

“ Discuss the relationship between law and morals. Consider how far the law seeks to uphold and promote moral values.”

Law and morals have historically always been in conflict with each other. Before trying to define them as a relationship we must define them separately. Morality can be anything. Law requires a definition.

Law is a rule of conduct or action prescribed or formerly recognised as binding, or enforced by a controlling society. Law must be universal to all; problems occur when issues of personal choice arise and people are forced to do things against their own will. Law is also backed up by the threat of a prison or other punishments.

A moral is a principal of right or wrong behaviour sanctioned by or resulting from one's conscience or one's ethical judgement. Morality is personal to the individual. Morals can only be backed up by one's conscience or by social condemnation of the individual.

In any legal system there will be some overlap between legal and moral rules. This is called Primary Law. It is this law that tempts us to argue that law and morality are one and the same thing. Telling lies or acting dishonestly is generally considered to be wrong morally. Dishonesty in certain circumstances may be regarded as legally wrong. But only under strict definition. E.g. Sec 1 Theft Act, 1968.

Also moral views change over time; this effects the changing of laws in society. In the USA opium used to be used by the middle classes and thought not to be morally wrong, but when it was criminalised by the Harrison Act 1914 attitudes changed when the hardened users were perceived as low-life. It then was morally unacceptable. The government of the day may reflect these changing views by passing a law to reflect the views of society. For example the Sexual Offences Act 1967, that now makes homosexuality legal.

There are some long-established rules that are legal rules as well as moral ones and were probably adopted as part of common law as much for moral as for practical reasons. For example, "thou shalt not kill" finds its legal expression in the common law offence of murder and the moral rule against stealing coincides with the legal prohibition of theft.

The issue of whether or not the law should follow morality was debated in the late 1950's, where there was public concern about what was perceived to be a decline in sexual morality. The government of the day set up a commission to look at whether the laws on prostitution and homosexuality should be legalised with some restrictions. The findings were published in The Wolfenden Report. Lord Devlin, a leading judge opposed the findings that some areas of behaviour should be left to individual morality, instead of being supervised by the law. Professor Hart, an academic, approved of the recommendations.

On the one hand Professor Hart holds that there is no necessary relationship between a legal system and the ideas of justice or morality. A legal system can function effectively though it is neither just nor moral. Professor Hart argues that the question of what is law must be separated from the question of whether it was moral or just. Hart warns us against the dangers of 'populism'; political ideas and activities that are intended to represent ordinary people's needs and wishes. Hart also argues why should the conventional morality of a few members of the population be justification for preventing people doing what they want? This is based on the theory that most people's views are coloured by superstition and prejudice.

Both Hart and Devlin raise important issues. Devlin's view is pragmatic and focused on the majority rule. Hart is more humanistic and individual.

Lord Devlin thought that society required certain moral principals to be observed. Even if the public's views were changing, the breach of these principals was an offence against society not just against the injured party Devlin believed in a policy and public interest view, provided 'society' does not mind you can do anything. But - who is 'society' and is society's views always correct.

Devlin's guidelines are that he thought that privacy should be respected. The law should only intervene when society won't tolerate certain behaviour. Law should be a minimum standard of behavior not a maximum standard. Overall Devlin argued that the law must be supported by public morality.

Laws and morals coincide daily especially on the subject of medical ethics. A health authority refused to continue kidney dialysis treatment on the grounds that Mr. Sage had not a sufficiently 'high quality of life'. As there were enough machines to go round, it was not a shortage of resources issue. The phrase quality of life was highly suspect, and who the right to judge quality of life. The moral issue was could doctors pick and choose who receives treatment?

The legal and moral right to die (euthanasia) could be assessed in this case. Diane Pretty was terminally ill with Motor Neuron Disease. She wanted to obtain the right to be able to request medical help to die at a time of her choosing. She especially wanted a guarantee that her husband would not be prosecuted for assisting a suicide. The permission was refused. The Director of Public Prosecutions did not have the power to not consent to prosecute the husband of a terminally ill woman if he helped his wife to commit suicide.

These two cases could be said as contradictory as the Sage case implies that doctors can state when a person can live or die and without the dialysis, Sage would obviously die. The moral issue of quality of life in the Pretty case is a highly debatable. Should terminally ill people be able to end their own life? Some people may argue morally yes, but English law says no.

The law in numerous ways upholds and promotes moral values of society. Over the last one hundred years society has become more tolerant with regard to sexual and other matter. The law has reflected this e.g. The Abortion Act 1967 and Sunday Trading Act 1995. However, there are areas where the views of society have become less tolerant. Society has felt it is now morally wrong that rape cannot be committed within marriage. Sir Matthew Howard stated that a woman is in contract with a man to have sex whenever, this view was established in 1976. In *R v R* (1991), the case went to the House of Lords, they stated that it was an offence. When the views of society, what society views as morally right or wrong change e.g. rape in marriage, then the law tends to change to support its view. However, it may take some time and pressure group and interested parties to change the law.

The relationship between law and morality is not an easy one. The legal system presupposes a certain amount of morality, because if law is not essentially moral there is no easy explanation of the obligation to obey.