



An Analysis of Law and Morality

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SUMMARY

Morality and the law are two powerful concepts that have the power to build or destroy a civilization. Morality and the law are sometimes seen as being entirely distinct from one another and other times as being comparable. There are moments when one must decide between following the law and their upbringing. In the past, men were seen to be savage humans, but as civilization has developed, men are today seen as social beings. It is believed that each individual has their own set of values, ethics, consciences, and morals.

and would there be a harmonious coexistence between the law that must be obeyed and one's moral principles when a law violates the same? This is a jurisprudential concern, and this research article will address similar questions. This research paper will aid in providing a brief understanding of what law and morality are, connect it to various cases, and attempt to understand it in terms of Article 14 The Rule of Law. It also seeks to determine whether other schools of jurisprudence give place to morality in its high stance, such as the Natural School of Law, or not. When it comes to interpreting our legal system and even comprehending the legal framework in which we live, morality and the law are more important. In order to make difficult-to-understand issues more understandable, this study article will also feature criminal jurisprudence supported by common law rulings. The goal of this study article is to provide a clearer understanding of the notions of morality and law.

Keywords: legal systems, morality, common law, criminal law, jurisprudence, interpretation, and law.

I: OVERVIEW

Law is a very broad term. If we take India, and particularly the Hindus, into consideration, Dharma served as a code of behavior that was really followed as law under Hindu law, and Hukum was followed under Islamic law, prior to the creation of any laws. Since Dharma, also known as Hukum, has been practiced since the beginning of time, everyone, including laypeople, is aware of what it is. From this, law and other concepts like morality, ethics, conscience, etc., have developed. However, when we ask a layperson, "What is law? We receive a plethora of responses regarding the prevalence of laws and their significance to society, but do these responses truly capture the essence of the law? No.

From the perspective of the average person, law is composed of rules and regulations that are supported by the power of a sovereign nation. One might not understand the meaning of sanctions or sovereign if we also say this. The highest authority or the supreme body within the state is referred to as sovereign authority. In a democratic nation like India, the first five words of the preamble—WE THE PEOPLE OF INDIA—are very obvious. They essentially state that, as part of a social compact, we Indian citizens 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 conception of law was entirely different from what it is today. This applied to both Dharma and British-made laws 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. A notable jurist was Blackstone¹, who defined law as "a rule of conduct that applies to all sorts of activities, whether alive or inanimate, rational or illogical." Salmond² similarly defined law as "the body of principles recognize and applied by the state in the administration of justice." A crucial distinction between law and the administration of justice is that the former is carried out by the legislative branch, while the latter is carried out by the executive branch.



It is the Judiciary's responsibility to administer justice and interpret the law. This essentially establishes the division of powers and the means by which the law provides a means of enforcing individual justice for those whose rights have been infringed upon or violated.

Let's now examine morality, another key idea in this research report. A person's or a society's perception of what is right or wrong, particularly with reference to an individual's activities, is known as morality. In this study paper, it is crucial to address this idea since we must establish a link, if not a clear separation, between morality and the law. Because morality is based on such fundamental beliefs, it has the power to upend the foundations of law and raise questions about whether morality or law should be given priority. These morals have existed for eons; even a layperson is aware of his morals and how he should behave in accordance with them, even though he may not be aware of whether or not there is legal support for them. Understanding the legal system in our nation requires an understanding of both morals and the law.

1.2 Research Issue

There is much more to these notions than meets the eye, especially when thorough investigation is done on them. Two examples of these broad concepts are law and morality. The research challenge for this dissertation is that, while doing a thorough investigation into these two subjects, it was discovered that morality may be found in both criminal and civil jurisprudence, in addition to connections to several other entities. There is a divide between the two, but it can be difficult to explain. This research paper will examine this and look at situations where the rift and intersectionality are present at the same time.

1.3 Review of the Literature

The reference to Max Weber's work, which channeled morality and law to the core jurisprudential question of normative validity or legitimacy of legislation, would be the most striking feature in a journal article. If a law includes moral content, it is legitimate since morality is a prerequisite for legitimacy; if a law is morally neutral, it cannot be seen as legitimate. 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.

One of the other significant papers published in the same publication made the assertion that the law must be in charge of its own goals and reasoning and that it has immanent authoritativeness. 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 a fundamental component of its own.

1.4 The Study's Scope

This study paper on morality and the law covers nations with common law systems, such as India. Only countries that adhere to a common law system will be cited, and the primary focus will be on India's common law system and its jurisprudential framework when examining the relationship between morality and the law. This research paper will follow the provisions of Article 1 of the Constitution, which relate to the territory of India.

1.5 The Study's Objective

This research study aims to achieve the following goals:

1. to comprehend the morals and law in their broader context.
2. to examine the rifts and intersections that exist in them.
3. must evaluate closely whether morality, in the process of enforcing justice, produces a dogma.

1.6 Research Issue

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

1.7 Theory

While there are rifts and intersections in the concepts of law and morality, morality complements the rule of law but is never the basis for decision-making, and it is nearly impossible to use morality as a decision-making tool



because it is primarily involved in creating and amending the law but is never legally binding and does not confer constitutional validity.

1.8 Research Approaches

This research article employs both descriptive and critical analysis techniques throughout. The primary and secondary data used in the study are both sources. Statutes, cases, and books serve as primary sources of data, and articles, blogs, websites, and journals serve as secondary sources that were used in the creation of this study. Each of these pieces of information has been utilized to comprehend the paper's background and has also contributed to the development of the research questions. These sources of information have aided the paper in comprehending the social scene that exists now in relation to the research issue and have provided an in-depth analysis for this study. Since this study primarily focuses on current scenarios and rules, no fieldwork has been done.

II: THE RIFT AND INTERSECTIONALITY BETWEEN LAW AND HUMANITY

Morality is more important in India because, as everyone knows, every group has its own set of morals and beliefs, and anything that is done against them is also seen as being against the morals of the entire community. To understand the knowledge with which the law is made, one of the most crucial jurisprudential questions is whether the community's morality or the law itself are important.

Although morality is an abstract idea that cannot be felt or seen, it is an idea that may be touched. There are three types of morality: collective, personal, and universal values upheld by communities in their whole. Law is never an abstract idea; it is what it is, not what should be. In a society devoid of moral principles, there would be no social order, no knowledge of the outside world, and no secularism, as stated in the constitution's preamble.

Centuries ago, "satya" and "ahimsa," the two fundamental principles of life, were highly valued in Indian civilization. Great, honorable individuals like Mahavir, Gautham Buddha, and Mahatma Gandhi are known to practice nonviolence, and they have instilled this value in the lives of the populace. Truth is engrained in people as the central ideal in their day-to-day existence. However, in the post-Independence era, materialistic ideals and self-interest have undoubtedly eclipsed the truth. Because of this, it has become difficult to comprehend what precisely occurs when morality and the law collide. The ancient ethos has been eclipsed by materialism, and the desire for personal gain has grown so strong that parties to legal disputes will stop at nothing to conceal information from the judicial system or to tell lies.

2.1. Law and morality's intersection:

A thorough analysis of numerous legal systems has demonstrated that, although there are times when morality and the law diverge and are separated by the courts, these two concepts are never entirely separated. According to Stammler, jurisprudence is primarily based on moral principles since laws themselves require an ethical base in order to be upheld. The law of England forbids anything that is contrary to bonos mores, according to Lord Mansfield, and C.K. Allen, who notes that "our judges have kept their fingers delicately but firmly upon the pulse of the accepted morality of the day." However, it is safe to say that the law has developed primarily through the profound influence of conventional morality and the ideals that a particular social group holds, as well as from the moral criticism of those who have helped the development of the new kinds of morality that are currently accepted.

Let's use Socrates as a very basic example. He was imprisoned after being found guilty for a number of charges, despite the fact that his students or followers had made every arrangement to free him. He declined because his acts would just reveal his hypocrisy to others, in his opinion. His life's work was to impart to others the values of justice and fidelity to the law. When we consider this, morally speaking, he could have easily gotten away with it, but he chose not to break the law and do it. Here, morality took a backseat, and his motivation shifted to upholding the law.

Looking back to the medieval times, *lex aeterna*, often known as the natural law or the law of god, developed exclusively under the jurisdiction of the church in Europe. At that time, no law could be addressed without taking



into account the moral and religious context in which it was created. If a law violated the law of the god, it would not be regarded as a law under divine power. Even today, we still view morality as one of the primary foundations of law as many laws are, in fact, founded on moral principles; even when morality isn't stated clearly, it is taken into consideration implicitly.

For instance: Under the Indian Penal Code, 1860, stealing with the aim to defraud someone is illegal and penalized. However, if the circumstances surrounding the crime were different, the punishment would be different. Even if the crime was motivated by malice, the reasons provided explain why the perpetrator did it. Perhaps he stole because he was unable to provide his brother with even a single, healthy meal. In this case, morality or the law prevails. If the law prevails, the defendant should face a fine or even jail time; nevertheless, morality triumphs if the same court considers the circumstances and renders a decision that spares the defendant from punishment for attempting to feed his starving sibling. The judge's responsibility is to evaluate the circumstances and render a decision in line with them. However, it is important to remember that moral considerations are taken into account whenever a law is construed. Because it operates on moral precepts, morality has sometimes been regarded as the foundation of international law.

Three perspectives underlie the link between morality and the law:

1. Morality as the foundation of law: As was previously said, Dharma was the foundation for legislation in anything that went against it was destroyed in ancient India, and everything that followed the Dharma used to come first. This was due to the fact that morality or dharma were regarded as laws in and of themselves. However, because the state was established and these laws were put into effect, it is now simpler to determine that morality and the law shared a common ancestor but diverged in subsequent evolution.

2. Morals as a litmus test for the law: Whether it's Rome, the church, If a law violated the natural philosophy, it was declared unconstitutional. Son argued in the 17th and 18th centuries that the positive law, or legislation created by the The natural law must be followed by the legislature; if it isn't, then was disregarded, not only the explicit legislation but also the government that enacted it.

The law was to be repealed. It was really inflexible. However, with the emergence of the state notion, morality and natural law are no longer legally enforceable, even while such rules are not in adherence to moral principles. In his extensive writing, Paton states: "If the legislation is too stringent, it will be difficult to execute; if it is too lax, it will fall into disrepute.

3. Morality as the ultimate goal of law: The goal of morality is to ensure that those who have been wronged or legally wounded receive justice.

Examine what is just and moral, and then rid society of any conflicts of interest. Although 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 similarities. that one can expect.

2.1.2 The Unique Connection between Morality and the Law

When examining the parallels or intersections between the two ideas, we primarily focused on the significant roles that Dharma, the natural law, and divine law played. Here, the differentiation between the two is mostly dependent on the positive rule, as can be observed. The way laws are created, upheld, and interpreted in the state is the first difference that stands out when we compare the two. In contrast, morality is simply a set of beliefs that people adhere to on an individual or collective level and is called upon by institutions. 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. One person at most may face a boycott from the group of people who share their values.

Morality evaluates a person's internal and exterior behavior, for example.



For instance, he might not have learned to be grateful and as a result did not develop such a character internally. The exterior action would be that he acted on such a character. In contrast to morality, the law assesses an individual based on their outward actions. For instance, when a person commits theft, the law considers the man's malice in committing the crime, but it does not address the reasons why the man must have developed such a character.

Many things that are regarded as both legal and illegal in law may go against one's moral convictions. For instance, adultery was formerly illegal under the IPC but has now been decriminalized. Morality dictates that adultery is an entirely immoral act; having sex with someone other than one's spouse is sinful and not permitted by the law. Therefore, under the law, something moral might not be legal and something immoral might not be prohibited. When we examine law, we find that it is applied everywhere. Whether we are in a democracy or a communist country, each nation state has its own set of laws, and laws are universal. Although morals vary from country to country, laws are universal in nature. Therefore, what is immoral in one country may not be immoral in another. Therefore, rules are universal in nature, but morality is not.

Regarding S. According to the Supreme Court of India's ruling in *Khushboo v. Kanniammal*⁵, the concept of social morality is intrinsically subjective, and the criminal code cannot be applied in a way that unreasonably intrudes on an individual's right to privacy. Criminality and morality are not mutually exclusive.

For example, in *T.A.* The court should base its decisions in cases like *Quereshi v. CIT*,⁶ on legal reasons rather than personal moral convictions. Bentham and Austin, two positivist jurists, noted that morality and law are two different things.

In the well-known case of *R v. Dudley and Stephens*⁷, which raises unique ethical and legal issues, four men were left adrift on a yacht in the ocean with no means of subsistence. When food ran out, they made the decision to murder Richard Parker, the youngest member of the group. They slaughtered him and consumed his flesh in order to survive. When their case reached the Queens Bench following their rescue, concerns were raised about the morality of the act and whether it would be allowed by law.

Under Lord Chief Justice Coleridge, the Queens Bench declared that morality or previous legal decisions did not support the idea that necessity constituted a defense against murder. They were initially given the death penalty, but a mercy motion led to the verdict being overturned and their sentence being lowered to six months. We can attempt to deduce from this that morality and the law are very different from one another and will never be the same.

III: MORALITY STANDARD IN THE LAW

In democratic nations like India, the phrase "rule of law" is of utmost importance. In a democratic country, the people want their government to establish a welfare state. However, nobody is above the primacy of our Constitution—not even the parliament. Among the jurists who developed the most influential idea in history, which is still in use in the majority of the globe today, is A.V. Dicey.

The Law's Role.

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 The highest law of the land is recognized as the authority of the nation and the law. Any legislation A violation of the Constitution is regarded as null and void from the beginning. The legislation is regarded as paramount, and everyone is required to follow it regardless of anything.
2. Equal protection under the law: The rule of law regarded equality as extremely vital, this is true because everyone needs equality, regardless of status or circumstance, He is governed by national law and subject to its authority. No man will be in charge. The legal system and natural justice principles ensure that no one's rights are infringed upon. in the legal system.



3. Many countries lack a judge-written constitution or a strong legal spirit. think that a written constitution is necessary since it narrows its scope.

It becomes difficult to understand everything offered, and rules can be changed if they are not in writing. judges may exercise this discretion on a case-by-case basis when analyzing cases involving complex problems and rendering landmark decisions. When the nation maintains an independent judiciary, this can succeed.

The rule of law is discussed in this research study because it makes it simpler to explain the moral justifications when considering the idea on a case-by-case basis. Ronald Dworkin contends that political and moral principles are the inescapable foundation of both the constitution and the laws. The established, real moral precepts are not the logical source of the law. Rather, it is created by legislatures that reach a consensus on laws that are influenced by a political understanding of what is right and wrong. However, we may observe that morality has a significant influence over the current world.

laws created because morality is thought to be "secreted and interstitial" inside the legal system. It is believed that laws that are implemented incorporate specific ideals like equality and the greater good rather than just being a set of regulations. We may observe how morality and the law influence one another by applying these ideas to legal regulations in a very clever manner. Morality has recently permeated the law in the shapes of justice, equity, and good conscience. Since lawmakers cannot afford to pass laws that go against societal norms and suffer the ensuing fallout, morality does serve as a check on their authority. However, when laws are enacted, they are always examined through the lenses of constitutional morality rather than from the perspective of public morality.

According to Paton, "there is little need for law to rule the relations of the husband and wife in a married relationship as long as the lover persists, but the solicitor comes in through the door as love flies out of the window." Most people believe that morality is unconstitutional. To some extent, we might argue that in today's society, constitutional morality—rather than public morality—is what gave rise to justice, equity, and a clear conscience. Although the term "constitutional morality" has not yet been defined, it essentially refers to upholding the fundamental ideals of the constitution in a democracy and is the moral duty of every individual to do so. 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.

The court was asked to interpret and determine what authority the Lieutenant Governor of Delhi had under the Indian Constitution in the matter of Government of NCIT of Delhi v. Union of India¹⁰. In this instance, the court compared constitutional morality to a "second basic structure doctrine," noting that it is not only the constitution's forms and processes that give societies the opportunity for self-renewal, but also its enabling environment.

Section 377 of the Indian Penal Code of 1860, which declared homosexuality to be "carnal against the order of nature," was declared to be non-criminal in the case of Navtej Singh Johar v. Union of India¹¹. By applying the doctrine, the judges concluded that the court should be guided by constitutional morality rather than popular opinion. They also distinguished between public and constitutional morality and declared that the former would have a greater influence on the latter.

In Joseph Shine v. Union of India¹², the court upheld the right to equality and declared that the constitutional validity of criminal law shall not be predicated on public opinion or morality. The court also struck down and decriminalized adultery under Section 497 of the Indian Penal Code, 1860. This case served as a clear example of the distinction between public morality and constitutional morality since it was believed that for women to be subservient to their husbands and for husbands to be their masters went against many aspects and principles of the constitution.



The court ruled in *Indian Young Lawyers Association v. State of Kerala*¹³ that the ban on menstruating women from the Sabrimala temple violates the four fundamental moral principles of justice, liberty, equality, and fraternity. In this decision, the court further observed that the word "morality" in Articles 25 and 26 refers to constitutional morality rather than public morality, and that the current systems of social discrimination must be assessed through the prism of constitutional morality rather than public morality.

IV: FINAL SUMMARY

Given that India is a varied country, there are many different cultures and religious beliefs 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 provide the best guidance for determining whether a certain action is right or bad, but in the present day, we observe a branch of these ideas that has become known as morality. Morality is, in fact, a very useful term for jurisprudential purposes.

Law has always been based on morality, but in order to interpret court cases, morality must be understood in a deeper sense. This is because even these moralities cannot and should not conflict with India's constitution, which requires constitutional morality to take precedence over all other moralities. This study article aims to conclude that although morality served as the basis for the creation of law, legislation currently takes precedence above individual or even group morality. Laws have a special place in society; they are expected to be followed at all costs and have consequences for breaking them. 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 laws do affect constitutional morality, they will still be upheld because society has evolved to accept this interpretation and has eliminated any rationale for rejecting them. The nation ought to advance as society does not decline but rather changes.

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