LAW AND MORALITY: CONNECTIONS AND DISTINCTIONS

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ABSTRACT

This research paper analyses the relationship between Law & Morality through the ages. In Ancient Era, there was no certain distinction between the concepts of law and morality. The thinkers at that time, from Plato to Aristotle & Cicero, propounded the divine interconnection of law and morality. Further in Medieval Era, Law was interpreted through the lens of theology (study of religion) by Saint Augustine & Thomas Aquinas. Coming to the period of Renaissance, the concepts like-social contract theory and general will were propounded by great thinkers i.e. Thomas Hobbes, John Locke & J.J. Rousseau. They minimized the content of morality in natural law from right reason & inner insight to merely self-preservation of Natural rights of an individual. Finally in the 19th Century, Jurists like Jeremy Bentham & John Austin came who pointed out strictly the distinction between Law & Morality. In their opinion, Law is the imperative command or rules which are applicable 'as it is' and Morality consists of the highest principles which are applicable 'as it ought to be'. Further, H.L.A. Hart & Hans Kelsen also came with their theories of 'Legal positivism' and 'Grundnorm/Pure theory of Law' respectively. Moreover, the debates on the relationship of Law & morality continued in 20th Century and a fresh and contemporary theory got revived. The popular debates between H.L.A. Hart, Lord Devlin, L. Fuller & Ronald Dworkin have been discussed in this paper to conclude the contemporary status of the Law-Morality relation. So, it can be said that- Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would have fatal consequences. Contemporarily, in the name of 'justice', 'equity', 'good faith', and 'conscience', morals have become tangible into the fabrics of law.

Keywords: law, morality, legal positivism, grundnorm, moral value, John Austin, Plato, H.L.A. Hart, social contract theory, general will, debate.

INTRODUCTION

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions".[1] Alike this theory, there are many more interpretations of law, enlightened with the insight of morality. There had been an immutable connection between law and morality in Ancient era. Moreover, the *highest moral values*[2] and the *right reason*[3] are considered as law of the state in many of the ancient philosophies of Natural School.

Gradually, the concepts of law and morality developed and evolved with time. The relationship between law and morality has been thoroughly discussed in the thoughts of Natural School and Positive School. The former one claims that law is based on the inner morality and they are co-related with each other; whereas the latter opposed the claim and argued that there is no necessary relationship between law and morality. They both are the independent concepts. The Natural School accepted and promoted the relationship between law and morality. The Naturalists consider morality as the base and source of law. On the contrary, Positive School aims to segregate and distinguish the concept of law and morality. The Positivists made a strict distinction between law and morality. They considered a valid and empirical source of law i.e. Command, by the sovereign.

Before analyzing the relationship between law and morality, let's see that what the law and morality basically means. 'Law' is generally a set of rules and principles enacted and enforced to regulate the human behavior, while 'Morals' are the set of beliefs and the behavioural standards which are created and enforced in the society to guide us in the choice of right and wrong.[4]

Hereby in this paper, we will discuss the relationship of law and morality in the Ancient, Medieval, Renaissance and Modern theories of natural law; Distinction between law and

[1] A quote of Marcus T. Cicero's legal philosophy from his famous work- "De Legibus"
[2] According to Socrates, Virtue and Obedience are the highest moral values; and Man should appreciate and embrace these morals in their inner insight.
[3] Right Reason was the notion of Aristotle, which is the base or ideal of Law. This reason, according to him, emanates from human conscience.
[4] Shadrach Etin, A Critical Analysis of the Relationship between Law and Morality, Academic Paper, 2021, GRIN International Research Paper Publishing House
Available at: https://www.grin.com/document/1038415, last visited on 15/06/23, 3:25 pm.

morality by the Positive School; The debates on the law-morality relationship and the Contemporary status and significance of this relationship.

CONCEPT OF MORALITY IN LAW DURING ANCIENT ERA

Natural School of Law emerged during 4th century BC, with the divine and moral theories of Greek Philosophers– Heraclitus, Socrates, Plato and Aristotle. Though the clear and exact meaning of natural law cannot be unanimously stated but the natural law theory had been interpreted at a diverse level in different times by various thinkers. The natural law theory adapted and evolved from time to time depending on the needs of the legal thought and new challenges in the changing society.

The supporters of Natural law theory believe that there is a basic element in law which prevents a total separation of 'law as it is' from 'the law as it ought to be'. In fact, the term natural law is analogous to a mix-up of high values such as- morality, justice, ethics, right reason, equality, freedom, liberty, social justice, etc. It is a way of looking at things in the quest of ensuring justice.[5] Natural law is based on *a priori method* [6] not on a posteriori approach. According to the ancient thinkers, Natural Law is characterized as eternal, immutable and unalterable. It is an eternal everlasting value exists in the human insight. It cannot be created, promulgated or legislated by the state or rulers. The central idea behind natural law is that it embodies moral principles which depend on the nature of the universe and which can be discovered by natural reason.[7] The evolution and development of natural law theory has been through various stages which promulgated morality based law theory and its varied interpretations.

In ancient era, there were many harmonious thinkers who proposed an idealistic moral theory of law which were based upon internal morality and right reason. Around 4th century BC, **Heraclitus** was the first Greek philosopher who characterized the features of natural law as: *(1) Reason; (2) Order; and (3) Destiny*. With Reason 'he means the inner moral insight'; with Order 'he indicated the divine order' of the supreme-God; and with Destiny 'he believed that intrinsic character' that is built inside us, is itself our Destiny. There were many political challenges and instability in the early small city states of Greece, hence the legal philosophers,

[5] *Bodenheimer Edgar*, Jurisprudence: The Philosophy and Methods of Law, p. 430, McGraw-Hill Company, New York, 1940 edition,
[6] *A priori method* of research is based on 'Knowledge that comes before any prior experience or factual analysis.
[7] *Dr. N.V. Paranjape*, Studies In Jurisprudence & Legal Theory, p. 151 Central Law Agency, Allahabad, 9th Edition (2019)

like Heraclitus thought that law became just a medium to cater the people, who were in power and the common people are struggling for a better life. Therefore, these unstable socio-political conditions gave birth to the idea of natural law which aimed at morality and righteous conduct in human life.[8]

Thereafter, around 3rd century BCE, **Socrates** (470-399 BC) and his thoughts occupied a prominent place among the natural law philosophers of ancient time. He believed that- *"Every human has an internal insight which can enlighten or show the eternal moral value to him; on this basis one can judge the law and make a difference between the very right and wrong".* He also claimed that 'Virtue is the highest moral value' and 'Obedience (i.e. towards the God or the State) is the highest moral insight'. Socrates classified two types of law: (a) Natural moral law and (b) Natural physical law. The former one is unalterable and the latter may keeps on changing. To him, Justice may be of two kinds: (i) Natural justice and (ii) Legal justice. Natural justice, according to him is universally applicable but the notion of legal justice may differ from place to place depending upon the social conditions for the existing law created by the state. Moreover, Socrates believed that any particular law must be reasoned or judged by the human insight in us, implanted by the law of nature which is capable of differentiating between right and wrong. *However, "Socrates did not deny the authority of the positive law but he pleaded for the necessity of natural law for security and stability of the community"*[9]

The ideas of Socrates did not get promulgated publicly in his lifetime. But later on, it was published and conveyed by his determinate disciple– **Plato** (427-347 BC). Subsequently, around the same time, Plato carried further the natural law philosophy through his concept of 'Ideal state' which he defined in his prominent work, namely– 'The Republic'. Basically, Plato had 'an unfavorable attitude towards law'[10] and he solely believed in his imagination of an idealistic state, comprised of the 'perfect division of society'[11] on the basis of labour. He said: Each man ought to do his work to which he is called upon by his capacity…every member in the society has a specific function and everyone should confine to that function…thus, every person should mind his own business and not meddlesome with other's business. Alike Socrates, Plato also believed that the 'Administration of justice should be based on *inner*

[8] *Id* at p. 152
[9] *V.D. Mahajan*, Jurisprudence & Legal Theory, p. 597, English Book Company, New Delhi, 5th Edition (1987)
[10] Plato showed an unfavourable attitude towards law, in his famous work- "Statesman".
[11] Perfect Division as: (1) Gold section: Philosopher-Kings or Rulers; (2) Silver Section: Auxiliaries or the subordinates of king; (3) Iron and Copper section: Artisans or common people.

harmony'. [12] According to him, Judges should be provided with various discretionary powers for the administration of Justice and they should not be bound by any codified laws or rules; their judgement should be based on inner morality and shouldn't be questionable by anybody. In this way, Plato placed the inner Morality on a higher level rather than recognizing any law or set of rules created by human state. However, later in his life, he realised that his philosophy of ideal state is not practically possible, hence he gave recognition and considered the 'Law state' as 'the second best alternative' for the governance of man.

Around 2nd century BC, **Stoic or Roman School** of philosophy came into prominence and propounded the wider interpretation of natural law. According to the Stoic philosophy of natural law—Reason is universal which comes from *'cosmos'*[13] and that Cosmos based Reason is the basis of law and justice. Thus, the Stoic philosophy introduced and promulgated 'reason' as the content of morality in the natural law. This Stoic natural law philosophy found an expression in the Roman legal system as functioning the division of Roman law into three distinct types, termed as: (a) Jus Naturale; (b) Jus Civile; and (c) Jus Gentium[14]

Meanwhile, **Aristotle** (384-322 BC), the great Greek philosopher came out with the more logical interpretation of the natural law theory. Aristotle was the student of Plato and was influenced by his thoughts but he negated the Plato's theory of ideal state, because he realised and knew the social realities and imperfections of human beings. According to Aristotle, —Man poses an internal insight and active reason, given by the nature, through which he can distinguish within good and bad. He also claimed that– —Natural justice is everywhere and it stays in the same form (i.e. unchangeable) whether people agree to it or not…positive or human made laws should try to incorporate within themselves the principles of natural justice and law. Law should be reformed instead of breaking. Aristotle believed and postulates 'the state based on law as the only practical means of achieving a good life'. According to him- 'Rightly constituted law should be the final sovereign'. Moreover, Aristotle also exerted that- —Reason unaffected by desire is natural law. So here, Aristotle's 'reason' can be considered as the inner morality basis of natural law.

[12] According to Plato, inner harmony is the state of inner balance of mind which is not capable of rational analysis, and not based on any rules or law.
[13] Cosmos means- the supreme power, i.e. God
[14] Meaning: (a) Natural Law – universally applicable; (b) Civil Law – applicable only on Roman citizens; (c) Law of nations/International Law – applicable on foreigners or people of other nations outside Roman reign.

Marcus Tullius Cicero (106-143 BC) was one of the great Roman philosophers, lawyer and the statesman of 2nd century BC. He expanded and enshrined the Stoic philosophy of natural school. Thus, he concluded that *"Law in its proper sense is the right and highest reason in harmony with nature."* In his famous work, 'De Legibus', he mentioned his views and theories on natural law.

EVOLUTIONS IN THE RELATIONSHIP OF LAW AND MORALITY

In Medieval period during 12th century to 15th century, new theories of natural law were given by Catholic philosophers such as– Saint Augustine and Thomas Aquinas. They used natural law theory to propagate Christianity and to establish a new legal order and political ideology based on morals and theology. These Catholic philosophers reinterpreted the natural law in the light of *theology*[15] and the doctrines of Christianity, thus legal philosophy was dominated by Popes and their interpretations of law. The theological theories of a profound Christian Saint– **Saint Augustine** (354-430 AD) were regarded as the basic philosophy of natural law, based on the moral precepts and the interpretations of divine-holy scriptures. According to him, a long time ago, there was a *'Golden age'* [16] But now a 'Dark age' of Man's fall has came because of the sins of men.[17] St. Augustine favoured the principle of *'Lex Aeterna'*[18] and believed that—The union with divine is the end of the law. He pointed out that this divine wisdom was revealed in the scriptures and Church is the guardian of these divine laws…the church must interfere in any wrong, with the sinful institutions at his own will. The Church has unconditional Sovereignty over the state. So, morality according to his theory resides in these divine laws; its source is the scriptures of God, and Church is the sovereign to protect these moral precepts.

One of the greatest theologian–**Thomas Aquinas** (1225-74) is considered to be the representative of natural law theory in this era. He defined law as —an ordinance of reason for the common good made by him who has the care of the community, and promulgated through reason. He also said that–—the primary precept of law is that, good should be done and pursued, and evil be avoided..man's activities are directed to ensure his survival, continuity

[15] The study of religion or religious beliefs.
[16] The state of holiness, innocence and immortality; where the domination on man by man was unknown, and all men lived in the state of fraternity.
[17] Sins of men, according to St. Augustine, were– Degraded value and practice of religion & morality, desire of Democracy or other Powers.
[18] Latin term for Eternal Law, i.e. the law of God; the supreme divine law.

and perfection; he must do things to achieve them and doing anything against these ends shall be morally wrong. St. Thomas Aquinas observed law in the four fold classification: (1) *Lex Aeterna; (2) Lex Naturalis; (3) Lex Divina; and (4) Lex Humana*.[19] He believed in the supremacy of law because it is the only means, according to him, to attain common good. Alike Aristotle, he also considered 'reason' as the basis of natural law. *Moreover, Aquinas also regarded, Church as the sole authority to interpret divine law. In his theory, morality reflects through his concept of attaining common good through reason*

The period of Renaissance during 15th century to 18th century remarked the historical time of development and revolution of ideas in different fields of knowledge. This period evolved the natural law theory through a rationalistic approach. Many new ideas emerged which led to the shift from theological dominance to Natural rights preservation. As a result of these developments, the dominating Churches and the theological natural law received a serious blow and finally it dwindled, giving away to natural rights of man and the state. Moreover, the natural law theory propounded by Hugo Grotius, Thomas Hobbes, John Locke and Jean Jacques Rousseau revolutionized the existing institutions and held the 'social contract' as the basis of society, for the preservation of peace and protection of individuals from perpetual conflict and chaos.[20] **Hugo Grotius** (1583-1645), a Dutch scholar, philosopher and a vigorous supporter of a Renaissance, propounded that– ―Natural law is the dictate of right reason. Morals and basic natural laws are above than any positive law..Natural law is an immutable law that cannot be disappear or change..it could retain its validity even if God did not exist. *Thus, he discouraged the theological approach of natural law and promoted morality in the form of right reason.*

Further, **Thomas Hobbes** (1588-1679) propounded his social contract theory and interpretation of natural law in his famous works.[21] His natural law theory was based on natural rights and self-preservation of person and property. He also made use of natural law to justify the 'absolute authority' of the ruler by endowing him power to protect his subjects as an absolute sovereign. He propounded the philosophy of 'Absolutism' and hence stated that―Absolute power should stay with the king or the sovereign to rule upon and protect the *'state of commonwealth'*[22]..even the Church should be under king's authority. Hobbes

[19] Meaning: (1) Eternal Law– Law of God or divine origin; (2) Natural Law– Law emanated from eternal law as human conscience and reason; (3) Divine Law– Law of Scriptures and religious texts; (4) Human Law– Law made by human/state for the organization and protection of society
[20] *Supra note at 7*, p. 158
[21] Leviathan (1651), De Cive (1642), etc.
[22] The people or general public of the state.

described- ―Law in its proper sense is the command from the sovereign ruler, hence he is often referred as the 'Precursor to legal positivism'. In this way, *he minimized the content of morality in natural law from right reason & inner insight to merely self-preservation of Natural rights of an individual.*

Thereafter, **John Locke** (1632-1704) came and shift the focus of social contract theory from the protection of sovereignty to the 'protection of Liberty and Natural rights'. He did not gives absolute power to the ruler and advocated that there are some inalienable rights[23] which shall not be surrendered or transferred to any sovereign authority or institution of government. As per Locke, these rights are the basis of natural law principles and the government should protect them. Whosoever in the power should be the 'final guarantor of law of nature'. He further adds that 'government is subject to changeability', if any condition of violation of the fundamental rights come. Locke pleaded for the protection of individual natural rights by a constitutionally limited government. These natural rights in Locke's theory are the Sovereign and represent the content of morality in natural law.

With his philosophy of 'General will'[24] even philosopher **Jean Jacques Rousseau** (1712-78) came in light during 18th century with his social contract theory which was based on a 'communitarian approach'. He argued that―Since legitimate laws are found on general will of the citizens, thus in obeying the law, the individual citizen is only obeying himself as a member of the community; hence freedom and authority are not contradictory. Unlike any Individualistic or absolutist approach, Rousseau shifted the focus of natural law on the collective will and interests of people as a whole. He claimed that–People as a whole and their general will should be the sovereign of the state. Freedom and equality are their natural rights which cannot be surrendered to any so called ruler. The government or the ruling authority shall be created through general will; and the laws or authority whenever found as contrary to the general will, it must be overthrown..' *In his theory, morality contented till the principles of collective interests and natural rights preservation of the people as a whole in the state of natural law.*

Furthermore, a German philosopher **Immanuel Kan**t (1724-1804) also dictated his social contract theory, inspired from Rousseau's General will concept. But his philosophy

[23] The three inalienable rights- (i) Right to Life, (ii) Right to Liberty and (iii) Right to Property.
[24] Rousseau's General Will was known as- "Vo lonte generale".

distinguished law from morality and hence destroyed the foundation of Natural Law theories which further suffered a death blow in the hands of positivists.[25]

So now, we have seen that how the Divine, Immutable and Unalterable natural law theory of ancient Era evolved with time and the content of morality in it got minimised from highest inner-moral insight to—right reason to— religious moral precepts; and then it revolutionized into the concept of natural rights by the social contract theorists.

STRICT DISTINCTION BETWEEN LAW AND MORALITY BY POSITIVISTS

The Positive Law School thinkers emerged in the 19th century with the empirical, scientific and *a posteriori approach*[26] towards law and therefore, they rejected the theory of natural law alleging that it was vague, obscure and contrary to the empirical approach to law. Thus, the natural law theory suffered hostility and declined due to the eminent rise in analytical positivism. The roots of natural law lay in precepts like- morality, justice reason etc., which the positivists denounced as being unreal, unhistorical and non-scientific. The dominance of analytical positivism had completely divested law from morality and Justice; thus, destroying the very foundation of natural law theory. The main pioneers of Positive School marked district distinction between law and morality. They didn‘t consider any necessary correlation between morality and law.

Jeremy Bentham and John Austin are referred as the founders of positive School. Both of them considered 'Law as a command, given by sovereign, backed by sanctions'; thus it is also known as ‘the imperative theory of Law.’ Both Bentham and Austin distinguished the ‘is’ and ‘ought’ aspect of law; however, Bentham‘s classification of law and morality was somewhere flexible from that of Austin‘s strict segregation.

Jeremy Bentham (1748-1832) distinguishes the two aspects of law as: (i) Expositorial jurisprudence and (ii) Censorial jurisprudence. The former one according to him is ‘science of law’ which ascertain what the law is; and the latter one is the ‘science of legislation’ that ascertain what the law ought to be, whereas on the other side, *John Austin* (1790-1859) regarded as the father of the study of analytical positivism, considered only the ‘law simply and is strictly so called’ as the subject matter of jurisprudence. He differentiated Positive law

[25] Details in Kant’s famous work- “The Metaphysical Elements of Justice (1965)”
[26] A posteriori term describes ‘Knowledge that requires evidence, i.e. based on experience, observation and facts’.

as 'laws properly so called' with morals or other laws as 'laws improperly so called' (which lack for or sanction by the state). Austin, very strictly segregated law and morality and did not consider any importance or relation of moral component in the function of law. But, Bentham derived some content of morality in his approach of law when he stated in his 'Utilitarianism theory' i.e.–—the proper end of every law should be the promotion of greatest happiness to the greatest number of people. Therefore, the principle of his utility theory was based on some moral content. Although, morality to him was the promotion of maximum pleasure to maximum people in the society and the evil or pain must be prevented, through attaining the four basic goals.[27]

During 20th century, **H.L.A. Hart**[28] came with his 'conception of law'. He criticized the Austin's theory of command and the elements of his sovereignty. At first, 'Hart distinguished between the notion of habit and rule'. According to him, Habits only require common behaviour which is not enough for a rule; a rule has an internal aspect which people use as a standard by which to judge and condemn deviations.[29] Therefore, he defined 'law as a union of primary and secondary rules.' Primary rules are the duty-imposing rules which are binding because of the popular social acceptance; and the Secondary rules are power-conferring which enable the legislators to modify the primary rules, when suffering from defects.[30] Prof. Hart explains the existence or source of law with reference to the 'Rule of recognition', which he described as a 'binding force' which depends upon its acceptance in the society. The validity of law is to be tested through this of rule of recognition. This can be considered as the sovereign in the Hart's theory of law. He also accepted law as a command but mandated the notion of social acceptance. Moreover, he believed that 'the law as it is actually laid down (i.e. positum) has to be kept separate from law as it ought to be'. But he also considered that—it is necessary for law and morality to have certain element of natural law as a logical necessity. Law and morality are complementary and supplementary to each other. As a member of society, an individual feel morally bound to abide by these rules of law both as a matter of duty and obligation. Thus, Hart claimed that morality is implicit in his theory of positive law.

Another Positivist, who has the credit of reviving the original analytical legal thought in the 20th century through his 'Pure theory of law' is–**Hans Kelsen** (1881-1973). Kelsen claim that

[27] *supra note at 7,* pp. 25-31
[28] Herbert Lionel Adolphus Hart (1907-1992)
[29] *Supra note at 9,* p. 458
[30] Three basic defects in primary rules: (1) Uncertainty; (2) Static in Character; (3) Inefficiency.

his pure theory was applicable to all places and at all times. According to him, Law must be free from ethics, politics, sociology, history, etc.; though he did not deny the value of these branches of knowledge. He only wanted that law should be devoid of them. He defined 'law as a normative science'. He stated that—legal order is the hierarchy of norms having sanction and jurisprudence is the study of these norms which comprise legal order. Kelsen's pure theory of law is based on a pyramidical structure of hierarchy of norms which derive their validity from the basic norm which he termed as 'Grundnorm'. Basically, this Grundnorm determines the content and gives validity to other norms derived from it. Further, he also distinguishes Moral norm with Legal norm; thus this pure theory of law is a theory of Positive law, based on normative order eliminating all extra and non legal elements from it, as Kelsen believed that a theory of law should be uniform.[31]

So now we have seen that, how the propounders of positive School distinguished the positive law & morality, and condemn the relationship between them.

DEBATES ON THE LAW-MORALITY RELATION AND THE REVIVAL OF NATURAL LAW THEORY

The Debates on the connections and distinctions between law and morality started with the revival of natural law in 20th Century. After the rise of Nazism and fascism in Germany and Italy respectively, the 19th century legal theories, which overemphasized positivism, failed to satisfy the aspirations of people because of their refusal to accept morality and reason as elements of law. The World War-I further shattered the Western society and there was a search for value conscious legal system. This changed social-political conditions compelled the legal thinkers to look for some value oriented ideology, which could prevent general moral degradation of the people. Therefore, the Natural law revived on the basis of morality, humanity and ethics, with the fresh modern theories of naturalists such as– John Finnis, Lon Luvois Fuller, John Rawls, Rudolf Stammler, Ronald Dworkin, etc.

L. Fuller (1902-78) strictly denied any rigid separation between 'is' and 'ought' aspect of law. He believed that law is a purposive system and every workable legal system must comply with *'eight requirement'* [32] in order to make the law really effective. He calls these requirements as

[31] *supra note at 9,* pp. 471-473

[32] The 8 requirements resembling inner morality of law, written/published in Fuller's popular work- "The Morality of Law" (1964)

'inner morality of law', which represents the procedural aspect of the modern natural law theory. **John Finnis** (born in 1940) interpreted natural law as a set of principles of practical reasonableness in ordering human society. He emphasizes on '*seven values*'[33], that must be promoted by law in order to ensure justice in the society. According to him, the moral authority of law depends upon its ability to secure justice.

The issue of law and morality is a complex matter that has been widely discussed in various fields. The prominent debates on the relationship of law and morality were held between Hart–Devlin, Hart–Fuller and Hart–Dworkin.

The Hart-Devlin debate was motivated by a report, published by the Wolfenden committee in 1950s that recommended the decriminalization of prostitution and homosexuality. The committee argued that law should not interfere with the freedom of choice and the privacy of morality. This approach provoked a reaction from Lord Devlin[34], a leading judge at the time. He envisaged law and morality as being fundamentally interconnected. He argued that a common morality, with basic agreement on good and evil, was the cement of society without which it would begin to disintegrate. Devlin argued that law had a right, in fact a duty, to uphold that common morality. On the Contrary, H.L.A. Hart argued that using law to enforce moral values was unnecessary, as society was capable of containing different moral standards without disintegrating. It was also undesirable as it would freeze morality at a particular point and morally unacceptable as it infringes the liberty of the individual. Prof. Hart further added in his argument that—law's function is only the last line of defence; other attempts to preserve the accepted morality should come from within the society. But, Devlin opposed liberalization of the law, which did not forbid homosexual acts. According to Devlin, homosexual acts must be forbidden and punished. Institution of marriage as a part of the structure of our society and the basis of moral code which condemns fornication and adultery must be protected by the law.[35]

The Hart–Fuller debate was an exchange of arguments between Lon Fuller and H. L. A. Hart on the issue of Nazi Rule in Germany, published in the Harvard Law Review in 1958. Fuller

[33] His seven basic goods are detaile and enlisted in his work: "Human Rights & Common Goo : Collected Essays, Vol. III (2011)"
[34] Patrick Devlin (1905-1992) was a British judge and legal philosopher.
[35] Ketki Jaltare, Law and Morals (Mills, Hart-Devlin Debate), Vidhikarya online platform, Nov. 2020; Available at: https://www.vidhikarya.com/legal-blog/LAW-AND-MORALS-MILLS-HART-DEVLIN-DEBATE, last visited on 16/05/23, 9:40 am

criticized and debated with Hart on his theory, which holds that there is no law other than the rules of recognition. Fuller believes that legal system being an instrument to regulate human conduct, must concern itself with both- 'law as it is' and 'as it ought to be'. Thus, law cannot be completely divorced from the concept of morality. Fuller maintained that law is a product of sustained purpose and efforts which contains its own implicit morality. He believed that―good order is law that corresponds to demand of justice or morality or men's notion of what ought to be‖. This debate demonstrates the divide between the positivist and natural law philosophy. Hart took the positivist view in arguing that morality and law were separate and Fuller contended that law and morality go hand in hand.[36]

Ronald Dworkin (1931-2013) was a lifelong critic of legal positivism. He denounced Hart's view and concept of law and exclusion of morality from it. He said that 'law does not only consist of rules, but also principles.' Dworkin drew a distinction between 'rules' and 'principles' when he said that, principles are broad formulations of generalization whereas rules are detailed precepts having a distinct and definite effect. He further observed―a principle is standard that is to be observed because it is a requirement of justice or fairness or some other dimension of morality. For example– 'no one can take advantage of his own wrong' is a well established principle of law.[37] In this series of Debate, Hart insists that judges are within bound to legislate on the basis of rules of law, whereas Dworkin strives to show that in certain cases[38], judges work from a set of "principles" and use them to formulate judgments. According to him, these principles either form the basis, or can be extrapolated from the present rules.

We can see in this way, a cycle of the debates on the relationship of law and morality started with the revival of natural law, and which is still continued in today's world, regarding the various contemporary issues, emerging and existing in the society.

CONCLUSION

As we have seen in this paper, that there was no clear distinction between law and morality in ancient era where the theories of Natural School were prevalent, but after the Renaissance period the moral philosophies of natural law declined and there was emergence of Positive school theories which marked distinctions between law and morality. Thereafter in 20th

[36] *Supra note at 7,* p. 39
[37] *Riggs v. Palmer*, 115 N.Y. 506 (1889)
[38] Hard cases, where the case cannot be resolved by the use of an unequivocal legal rule or general law; therefore in such cases, judges have the discretion to decide by weighing the natural principles of law & justice.

century, there was a revival of natural law which popularized the concept of morality and ethics in law that was further opposed by positivists in contemporary debates.

Being around the contemporary conditions of society in India or anywhere else, we can conclude that– *"though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would have fatal consequences."* Thus, Morals do have relationship with Law and this relationship can be expressed in three terms:- (i) Morals as the basis of law; (ii) Morals as the test of (positive) law and (iii) Morals as the end of law. [39]

Law and morals act and react upon each other; and also mould each other. In the name of 'justice', 'equity', 'good faith', and 'conscience', morals have become tangible into the fabrics of law. In judicial law making, in the interpretation of legal precepts, in exercising judicial discretion (as in awarding punishment), in moral considerations, etc. they play a very important role. Morals work as a restraint upon the power of the legislature, because the legislature cannot venture to make a law which is completely against the morals of the society. Moreover, all human conducts and social relations cannot be regulated and governed by law alone; a considerable number of them are regulated by morals. A number of actions and relations in the life of the community go on very smoothly without any intervention by law. Their observance is secured by morals. So far as the legal rules are concerned, it is not the legal sanction alone that ensures their obedience but morals also help in it. And the Laws, framed with a purpose of eliminating evils such as- drinking alcohol, gambling, theft, dacoity and murder are considered as Moral laws.[40] They arouse our sentiment of morality and enable us to become ideal citizens. Thus, morals perfect the law. Aristotle has rightly said that–

"Man when perfected by society is the best of all animals, but when separated from Law and Justice he is the worst of all."

Here, he meant 'the law and Justice based on morality.'

[39] Many scholars like G. W. Paton and Dennis Lloyd describes these terms of relationship between law and morality in Contemporary world.

[40] Mohd. Aqib Aslam, Law And Morality In The Light Of Jurisprudence, Available at: https://www.legalserviceindia.com/legal/article-1888-law-and-morality-in-the-light-of-jurisprudence.html, last visited on 16/05/23, 02:05 pm