



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE HART-DEVLIN DEBATE ON MORALITY AND LAW: A CONTEMPORARY INDIAN PERSPECTIVE

AUTHORED BY - EESH SINGH

Abstract

The Hart-Devlin debate, a foundational discourse in legal philosophy, examines the extent to which law should enforce societal morality. Lord Devlin argued that legal moralism is essential for maintaining social cohesion, whereas H.L.A. Hart contended that law should intervene only to prevent harm, not to impose moral standards. This debate remains highly relevant in contemporary India, where the legal landscape frequently navigates the tensions between constitutional rights and traditional moral values.

This article analyzes the Hart-Devlin debate in the Indian context, exploring its implications in key areas such as LGBTQ+ rights, marital rape, religious freedom, censorship, and abortion laws. Through landmark Supreme Court decisions, such as *Navtej Singh Johar v. Union of India* (2018) and *Shayara Bano v. Union of India* (2017), the judiciary has increasingly embraced Hart's emphasis on individual autonomy. However, legal moralism continues to influence Indian law, particularly in areas such as marital rape and content regulation.

By comparing India's legal trajectory with other jurisdictions, this article highlights the persistent struggle between upholding personal freedoms and preserving societal morality. It argues that while India is gradually aligning with Hart's philosophy, Devlinian principles continue to shape public policy and legal interpretation. The future of Indian jurisprudence lies in balancing these competing perspectives while ensuring that constitutional morality prevails over majoritarian morality.

Keywords

Legal moralism, constitutional morality, Hart-Devlin debate, individual rights, public morality

Introduction

The relationship between law and morality has been a subject of intense debate in legal philosophy. A key discussion in this regard is the Hart-Devlin debate, which arose in the mid-20th century in response to the Wolfenden Committee Report (1957) on the decriminalization of homosexuality in the United Kingdom. Lord Patrick Devlin argued that the law should enforce societal morality to maintain order and cohesion. In contrast, H.L.A. Hart countered that law should not be used as a tool to impose moral values unless an action causes harm to others.

This debate remains highly relevant in contemporary India, where legal disputes often revolve around the tension between individual freedoms and traditional moral values. Issues such as LGBTQ+ rights, marital rape, religious freedom, and censorship exemplify the ongoing struggle between legal moralism and personal liberty. This article examines the Hart-Devlin debate in the Indian context, analyzing how courts and policymakers navigate this complex intersection of law and morality.

The Hart-Devlin Debate: A Theoretical Framework

- **Devlin's Perspective: Law as the Guardian of Morality**

Lord Devlin's argument rested on the premise that a society is held together by shared moral values, and any erosion of these values threatens societal stability. He asserted that:

1. **Law Must Uphold Public Morality:** Society has a right to use law to enforce moral standards that reflect the values of the majority.
2. **Morality and Social Cohesion:** A breakdown in moral standards can lead to societal disintegration, justifying legal intervention.
3. **Majoritarian Standards of Morality:** If the majority deems an act immoral, even if it occurs in private, the state has the right to prohibit it.

Devlin's views were heavily influenced by traditional and religious norms, advocating for a paternalistic legal system that prioritizes societal interest over individual freedom.

- **Hart's Perspective: Law Should Not Enforce Morality**

H.L.A. Hart, a leading legal positivist, strongly opposed Devlin's stance. Drawing from John Stuart Mill's 'harm principle,' Hart argued that:

1. **Law and Morality Should Be Distinct:** Not all moral wrongs should be criminalized—only those that cause harm to others.

2. Individual Autonomy is Paramount: Private moral choices, such as homosexuality or adultery, should not be subject to legal intervention.
3. Danger of Legal Moralism: Using law to enforce morality leads to authoritarianism and restricts personal freedoms.

Hart's philosophy advocates a minimalistic approach to law, focusing on harm prevention rather than moral enforcement.

The Hart-Devlin Debate in Contemporary India

India's legal framework reflects both Hart's and Devlin's ideologies. While the Constitution upholds secularism and individual liberties, many laws are rooted in traditional moral values. The following key issues illustrate this ongoing debate.

1. Decriminalization of Homosexuality: A Triumph for Hart's Philosophy

For decades, Section 377 of the Indian Penal Code (IPC), a colonial-era law, criminalized "unnatural offenses," disproportionately targeting LGBTQ+ individuals.

- In *Naz Foundation v. Govt. of NCT of Delhi* (2009), the Delhi High Court decriminalized homosexuality, stating that morality alone cannot justify restricting fundamental rights.
- However, the Supreme Court reversed this decision in *Suresh Kumar Koushal v. Naz Foundation* (2013), ruling that moral disapproval of homosexuality justified legal prohibition—a clear reflection of Devlin's philosophy.
- Finally, in *Navtej Singh Johar v. Union of India* (2018), the Supreme Court struck down Section 377, emphasizing constitutional morality over public morality, aligning with Hart's view that law should protect individual freedoms, not enforce societal norms.

2. Marital Rape: A Battle between Autonomy and Tradition

Under Indian law, marital rape is not criminalized due to an exception in Section 375 of the IPC, which states that non-consensual intercourse between a husband and wife is not rape. This reflects Devlin's argument that law should preserve traditional social structures like marriage.

However, legal challenges have been mounted against this exception, arguing that:

- Marital rape violates a woman's right to bodily autonomy under Article 21 of the Indian Constitution.
- Consent is central to sexual relations, irrespective of marital status.

In *Independent Thought v. Union of India* (2017), the Supreme Court criminalized marital rape for minor girls but refrained from addressing the broader issue. Courts remain divided, reflecting the tension between Hart's advocacy for individual rights and Devlin's emphasis on preserving traditional morality.

3. Religious Freedom vs. Public Morality

The conflict between religious morality and constitutional principles has been evident in landmark cases:

- Triple Talaq Case (*Shayara Bano v. Union of India*, 2017): The Supreme Court declared instant triple talaq unconstitutional, upholding women's rights over religious customs.
- Sabarimala Temple Case (*Indian Young Lawyers Association v. State of Kerala*, 2018): The Court ruled that restricting women's entry to temples based on menstrual status violated gender equality.

Both judgments emphasized constitutional morality over religious morality, reinforcing Hart's principle that law should prioritize individual rights over traditional beliefs. However, strong societal backlash and review petitions highlight Devlin's continuing influence.

4. Censorship and Freedom of Expression: A Devlinian Legacy?

India's approach to free speech often leans towards Devlin's ideology. The state frequently censors content deemed offensive to religious or cultural sentiments:

- Film Censorship: The Central Board of Film Certification (CBFC) often demands cuts or bans films that challenge moral norms like *Uda Punjab* and *Lipstick under my Burkha*.
- Book Bans: Authors like Salman Rushdie and Wendy Doniger have faced bans due to alleged religious offense.
- Internet Regulation: Section 66A of the IT Act (struck down in *Shreya Singhal v. Union of India*, 2015) was used to criminalize online dissent.

While courts have upheld free speech in some cases, the persistent invocation of public morality justifications reveals Devlin's continuing impact.

5. Abortion Rights and Women's Autonomy

The Medical Termination of Pregnancy (MTP) Act, 1971, allowed abortion under specific conditions, but access remained restricted.

- Recent amendments in 2021 expanded abortion rights, permitting termination up to 24 weeks in certain cases.

- However, restrictions on unmarried women and late-term pregnancies reflect lingering moral constraints.

This debate mirrors the Hart-Devlin conflict—progressive laws supporting individual autonomy (Hart) versus continued moral oversight (Devlin).

Comparative Perspective: India vs. Other Jurisdictions

Examining other legal systems highlights India's position in the Hart-Devlin spectrum:

- United States: *Roe v. Wade* (1973) initially established abortion rights, reflecting Hart's influence. However, *Dobbs v. Jackson* (2022) reversed this, showing a shift towards Devlin's approach.
- United Kingdom: The Sexual Offenses Act (1967) decriminalized homosexuality based on the Wolfenden Report, aligning with Hart's principles.
- Canada: Recognizes marital rape as a crime and upholds strong LGBTQ+ rights, demonstrating Hart's philosophy in action.

While India has progressed in some areas (LGBTQ+ rights), it remains conservative in others like marital rape and censorship.

Conclusion: Navigating the Hart-Devlin Divide

The Hart-Devlin debate continues to shape Indian law. While constitutional jurisprudence has increasingly embraced Hart's emphasis on personal autonomy, Devlinian legal moralism persists in areas like marital rape, censorship, and religious freedom.

The judiciary plays a crucial role in striking a balance between tradition and individual rights. Moving forward, India must:

- Ensure constitutional morality prevails over majoritarian morality in judicial decisions.
- Reform outdated laws that reflect Devlinian moral constraints e.g., marital rape laws.
- Strengthen protections for free speech against censorship rooted in moral policing.

Ultimately, while Hart's principles have gained ground in India's evolving legal landscape, Devlin's arguments continue to resonate, reflecting the country's complex relationship with law and morality. The challenge lies in ensuring that legal reforms uphold individual freedoms while maintaining societal harmony.