

Problem issues regarding the impact of the law on morality in the Russian Federation

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Abstract. The article considers the problems of interaction of law and morality from the position of the negative impact of the law on public morality. Based on the analysis of individual legal regulations, as well as historical examples, the variants of interaction of law and morality are demonstrated. To implement the concept of the optimal ratio of law and morality, proposals for the improvement of legal technique were made.

Keywords: law, morality, legal institutions, regulation

1. Introduction

The contemporary social reality demonstrates multiple manifestations of not only legal but also moral nihilism. The reason for this, in our opinion, is an insufficiently formed mechanism for regulating social relations. To optimize social regulation, the really important issue is the relationship and mutual influence of law and morality. In the framework of this study, we are interested in the problem of the influence of the law on morality.

In contemporary social relations, law and morality are closely interrelated. As part of the study of the interaction of law, the attention of researchers is mainly drawn to the impact of morality on the law. At the same time, in our opinion, the question is important in modern conditions. In this regard, it is difficult to disagree with the well-known law theorist that “in conditions of developed, independent and differentiated from each other of various types of social norms (morality, law, religion, etc.), it is the legal principle of coordinating their joint existence and action that can give this diversity of social norms (and regulators) a certain systemic unity” [1]. In our opinion, precisely such unity can be a fundamental prerequisite not only for the social and spiritual revival of Russia.

The objective of this study is to analyze the problematic issues of the influence of the right to morality in a legal democratic state, such as the Russian Federation, as well as improving the balance of law and morality.

2. Materials and Methods

The problem of the correlation of law and morality is one of the key problems in Legal Science and other sciences (Philosophy, Sociology, Psychology, History of Political and Legal Doctrines). Within the framework of Legal Science, the problems of the relationship between law and morality were considered in the following works: Ayupov, V. Sh. (“Law and Morality in the Context of Globalization”); Boguslavskaya, K. Yu. (“The Interaction of the Norms of Law and Moral Norms in the Legal Regulation of Labor Relations”); Gerasimov, A. M. (Morality in the Criminal Law of Russia);

Lyadov, V. V. (Morality and Law in the Political and New Ideas of Russia); Sidorov, V. A. (The Right to Protection of Honor and Dignity: The Relationship Between Law and Morality); Shidlovskaya, T. Yu. (The Ratio of Law and Morality in the Lawmaking Process); Tsybulevskaya, O. I. (Moral Foundations of Modern Russian Law).

Despite the specificity of the research topic limited to the Russian Federation, we can also find ideas about the interaction of law and morality in certain works of foreign authors: Dworkin, R. M. (Law's Empire); Hart, H. L. A. (Law, Liberty, and Morality); Lyons D. (Ethics and the Rule of Law).

In the course of the study, as general scientific methods (analysis, synthesis, comparison, abstraction, induction, deduction, system-structural, etc., as well as dialectical materialistic and spiritual-cultural approaches), so and private scientific methods were applied: (1) the formal legal method, consisting in the study of legislation regulating social relations in various fields; (2) the historical and legal method was used in determining the theoretical and methodological foundations of the influence of the law to morality; (3) the method of interpretation of law, which allows to deepen and expand the results of applying the formal legal method, to identify both the literal and systemic meaning of legal regulations and to make a general picture of the aspects of the influence of the law to morality; (4) the method of legal modeling allowed to determine the functional aspects of the interaction of the law and the morality.

3. Results

The coercive nature of law forms the need for citizens to follow imperious prescriptions, which ultimately contributes to the formation of habitual behavior. At the same time, not every formally determined prescription meets the requirements of morality. In our opinion, the full compliance of law and morality is impossible. However, being social regulators and constantly interacting, they influence each other. In modern conditions, the influence of law on morality is capable of acquiring a problematic character, since the first can significantly transform social relations formed on the basis of moral norms.

According to some legal scholars, the law can manifest itself in morality when issuing emergency laws caused by abrupt changes in social conditions, when progressive moral ideas are established as the basis of legislation, and so on [2]. We believe that on the one hand, emergency conditions themselves do not claim to preserve morality in the case of issuing emergency regulatory legal acts. Here, the main goal is to maintain the socio-economic system in a viable state. On the other hand, in modern ordinary conditions, the legislators often seek to create regulations that are extraordinary in nature, significantly affecting the moral aspects of society [3].

In our opinion, the influence of the law on morality is an inevitable phenomenon. Moreover, if within the framework of the natural law approach, the convergence of law and morality is immanent [4], a certain dualism manifests itself in the influence of the positive law to morality. Dualism is expressed in two ways. On the one hand, the law protects the moral order formed in a society. On the other, the law can transform such morality.

Morality protection is carried out by fixing specific regulations in the legal norms. Thus, an indication of the need to ensure moral principles in one form or another is contained, for example, in the following legal provisions: articles 2, 7, 13, 14, 17-31, 34, 37-56 of the Constitution of the Russian Federation [5]; subparagraphs 1-3 of article 1, paragraph 2 of article 2, paragraph 5 of article 19, article 137, article 150 of the Civil Code of the Russian Federation [6]; article 5, part 1 of article 65, part of article 124, part 1 of article 127, part 2 of article 146 of the Family Code of the Russian Federation [7]; articles 2, 63, 265, and 348.8 of the Labor Code of the Russian Federation [8]; articles 4-7, 57 of Chapter 25 of the Criminal Code of the Russian Federation [9]; clause 40 of article 5, 9, 11, 17, 297, and 332 of the Criminal Procedure Code of the Russian Federation [10].

However, the influence of law on morality exists when the law transforms or absorbs morality, adapting it in such a way that the content of morality loses its regulatory nature. A striking historical example in this regard is the reform of the ancient Chinese legist Shang Yang. He introduced the collective responsibility as a means of controlling and governing the people, eradicated all knowledge;

forbade fathers, sons and brothers to live in the same house [11], sought to destroy kindness and humanity, and offered to punish with death penalty [12].

Shan Yang tried to destroy all moral principles developed by Confucius in the 6th-5th centuries BC. The latter believed that the regulation of life based on laws is unacceptable [13]. Confucius sought to ensure that the people were ruled on the basis of virtue. At present, it is believed that the traditional Chinese law is more based on “the sense of decency and knowledge of customs,” as well as on the ability to feel another person than on the norms. This right takes a lot from the traditional life [14].

In modern conditions, the law has penetrated far into the sphere of moral. Evidence of this can be the fact that the law authorizes the immoral behavior of its subjects by fixing conformist and marginal behavior as legitimate. For example, the Judicial Code of the Russian Federation [7] in its article 14, in fact, does not care about the issue of the admissibility of marriage between a former son-in-law and a former mother-in-law.

Note that the law and morality cannot be easily identified. According to the correct remark of V. S. Nersesyants, “Moral legal thinking deforms the essence of not only the law, but also morality, since the moralization of law is inevitably accompanied by the legalization of morality.” We believe that the spheres of law and morality should be autonomous. S. Bulgakov’s statement seems appropriate in this regard. He states, “The mirror reflects but does not contain the reflected in it, it indicates the existence of the object not only in this reflection, but also in itself and for itself ... Therefore, the very being reflected is completely incommensurable with the reflection” [15]. Thus, we believe that law and morality as regulators of social relations should regulate similar but not completely identical relations. At the same time, in our opinion, the law is capable and should maintain public morality, since in conditions of rapidly changing, expanding and receiving more freedom of relations, the effectiveness of public censure, as a moral sanction, decreases. However, we note once again that the complete absorption by the right of morality is unacceptable.

4. Discussion

To date, the view remains to be wrong, that the law should be moral. Such a point of view is dangerous because in the end, the content of the law should be not so much legal as moral, and therefore the law itself should become moral. This point of view on the right deforms the essence of not only the right, but also the moral itself, but at the same time the law seems to reflect public morality, the main value of which is justice.

To implement the concept of the optimal relationship between law and morality, a number of the following tasks should be solved on a theoretical level:

- Fundamental moral bases to define, characteristic for the Russian statehood;
- The requirement to assess the accepted legal norms from the standpoint of the interaction in it of the legal and moral regulations to fix as a rule of legal technique;
- When developing bills, the likelihood of negative transformation of moral norms in the future implementation of legal regulations must be considered.

5. Conclusion

In the conditions of a transitional state, the process of developing the legal system of the Russian Federation for its effective work is important to implement, taking into account moral and ethical standards. For this, the essence of law and morality in the modern Russian state must be identified, their optimum ratio is determined. The existence of such modern legal institutions as the discretion of judges and investigators, the court with the participation of jurors, the interpretation of law, and a number of others is difficult to imagine without taking into account moral norms. In the present work, we attempted to identify problematic aspects of the law on morality in a modern state.

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