



Law and Morality: An Analysis

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ABSTRACT

Law and morality are two words with immense capacity to make and break society. Law and morality are sometimes considered to be something similar and sometimes completely different from one another. At times, there are situations where one must either choose the law or the morals one is brought up with. A man was considered barbaric human ages ago, but as and when society has evolved, now a man is considered a social human being. A person is considered to have his own morals, ethics, conscience, and value systems and when a law contravenes the same, would that lead to peaceful coexistence between the law that needs to be followed and the morals one upholds? This is a question of jurisprudence, and the same kinds of questions will be dealt with in this research paper. This research paper is also trying to find a nexus between law and morality and evaluate if the other schools of jurisprudence give place to morality in its highest stance, like the natural school of law, or not. This research paper will help in giving a brief understanding of what law and morality are, connect them to various cases, and try to understand them in terms of Article 14 of the Rule of Law. Law and morality hold a greater position in the interpretation of our legal system and in even understanding the legal system we live in. This research paper will also include criminal jurisprudence to clarify concepts that are tough to understand and are supported by common law judgments. This research paper will try to clarify the concepts of law and morality in a

better way.

I. INTRODUCTION

The term "law" is fairly general. When it comes to India and the Hindu community in particular, Dharma served as a code of conduct prior to the introduction of legislation. In Hindu law, Dharma was really followed as law, while in Islamic law, 'hakum' was observed. Since dharma, also known as 'hakum', has been practiced since the beginning of time, everyone is aware of what it is. From dharma, morality, ethics, conscience, and other concepts have developed, including law.

An ordinary man's understanding of law is a body of rules and regulations supported by official government punishments. One might not understand the meaning of sanctions or sovereignty if we also say this. The highest authority, or supreme body within the state, is referred to as sovereign authority. The opening five words of the preamble, "WE THE PEOPLE OF INDIA," are easily noticeable in a democratic nation like India. These five lines essentially state that, as part of a social compact, we Indian people have ceded our rights to a single, sovereign body to make decisions on our behalf, provided that we choose our representatives. Thousands or even hundreds of years ago, our idea of law was very different; it was Dharma, or even British law for British India. Since then, a number of distinguished jurists have provided well-known and significant definitions of law, defining it to the best of their knowledge.

Blackstone was one such distinguished jurist who provided the following definition of law: "A rule of action that applies to all kinds of activity, whether alive or inanimate, rational or illogical, is what law in its broadest sense refers to.

"Law may be defined as the body of principles recognized and applied."

The English lawyer and scholar Mr. William Blackstone's observations on English law greatly influenced the US Constitution.

In addition to practicing law, Mr. John Salmond was a lecturer, solicitor general, and Supreme Court judge. He was a well-known New Zealander who also studied international law theory. By the government in the execution of justice."

Law and justice administration: it's crucial to distinguish between these two concepts. The legislative branch makes laws, the executive branch carries them out, and the judiciary interprets the laws and administers justice.

This essentially establishes the division of powers and the legal process for delivering justice to those whose rights have been infringed upon or violated.

Let's now examine morality, another crucial idea in this research report. Morality is the concept of what oneself or society considers to be right or wrong, particularly in reference to an individual's actions. In this research paper, it is crucial to address this significant subject because it requires us to draw a line, if not a division, between morality and the law.

Because morality is based on extremely fundamental beliefs, it has the power to upend both the foundations of law and the necessity of giving law priority. These values haven't been a part of human existence since ancient times; even a layperson is aware of his morals and how to live by them, even though he may not be aware of whether or not they are codified in legislation. Morality and law have grown to be crucial ideas for comprehending our nation's legal system.

Research Problem

There is much more to these concepts than meets the eye, especially when departmental studies and research are conducted on them. Law and morality are only two examples of these broad notions. The research challenge for this study is that a full investigation into these two subjects connected to numerous entities—whether it be civil or criminal jurisprudence—and morality was one of them. There is a divide between the two that exists, but it can be difficult to explain. This research paper attempts to examine this rift as well as situations where there is intersectionality.

Literature Review

Max Weber, *Economy and Society* (New York: Bedminster Press, 1968) The reference to Max Weber's work, which directed morality and law to the basic jurisprudential issue of the normative validity or legitimacy of legislation, would be the most striking thing to see in a journal. When a law has moral content, its legitimacy stems from the fact that it is based on moral principles; conversely, if a law is morally neutral, its validity cannot be connected to moral principles. The development of the study

problem and query was greatly aided by this paper's improved understanding of the relationship between morality and the law.

Ronald Dworkin, *Law's Empire* (1988), and Bernard Williams, *Utilitarianism For and Against*

This was one of the other significant papers published in the same publication that made the claim that the law must govern its own goals and reasoning and has immanent authority. According to this magazine, the integrity of the law must come from sources within it rather than from outside. This publication upheld the authority and supremacy of the law as essential components of its own.

Reddy, A. R. (2007). ROLE OF MORALITY IN LAW-MAKING: A CRITICAL STUDY. *Journal of the Indian Law Institute*, 49(2), 194–211,

This journal draws heavily from issues involving morality in common law jurisdictions, such as the United States of America. It also discusses a few instances in which the judiciary was faced with the difficult decision of upholding the law or morals and provides rulings on the matter. The relationship between criminal jurisprudence and morality is another topic covered in this study paper.

Cane, P. (2012). MORALITY, LAW AND CONFLICTING REASONS FOR ACTION. *The Cambridge Law Journal*, 71(1), 59–85. This journal has examined four characteristics of morality—importance, resistance to willful alteration, moral transgressions, and moral pressure—that set it apart from the law. But before Hart took on a more expansive meaning, none of these characteristics truly distinguished between right and wrong. The importance of morality in practical reasoning as the gold standard for judging human behavior was Hart's fifth chosen attribute.

Scope of the Study

India is among the nations that adhere to the common law system in this study paper on morality and the law. It will primarily examine the jurisprudential element of India and its common law system to look at the principles of law and morality, using references only from those countries that follow the common law system. The Indian territory is covered by a clause found in Article 1 of the Constitution, and this research paper will follow that clause.

Objectives of the Study

This research paper aims to achieve the following goals:

1. To comprehend morality and the law in a broader sense.
2. To examine the rifts and intersections that exist in them.
3. To evaluate critically if, in the process of enforcing justice, morality produces a dogma.

Research Question

1. Is there a divide or intersection between morality and the law?
2. Does morality have a place in India's chosen rule of law?

Hypothesis

When it comes to taking a position on the rule of law, morality can be said to complement the law but never serve as the foundation for decision-making. It is also nearly impossible to use morality as a decision-making tool because it is primarily involved in creating and amending laws rather than being legally binding or obtaining constitutional validity.

Research Methodology

The present study employs both descriptive and critical analysis methodologies throughout. The primary and secondary data used in the study are both sources. Statutes, court decisions, and books serve as primary data, and articles, blogs, websites, and journals serve as secondary data or sources that have been consulted in the creation of this work. This information has all been used to comprehend

The development of the research questions also takes into account the paper's background. These informational resources have given the research paper comprehensive support and have assisted in understanding the state of society now in relation to the topic of the study. Since this study mostly relies on current situations and enacted legislation, no field research has been conducted.

2. THE INTERSECTIONALITY AND PRESENT RIFT BETWEEN MORALITY AND LAW

Morality is very important in India, as everyone knows. Every community has its own set of morals and beliefs, and any action that goes against these is also regarded as against the morals of the community as a whole. But is the law important, or are the values of the community more important? In order to comprehend the information that goes into making laws, that is one of the most significant jurisprudential questions.

Morality is an immaterial idea that is felt but cannot be seen or touched. There are three types of morality: community-wide morality, individualized morality, and group morality. All moralities are constant and universal. Law is never an abstract idea; it is what it is, not what it should be. As stated in the constitution's preamble, there would be no social order, knowledge, or secularism in a society devoid of moral principles.

Centuries ago, Indian society held two fundamental principles of life in high regard: "satya" and "ahimsa." Great, honourable individuals like Mahavir, Gautham Buddha, and Mahatma Gandhi are examples of nonviolent persons whose values are deeply ingrained in the lives of the populace. Truth is a virtue that permeates all aspects of a person's everyday existence. However, in the post-Independence era, materialistic ideals and self-serving intrigue have undoubtedly eclipsed the truth. It has become difficult to comprehend what precisely transpires between the lines of morality and the law because of this. Materialism has overshadowed the old ethos, and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter from falsehood, misrepresentation, and suppression of facts in court proceedings.

2.1. The intersection between morality and the law:

A thorough analysis of several legal systems has demonstrated that there are, in fact, three. The relationship between law and morality is discussed in *Dalip Singh v. State of U.P.* (2010), 2 SCC 114, with occasional desertion and judicial separation, but it is never fully detached. According to Stammler, moral principles are the primary basis for jurisprudence since even laws require an ethical base in order to be upheld. In terms of morality and the law, C.K. Allen notes that "our judges have kept their fingers delicately but firmly upon the pulse of the accepted morality of the day." The law of England, according to Lord Mansfield, "prohibits everything that is contra bonos."

However, it is safe to state that the ideals of a specific social group and conventional morality have had a significant influence on the development of law, as has the moral critique of those who have contributed to the creation of the now-accepted new moralities.

Let's use Socrates as a very basic example. He was imprisoned after being found guilty of numerous charges. He denied that his students or followers had made any preparations to free him from prison. He declined since his acts would just demonstrate his hypocrisy, in his opinion. He committed his life to enlightening others about the importance of justice and upholding the law. Morally speaking, he could

have easily gotten away from this situation, but he chose not to break the law and do it. Morality was downplayed in this situation, and following the law became his driving force.

The natural law, often known as the law of God, or *Lex aeterna*, developed exclusively under the church during the Middle Ages in Europe. A law would not be regarded as having divine authority if it conflicted with God's law. It was impossible to examine the law at that time without considering morals or religion.

Even today, we still view morality as one of the primary foundations of law since, whether directly or implicitly, many laws are founded on moral principles.

For instance, theft is illegal and punishable under the Indian Penal Code, 1860, if it is done with the malicious purpose of taking money from it. However, if there is another side to the same tale, if the individual's motivation for stealing was his inability to provide his brother with even a single adequate meal, then perhaps his actions were dishonest, but his justifications made sense. In this case, morality, or the law, prevails. If the law prevails, the offender should be penalized with a fine or put in jail; nevertheless, if the same court considers the case and determines that the offender shall not be punished for trying to feed his hungry brother, morality wins. It is the judge's responsibility to consider all relevant factors before rendering a decision. However, it is important to remember that moral considerations are taken into account whenever a law is construed.

The foundation of international law has been regarded as morality as well, as it operates on moral precepts.

2.2. Relationship between law and morality is based on three angles:

1. *Morals as the foundation of law:* As was previously said, laws in ancient India were based on Dharma, which was followed by everything that was in accordance with it and everything that did not. This was due to the fact that morality, or Dharma, was seen as law in and of itself. However, since these rules were passed and put into effect when the state was established, it is now simpler to distinguish between the moral and legal domains, even though they developed differently.

2. *Morals as a test of law:* All laws, whether from Rome or the church, or any other legislation passed in violation and overturned because it did not follow the natural principle, must adhere to morality. During the 17th and 18th centuries, there was a contention that the natural law must be obeyed by the positive

law, which is the legislation enacted by the legislature. If the natural law was disregarded, not only the positive law but also the government that enacted it would be toppled. It was really inflexible. However, with the advent of the notion of the state,, morality is neither enshrined in natural law nor legally enforceable, even when rules of this kind are at odds with morals. Paton extensively writes: "If the law lags behind popular standards, it falls into disrepute; if the legal standards are too high, there are great difficulties in enforcement. ^[1]

3. Morality as the End of Law: Morality's goal is to examine what is right and wrong before eliminating conflicts of interest in society. The law exists to give justice to those who have been wronged or lawfully harmed. Though they may appear to be two distinct assertions, morality and the law share many goals. Thus, it is evident from this that morality and the law share many predictable characteristics.

2.3. Distinctive Relationship between Law and Morality

When examining the parallels or intersections between the two ideas, we primarily examined the significant role that Dharma—the natural or divine law—played. Here, the divergence between the two is mostly dependent on the positive rule, as can be observed.

The first thing that comes to mind when we consider the differences is how the state creates, upholds, and interprets laws, but morality is only a set of beliefs that a person or group adheres to at the institution's command. When someone breaks the law, they are usually subject to the punishment specified by the law, but if someone breaches an institution's morals, they are not subject to any punishment until those morals have been codified into a law. The most that can happen to someone with identical principles is a boycott from the group. That holds similar morals.

When we examine morality, we evaluate a person's internal and exterior behaviours. Being ungrateful, for instance, might be an outward action that stems from his acting on such a character, but it might also be an inside issue since he never learned to be grateful and hence did not develop such a character. Though the law evaluates an individual's outward behaviour, such as stealing, it does consider a man's malice in committing the crime, but it does not address the reasons why the man must have developed such a character, in contrast to morality.

Many things that are regarded as both legal and illegal by law may go against one's moral convictions. For instance, adultery was formerly illegal under the Indian Penal Code, but it has now been decriminalized. Morally speaking, adultery is an entirely immoral act; having sex with someone other

than your spouse is wrong and is not tolerated by the law. Therefore, anything virtuous might not be allowed by the law, and anything immoral might not be prohibited either.

Whether we are in a democracy or a communist nation, the law is implemented uniformly. Every nation-state has its own set of laws, and each one is unique. While laws are universal in nature, morality is different. Something that is morally wrong in our country might not be in another. Therefore, laws are universal in nature, but morals are not.

The Supreme Court of India ruled in *S. Khushboo v. Kanniammal* [2] that the criminal code cannot be utilized to unnecessarily intrude on an individual's right to personal autonomy and that ideas of social morality are intrinsically subjective. Criminality and morality are not mutually exclusive.

In the case of *T.A. Quereshi v. CIT*,^[3] cases are to be decided by the court on legal principles and not on one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out.

One notable case that raises unique issues about morals and the law is *R v. Dudley and Stephens* [4]. In this instance, four men were left adrift aboard a yacht in the ocean with no chance of life. They chose to kill Richard Parker, the group's youngest member, as food started to run low. They slaughtered him and consumed his flesh in order to survive. When their case reached the Queen's Bench following their rescue, the topic of whether or not such an act was morally and legally appropriate was questioned.

Both on the grounds of morality and legal precedent, the Queen's Bench, led by Lord Chief Justice Coleridge, declared that necessity was not a justification against murder. They were initially given a death sentence, but a mercy petition resulted in the verdict being overturned and their term being lowered to six months.

This allows us to attempt to comprehend the fact that morality and the law are inherently different from one another.

3. STAND OF MORALITY IN THE RULE OF LAW

One of the most important concepts in democratic nations like India is the rule of law. In a democratic country, the government is empowered by the people to establish a welfare state. But our Constitution is supreme, and no one is above it, not even the parliament.

Among the jurists who developed the most influential idea in history is A.V. Dicey, whose theory is still in use today in the majority of the world. Three perspectives that complement one another to explain the rule of law are as follows:

- 1) The supremacy of the law: The Indian Constitution is regarded as the highest authority in the country, and the law is recognized as the ultimate law of the land. Any law that is unconstitutional is deemed to be invalid or void from the beginning. The law is seen as ultimate and must be followed by everyone, regardless of circumstances.
- 2) Equality before the law: According to the rule of law, equality is crucial. This is due to the fact that every individual, regardless of status or circumstance, is entitled to equality and is governed by the general laws of the state. No one is above the law, and natural justice principles guarantee that no one's rights will be infringed upon in legal proceedings.
- 3) Judge written constitutions or the prevalence of legal spirit: Many countries reject written constitutions because they confine their scope and make it difficult to understand what is stated. If the law is not written down, it can be changed on a case-by-case basis. Judges have this ability when they interpret cases involving complex issues and render landmark decisions. When the nation has an independent judiciary, this can succeed.

This research paper discusses the rule of law because it makes it easier to explain the moral justifications when considering the idea on a case-by-case basis.

According to Ronald Dworkin, political and moral principles are the inescapable foundation of both the constitution and the laws. Legitimate, acknowledged moral precepts are not the intellectual source of the law. Rather, it is created by legislatures that reach a consensus on laws that are influenced by a shared political understanding of what is right and wrong. ^[5]

However, as morality is seen as "secreted and interstices" of the legal system, we can observe that morality has a significant influence on laws established in the current world. It is believed that when the law is applied, it encompasses more than just a set of regulations and involves ideas like equality and the greater good. We may observe how morality and the law influence one another by applying these ideas to legal regulations in a very clever way. Morality has recently permeated the legal system in the shapes of equality, justice, and morality. Sometimes morality serves as a check on the legislative branch's authority since lawmakers cannot afford to pass laws that are in opposition to societal morals and face

the detrimental consequences. Yet, when laws are made, they are never looked at from the point of view of public morality but are looked at through the prisms of constitutional morality.

According to Paton, "In marriage, so long as the lover persists, there is little need for law to rule the relations between the husband and wife—but the solicitor comes in through the door as love flies out of the window." ^[6]

Most people believe that morality is unconstitutional. To some extent, we might argue that in our current society, justice, equity, and a clear conscience originate from constitutional morality rather than public morality expanding on its own.

Although the term "constitutional morality" has not yet been defined, it essentially refers to upholding the fundamental ideals of the constitution with the highest dignity in a democracy and adhering to the fundamental principles of the document. It basically indicates that as society changes, so too should our interpretations of the constitution, as upholding constitutional morality is of utmost importance while individualistic or group moralities are not.

In the case of *Government of NCT of Delhi v. Union of India*^[7], the court was asked to interpret and render a decision regarding the extent of the Lieutenant Governor of Delhi's authority under the Indian Constitution. In this instance, the court compared constitutional morality to the "second basic structure doctrine," noting that a society's capacity for self-renewal is enabled by an enabling framework that the constitution provides in addition to its formalities and processes.

In the case of *Navtej Singh Johar v. Union of India*^[8], the Apex Court ruled in this case that Section 377 of the Indian Penal Code of 1860, which declared homosexuality and other "carnal against the order of nature" to be non-criminal, was no longer illegal. By applying the theory, the judges concluded that constitutional morality, not popular opinion, should serve as the court's guiding principle. They also made a distinction between public and constitutional morality and declared that the former should take precedence over the latter.

In the case of *Joseph Shine v. Union of India*^[9], In this instance, the Indian Penal Code, 1860's Section 497, was invalidated by the court and decriminalized adultery. The right to equality was maintained by the courts, and it was stated that morality or public opinion could not determine whether a criminal statute was constitutional. Since it was believed that wives should submit to their husbands and that

husbands should be their masters, this case served as a stark example of the need to distinguish between public and constitutional morality.

In the case of *Indian Young Lawyers Association v. State of Kerala*^[10], the court ruling is that the Sabrimala temple's policy of excluding menstruation women violates four fundamental moral tests: justice, liberty, equality, and fraternity. The court in this instance also pointed out that the word "morality" in Articles 25 and 26 refers to constitutional morality rather than public morality, and that constitutional morality, not public morality, is the standard by which the current systems of social discrimination should be assessed.

4. CONCLUSION

Given the diversity of India, it is inevitable that there are many different cultures and religious perspectives that people adhere to. Dharma was founded on these kinds of religious ideals, both centuries ago and now. Indeed, the ideas of Hukum and Dharma have provided us with the greatest grasp of what constitutes right and wrong behavior, but in the present day, we observe a branch of this understanding known as morality. Morality is, in fact, a very useful term for jurisprudential purposes. Law has always been based on morality; however, in light of the need to interpret court cases, morality must now be understood in a deeper sense. This is because even these moralities cannot and should not conflict with the Indian Constitution, which must take precedence over all other moralities. The law has a certain status in society; that is, it is something that needs to be followed at all costs, and breaking it carries consequences. The conclusion would be that since law supersedes all beliefs, laws must be created, passed, and interpreted so as to neither affect public morality nor constitutional morality. Even in the event that they do, however, constitutional morality will still prevail because society has evolved to accept this interpretation and has eliminated any rationale for rejecting those laws. A nation should develop along with society, not backward.

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