

Constitutional Morality and Societal Morality: An impact over Live in Relationship

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ABSTRACT

This paper focuses on the aspect of Constitutional morality and societal morality in the present scenario and its relevance in all the modern societies. As we all know that morality is the very basis of law and therefore a law reflects the idea of morality. The concept of live in relationship is one of the issues which is related to Constitutionality and societal morality. The concept of live in relationship although is a part of Constitutional morality under Article 21 of Indian Constitution, but fails to be within the ambit of societal morality in context of the Indian society. The paper discusses the difference and the relationship between Constitutional morality and societal morality and its impact on live in relationship. As it said that a society grows only if it adapts itself with the changing time and thereby widening the scope of societal morality by accepting the new concept like live in relationship. The goal of this study is to develop a balance between the constitutional and societal morality in order to give recognition to the concept of live in relationship thereby not limiting itself within the principles of morality.

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Introduction

As we all know that morality is the very basics of law. The very concept of law itself has originated from morality. It can be said that the aspects of moral values are part and parcel of very idea of law. The Indian judiciary has interpreted the term, 'law' and 'morality' as the two sides of same coin while adjudicating the cases relating to relationships in the nature of marriage. Pre-marital sex and live-in relationships are recognized to the extent of granting maintenance, residence and protection under statutory laws. While dealing with these types of cases all live-in relationships have not been protected under the garb of relationships in the nature of marriage. Judiciary is only providing protection to those who are in live-in relationship in India on case to case basis approach. Therefore it becomes important to make it clear the concept of constitutional morality and societal morality, so that both can be made to consensus thereby making live in relationship within our notions of law and morals.

The concept of constitutional morality means as a moral responsibility of an individual to be faithful towards constitutional values and uphold them with utmost integrity, without any compromise. And societal or popular morality refers to personal or cultural values, codes of conduct or social morals from a society that provides these codes of conduct in which it applies and is accepted by an individual. These morals govern the social

behaviour of individuals in a society. The constitutional makers very well have established the rules for constitutional morality and the Honourable Supreme Court has opined that only Constitutional Morality and not Public Morality should prevail.

Law and morality are too vague to understand. The aspect of law and morality is so vast and analytical that it cannot be explained and understood in mere few sentences. Many jurists and philosophers have tired from the ancient Greek period to the modern and even the post-modern era have attempted numerously to define these concepts and notions but have failed. The factor underlying in not being able to define these notions is that human mind is so complex, which is extremely random and versatile.

While considering the social change in society as morality is an aspect prevailing in any society over a period of time. Law is a norm which is continuously evolving or rather it is a part of a normative system whose work is to regulate the society. It is never static rather it's a dynamic concept. Law has to change from time to time as according to the ever changing demands of society. Law has to achieve certain objectives, which may be short term or long term. Law aims to create an order in society to function in a systematic manner. Law tries to create a working environment which is equally just to all sections of society. On the other hand, there is the vague concept of morality which is a sought of norm or a

part of normative system or Volksgeist a reflection of the spirit of the people as given in volksgeist theory of Von Savigny.

Morals are actually certain yardstick standards in our society which work as prescriptions to human behaviour. The starting of preaching of morals start from the very basic unit of our society i.e. family. As in a Hindu family as a custom, young people touch the feet of elders to wish them. There is no logic behind these morals but still these morals do prevail in our society. This is fully one's own private practice in which nowhere law has to intervene. A morality can be one which throws a negative impact on society and the other which can benefit the society. 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 behaviour 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 behaviour after certain time.

Relationship between Constitutional and Societal Morality

The aspect of Constitutional and Societal morality is so vast and analytical that it cannot be explained and understood in mere few sentences. The reason why societal morality is not being able to be defined is because the human mind is so complex, which is extremely random and versatile.

Law and social change

The social change in society is important as morality is an aspect prevailing in any society over a period of time. Law is continuously evolving norm or rather we should say that it is a part of a normative system whose work is to regulate certain norms in society. Law has to change from time to time as according to the ever changing demands of society. Law doesn't exist for its own state. It has to achieve certain objectives, which may be short term or long term. Law aims to create an order in society (in all units of society). Law tries to create a working environment which is equally just to all sections of society. On the other hand, there is the vague

concept of morality which is a sought of norm or a part of normative system.

Law has got a coercive backing which works through institutions. So, idea of sanction, that? One will be punished by god? As is being propagated by religion and the so called contractors of morality from years, has become very loose. That is the reason, why religion and morality has become loose and ineffective. So, constitutionalism has taken a front foot. Today in our present society, morality and religion are facing challenges put forward by technology, fast urban life, and secularism, equality before law, democracy, and constitutionalism.

According to great jurist force is necessary to control human behaviour because humanity as a whole is not governed by reason. If everyone thinks reasonably and acts rationally there is no need of binding one's behaviour. But the experiences in history do not provide clear evidence of such rational behaviour and so the idea of law has developed on the assumption that it is necessary to compel the behaviour of individuals in a particular direction to achieve certain specific ends. Justice and conscience seem to be personal and individualistic that depend upon the human psyche. Therefore one recognizes, at any point in the history of any social organization, a legal system but one fails to locate such a system of justice or morality.

Law is such an external force, a system in more comprehensively physical. Moreover the external element of deciding, adjudication, administration or even policing is possible. On the other hand, the definition of morality or the concept of morality changes from person to person. May be what morality is for one that may not be moral for the other person.

Differences between law and morality

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? The answer is that, the legal system is distinct from religion and morality in the form and not in the content.

Law is influenced from both religion and morality and hence their takes place a sought of interaction

between the legal system and the moral and religious faculty of our society. In a traditional society laws have never had a very dominating character, but religion and morality had always had a very predominant role.

But in a modern society life changes very fast, hence morality and religion are under a great pressure. Hence, law is the only alternative to human development.

Take the issue of living relationships, which carries a moral ban on it. According to the aspect of law if we consider that two major individuals with their exercise of free consent decide to live together, where the question of infringement of any rational standards arises. This shows that the moral standards are never rational by effect.

Then should a law be made to enforce such moral standards. Is such a law not repugnant with the constitutional principles of liberty and freedom?

The legal positivists like, Bentham, Austin, Kelson have always said that law must never be used as an instrument of enforcement of any moral standards. Therefore, as one cannot see the mind and conscience, elements of morality become weak and not determinable. But law is convenient, the present writer asserts again that it is only convenient; it has withstood the test of time. At any particular time, for any situation, law becomes a technique to establish a certain expected social behaviour. Morals may be for enlightenment and would facilitate individual peruses. Therefore it is thought and envisaged by the present writer, as compulsions and aspirations influence life, a legal system should consist of principles of convenience and feasibility whereas morality should be left to individual freedom and practice. Legal enforcement of these moralities which causes negative impact in the growth of our society must never be determined.

But on the other hand 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 positive thinkers have thought in a narrow interpretation of law because they overlooked religious and moral values.

The actual conclusive situation is that religion, morality or law all have the work of controlling the behaviour 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.

Relationship between law and morality

There is a strong connection and relation between law and morality. Although people sometimes say "you shouldn't legislate morality", they presumably don't really mean this - why would we outlaw rape and murder if they weren't wrong? Instead, they mean that people shouldn't impose their personal moral views (especially regarding sexuality) upon others.

It is unfortunate that the word "morality" has become associated with conservative values, because the obvious invalidity of those values to many people tarnishes their attitude towards morality as a whole which is disadvantageous. Their domains are clearly not entirely identical - for example, it may be wrong to lie to your parents, but it certainly is no business of the law. Perhaps the best way to explain this is to acknowledge that the law is an extremely blunt tool, and so will be of no help when dealing with minor or subtle moral issues.

But even if some morality is outside the scope of Law, could Law's domain be a subset of the Moral? That is, should we only ever outlaw immoral acts, and never morally permissible ones?

For example, if I turn on a heater, this may be because I desire to be warm, and I believe that turning on the heater will achieve this end. To apply this to our current topic, consider how society can influence the actions of its members. According to belief-desire psychology, there are two broad options: change someone's beliefs, or change their desires.

Morality, by this understanding, corresponds to the latter option. That is, morality is a system of socialisation whereby society instils in its members' the desire certain ways. The other method of influence is to alter people's beliefs about how best to fulfil their desires. This is where Law comes in. Its role (according to this interpretation) is to serve as a deterrent for those who, for whatever reason, fail to be bound by morality. It achieves this through the threat of punishment, i.e. by instilling in citizens the belief

that breaking the law is not in their own best interests - they could get caught and sent to jail, which would surely thwart many of their other desires.

So by this view, law and morality are just two sides of the same coin - namely, that of socialisation. Morality seeks to influence our behaviour by way of our desires, whereas law is the 'back-up' option, and targets our beliefs.

This is true in the United States as well, and not only in how our legally mandated school systems and our criminal laws contribute to the shaping, including the moral training, of citizens. Yet the typical opinions in a contemporary liberal democracy are likely to be:

- (1) that morality cannot be legislated; and
- (2) that even if morality could be legislated, it should not be that to do so is somehow improper, even tyrannical, either because there is no morality objective enough to justify legal enforcement or because one's autonomy and individuality would be violated by attempts to legislate morality or perhaps even because one really has no autonomy that can respond to any external directive.

Such concerns are not evident in the Ethics: law is needed both to help habituate citizens to virtuous actions and to help maintain the salutary habits they acquire. These needs can be recognized even by those who are aware that the virtues generally fostered by law are not the highest. The opinions one may have about the good, the true, and the beautiful are a secondary concern of most laws. Still, it is well to keep in mind Aristotle's counsel that one who is "to listen intelligently to lectures about what is noble and just must have been brought up in good habits." For proper habituation, laws can be most useful, if not indispensable. Although intellectuals of liberal democratic sympathies may not believe that morality depends on law, it is almost impossible for any regime that takes itself, and is to be taken, seriously not to shape its citizens with respect to morality. To deny that legislation of morality can or should take place does not eliminate such legislation; it merely conceals it, perhaps distorts it, and otherwise confuses and misleads rulers and ruled alike. (Here, as in physics, much that Aristotle noticed and relied upon is tacitly relied upon by us as well, but relied upon haphazardly because it is not properly noticed.)

It would be useful, therefore, to indicate how pervasive Aristotle understands the law to be with respect to morality in a community. When we see what law can mean, and how it works, we may better appreciate what the law does in the service of morality, even in such a liberal democracy as ours. To speak of the influence of the law is, we shall see, to speak of the many ways that the community forms the citizen and guides the human being. For us, however, the term law does tend to be limited to what "government" does, to the statutes and decrees that governments issue. We have noticed the most conspicuous way, drawn upon at the end of the Ethics, in which morality is dependent on law. It should be added here that not only is morality somewhat dependent on law, but also that the law itself is to a considerable extent dependent on morality. A properly trained, morally alert citizen-body tends to be appalled by the lawbreaker. But does not this response (which can help keep many would-be lawbreakers in line) rest, in turn, upon the presumption that the law is likely to be, and in fact usually appears to be, itself moral and in the service of the common good. There is a critical reciprocity between law and morality. Reciprocity, we recall from the Ethics, can be vital to justice as a particular virtue. The exercise of most virtues requires a stable community, one in which one's body and life as well as property are fairly secure and, of course, the law is essential here. To become or to remain a civilized human being usually requires a sound community that is, one in which the law plays a considerable part.

In the cases where morality shadows a good and beneficial effect on the society, there if required, law could be used to enforce that positive morality. For example, in the case of International Humanitarian Laws, certain moral standards are also recognized as a part of law or in another illustration that, all religious and moral norms say not to kill or not to steal, and this moral is enforced through law.

On the other hand, that morality which produces any harmful effect in any form in the society, there law should never be used to enforce such morality. For example, the celebration of Valentine's Day in Indian society is considered as immoral. But such morals must never get the institutional shape of law.

Therefore the aspect of morality comes as we discuss about live in relationship. As this unconventional relationship has a string of morality attached to it as in India we have a conservative approach towards it. The aspect of morality creeps in as our society still not accepts such kinds of relationship although in western countries it is a common phenomenon. Morality defines good behavior whereas law helps to enforce them therefore law should work in positive direction which can help our society to grow with the modern times and be able to catch up with the requirements of present time. The approach toward live in relationship should also change and should be given recognition in society and protection of rights in case of infringement of persons rights.

“With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today.”

— Hon’ble Justice A.K.

Ganguly in *Revanasiddappa v. Mallikarjun*

Live-in relationship is one of the areas which is under criticism and highly debated in India regarding its legality and implication on the societal relationships. Long term cohabitation between two major man and woman has long been equated to a valid marriage. While the year 2010 saw a number of judgments related to live-in relationships, which includes, clear declaration by the Supreme Court that a live-in relationship is not illegal and grant of maintenance to a woman in live-in relationship. In January 2008, the Supreme Court validated long-term live-in relationships as marriages. A Supreme Court bench headed by Justice Arijit Pasayat with P Satisivan declared that children born out of such a relationship will no longer be called illegitimate. "Law inclines in the interest of legitimacy and thumbs down 'whoreson' or 'fruit of adultery'," the court added.

According to *Manu*, premarital relationships existed both in the Vedic period and afterwards, but was a rare occurrence. This concept of live in relationship is not new in India; in ancient times it was known as *maitri-karar* in which a written agreement was made between the two opposite sex that would live together as friends and look after each other.

Legal Status of Female Live-in-Partners and Judicial Approach

The partner of a live-in relationship was first time accorded protection by the Protection of Women

from Domestic Violence Act, 2005, which considers females who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife.

The Supreme Court in *D. Veluswamy v. D. Patchaiammal* has opined that the Parliament has drawn a distinction between the relationship of marriage and the relationship in the nature of marriage, and has provided that in either case the person is entitled to benefits under the Protection of Women from Domestic Violence Act, 2005.

A live-in-relationship constitutes a distinct class from marriage. The question of legitimacy of child is also directly related to protection of women. On this point apex court in *Madan Mohan Singh v. Rajni Kant* case said, “The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. Therefore live in relationship is not in consonance with the concept of societal morality.

Conclusion

With the changing dimensions of morality and social transformation, the society is going towards accepting such relationships across the world. Although the Indian society will take some times to accept this kind of relationship. Our morals sometimes do not have logic behind them but still we follow them as it prevails in our society from time immemorial. The only difference between these two morality is that constitutional morality is enforceable by law but societal morality is not, therefore the young generations do not find any relevance in following these notions of societal morality.

The couples tied with the knots of live-in relationships are not governed by specific laws and therefore find traces of assistance in other civil laws. Though we say live in relationship is immoral but law cannot be judge on the basis of immorality. As we all know that morality changes from society to society and from time to time. Like it is quoted by Aristotle -

“Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice.”

Therefore we need a codified law to govern the various legal aspects of live in relationship so that the repercussions of them do not lead to criminal offences in the society and leaving behind the

weaker sections of the society at grief. At last, it is better for our society to accept live in relationship so that there will be better chances for the Indian judiciary for passing judgements which are in the righteous spirit of law and in the interest of justice, equity and good conscience and not being chained in the principles societal morality. So it can be said that Constitutional morality prevails over societal morality in relation to its enforceability.

References

- [1] A Relationship In The Nature Of Marriage - Hope And Disappointment By Shyam Krishan Kaushik Journal Of The Indian Law Institute Vol. 53, No. 3 (July-September 2011), Pp. 474-490 (17 Pages)
Published By: Indian Law Institute
- [2] Naz Foundation V. Govt. Of Nct Of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)
- [3] Mahajan.V.D. Jurisprudence and Legal Theory, 5th edn 1987, Eastern Book Company, Reprinted 2021,
- [4] Dr. Paranjape.N.V., Studies in jurisprudence and legal theory, 6th edn, Central law agency, Allahabad, 2011.
- [5] 2011 (2) UJ 1342 (SC).
- [6] Dr. Chaturvedi R.G, Manusmriti 121, Universal law publishing company, New Delhi, 2010 edn
- [7] Section 2(f) Domestic Violence Act, 2005
- [8] (2010) 10 SCC 469
- [9] 9SCC, 209(2010)