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THE LIMITS OF LEGAL MORALISM: SHOULD PRIVATE MORALITY BE A MATTER FOR THE LAW?

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INTRODUCTION

Law and morality are closely related, and this has long led to the idea that a law cannot "acquire legitimacy" unless it "accords with the moral values of the society." According to this particular way of reasoning, "public morality" is "one of the vital ingredients of a society," and the purpose of criminal law is, in reality, to impose moral norms. In order to determine the moral standards of the community, Lord Devlin depended on the concept of "reasonable man." He held that, for the purposes of the law, everything that a "reasonable man" could reasonably be expected to be immoral was sinful. Still, "there must be a real feeling of reprobation" for anything immoral to be considered illegal, not only the majority of society's disapproval of it. Before the alleged behaviour is criminalised, it is also necessary to establish a clear indication that the behaviour be applied in pluralistic societies. The subject of whether the state should control personal morality comes up in modern legal discourse, particularly when people's actions don't seem to be hurting other people.

In the case of **S. Khushboo v. Kanniammal**,^[14] the Supreme Court of India addressed whether criminal proceedings initiated against an actress for advocating pre-marital sexual relations in a magazine interview, on charges including the indecent representation of women, should be quashed. The Court ruled that, although a significant portion of Indian society may view pre-marital sex as a threat to the institution of marriage, criminal law cannot be used to target individuals who hold a minority opinion that deviates from the majority's moral standards. In quashing the criminal proceedings, the Court emphasized that conceptions of morality are "inherently subjective," and criminal law should not necessarily align with prevailing moral views.

This judgment underscores a key criticism of the legal moralist approach: the inherent subjectivity of morality. Lord Devlin's perspective on moral relativism—tying what is morally good to the beliefs of a particular society—highlights this issue.

Legal Moralism: An Overview

Legal moralism is a legal doctrine that contends that moral norms should be upheld by the law even in situations when private behaviour of persons does not directly affect other people. This theory addresses important philosophical arguments about the role of law, how morality and law interact, and how much private behaviour should be regulated by the law. Comparing legal positivism and the harm principle with other legal theories is crucial for gaining a thorough understanding of legal moralism.

Lord Devlin's View: Law as a Guardian of Public Morality

Lord Devlin's book, *The Enforcement of Morals*, argued that a common moral code is necessary for society's cohesiveness and proper operation. He argued that a breakdown in this consensus could lead to societal disintegration, and that the law has a legitimate role in upholding moral norms. The Wolfenden Committee Report (1957) advocated for the decriminalization of private homosexual actions, which had a significant impact on Devlin's ideas. Devlin disagreed, stating that morality is the "cement" that binds society together and that the law must protect it. He believed that morality should be a public issue as a decline in moral standards can negatively impact society even without immediate harm to individuals. This theory supports the government's meddling in private morals, such as drug use, homosexuality, and obscenity crimes, even when these behaviors occur privately and with permission.

In *Shaw v. DPP* 1962, the House of Lords upheld Devlin's opinions, confirming Shaw's conviction for publishing a directory of prostitutes. Despite the lack of a specific law making Shaw's actions illegal, the court deemed his actions immoral and imposed punishment, as it was the judiciary's duty to uphold public morality. This case illustrates how the government can enforce moral values in public, even without immediate threats, and supports Devlin's viewpoint by reinforcing the law's role in societal moral values.

H.L.A. Hart's Critique of Legal Moralism

H.L.A. Hart argues that the federal government should not interfere with a person's morals unless their actions cause harm to others. He believes that as long as people do not cause harm, they should live according to their own ideal life. Hart criticized Devlin's community morality concept as authoritarian and would lead to unwarranted judicial action. He argued that morality is arbitrary and debatable, and no one should be forced to follow a certain group's moral

standards.

The *Dudgeon v. United Kingdom* case, involving Jeffrey Dudgeon, criticized legal moralism by the European Court of Human Rights. The court ruled that the criminalization of homosexual acts violated the right to respect for private life, as guaranteed by Article 8 of the European Convention on Human Rights. The court emphasized the importance of individual autonomy and privacy, rejecting the argument that law should enforce societal moral standards regarding homosexuality. This case exemplifies Hart's philosophy that the law should not regulate private morality without harm.

Hart's critique is based on legal positivism, a theory that distinguishes law from morality. Legal positivists argue that a law's validity is based on its adherence to established procedures, rather than moral principles. They believe that law's primary function is to ensure order and resolve conflicts, not to impose or uphold moral standards. Hart's "rule of recognition" argues that legal systems function according to socially constructed rules, not moral principles. Legal positivists argue that the law should not enforce private morality unless it directly infringes on others' rights or causes harm.

The U.S. Supreme Court's 2003 ruling in *Lawrence v. Texas* invalidated a Texas statute criminalizing homosexual conduct, stating it violated the Due Process Clause of the Fourteenth Amendment. Justice Kennedy argued that the state had no legitimate interest in regulating consensual, private sexual conduct between adults. The Court rejected moral disapproval as a valid basis for criminal law, highlighting Hart's critique of legal moralism and the modern legal view that law should not impose moral standards in private matters without harm.

John Stuart Mill's harm principle is a legal principle that asserts that the state's only legitimate purpose is to prevent harm to others. It has significantly influenced modern human rights law, where courts aim to balance societal interests with personal liberty. However, the principle's limitations are evident in cases like *R v. Brown*, where the House of Lords upheld convictions for consensual sadomasochistic activities. Critics argue that criminalizing consensual acts between adults in private unjustifiably extends the law's reach into regulating personal morality, particularly when no one is harmed. The ongoing conflict between legal moralism and personal autonomy highlights the challenges of applying the harm principle in complex moral cases. The debate between legal moralists and advocates like H.L.A. Hart revolves

around whether the law should enforce societal moral standards and whether private morality should be a matter for the law.

The argument over how much private morality belongs in the legal domain raises complex issues related to the nature of the state, the link between human autonomy, and the line separating private property from public interest. This question requires a careful analysis of the state's legal capacity to regulate moral behaviour in relation to an individual's right to self-determination since it sits at the crossroads of jurisprudence, legal philosophy, and constitutional theory. A more thorough legal perspective is provided in the following:

Arguments Advocating Legal Regulation of Private Morality

1. Preservation of Social Order and Public Morality:

It is argued that by maintaining a common moral framework, the law plays a crucial role in maintaining society cohesiveness. From a legal perspective, certain private actions—even those carried out in secret—may negatively impact society's moral fabric, which justifies government intervention. This is based on the legal notion of public morality, which is frequently outlined in laws pertaining to public order, family law, or decency. For instance: Laws that make drug use or prostitution illegal are often based on the claim that although these activities are private, they have wider societal repercussions, such as crime, public health issues, and the deterioration of social values.

2. Paternalism and the Protection of the Individual:

"legal paternalism" contends that the government has a right to interfere in people's moral judgements in order to save them from harming themselves. This method makes the assumption that people don't always behave in their own best interests because of irrationality, ignorance, or force. Therefore, the government has the right to control certain moral behaviours in order to protect individual wellbeing. For instance, this concept may justify the criminalisation of prostitution or gambling, with judges frequently supporting such laws on the grounds that they shield people from exploitation or degradation, even in the face of claims that these are concerns of private morality.

3. The Harm Principle Reconsidered

Moral behaviour on the part of individuals frequently has an indirect negative impact

on society as a whole, despite the harm principle's assertion that the government should only step in to stop harm to others. For instance, drug addiction may result in higher public costs for things like healthcare and law enforcement involvement, which justifies their legal restriction. As an illustration: Courts frequently acknowledge the harm addiction does to society, particularly the burden on public resources, in places where drug misuse is illegal. As a result, they support the implementation of laws designed to stop this kind of behaviour.

By recognising that private acts may result in externalities that impact the welfare of the collective, this interpretation of the damage principle expands the boundaries of legal intervention and justifies its use.

4. **Moral Education and the Role of Law in Character Formation:**

The law is frequently viewed as a tool for moral character development as well as behaviour regulation. Legal positivists and proponents of natural law theory have contended that the legal system mirrors and upholds the ethical principles of society. Therefore, laws that control personal morality may also have an educational purpose by pointing people in the direction of behaviour that is seen good by society. For instance, laws that restrict the public exhibition of obscene content or outlaw certain types of obscenity are frequently defended by judges on the grounds that they uphold morality and safeguard public decency.

In this instance, the law serves as a medium for disseminating cultural norms and values, justifying its control over individual morality for the more general goal of moral instruction.

Arguments Opposing Legal Regulation of Private Morality

1. **Autonomy, Privacy, and the Sanctity of Individual Freedom:**

The right to individual autonomy, which includes the ability to choose one's own moral path free from governmental interference, is a cornerstone of liberal constitutionalism. Lawmakers who oppose regulating private morality contend that moral judgements should not be made by the government, especially in situations when individual acts do not directly damage other people. In the famous case of *Lawrence v. Texas*, the Supreme Court struck down legislation that made consenting to same-sex relationships illegal, highlighting the Due Process Clause of the Fourteenth Amendment's guarantee of individual liberty and privacy.

This viewpoint is supported by the negative liberty concept, which holds that people should not have the government intervene excessively with their own moral decisions as long as such decisions do not violate the rights of others.

2. **The Limits of Law and Its Inherent Ineffectiveness in Regulating Morality:**

Critics contend that the law is an inherently blunt tool for controlling behaviour, even if it has a genuine purpose in preserving certain moral norms. Overcriminalizing moral transgressions can have unintended consequences such as the growth of black markets, the stigmatisation of marginalised communities, and the focus of law enforcement efforts on crimes without victims.

One well-known historical example is the United States' alcohol prohibition, which led to widespread lawlessness, the emergence of organised crime, and a general disdain for the law in an attempt to control individual moral behaviour.

Legal restrictions on personal morality might, in this view, be detrimental to society rather than beneficial, causing social instability and eroding confidence in the rule of law.

3. **Moral Pluralism and the Need for Tolerance in a Diverse Society:**

Legal experts and jurists have contended that enforcing a single, universal moral norm through the legal system runs the danger of violating minority rights and limiting variety in culture and religion. Legal neutrality is the idea that the state should not favour any specific set of moral ideals over another, especially in a democracy.

For example: There is a growing recognition that the imposition of majority morality on minority groups violates the principle of personal autonomy and equality before the law, as evidenced by the decriminalisation of homosexuality in many jurisdictions, including the European Court of Human Rights' landmark case of *Dudgeon v. United Kingdom* (1981).

This viewpoint highlights how important it is for legal systems to accept moral diversity and steer clear of the majoritarian tyranny that can arise from forcing people with different moral convictions to conform to dominant moral standards.

4. **The Harm Principle and the Doctrine of Consent:**

Reiterating the traditional liberal stance, it is contended that private moral acts carried out consensually and without causing harm should not be subject to legal supervision and that the main purpose of the law should be restricted to avoiding harm to others.

This argument is around the idea of consent, which emphasises that the law cannot legitimately intervene in a private action if all participants have provided informed assent.

The courts have debated how much the state may get involved in private moral conduct in cases involving consenting adults, such as the ruling in *R. v. Brown* (1993). Opposing views have frequently called for a greater respect for individual autonomy and consent.

This argument argues that private morality, when practiced among consenting individuals, is outside the proper purview of law regulation, hence reinforcing the separation between public damage and private morality.

Whether or not private morals should be governed by the law?

It deals on the fundamental ideas guiding the interaction between the state and the individual, as well as the boundaries of governmental authority and the extent of individual freedom. The issue is typified by a conflict between two opposing conceptions of the role of the law: one sees the law as a protector of social order and public morality, while the other prioritises individual liberty, privacy, and moral variety.

Legal moralists, on the one hand, support the role of the law in preserving social norms, contending that moral principles are required to preserve social harmony, safeguard the weak, and stop actions that, despite their seeming privacy, may have far-reaching effects on the general welfare.

However, the liberal legal tradition gives the concepts of moral plurality, privacy, and human liberty a lot of weight. The main thrust of this argument is that when an individual's actions do not directly injure other people, the state should not step in to arbitrate morality. According to this viewpoint, the law should respect the variety of moral convictions present in a diverse society by allowing people the autonomy to make choices about their morals so long as those choices do not violate the rights of others.

The damage principle of John Stuart Mill, which is frequently cited in this discussion, supports the idea that the government should only become involved when there is an obvious risk of harm to others. The argument against legal involvement in areas like drug use, sexual

behaviour, and reproductive rights is based on the idea that these are personal decisions and that the government shouldn't regulate them unless there is clear evidence of harm to the public welfare. The increasing acknowledgement of private rights and the defence of individual liberty in constitutional jurisprudence is indicative of a judicial movement to curtail the state's influence over people's moral decisions.

A balanced legal approach must be guided by proportionality to reconcile divergent viewpoints. Government regulation may be necessary to protect social stability or public safety, but it must be balanced against people's rights to self-determination. Courts in liberal democracies have shifted away from regulations restricting private morals and towards safeguarding individual liberties. Significant rulings, such as *Dudgeon v. United Kingdom* and *Lawrence v. Texas*, demonstrate the court's propensity to value individual liberty over majority moral standards. Courts have also stressed the value of privacy and the right to self-determination in private and sensitive concerns.

In areas like lifestyle choices, freedom of expression, and reproductive rights, courts have taken a more rights-based stance, emphasizing consent, privacy, and restraint of governmental authority. Robust legal frameworks exist to protect individual liberties against unjustified governmental interference. The conflict between the interests of the whole and the rights of the individual determines how private morality and the law are discussed. Legal systems tend to move towards a rights-based framework, respecting the state's role in avoiding damage while prioritizing individual liberty, privacy, and moral heterogeneity.

In summary, a prudent and measured application of the law is necessary, respecting people's fundamental freedoms to live their lives according to their own values while acknowledging the limitations of state power in regulating morality. Future legal jurisprudence is likely to move towards a greater regard for individual autonomy, defending freedom and social order.