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From Legal Codes to Moral Compass: Navigating the Conflicts in Law and Morals

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ABSTRACT

Law is a complex study, isolation of law is practically not possible. The jurisprudential theories have been evolving and have introduced numerous approaches. Morality and law though viewed as conflicting are foundationally inseparable. The paper highlights arguments between legal positivism and natural law theory while discussing how morality has historically influenced the creation of laws both internationally and in India. It places emphasis on the development of legal frameworks that give constitutional morality top priority, guaranteeing respect to the core values and rights enshrined in the Indian Constitution. The societies are governed by law nonetheless they are at times built on moral and religious values. Consequently, our law has to deal with morals and religion by resolving the issues between constitutional morality and social morality. Civilization has brought great developments and transformations in society but has not completely brought it out of its roots. This paper explores how Indian jurisprudence dynamically balances social and constitutional values. It explores the ways in which these two moral systems impact legal interpretations and rulings, influencing the development of legislations. The concept of social morality is examined in its cultural and societal context, highlighting its role in governing the human behaviour and societal norms. On the other hand, constitutional morality is defined as upholding the values found in the Indian Constitution, which prioritizes justice, equality, and fundamental rights over customary social norms. This paper examines how social morality is shaped by cultural and societal circumstances and how it influences and interprets the law, emphasizing how laws change over time to reflect changing social standards.

Keywords: Law, Morals, Jurisprudential, Constitutional Morality, Religion.

I. INTRODUCTION

Law being a multifaceted concept has been defined diversely by jurists over time. The ancient philosophers associated law with good, the highest good, or with truth. Later it was a rule regulating external conduct and gradually came to be defined as “rules regulating the conduct backed by a sovereign sanction”². There are certain terms that coincide with law, these are

¹ Author is a LL.M. Student at ILS Law College Pune, India.

² Rajib Hassan, ‘Law is a Command of the Sovereign Backed by the Sanction: Austinian Command Theory of

justice, ethics, equity, and morality. Deeply rooted in law they play a key role in the operation of law.

Religion has been the way of life since time immemorial, no doubt it has often been described in terms of societal impact as it binds people together. It somehow forms the foundation for the existence and behavior of people, guiding them through morals and norms sorting the right and wrong deeds. Morals define the inner conscience of a person, it imparts the judgment of right and wrong based on their faith and beliefs. There cannot be universally followed morals, they differ from person to person and society to society. Law on the other hand is a binding force on subjects that comes with a sanction.

The roots of law emerge from religion and morals. They collectively guide human behavior and conduct, nevertheless, only the Law has effective enforceability over the others. It would not be wrong to say that with civilization and social development, Law has emerged from Religion and morality. The Hindu jurisprudence was solely based on “dharma” the age-old code of conduct, which prevailed as law for that time. Similarly, Fiq the Islamic jurisprudence aims to apply the prophetic teachings to human behavior. Law has been developing since its emergence and during this evolution, it has been continuously witnessing morals and religious influences in it.

In India moral values are of great significance and people have still bound themselves to the *Dharma* principles³. The diverse nation has countless sets of moral principles that quite often are found contradictory to each other. At times it can be seen that religious sensitivities impede the flow of fundamental rights, however, these religious sensitivities are the roots of fundamental rights. Law cannot be considered as an abstract concept, it is preferably acknowledged as what it is and not what it ought to be. But the major issue arises when there is a conflict of interest between religion, morals, and the Laws.

The idea is clear on enforcement of law i.e. on the individual and society, as law operates on a society. Society is built up of morals and values, which in general are the product of religion and this has constantly formed a base for developing the legal theory. The ancient Hindu texts gave the concept of *dharma*, the then code of conduct which came to be recognized as the highest ideal of human life. It is the Hindu jurisprudence's⁴ contribution to the natural law theory. *Dharma* signifies prudent conduct and confined obligations, rights, morals, and virtues.

Law- Revisited' (2023) 6(1) IJLMH < <https://doi.org/10.1000/IJLMH.114303> > accessed 13 may 2024.

³ Rachna Pramod Joshi & Ujjawala Sakhalkar, 'Dharma as the foundation of Legal Rights and Duties in Modern Context' (2023) 52(4) Anvesak 223.

⁴ D.p Singh, *Morality in Law* (1st edn, Eastern Book Company 2012) 73.

The Natural Law jurists recognize Law as the basis of moral principles. They believe that morals should be the foundation of any law because these principles are accepted by major societies and will help guide the law better. While few are of the view that law ultimately has a divine source. Lon L. Fuller the American jurist in his book “The Morality of Law”⁵ contends that all the legal systems carry “internal morality” that obliges them to the law. Hugo Grotius one of the originators of Natural law theory is universally applicable irrespective of religious beliefs, this idea further contributed to the development of international law.

One of Roscoe Pound's major works is the development of sociological jurisprudence, which consists of the idea that societal morals should be implemented through laws and that the law develops with society's principles. According to him, justice has to be the leading ideal in every legal system while reflecting the morals and values of society. H.L.A Hart a British legal philosopher and also the advocate of legal positivism argued the clear separation of morality from law. His contentions are termed the “Hart-Fuller debate”⁶ that focused on the nature of law, where he was of the view of law and morality being completely separate while Fuller believed in the existence of a strong interconnection between law and morality.

In India moral values are of great significance and people have still bound themselves to the *Dharma* principles. The diverse nation has countless sets of moral principles that quite often are found contradictory to each other. At times it can be seen that religious sensitivities obstruct the flow of fundamental rights, however, these religious sensitivities are the outgrowth of fundamental rights. Law cannot be considered as an abstract concept, it is preferably acknowledged as what it is and not what it ought to be. But the major issue arises when there is a conflict of interest between religion, morals, and the Laws.

This paper seeks to comprehensively investigate the varied relationships and conflicts between law, morality, and religion in the Indian context by spanning the historical and contemporary periods. The research shall study certain cases and statutes within the domain to further illustrate and analyze the intersection and interplay. The pivotal role of the judiciary in preserving and harmonizing the delicate balance will be investigated by understanding the judicial trends.

II. THE INTERPLAY OF LAW MORALITY AND RELIGION

Natural law implies the traditions carried in morals. Tradition covers a chief portion of culture and most importantly the legal culture. The well-established traditions have now taken the place

⁵ Lon Fuller, *The Morality of Law* (1st edn, New Heaven and London 1964) 44-47.

⁶ Sonali Bannerjee, ‘The Relevance of the Hart & Fuller Debate Relating to Law and Morality- A Critical Analysis’ (2017) 4(2) < <https://ijlljs.in/article/the-relevance-of-the-hart-fuller-debate-relating-to-law-and-morality-a-critical-analysis> > accessed 23 June 2024.

of substantive and continuous anatomy of attitudes and practices which later are the basis for renewal and evolution. The divine law in the bible has been dominant in influencing the legal concept in the West and similarly, the divine law of god through the *dharma* intensity *vide vedas, ritis, nitis mimansa*, etc. has commanded the legal system in India till the common law took over the reign. Concisely, the relationship between law and morality could be credited to the emergence of law as spirituality as rather rational thought.

However, the inclusion of morality in the domain of law has proved to be quite assisting in administration and enforcement as it creates a moral fear of disobedience in the people. But, law and morality have some major issues in hand that are jurisprudentially common to both for example, homosexuality, abortion rights, gender abuse and exploitation, begging, terrorism, immoral human trafficking, etc. which can be addressed by bringing moral and legal knowledge together. Now, the main question for the jurists remains whether it is law that is the product or morality or morality is the product of law, which ultimately goes back to the root of the conflicting opinion by refusing the presence of morals in the domain of law.

(A) History and Jurisprudence

In the nineteenth century, the chief issue of debate among the jurists was the relation of morality with law. In the words of Rudolf Von Jhering, it is the “cape horn”⁷ of jurisprudence. Morals are standards of good or bad behavior believed by individuals or society. Morality is the body of conduct ratified by custom or habitual acts. Religion forms a society that shapes the moral foundation for those members. Religion is a vital component in influencing morals and values in numerous ways. Christian morality is the conduct sanctioned by Christians in accordance with Christian principles. Same for Hindus, Hindu morality is defined by the standard norms and conducts accepted by Hinduism.

Morals in the name of policies impose unforeseen restrictions on human conduct, which may differ from society to society. These policies are societal laws. In the Indian scenario, there has been very little difference between law and morality but with time they emerged as two different concepts. Though it may be based on religious principles and doctrines because of its well-defended ancient acceptance apparently it shall be dependent on its perceived soundness and providing regulating principles with the constituents of social recognition in order to regulate the sociological order for humanity and social ethics as a whole.

The positivist law jurists like H.L.A Hart, Bentham, Austin, and Kelson have on purpose kept justice and morality outside the ambit of the legal system. They rejected the idea of using law

⁷ William Seagle, ‘Rudolf von Jhering: Or Law as a Means to an End’ (1945) 13(1) U Chicago Law Review 74.

as an agent of enforcing morality and ethics. Their approach is inclined towards studying law as it is and not what law ought to be. The positive law school had a huge impact on law-making in Europe, this eventually aided in the separation of morality from law and as a result affected societal morals. Later with this development people realized that they were obligated to follow the law and that morality was an option.

Hart⁸ acknowledges the close relationship between law and morality. However, rejects it as a necessary condition for legal validity. He focused on the use of criminal law in enforcing morality particularly, sexual morality which gained particular interest after the publication of Wolfenden Report⁹. He sets forth four questions concerning the enforceability of morality through legal coercions: 1) has the development of law been influenced by morals? 2) Should morality be included in a comprehensive definition of law? 3) Is the law open to moral criticism? 4) certain conduct is by common standards immoral sufficient to justify making that conduct punishable by law? He rejects P. Delvin's claim that the State cannot be limited to legislate against and that the function of criminal law is to enforce morality and nothing else. He demands justification from moralists as to why a particular sin should be criminalized. Corresponding to JS Mill's "harm principle" with respect to sexual morality, he assents to punish public indecency and not private immorality as it does not result in harm to any person. He ignores the social aspects by only focusing on "individuality" and criticizes moral enforcement as an obstacle to the progress of individuality.

J. S. Mill¹⁰ With his theory of liberty, sets a distinction between individual liberty and authority. He argues that an individual must be allowed to pursue his own good until he inflicts harm to any other individual (The Harm Principle). The book is divided into five chapters discussing about the power society can legitimately command over individual liberty, whether it is just to limit the expression of opinion and the ideal conduct of an individual to minimize his chance of facing litigation. According to him, liberty is important for an individual's development and society must not interfere with self-regarding concerns of the individual. He disregards society's "likings and dislikings" as a standard of political or legislative decision-making. He has limited his discussion to a utilitarian framework concerning only with good or harm of others including that of social interference. He justifies enforcement of only that "morality" which has the potential of inflicting harm on others.

In the Indian context, Kautaliya introduced the codified law outside the religion. However, his

⁸ H. L. A. Hart, *law, liberty & morality* (1st edn, Oxford Paperbacks 1968).

⁹ Home Office, *Report of the Committee on Homosexual Offences and Prostitution* (Cmnd 247, 1957).

¹⁰ J.S. Mill, *On Liberty* (2nd edn, John Parker & Son 1859) 57.

codified law had strict principles regulating society based mainly on morality. In ancient India, jurisprudence could never draw a stringent line between law and morality. *Dharma* was the predominant code prevailing, widely regarded as a morality norm. For example, the *Vedas* and *Smritis* which formed the base for values later became the major source of Hindu law. Gradually *Mimansa* expanded several concepts that formed significant distinctions in the recommendatory rules, which would be effective in implementing morality as well as beneficial for society and required rules, which are obligatory in nature i.e. the law. So, morals were ultimately derived from religion, and law was derived from the state. Law and morality may in many ways contradict but eventually have a common root. Both are the regulators of human life.

Morality is relatively a dynamic concept. In modern times it keeps fluctuating and evolving. Now the major issue arises when the law is unable to meet this morality or when the law is unable to separate itself from the outdated morality. The law aims to seek justice, which might or might not be consistent to the morals of the society. Roscoe Pound¹¹ describes four stages for the development of law with regard to morality:

1. In the first stage there is identical ethical custom, customs of popular action, religion and law. This is the pre-legal stage in the evolution of law where law and morals were same one and the same thing.
2. In the second stage the law is strict law i.e. codified and crystallized law. However, with time it is overtaken by morality and possesses no sufficient power to walk along with morality.
3. The third stage is the infusion of morality into law where the law is shaped by inculcating morals. Here Equity and Natural law are the capable agencies of future development.
4. The last stage is the maturity of law which involves conscious and constructive law-making. The morality and morals are for the law makers and the law alone is for the judge.

Law and morality relationship can be studied with three dimensions¹², first where morals are the basis of law. This is the ancient angle and there is no distinction between law and morality. Rules are from the divine source and are backed by supernatural fear. The state picks up those crucial rules for regulating society. Though having common roots they diverge in their evolution. The second dimension is Morals as the test of law. Since morals hold a crucial place in society, it was an obligation for a law to have conformity with the morals. The religious preachers made sure the law passed the morality test in the early and middle ages. Paton also

¹¹ Roscoe Pound, *The Ideal Element in Law* (Stephen Presser ed, Liberty Fund 2002) 66.

¹² Edwin Tucker, 'The morality of law, by Lon Fuller' (1965) 40 *Indiana Law Journal* 270.

claims that if the law fails to meet the moral standard it falls into humiliation. The high legal standards attract high difficulties in enforcement. The third angle is morals as end of law. The main aim of every law in every legal system is to secure justice. Justice is however based on morality. Some jurists are of the view that law and morality ultimately hold the common goal i.e. welfare of the society.

The fourth angle could be considered morals as part of law. Nevertheless, law and morals are now distinguishable but morals do form an integral part of law. Morality is deeply rooted in the law and is inseparable from law. In terms of Prof H.L.A Hart some shared morality is crucial for survival in any given society¹³. While interpreting law it shall be inappropriate to follow the positivist theory especially when the society concerned is suffering from corruption, communalism, casteism, and other majorly prevailing social issues. When the law is at times vague or unclear on certain aspects, it is the common law principles that act as guiding light in the social and national interest.

III. INFLUENCE ON LEGAL NORMS

In India, people believe that morality is very important and each community has its own set of morals and beliefs. Going against these morals is considered wrong against the whole community. But then there arises a question of whether community morals or the law is more important. This is a significant question in understanding how laws are created. Morality is a concept that can't be touched or seen but can be felt, it is a sentiment. Morals exist in every society. There are morals for groups, individuals, and whole communities.

Unlike morality, law is not abstract. It is what it is, and a society without moral values would lack social order and secularism, as stated in the Constitution. In earlier times, Indian society valued two basic principles: "satya" (truth) and "ahimsa" (non-violence). Great figures like Mahavir, Gautam Buddha, and Mahatma Gandhi followed non-violence. However, gradually, truth has been overshadowed by materialistic values and selfish interests. This has made it difficult to understand the relationship between morality and law. Materialism has now replaced old values, and the pursuit of personal gain has become very intense¹⁴.

Research across various legal systems has shown that there is indeed a connection between law and morality, with occasional separation and judicial independence, but they are never entirely set apart. Stammler's¹⁵ view is that jurisprudence relies heavily on moral grounds because a law

¹³ William Starr, 'Law and Morality in H.L.A Hart Legal Philosophy' (1984) 67 *Marquette Law Review* 673.

¹⁴ *Dalip Singh v. State of U.P* (2010) 2 SCC 114.

¹⁵ Isaac Husik, 'The Legal Philosophy of Rudolph Stammler' (1924) 24(4) *Columbia Law Review* 374.

needs ethical foundations to stand firm. C.K. Allen notes that judges stay in tune with the accepted morality of the present, and Lord Mansfield elaborates that English law prohibits anything against good morals.

It could be said that law has largely developed under the profound influence of conventional morality, the ideals of specific social groups, and moral criticism from those who have contributed to the development of new moral standards. Morality contributes to both internal and external actions, such as ingratitude, considering both the lack of a grateful character and the actions resulting from it. Conversely, the law focuses on a person's external actions, like theft, where it considers the malicious intention but does not dig into the foundation of the person's character as morality might.

In law, certain actions may be deemed legal or illegal, even if they go against one's morals. For example, adultery was a criminal offense under the Indian Penal Code but was later decriminalized. Adultery, considered immoral behaviour, may not align with the law's acceptance to it and decriminalizing it. This shows that what is moral may not always be legal, and what is immoral may not necessarily be illegal under the law. Unlike laws, which are applied universally, morals vary from one culture to another. What is considered immoral in one country may not be the same in another. Therefore, morals are not universal, but laws and its principles are.

In the case of *S. Khushboo v. Kanniammal*¹⁶, the Supreme Court of India emphasized that notions of social morality are subjective, and criminal law shouldn't unduly interfere with personal autonomy. Morality and criminality cannot always be aligned. In *T.A. Qureshi v. CIT*¹⁷, the court stressed that cases should be decided based on legal principles, not personal moral norms. This distinction between law and morality is also highlighted by positivist jurists like Bentham and Austin.

The case of *R v. Dudley and Stephens*¹⁸ is a notable example that challenges the separation of law and morality. Stranded at sea with no hope of survival, four men decided to kill and eat the youngest member. When rescued, the legal and moral acceptability of their actions was questioned. The Queens Bench, led by Lord Chief Justice Coleridge, ruled that necessity couldn't be a defence against murder, neither legally nor morally. Although initially sentenced to death, the punishment was reduced to six months on a mercy plea. This case illustrates the significant differences between law and morality, showing that they can never be considered

¹⁶ *Khushboo v. Kanniamal* (2010) SCC 600.

¹⁷ *T.A. Qureshi v. CIT* 2007 (2) SCC 759.

¹⁸ *R V. Dudley and Stephens* (1884) 14 QBD 273.

the same.

Law and morality are closely intertwined, even though they are subjects studied in different fields—Political Science for law and Ethics for morality. They brace each other, guiding individuals on proper conduct and distinguishing between right and wrong. Ethics teaches a code of conduct, making us aware of the moral implications of our actions and helping shape our moral character. Similarly, state-enacted laws aim to achieve the same overarching goal: promoting the well-being of people and preventing wrong. Another question that arises is that whether to strive for an ideal state, adherence to moral principles is crucial.

Laws based on morality, such as those which are considered evil by the society like drinking, gambling, theft, and murder, aim to eliminate societal vices and promote spiritual development. Social development is hindered when moral principles are ignored, leading to increased crime and a return to a state of savagery, losing the track of civilization. The responsibility for maintaining a high moral standard in society lies with the state. Citizens in an efficient State tend to be good themselves, while those in a scrupulous state may exhibit undesirable behaviour.

Laws often reflect moral standards, and in democracies, there is a typically visible alignment between legal principles and morality. Laws are seen as products of the prevailing morality within a state. The relationship between law and morality is multi-faceted, with laws influencing public sentiment and attitudes, while also serving as an instrument for moral change. Therefore, legislators pay close attention to the interconnection between law and morality, recognizing that the line between what is illegal and what is immoral can be blurry. Though ultimately, both law and morality play significant roles in shaping individual conduct and societal well-being.

Indeed, the relationship between law and morality is complex, and there are instances where they diverge. On one hand, certain acts are considered social wrongs and are both morally condemned and rendered illegal by law. However, there are circumstances where moral values are not legally enforced, and there is no formal mechanism to monitor adherence to these morals. For example, if a person chooses not to help the poor despite being wealthy or decides not to save a drowning person despite being a good swimmer, there is no legal punishment.

Furthermore, the divergence between law and morality is more perceptible when rules considered immoral are implemented as legal. One prominent example is the historical perspective on homosexuality laws. Moral views on homosexuality, often influenced by religious beliefs, have been not in favour. For a long time, various religions opposed the idea of homosexuality, citing it as immoral and against the natural order. The concept faced discrimination and condemnation in societies that deemed it non-religious or unnatural.

A) *Homosexuality laws*

In the context of Indian law, Section 377 of the Indian Penal Code criminalized any penetrative sex considered "against the order of nature" and not leading to reproduction. This criminalized sexual expressions by the LGBTQ community. However, over time, societal attitudes changed, and call for for LGBTQ rights gained momentum. Various organizations, including the National Aids Control Organization and the Naz Foundation, raised their voices against Section 377. The Law Commission of India also recommended decriminalizing homosexuality.

In a significant development¹⁹, the 5-judge constitutional bench of the Supreme Court of India invalidated some parts of Section 377 of IPC, marking a move towards decriminalizing homosexuality. This example illustrates how, through societal pressure and evolving moral perspectives, legal changes can occur, reflecting the dynamic interplay between law and morality.

B) *Abortion laws*

The issue of abortion has been a subject of extensive debate, where morality and laws clash on the question of legalizing abortion and granting women the right to decide whether to proceed with a pregnancy. From a global perspective, various religious beliefs, such as those found in the Bible and Roman Catholicism, strongly oppose and condemn abortion, considering it morally abhorrent and cruel. In Hinduism, the practice is often viewed as brutal and condemned. These moral perspectives are often rooted in religious teachings and beliefs. However, another dimension of the debate considers abortion from a logical and fair perspective, emphasizing a woman's rights over her own body. This argument supports a woman's right to choose abortion based on her will, invoking the Right to Abortion, Right to Freedom, and Right to Privacy.

The landmark case of *Roe v. Wade*²⁰ emphasized the Right to Abortion as part of the Right to Privacy, asserting that it cannot be termed as wrong within certain limits. Similarly, in India, the law allows for the termination of pregnancy within 24 weeks in exceptional cases such as rape.

Despite moral objections, the law has accommodated the reality that abortion cannot be entirely eliminated. Legal frameworks, acknowledging the complexity of the issue and the rights of women, have sought to strike a balance by allowing for specific circumstances where abortion is legally permissible. This reflects the ongoing tension and negotiation between moral values

¹⁹ *Navtej Singh Johar v. Union of India* 2018 (10) SCC 1.

²⁰ *Roe v. Wade* 410 U.S. 113.

and legal considerations surrounding the topic of abortion.

C) Betting and Morality

India has a historical cultural opposition to gambling, despite its existence in society since ancient times, however textual references indicate that such activities have not been socially approved. The government generally prohibits gambling to prevent societal harm and safeguard social stigmas.

The question of whether the state has the right to regulate private morals has often been at the core of gambling prohibition laws. J.S. Mill examined the restriction on the State's authority to curtail individual liberty. He emphasized the tension between an individual's freedom to engage in preferred trade and activities and the societal repercussions that may arise from those choices²¹. He was of the view that such legislations curtail the right of wealth generation. Arguments in favour of legalizing gambling weigh upon individual autonomy and minimal state interference, while those against it cite immorality as a justifiable reason for restricting individual liberty to maintain societal order.

In the notable case of *Guru Prasad Biswas & Anr. v. State of West Bengal & Ors.*²², the Calcutta High Court pinned that betting and gambling activities affect a person's morality, potentially infringing on the right to life guaranteed under Article 21 of the Constitution. The Supreme Court, in *Gherulal Parakh v. Mahadeodas Maiya & Ors.*²³, emphasized that the term 'immoral' is comprehensive and context-dependent, with no universal standard. The notion of morality in gambling is quite different from that in sports betting. Sports involve skill, strategy, and effort, whereas gambling relies on chance. The accusation of immorality may not apply to sports betting if substantial skill is required. Ideally, constitutional morality should guide state intervention, and offending public morality alone should not determine the legality of an action. The term 'immorality' alone cannot serve as grounds to challenge the constitutional validity of a law because morality is a subjective concept. However, if a provision in the Constitution compromises an individual's dignity, it may be challenged as violative of Article 21, which guarantees the right to life and personal liberty. Similarly, if a custom or usage is deemed 'immoral' by a particular group, they may challenge it accordingly.

It's crucial to understand that morality and criminality are not always synonymous. Morality can be a basis for imposing reasonable restrictions on an individual's freedom, but the two

²¹ Law Commission of India, *Legal framework: gambling and sports betting including in cricket in India* (Law Com No 21, 2018) paras 4.8 – 4.10.

²² *Guru Prasad Biswas v. State of West Bengal* (1998) 2 CALLT 215 HC.

²³ *Gherulal Parakh v. Mahadeodas Maiya* 1959 AIR 781.

concepts do not always align. Defining morality in law is a continuous process, and the law must evolve to adapt to the changing needs of society over time. Therefore, the law remains in a state of flux while attempting to define and incorporate moral considerations.

IV. THE JUDICIAL PERSPECTIVE

Morality plays a vital role in shaping individual and societal values. Morality encompasses principles of right and wrong conduct, often influenced by cultural, religious, and philosophical beliefs. It provides a moral compass for individuals and communities, guiding ethical decision-making. While morality is deeply personal, it can influence societal norms and expectations, contributing to the formation and evolution of laws.

The interplay between law, justice, and morality is complex. While laws are designed to codify societal norms and establish a framework for justice, the interpretation and application of laws can be influenced by moral considerations. Instances may arise where legal decisions align with prevailing moral values, while in other cases, there might be a disconnect.

Thus, law, justice, and morality are interconnected but distinct concepts. Law provides a structured framework of rules, justice embodies fairness and ethical rightness, and morality encompasses personal and cultural principles of right and wrong. The coexistence and interplay of these concepts are fundamental to creating a just and equitable society.

(A) Social Morality vs Constitutional Morality

Social morality refers to the set of values and norms that exist in a society, governing the behavior of its members for their welfare and well-being. It is not precisely defined and varies across cultures, encompassing beliefs, practices, traditions, and customs prevalent in a given society. Social morality provides guidelines for peaceful coexistence, fostering harmony and preventing conflict among community members. It influences behavior in various aspects of life, including social, economic, environmental, and political domains.

Social morality serves as an ethical framework for evaluating people's actions and addressing ethical questions encountered in society. It plays a crucial role in determining how individuals behave toward one another and how they treat their communities, environments, and societies as a whole. Concepts such as rights, justice, equality, and liberty are integral to social morality.

On the other hand, constitutional morality refers to adherence to the principles and values enshrined in a constitution. It involves aligning individual and societal behavior with the constitutional framework and upholding the constitutional principles of justice, equality, and fundamental rights over social norms.

The Constitution of India is the supreme law of the land, serving as a dynamic and ever-evolving document that guides the judiciary in addressing various issues. The flexibility provided by the constituent assembly allows the Constitution to adapt to the changing requirements and circumstances of Indian society.

The Constitution enshrines essential principles such as liberty, equality, fraternity, and justice, acting as a moral compass for different branches of the government. It guides the legislature in the creation and implementation of laws, and it provides a framework for the judiciary to interpret and decide on issues brought before it. While the Constitution is the longest written document globally, it cannot explicitly cover all principles needed for the evolving needs of society. Consequently, the judiciary sometimes crafts new doctrines to address emerging issues and uphold justice.

The concept of "Constitutional Morality" eventually gained prominence and has been playing a crucial role in guiding judgments in the Indian judiciary, particularly in landmark cases. It implies adherence to the constitutional principles and norms, going beyond literal interpretations and fostering the spirit of constitutionalism

The term 'Constitutional morality' is not explicitly defined in the Constitution but has been subject to interpretation by judges. It is indirectly embedded in the Constitution itself, reflected in Part III (Fundamental Rights), Part IV (Directive Principles of State Policy), the Preamble, and Fundamental Duties (Article 12-35, Article 36-51). Judges draw upon these constitutional provisions to interpret and apply the concept of constitutional morality in their decisions. This concept underscores the importance of aligning actions and decisions with the constitutional principles and values that underpin the Indian legal system.

However constitutional morality has not been defined in the constitution but has been developed as an essential doctrine that safeguards the constitution. The apex court in the *Manoj Narula*²⁴ judgement came up with a clear definition, "constitutional morality means following the principles and ideology of the constitution, and avoiding actions that are violative to rule of law and seem arbitrary". Constitutional Morality serves as a guiding principle for the judiciary, ensuring justice, dignity, and equality for all citizens. It upholds the constitutional spirit, preventing majoritarian views from infringing on fundamental rights. The dynamic nature of Constitutional Morality ensures that legal systems evolve with societal changes, promoting a just and inclusive society. This interpretation emphasizes a commitment to the Constitution as a facet of Constitutional Morality.

²⁴ *Manoj Narula v. Union of India* (2014) 9 SCC 1 459.

While social morality is rooted in societal values and norms, constitutional morality is centered around adherence to constitutional principles. The dynamic interplay between these two concepts shapes legal interpretations and judgments, influencing the evolving landscape of laws and rights in a society.

In legal contexts, the interplay between social and constitutional morality can be complex. Judgments such as those in the cases of *Naz Foundation vs. Government of NCT of Delhi*²⁵, *Suresh Kumar Koushal vs. Naz Foundation*²⁶, and *Navtej Singh Johar*²⁷ illustrate the dynamic relationship between these two concepts. The legal interpretation often involves balancing the values embedded in social morality with the constitutional principles that guide the legal system.

In the landmark *Navtej Singh Johar* judgement, the emphasis was placed on constitutional morality, affirming the rights and dignity of individuals irrespective of their sexual orientation. This case marked a shift where constitutional morality prevailed over societal norms, contributing to a more inclusive legal framework. It marked a revolutionary approach, reading down Section 377. The judgment was based on transformative constitutionalism, constitutional morality, and the right to privacy. It showcased that Constitutional Morality goes beyond literal texts, aiming to make society more pluralistic and inclusive.

*NCT of Delhi v. Union of India*²⁸ presented a new perspective, pairing Constitutional Morality with the spirit of the Constitution, standard to the doctrine of basic structure. It implies strict adherence to constitutional principles in all constitutional functions.

While Constitutional Morality guides the judiciary, legislature, and executive, there are instances where social morality has been prioritized over constitutional morality. In the *Suresh Kumar Koushal case*, the court upheld the validity of Section 377, emphasizing the small fragment of the LGBTQ+ population. This decision was criticized immensely for prioritizing social morality over fundamental rights, violating Articles 14, 19, and 21.

The judiciary has to uphold constitutional principles, ensuring justice for all sections of society, even if a minority. Constitutional Morality acts as a yardstick for decision-making, thus preventing majoritarian societal views from violating fundamental rights. It guides the courts to decide justly, irrespective of societal opinions.

The evolution of laws, like the striking down of Section 377, reflects the need for legal systems

²⁵ *Naz foundation v. government of NCT Delhi* 160 Delhi Law Times 277.

²⁶ *Suresh Kumar Koushal v. Naz foundation* (2014) 1 SCC 1.

²⁷ *Navtej Singh Johar v. Union of India* (2017) 9 SCC 1.

²⁸ *NCT of Delhi v. Union of India* (2018) 8 SCC 501.

to adapt to societal changes. Constitutional Morality ensures that laws align with constitutional principles, preventing violations of fundamental rights based on social morality.

On the other side the Allahabad High court²⁹ was seen stepping beyond constitutional morality and inclining towards social morality by denying protection to inter-faith live-in couple. The decision went ahead by calling such a relationship immoral and violative of personal laws. The ungrounded reliance placed on personal laws above the constitution attracted massive disapproval and criticism.

The Supreme Court's landmark judgment³⁰, allowing women's entry into the Sabarimala temple, marked a significant decision by a 4:1 majority. The court held that banning the entry of women into the temple violates their right to freedom of religion under Article 25 of the Indian Constitution. The Constitution stands on the highest pedestal and is more significant than customs and morals. As Justice DY Chandrachud remarks that morality mentioned under Article 25 and 26 is constitutional morality and it has to be in accordance with the pillars of our legal philosophy Justice, liberty and equality and excluding women of a certain age group goes beyond the philosophy. The court also struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional. Rule 3(b) allowed Hindu denominations to exclude women from public places of worship on the grounds of custom. The majority opinion emphasized that Sabarimala temple does not constitute a separate religious denomination, subjecting it to the state's social reform under Article 25(2)(b). Here, Article 25(1) was invoked to protect the fundamental rights of women between the ages of 10-50.

Justice Chandrachud expressed that the exclusion of women was against constitutional morality. He underlined that biological factors should not affect what our constitution guarantees and menstrual status is not a valid ground to deny the right to worship. He connected the practice to untouchability under Article 17, as the exclusion of women amounts to discrimination based on gender.

However, Justice Indu Malhotra dissented, asserting that constitutional morality in a secular polity requires the harmonization of competing claims to fundamental rights. She argued for respecting religious denominational rights, even if the practice seems illogical. She believed Sabarimala temple satisfied the test of a separate religious denomination protected under Article 26(b). She held that India's pluralistic society must respect individual rights to practice and propagate their faith. She rejected arguments that Rule 3(b) of the Kerala Hindu Places of Public

²⁹ *Kiran Rawat v. State of UP* SCC OnLine All 323.

³⁰ *Indian young lawyers Association and others v. The state of Kerala* (2017) 10 SCC 689.

Worship Act conflicted with Article 26(b) and dismissed claims of untouchability based on gender.

The verdict has set a precedent for practices and traditions of different religions conflicting with constitutional morality. The Supreme Court affirmed women's equality, emphasizing that their biological progress should be free from discriminatory social and religious practices. The conflict between secularism and equality was resolved by prioritizing equality, and the court played a crucial role in determining essential practices and debunking myths.

V. CONCLUSION

Centuries ago and also today, religious beliefs have served as the foundation for Dharma for Indian civilization. The concepts of Hukum and Dharma assist in understanding whether an action is right or wrong. However, in modern times this has emerged under the concept of “morality”. Eventually, morality became a significant concept in jurisprudence, providing the basis, test, and ends for laws. While morals have played a crucial role in shaping laws, it is essential to dig deeper into morality's distinct dimensions, ensuring it aligns with the constitution of India.

Constitutional morality stands tall against all the laws and must prevail over other existing moralities. Though morality may have been the foundation for creating laws, in the present times, laws take precedence over individual or group moralities. Laws, hold their high stand in society and must be followed without compliance with moral standards. The laws should be constructed, commanded, and construed in a way that neither undermines public morality nor breaches constitutional morality. Whilst conflicts arise, constitutional morality should prevail, as society has evolved to accept such interpretations. A country progresses with society and develops as society evolves, avoiding deterioration.

No doubt there exists a close connection between morality and the law. Naturalists argue that morality strongly influences the law, and indeed, this is true to an extent. However, the significance of rules and regulations in society is also evident, even if their severity may raise doubts about their legitimacy. This attracts discussions about the appropriateness of both morality and the law, which can become fierce and result in conflicts. It's crucial to note that the laws are ultimately established for the well-being of society, aiming to maintain order and prevent social unrest between those who uphold morals over the law and those followers of the rule of law.

In contradiction to morality, the law should serve as the proper instrument for shaping people's perspectives on the world and upholding the idea of needed social transformation. It's essential

to understand that morality and law should complement each other rather than compete to determine which is more beneficial to society as a whole. Both law and morality have their significant roles and persist through their essence. Laws are essentially derived from morality to establish a framework for determining and differentiating between wrong and right.
