

The Relationship between Law and Morals

Dr. Bhagyashree Manohar. Deshpande

Assistant Professor, Bharati Vidyapeeth Deemed University, New Law College, Pune, India

Abstract--- The relationship between laws and morals have caused much debate and discussion. The law prohibits those activities which are offences because they are considered to be harmful to the society. Similarly, the moral principles also cause the person to refrain from doing such activities which are against his consciousness. The main issue of the controversy between the laws and moral principles is the question of curtailment of liberty; because when the law enforces the moral principles then the liberty of an individual is curtailed regarding the observing the moral principles. The law enforces the moral principles to protect the society from harmful activities. Most of the criminal acts are also prohibited by the moral principles hence the law as well as the moral principle overlap with one another to certain extent. It is also true that all the moral principles cannot be enforced by law and some of the moral principle are left for the individual choice to follow or not to follow; and hence laws and morals overlap with one another to some extent.

Keywords--- Laws, moral principles, inner morality of law, natural law theory, revival of natural law, positive law, Wolfenden Committee

I. INTRODUCTION

The law lays down the conduct for the human beings and they have to carry out their activities according to the prescription of law. The sources of law that is from where the law originates may be the legislation, precedence or customs and traditions or the religious tenets. Some times the law may be influenced by morals. Law and morals share a very complex relationship, and much has been stated by various eminent scholars on the issues of the relationship between morals and law. Some experts are of the opinion that law and morals are two separate concepts and hence the law should not be mingled with morals. The others express their opinion to establish a relationship between laws and morals and that law should takes efforts to inculcate moral principles. Let us give a cursory glance at the three major debates.

- The place of morals according to the natural law theory.

According to the ancient natural law theory, the morals formed the integral part of the natural law. Immoral acts can never be part of natural law, as the nature would prohibit individual from doing any immoral activity. According to Socrates and Plato the law should be based upon "insight" or "reason". The concept of insight is closely associated with the consciousness of the individuals and moral are also associated with consciousness; as no consciousness would permit an immoral act. So according to the natural law theory laws and morals were same and there was no distinction between them.

According to revival of natural law theory, laws and

morals could not be considered as having the same sphere; never the less some laws were based upon the morals. So, laws and morals share some common sphere. Lon Fuller who belongs to the revival of natural law philosophy states that law there is a unique relationship between law and morals and the law should be based upon morals to some extent. Further Lon Fuller has developed the concept of "inner morality of law". That is, according to Fuller before the law embarks to protect the morals, the law itself should possess internal morality. The law would be considered to possess the inner morality when the following aspect are fulfilled: -

- i. There should be no scope for adhoc rules that is no temporary rules.
- ii. The rules made by executive should be published.
- iii. There should be no retrospective application of legislation.
- iv. The rule should not be contrary to one another in a legal system.
- v. The rules should be certain and understandable.
- vi. The rules should not require the individual to do some things which is beyond his capacity.
- vii. The rules should not change so frequently that a confusion prevails as to which rule is prevalent.
- viii. There should be a link or a relation between the rules which are made and rules which are administered.

When the law abides with the above eight principles, the law is said to possess the inner morality. According to the natural law theory morals are enforced by law.

- The relationship between law and morals according to the positive law approach.

The positive law means the law made by the sovereign

International Journal of Engineering Research in Computer Science and Engineering (IJERCSE)

Vol 4, Issue 8, August 2017

or the competitive lawmaking authority, and the positivism recognizes only one source of law that is the sovereign. The law has a separate and distinct sphere, and hence has no relationship with morals. The morals are and individual's concern and are not enforced by the law.

- Debates regarding the relationship of the law and morals. Let us give a cursory glance at the three major debates.

i. James Fitzjames Stephen's and J. S. Mill.

According to James Fitzjames Stephen morality is one of the methods of imposing prohibitions or restraints on the individual's behavior. Many a times the people obey the moral principles because of the fear of the opinion of the other members in this society, however this fear is essential. So, morality is one of the limitations imposed upon the individuals which are essential to keep and promote the values and cultural; which are very fundamental for the society's integrity and unity. The law should enforce the morals which are essential for the society's integrity and unity. According to J. S. Mill the individual liberty was of utmost value and the law had to take steps to protect the liberty if the law attempted to enforce the morals which infringed the liberty of some individuals then in such a situation the law was itself violating the principle of morality. J.S. Mill firmly believed in egalitarian state.

ii. Professor H. L. A. Hart and Lord Devlin.

According to Lord Devlin the criminal law had to enforce the moral principle which are accepted by the society at large. The concept of morality should be viewed from the society's angle and if certain activities in danger the moral principles which tend to corrupt the young minds then the law should prohibit such activities. According to Professor H. L. A. Hart the concept of morality should be left to the individual judgement. It is erroneous for the law to compel an individual to abide by the morals of somebody else. In this situation the liberty and the freedom of the individual is jeopardized. The Wolfenden Committee stated that the acts which are done in the private sector or place is not the concern of the society. However, the immoral acts which are done in the public places should be prohibited by the law. As the morals which endanger the society's integrity or the values then those moral principle have to be enforced by the law.

iii. Lon Fuller and H. L. A. Hart.

According to Professor H. L. A. Hart, the criminal law should possess minimum content of morality, otherwise law and morals are separate and distinct from one and another. Law is the concern of the lawmaking authority where as the morals fall in to the category of the individual sphere. If the law enforces the moral principle then the

scope of liberty and freedom will be reduced considerably. Lon Fuller states that the law and morals cannot be separated from one another because both are related to each other. The law should enforce the morals, values and culture so that the society does not disintegrate and collapse

- The comparison between laws and morals.

Both the laws and morals prohibit the individuals from committing some acts. The law prohibits the individuals from committing illegal actions, were as the morals prohibit the individual from committing immoral acts. The law and the morals are stated to be the agencies of control. The law is stated to be an external agency of control because the law is imposed externally. The morals are stated to be an internal agency of control because the morals are considered to be an internal aspect of a human being close to his consciousness.

The object of the morals and the laws is the same is that to protect the individuals and unite the society.

- Importance of morals.

The moral principles are considered to be very important because they play an important role in protecting and maintaining the society. The morals are related to the consciousness of a person, so they will not allow a person to do any act which is against his consciousness or immoral. This makes an individual to perform his duties and discharge his responsibilities. The morals, the values or the culture help the individuals to lead a good and moral life and hence there would be less commission of the offences. Every person does not commit an offence because of the fear of the punishment but some people refrain from committing the offence because of the moral principles which they cherish and will never dare to act against their moral principles. If the moral principles are not followed and every person of the society indulges into immoral activities one cannot imagine the situation of the society. The most of the criminal offences are immoral activities such as murder, rape, theft, forgery, robbery, dacoity etc. The activities such as food adulteration, smuggling, corruption and another white-collar crime are considered to be offences and so, these activities are prohibited by the criminal law as well as the moral principles. In fact, the first level of control of human behaviour is the internal control of his moral principle. When this internal level of moral principles fails then then the fears of punishment operates as a level control; and when this level also fails then the individual becomes a criminal as he violates the law. Not only the offences and the moral principles overlap one another but also the civil wrongs overlap with the moral principles such as breach of contract, fraud, unlawful possession, impersonation, etc.

International Journal of Engineering Research in Computer Science and Engineering (IJERCSE)

Vol 4, Issue 8, August 2017

the offences against the environment done in pursuance of higher economic profit are also immoral activities as well as illegal activities. The law and the moral principles both strive to make the society's life more peaceful and secured. So actually, there should not be any conflict between the laws and morals but they should both help in making the human life more fruitful in the society.

II. CONCLUSION

The debate over the relationship between the laws and morals is age old. Both the concepts that is the laws and the morals are very essential for the society. The function of law as well as the moral principles are considered to be the agencies of control. The law is considered to be an external agency of control and where as the moral principles are considered to be an internal agency of control. Law is considered as the last level of control because it mandates the individuals to do or prohibit from doing an activity because of the fear of punishment. The moral principles are considered to be the first level of control because they are related to the consciousness of the individuals and hence are more binding upon the individuals. Today the society is disintegrating because of lack of morals, values etc. Not only the rate of offences has increased but also the types of offences have increased like the offences done with the help of technology such as the cybercrimes. Some of the cybercrimes are also immoral activities, a person who abides by the moral principles will not indulge in these activities. So, the object of the laws and moral principles is to curb the criminal tendencies which are dangerous to the safety and security of the society. Hence the law and the moral principles together can make society crime free and hence a better place for human life.

REFERENCES

- [1] HLA Hart., *The Concept of Law*. (Oxford University Press Publication)
- [2] Lon L Fuller., *The Morality of Law*. (Universal Law Publishing)
- [3] George Whitecross Paton., *A textbook of jurisprudence*. (Clarendon press)
- [4] John Finnis., *Natural Law and Natural Rights*. (Oxford university press)
- [5] Richard A. Posner., *The Problems of Jurisprudence*. (Harvard University press)