respect to his wife. The above section was discriminatory against both men and women. Furthermore, it was argued that this section was often a reason for exploitation of women, for as the section further stated, a married man having sexual intercourse with a) An unmarried woman or b) Widow or c) A married woman whose husband consents to it or d) A divorced woman, commits no offence under this section. Thus, this article was found to be discriminatory, exploitative and offending the dignity of a woman.

This judgement marked a paramount shift from the set morals of the society. Various religions, in their holy texts have considered adultery to be exceedingly immoral. Manusmriti, the first law book of India provided punishment for those addicted to intercourse with other men's wives. The punishment was ensured to cause terror followed by banishment. Decriminalising adultery indicated an overriding shift in the set morals of the society and the legal system of the state.

2) Decriminalising Gay Sex

NAVTEZ SINGH JOHAR V. UNION OF INDIA, WP (Cr) No 76 of 2016 (decided on 06-09-2018)

A five-judge bench at the country's highest court decriminalized homosexuality, striking down the 160 years old law which considered gay sex as against the law of nature. The Supreme Court declared section 377 of the Indian penal constitution unconstitutional, in so far as it criminalizes consensual sex act of adults of same sex, in private. However, other parts of section 377 relating to sex with minors and bestiality remain in force. The historic judgement was appreciated across the state.

Gay sex was an offence which was covered under section 377 of the Indian Penal Code, which stated the offence of bestiality. This judgment unveiled the numerous discriminatory practices against the LGBTQIA+ community. The society came forward with mixed opinions and emotions. Where a major section appreciated the judgments, others still were not able to accept it. Despite legal sanction, the morals were still at crossroads. Therefore, by looking at various beliefs, morals and emotions attached to this subject of LGBTQ+, it can be established that the community can no longer stay unnoticed and the legal sanction provides a pathway for individuals and society to be a safer place for everyone.

3) Passive Euthanasia and the right to die with dignity

COMMON CAUSE (A REGISTERED SOCIETY) V. UNION OF INDIA, WP(Civil)215 of 2005, March 2018

On 9th March 2018, a five-judge constitution bench headed by Chief Justice Dipak Mishra gave a legal sanction to passive euthanasia. According to the judgment, it permitted "living will" by patients on withdrawing medical support if they slip into irreversible coma. Here, the Supreme Court held that the right to die with dignity is a fundamental right.

Life and death have been two issues that most religions and society believe are beyond the ruling of any institution or individual. It has long been an issue of much debate and deliberation. Different religions have different beliefs. In Hinduism, Dharma (moral values) of an individual focus more on the result of an act of a person than whether it's right or wrong. Thus, in Hinduism euthanasia is an immoral act which results in the untimely separation of the soul and the body. In Jainism, the practice of Santhara is highly prevalent wherein one decides that when their purpose of life has been fulfilled, they can fast unto death and take death with stride. The apex court declared this practice to be unconstitutional and directed the state governments to investigate it. This was met with protests all over the state. Thus, laws and morals of different sects in India hold varied opinions and beliefs in different morals. Consensus in subjects like right to life or right to die with dignity is still difficult to achieve due to the variety in beliefs and morals in the society.

4. The Way Forward

In the above-mentioned judgements, the morals of the state and its institutions evolved over a period. Where adult and consensual gay sex was a criminal offence, it was struck down as unconstitutional in a landmark judgement and highly appreciated by the members of the society. The legal

system of India has gone over various phases of transformation and transcendence right from the abolition of sati and widow remarriage to permitting gay sex and right to die with dignity (in case of passive euthanasia). However various cases are still in a conundrum due to the fight between their legality and morality as seen in the case of abortion or prostitution. In both the cases there is a huge wall of difference between those who approve one and the others who resist the change. Despite various regulations that have been put forward, illegal abortion is still extensively carried out in a country like India where girl childbirth is still considered to be a taboo. Considering the background of India, the state finds itself in a position to not legalize abortion. The held belief is that this would make it easier to deprive the unborn child her/his right to life. However, this very notion acts as a hindrance to the right of the woman, who might, despite taking all precautions end up with unwanted pregnancies. Here, the question arises as to whose life is more important, the right to life of the unborn child or the woman who will bring the child into the world?

In prostitution, where some consider it acceptable to have consensual sex with a person and pay money for it whereas for others it is an immoral act. Thus, no law has been able to achieve a consensus on the matter of prostitution. In a country like India, where it was once considered that sati could not be abolished or gay marriage could not be legalized, one wonders if a day would come soon when abortion would not be done behind hidden doors and prostitution would become a new normal.

5. Conclusion

Morals and laws in any society play a significant role in the functioning of any society. Where morals work more on a personal level, the laws help in strengthening the various institutions of the state and its effective working. However, the moral system and the legal structure often stand at conflict with each other. The common point of both lies in their dynamic structure. The structure of any state is highly influenced by the morals that are prevalent in the society and as a society evolves, so does its legal structure. The question that one discusses here whether it is beneficial for the state and the legal structure of any state to keep evolving over the period. How does one realize that the morals of the society are not bound by majority and those in minority are not excluded? Thus, it is crucial that when one considers developing a legal structure based on the morals of a society or community, one should also keep in mind the minority who exists and the impact of such decisions on a person's life. In the end it is the conscience of the rule maker that decides what in the world will be legal, but it depends on the conscience of the individual as to what is to be considered moral or immoral. Thus, morality and legality of a system, society, individual, community or state are bound to go hand in hand, with similar ends but different means.

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Author Profile



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