

# Morality and Law

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## POINTS TO DEVELOP

Law and morality are not synonymous terms.

Differences in perception of 'morality'.

Problems of law enforces becoming immoral as well as illegal in their actions.

When state law and morality of certain groups clash, there is a problem.

Concept of morality should be widened and should evolve with time.

Law is related to morality, but that morality is of a universal kind.

It is a common though erroneous perception that law and morality are the same. However, while there are laws with roots in morality. Morality goes beyond law in that, at times, what law forbids may be morally permissible or even obligatory. Similarly, what is morally forbidden may be permitted, even insisted upon by law. In the liberal way of thought, law is essentially 'public' whereas morality may have a 'private' sphere in which intrusion by law would constitute a violation of the rights and freedoms of individuals. In this way of thinking, sexual conduct, for example, is a private matter. Hence, though some forms of sexual conduct may be morally repugnant, they should not be forbidden by law, provided- and this important – no harm is done to others, and there is 'consent' of the people concerned.

Those who, unlike liberal thinkers, do not have much confidence in separating state from society tend to see the state as the guardian of the whole social order and the values- moral, political, or religious- that the social order requires. It is argued that moral sanctions need legal recognition to make them commonly accepted, and it is only by their being commonly accepted that society will remain integrated. In theocratic states, distinction between law and morality – which is seen as divine law- seems artificial; there is similarly no difference between the 'public' and the 'private' as divine law regulates all human affairs. In a secular and pluralistic democracy, which set of divine laws is one to follow? Or which set of moral values ought to be 'legalized'?

There are communities that still believe it is 'moral' to indulge in 'honor killings'. There are panchayats that give judgments in this country on basis of caste affiliations and customs, all in the name morality. If we condemn these actions as illegal, by what or whose standards do we do so? This is a danger one

has to take into account before one agrees to allow 'policing' of morality. However, the actions are condemnable by rigid confines to mean universal values such as kindness and considerateness. Many of our customs and practices rooted in so-called 'tradition' suffer from a lack of morality if we see morality in the light of human values. Those women in Nagpur who broke the law by lynching a man whom they knew at personal experience to be a dangerous rapist but who constantly escaped the 'law' for some reason or other, cannot be condemned on moral grounds. Now, which kind of morality is the state to make into law, for, policing. By any definition of the term, is associated with the enforcement of the law?

Recent incidents involving the police in criminal activities- the constable who raped a young girl in Mumbai, the two policemen who molested a woman in Pune, the top police personnel caught in scams of all kinds- show the abuse of power which militates against all moral principles. The police are entrusted with the maintenance of law, but when they break the law themselves, or prevent the public from seeking action against law-breakers. They are acting immorally, yet not many are bothered about this kind of immorality. Immorality is almost always seen in sexual terms. What is more, the female of the species is condemned a little more than the male. In the moral indignation shown by the Maharashtra state government against the dance bars, the 'moral' issue is the corruption of young minds by these 'dancing girls'. One has a sneaking suspicion that the harsh action against the dance/beer bars under the guise of 'morality' is to keep 'outsiders' out of Maharashtra, for many of these girls are from other states of India, even from outside India. What is ironic is that Mumbai has a huge population of prostitutes who themselves are exploited by pimps and the criminals who run the brothels. These criminals do not seem as immoral to make a living by dancing in bars that. Apparently, are licensed. There is something obviously wrong with this perception of morality that governs the actions (or lack of it) of state officials and law enforcers.

Then, we have child marriages celebrated right under the noses of district officials and political heavyweights, manifesting a clear gap between the law and the concept of 'morality' determining certain communities. These communities – even the so-called educated among them – think it would be immoral not to marry off their children, especially the girls, before puberty. Would it be possible to leave law aside or modify it to suit such an obsolete sense of morality which, moreover, causes direct harm to the hapless children?

Then again, those deciding cases on rape almost invariably go beyond what the law states and calls for. The accused is never judged on the evidence

presented alone; the 'moral' character of the victim is almost always brought in. a prostitute can apparently never be raped by this moral logic. A woman of 'loose' character- whatever that may mean, because a man does not ever seem to suffer such an aberration – somehow deserve being raped. A minor girl abdicated and sexually exploited by many men for more than a month was considered by the judges of a high court as being "deviant" and not quite the "normal innocent" girl; as such her version of what happened could not be believed. She is alleged to have spent money meant for her hostel fees and then tried to pawn her jewelry to make up for the spent money. The court wondered if her case was one of rape at all, and not a mere escapade after which the girl was blaming all those with whom she had sexual intercourse by "making convenient omnibus assertions that they were all rapes". In other words, the girl was trying to cover up" consensual sexual intercourses". All but one of the accused was set free. The one who was convicted was concocted on the count of procuring and using a minor for prostitution. It was a case, one feels, in which patriarchal moral values played their part in application of the law. Incidentally , what of the other man who had sex with a minor? Does her consent- even if it was given – hold valid in law?

Then there was the ads of a hospital nurse who was not only brutally raped and tortured, but had her eye gouged out by her assailant, a ward boy in the same hospital. There was no doubt about the crime committed or the criminal but just before judgment was to be delivered, there was a curious hiatus. The accused put forward an application offering to marry the victim. How generous of him! But he too (as well as his legal representatives) seemed to be laboring under the traditional mental attitude that a women , whatever wrong has been done to her, would be ready to overlook it if she is given the option of 'setting respectability than marriage even if it is with a man who has wrought the marriage even if it is with a man who has wrought the worst kind of violence on you physically as well as mentally. So that rapist would, in fact , seem to be doing the ' moral' duty by marrying the victim. But what about the woman? Could she feel safe with such man, even if she were willing to accept the atrocious proposal? Then, again, once married, it is the 'moral' duty of the woman to comply with her husband's wishes; and marital rape, it is assumed, does not happen. The rapist escapes punishment in spite of the damming evidence against him; the victim is condemned to a life with a man she could hardly have dreamt of marrying on her own. The proposal, said the judge, in the end was frivolous and mischievous. Indeed, it should not have been entrained at all. Indian law , after all does not allow plea bargaining. If the proposal was entertained at all by the judge, it reflects the lopsided 'moral' values held by this

society which sees in the rapist's offer a virtue- of marrying a woman 'whom no one else will marry'.

There have been cases in which the rapist has been accepted as a husband ,but no one appears to have made a serious effort to find out if the victim willingly accepted him. It appears as if a rape victim suffers only in so far as having been rendered 'unfit' for marriage. This speaks feeling of violation she has to live with all her life. Even in this age, which we think to be modern, we hear of feudal quarrels in which 'punishment' is dealt out in the form of gang rape of the women of the family of the accused. The law of the land does not tolerate it, but the 'moral' principles governing some societies do. We can do without such 'morality'.

Law is necessarily related to morality, but that morality should be of the universal human kind, not based on narrow principles ordained by past customs that seek to oppress sections of society, manifest an insensitivity to cultural differences, and dominate- often brutally – over those who are considered inferior on the basis of gender, community, personal affinities , profession or work, and 'position 'in society.