

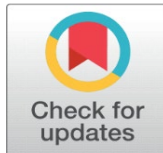
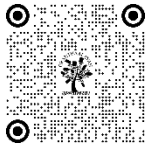
CONSTITUTIONAL MORALITY AND SOCIETAL MORALITY: AN IMPACT OVER LIVE IN RELATIONSHIP

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DOI

[10.29121/shodhkosh.v5.i5.2024.4965](https://doi.org/10.29121/shodhkosh.v5.i5.2024.4965)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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ABSTRACT

The article's primary concern is the current situation of constitutional and societal morality and how it pertains to all contemporary societies. Since morality is, as we all know, the basis of law, the concept of morality is represented by a law. The concept of a live-in relationship is among the constitutionality and cultural morality issues that need to be addressed. Although the notion of a live-in relationship is protected by Article 21 of the Indian Constitution When seen in the context of Indian society, it transcends the scope of social morality as an issue of constitutional morality. The study examines the differences between and relationships between constitutional morality and societal morality, as well as how this impacts romantic relationships. In line with the proverb, A civilization may only grow if it adapts to its environment, broadens the concept of public morality, and accepts novel ideas like live-in relationships. The objective of this study is to strike a balance between constitutional and cultural morality in order to recognise the idea of a live-in relationship without restricting itself to morality's tenets.

1. INTRODUCTION

"Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil which is essentially undemocratic." **Dr. B.R. Ambedkar**¹

As we are aware, morality is the foundation of law, with the concept of law originating from moral principles. It can be argued that moral values are an integral part of the very essence of law. In cases concerning marital relationships, the Indian judiciary has interpreted the terms "law" and "morality" as two sides of the same coin. Statutory laws recognize premarital sex and live-in relationships to the extent of providing maintenance, residence, and protection. However, not all live-in relationships are protected under the guise of relationships in the nature of marriage. The judiciary provides protection only on a case-by-case basis to those in live-in relationships in India. Therefore, it is essential to clarify the

¹ Writing and Speeches of Dr. Baba Saheb Ambedkar, Volume No. 13 Page No. 61

concepts of constitutional morality and societal morality, so that both can be brought to a consensus, making live-in relationships a part of our legal and moral values².

The concept of constitutional morality pertains to an individual's moral duty to uphold and remain faithful to the values enshrined in the constitution without any compromise. On the other hand, societal or popular morality pertains to the personal or cultural values, codes of conduct, or social morals that govern the social behavior of individuals in a society. While the constitutional makers have established the rules for constitutional morality, the Supreme Court has held that only constitutional morality, and not public morality, should prevail.

Morality and the law are too hazy to be understood.

The area of morality and the law is so large and analytical that it cannot be characterized and comprehended in a few simple terms. From the time of the ancient Greeks through the contemporary age and even the postmodern era, many jurists and philosophers have tried in vain to describe these ideas but without success. The complexity of the human mind, which is highly unpredictable and adaptable, is the fundamental cause of our inability to describe these concepts.

Morality is a factor that persists in all societies across time, even while taking into account social change in society. Law is a norm that is always changing, or more accurately, it is a component of a normative system whose job it is to manage society. It is a dynamic idea and is never stagnant. The law must occasionally alter to reflect the constantly evolving demands of society. Law must accomplish specific goals, whether they be immediate or long-term. Law seeks to provide order so that society can run efficiently. Law aims to provide a workplace that is equally equitable for all societal groups. On the other side, there is the nebulous idea of morality, which is a sought-after standard or a component of the normative system, or *Volksgeist*, a reflection of the populace's spirit according to Von Savigny's *volksgeist* theory.

Morality can be defined as a set of standards or principles that prescribe proper human behavior in a given society. These standards are often passed down through families and traditions, such as the Hindu custom of touching the feet of elders as a sign of respect. While there may not be a logical explanation for some of these moral practices, they are still widely accepted in society and do not require legal intervention. However, there are both positive and negative impacts that morals can have on society. Both law and morality are normative systems, meaning they provide norms or guidelines for behavior. The main difference between them is that law is coercive by nature, while morality is not. Law is enforced through coercion and its constant application leads to the internalization of law in human behavior. Over time, habitual obedience to laws can become an internalized realization, as seen in the example of road traffic laws being internalized in a citizen's behavior.

2. RELATIONSHIP BETWEEN CONSTITUTIONAL AND SOCIETAL MORALITY

Constitutional and societal morality include massive and analytical elements that makes it nearly impossible to effectively convey and understand it in few words, sentences or phrases. The reason behind why societal morality cannot be defined is the complication of the human mind, which is extremely arbitrary and versatile. A system of standards and ideals that apply in society is known as social morality. These are the laws that control how people should interact with one another for their welfare and well-being. Social morality is not precisely defined because it changes from culture to culture depending on different social norms, practices, traditions, or customs.³

3. LAW AND SOCIAL CHANGE

Since Morality is one the major aspect that has been prevalent in any society over a period of time, the social alteration is important. Law is a norm that has been changing frequently since its inception, or perhaps we can say that it is an integral part of a normative system whose purpose it is to control certain social norms⁴. The law must modify itself every now and then as per the societal dynamism, as the law also reflects the constantly evolving demands of the

² Indian Law Institute, "Constitutional Morality," Indian Law Institute, accessed July 10, 2023, <https://ili.ac.in/constitutional-morality>.

³ M. (n.d.). Articles – Manupatra. <https://articles.manupatra.com/article-details/Social-Morality-vs-Constitutional-Morality-with-special-reference-to-Navtej-Singh-Johar-V-Union-of-India>

⁴ Laws must change with the times. (2010, November 21). The Indian Express. <https://indianexpress.com/article/cities/delhi/laws-must-change-with-the-times/>

society. There exists no law in a state's own territory. It should fulfill certain objectives, which can be a short-term goal or a long-term goal. One of the basic objective of any law or statute is to form an order in society (inclusive of all sections of society). Law strives to establish a working environment which is equally just to all sections of the society. The blurry idea about morality instead, is a desired norm or an element of a normative system, is totally inverse. Law has got a necessary component which functions by way of institutions. So, that's the sanctioning idea?

Who will suffer God's judgement? Religion and the so-called contractors of morality have been spreading this idea for years, and it has gotten quite loose. This is the major root cause, why religion and morals have become detached and unsuccessful. Consequently, constitutionalism has gained the upper hand. Technology, a fast-paced urban lifestyle, secularism, equality before the law, democracy, and constitutionalism are some of the major issues which have been faced by morality and religion recently. Since human behaviour is not being ruled by reason as a whole, force is imperative to regulate the same. It is unessential to bind one's behaviour, if people start thinking wisely and behaving practically. The notion about law has emerged on the hypothesis that it is imperative for everyone to act in a certain way to achieve certain objectives, whereas the past events do not clearly demonstrate such thoughtful demeanor. Justice and conscience appear to be individualised concepts which is based upon the human psyche of each individual. As a result, one may identify a legal system at any moment in the history of any social organisation, but fails to pinpoint a corresponding system of justice or morality.

4. LAW AND MORALITY DIFFER IN CERTAIN WAYS

A legal norm may share similarities with religious and moral norms if we examine the structure and content of the law. For instance, it is against all religious and moral principles—as well as the law—to kill or use weapons. So, law and morality have essentially the same content. Then, the question arises: If this is the case, what distinguishes morality from law? The legal system is distinct from religion and morality in form only, not in content, is the answer⁵.

There is a connection between the legal system and the moral and religious elements of our society since law is impacted by both religion and morality. Laws have never played a particularly dominant role in a traditional community; instead, morality and religion have always played a very significant part.

But because of how quickly life changes in modern culture, morality and religion are under a lot of pressure. As a result, the only alternative to human progress is law.

Consider the morally wrong topic of intimate partnerships. If two significant individuals decide to cohabitate while exercising their right to free consent, the issue of a violation of any reasonable norms becomes relevant from a legal perspective. This demonstrates that moral norms are never rational in their outcomes. Therefore, a law should be passed to enforce these moral norms. Isn't a law like that incompatible with the freedom and liberty guaranteed by the Constitution?

Legal positivists like Bentham, Austin, and Kelson have long maintained that moral standards should never be enforced through the use of the law. Because the mind and conscience are invisible, moral components weaken and are no longer determinable. However, the current author reiterates that legislation is only practical because it has stood the test of time. The law can be used at any time, in any context, to define a specific expected social behaviour. Morality might be for enlightenment and make individual explorations easier. Since compulsions and desires have an impact on life, the author believes that morality should be left up to human choice and practise, while a legal system should be based on practicality and convenience principles. It must never be decided to enforce these morals, which have a detrimental effect on the development of our society. On the other hand, we can never deny that morality is a major source of inspiration for law. Similar to this, moral principles are what shape criminal law. For instance, it is against all religious and moral principles—as well as the law—to kill or use weapons. As a result, morality and the law have a lot in common. Because they ignored religious and moral norms, positive thinkers had a limited understanding of the law. We must not discount the significance of morality in our society since the actual definitive scenario is that religion, morality, or law all work to regulate individual behaviour in our society. In the case of international humanitarian laws, some moral principles are also acknowledged as components of the law. Therefore, in these instances where morality has a positive future impact on society, it is impossible to completely separate law from morality.

⁵ Corner, L. (2022, April 10). Law And Morality In Jurisprudence - Law Corner. Law Corner. <https://lawcorner.in/law-and-morality-in-jurisprudence/>

4.1. RELATIONSHIP BETWEEN LAW AND MORALITY

The aspect of Constitutional and Societal morality is so vast and analytical that it cannot be explained and understood in mere few sentences. The reason why societal morality is not being able to be defined is because the human mind is so complex, which is extremely random and versatile.⁶

4.2. LAW AND SOCIAL CHANGE

Since morality is a factor that has long predominated in societies, the social transformation in society is significant. Law is a norm that is constantly changing, or perhaps we should say that it is a component of a normative system whose job it is to control certain social norms. The law must occasionally change to reflect the constantly evolving demands of society. A state's own laws do not exist. It must accomplish a number of goals, either short-term or long-term.

The goal of law is to bring about order in society (and all of its components). Law aims to provide a workplace that is equally just for all societal groups. The hazy idea of morality, which is a desired norm or a component of a normative system, is the opposite.

Law has a coercive foundation that operates through institutions. So, that's the sanctioning idea?

Who will suffer God's judgment? Religion and the so-called contractors of morality have been spreading this idea for years, and it has gotten quite loose. That is the cause of how loose and ineffectual religion and morals have become. Thus, constitutionalism has gained the upper hand. Morality and religion are currently confronted by issues brought about by technology, a fast-paced urban lifestyle, secularism, equality before the law, democracy, and constitutionalism.

According to famous jurists, since humanity as a whole is not guided by reason, force must be used to control human behaviour. There is no need to constrain behaviour if everyone thinks and behaves rationally. The idea of law has evolved on the premise that it is necessary to compel people's behaviour in a certain direction in order to attain certain specific purposes, although historical experiences do not clearly demonstrate such reasonable action. Justice and conscience appear to be subjective, individualistic concepts that depend on the psychological makeup of a person. As a result, one may identify a legal system at any moment in the history of any social organization, but one cannot identify a similar system of justice or morality.

Law is one such outside force, a system that is more thoroughly physical. Additionally, the possibility exists for the external aspect of judgment, administration, or even policing. On the other hand, each person has a unique definition or understanding of what morality is. It's possible that what constitutes morality to one person may not be moral to another.

4.3. DIFFERENCES BETWEEN LAW AND MORALITY

If we look at the form and content of law, we find that a legal norm may be common with that of religious and moral norm. For example, all religious and moral norms say not to kill or not to steal, and it is the same here in law. So, we have almost the same content between law and morality. Then the question arises that, if it is so, then what is the difference between law and morality? The answer is that, the legal system is distinct from religion and morality in the form and not in the content

Law is influenced from both religion and morality and hence there takes place a sought of interaction between the legal system and the moral and religious faculty of our society. In a traditional society laws have never had a very dominating character, but religion and morality had always had a very predominant role.⁷

But in a modern society life changes very fast, hence morality and religion are under a great pressure. Hence, law is the only alternative to human development.

Consider the moral prohibition placed on the topic of intimate relationships. If two significant individuals decide to live together with the exercise of their free consent, then the legal question of whether any reasonable norms are being violated emerges. This demonstrates that moral rules are never rational in their consequences.

⁶ India, L. S. (n.d.). <https://www.legalservicesindia.com/article/1931/Theory-of-Relationship-between-Law-and-Morality.html>.

⁷ Garg, R. (2022, February 12). All about law and morality - iPleaders. iPleaders. <https://blog.ipleaders.in/all-about-law-and-morality/>

Therefore, a law should be passed to enforce these moral norms. Isn't a law like that incompatible with the freedom and liberty guaranteed by the Constitution?

Legal positivists like Bentham, Austin, and Kelson have long maintained that moral standards should never be enforced through the use of the law. Because the mind and conscience are invisible, moral components weaken and are no longer determinable. However, the current author reiterates that legislation is only practical because it has stood the test of time. Law can be used at any time, in any circumstance, to define a specific expected social behaviour. Morality might be for enlightenment and make individual explorations easier. Since compulsions and desires have an impact on life, the author believes that morality should be left up to human choice and practise while a legal system should be based on practicality and convenience principles. It must never be decided to enforce these morals, which have a detrimental effect on the development of our society.

On the other hand, we can never deny that morality is a major source of inspiration for law. Similar to this, moral principles are what shape criminal law. For instance, it is against all religious and moral principles to kill or use steel, and the same is true in this country's legal system. As a result, morality and law almost have the same content. Because they ignored religious and moral norms, the positive thinkers had a limited understanding of the law.

We must not discount the significance of morality in our society since the actual definitive scenario is that religion, morality, or law all work to regulate individual action in our society. In the case of international humanitarian laws, some moral principles are also acknowledged as being a component of the law. Therefore, in these instances where morality has a good, future impact on society, it is impossible to completely separate law from morality.

law's position in relation to morality

Law and morality are intimately related and intertwined. Even while people occasionally argue, "You shouldn't legislate morality," it's likely that they don't actually mean it because we wouldn't make crimes like rape and murder illegal if they weren't immoral.

Instead, they suggest that people shouldn't force their own moral beliefs—particularly those pertaining to sexuality—onto others.

Since conservative principles are obviously false, it is unfortunate that the word "morality" has come to be associated with them. This has a negative impact on how many people view morality as a whole.

Their purviews are obviously not entirely the same; lying to your parents might be immoral, but the law has absolutely nothing to do with it.

The best approach to explain this might be to admit that the law is a very blunt instrument and cannot be used to resolve tiny or delicate moral concerns.

But even if certain morality is outside the purview of law, may the legal system be considered a subset of morality? That example, should we always forbid immoral behaviour but never that which is ethically acceptable?

For instance, if I switch on a heater, I might be doing so out of a wish to be warm and a conviction that doing so will help me do so. Consider how society can affect its members' behaviour as it relates to the topic at hand.

There are two main choices, according to belief-desire psychology: changing someone's beliefs or changing their desires.

Morality, by this understanding, corresponds to the latter option. That is, morality is a system of socialisation whereby society instils in its members' the desire in certain ways. The other method of influence is to alter people's beliefs about how best to fulfil their desires. This is where Law comes in. Its role (according to this interpretation) is to serve as a deterrent for those who, for whatever reason, fail to be bound by morality. It achieves this through the threat of punishment, i.e. by instilling in citizens the belief that breaking the law is not in their own best interests - they could get caught and sent to jail, which would surely thwart many of their other desires.

According to this perspective, morality and legality are merely two aspects of socialisation. Law is the "back-up" option and focuses on our ideas, whereas morality attempts to change our behaviour by influencing our impulses.

This is also true for the United States, and not just in terms of how our constitutionally required educational systems and legal framework for crime contribute to the formation of citizens, including their moral education. But the common beliefs in a modern liberal democracy are likely to be the following: (1) that morality cannot be legislated; and (2) that even if morality could be legislated, it should not be that doing so is somehow improper, even tyrannical, either because there is no morality objective enough to justify legal enforcement or because attempts to legislate morality would violate

people's autonomy and individuality; or perhaps even because one really has no choice because one really has no choice because one really has no choice.

Such worries are not raised in the Ethics since it is the role of law to assist persons develop good habits and to uphold those good habits after they have been formed. Even individuals who are aware that the virtues often promoted by legislation are not the highest can identify with these demands. Most laws are only primarily concerned with the good, the truthful, and the beautiful, regardless of one's own convictions.

However, it is wise to heed Aristotle's advice that one must have been raised in good habits if they are to "listen intelligently to lectures about what is noble and just." Laws can be extremely helpful, if not essential, for good habituation. It is practically impossible for any regime that takes itself and wants to be taken seriously to not mould its citizens with respect to morality, even though academics with liberal democratic tendencies may not feel that morality depends on the law. Denying that morality can or should be regulated does not prevent it from existing; rather, it only hides it, may pervert it, and causes confusion and misinformation among both the rulers and the ruled. (As in physics, we implicitly rely on a lot of what Aristotle discovered and relied on in this case, but we do so haphazardly because it is not fully noticed.)

Indicating how prevalent Aristotle believes the law to be with regard to morality in a community would be helpful. We may be able to better understand what the law does in the service of morality, especially in a liberal democracy like ours, when we understand what it can mean and how it operates. We shall see that discussing the impact of the law entails discussing the numerous ways in which the community shapes its citizens and directs its members. But for us, the definition of law tends to be restricted to what "government" does, i.e., the statutes and orders that governments make.

The clearest example of how morality and law are related can be found near the conclusion of the Ethics. It should be noted that morality and the law are both partly dependent on each other, as well as morality and the law being significantly dependent on each other. A well-educated, ethically vigilant citizenry is usually horrified by the lawbreaker. But does this response—which can deter many would-be offenders—not rely on the assumption that the law is likely to be moral and serves the general good? This presumption is supported by the fact that it frequently seems to be so. Law and morality are crucially reliant on one another.

As we recall from the Ethics, reciprocity can be essential to justice as a specific virtue. Most virtues can only be practised in a stable society where one's body, life, and property are generally secure. The rule of law is obviously crucial in this situation. A sound community, or one in which the law plays a significant role, is typically necessary for a human person to become or remain civilised.

If necessary, the law could be utilised to enforce morality in situations where it has a positive and constructive impact on society. For instance, certain moral principles are recognised as part of international humanitarian law. As another example, all religious and moral standards forbid killing or using weapons, and laws are used to enforce these principles.

On the other hand, the law should never be used to enforce any morality that has any negative effects on society in any way. For instance, Valentine's Day celebrations are frowned upon in Indian culture. Such morality, however, must never take on the institutional form of the law.

Therefore the aspect of morality comes as we discuss about live in relationship. As this unconventional relationship has a string of morality attached to it as in India we have a conservative approach towards it. The aspect of morality creeps in as our society still not accepts such kinds of relationship although in western countries it is a common phenomenon. Morality defines good behavior whereas law helps to enforce them therefore law should work in positive direction which can help our society to grow with the modern times and be able to catch up with the requirements of present time. The approach toward live in relationship should also change and should be given recognition in society and protection of rights in case of infringement of persons rights.

"With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today." Hon'ble Justice A.K.

Ganguly in Revanasiddappa v. Mallikarjun Regarding 31 March, 2011 its legality and effects on society connections, live-in relationships are one of the topics that are heavily disputed and subject to criticism in India. A legal marriage has traditionally been seen to exist when two substantial men and women cohabit for an extended period of

time. While 2010 saw a number of judgements pertaining to live-in partnerships, including the Supreme Court's unequivocal determination that a live-in relationship is not illegal and the award of maintenance to a woman in a live-in relationship. Long-term live-in partnerships were recognised as marriages by the Supreme Court in January 2008⁸. Children born out of such a relationship would no longer be considered to be illegitimate, according to a Supreme Court panel chaired by Justice Arijit Pasayat and P Sathasivan. The court further stated that "law tends in favour of legitimacy and rejects whoredom" or "fruit of adultery".

Premarital relationships existed both throughout the Vedic era and afterwards, but they were uncommon, according to Manu. In ancient India, the idea of a live-in relationship was known as *maitri-karar*, and it involved two people of opposing sex making a written agreement to live together as friends and take care of one another.

Judicial Approach and the Legal Status of Female Live-in Partners

The Protection of Women from Domestic Violence Act of 2005 gave protection to the partner of a live-in relationship for the first time. This act views women who are not legally married but are living with a man in a relationship that has the characteristics of marriage as being similar to wives, though not identical to wives.

The Protection of Women from Domestic Violence Act of 2005 grants benefits in either situation, according to the Supreme Court's ruling in the case *D. Veluswamy v. D. Patchaiahmmal*. The court noted that the Parliament distinguished between a marriage and a relationship that has the characteristics of a marriage.

A live-in relationship belongs to a different class than marriage. A close link exists between the legitimacy of a kid and the safety of women. In the *Madan Mohan Singh v. Rajni Kant* case, the Supreme Court made the following statement regarding this issue: "The courts have repeatedly maintained that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited regularly for a number of years. As a result, a live-in relationship is incompatible with the idea of societal morality."

5. CONCLUSION

The culture is moving towards allowing such relationships everywhere due to evolving moral standards and societal change.

Although it would take some time for Indian society to embrace this form of partnership. Even when our principles occasionally lack logic, we nonetheless uphold them since they have been the norm in our society since the dawn of time. The new generations do not see any value in adhering to these conceptions of societal morality because the main distinction between these two moralities is that constitutional morality is subject to legal enforcement while social morality is not.

Since there are no explicit laws governing live-in partnerships, couples bound by them find some support in other civil laws. Even though we may believe that living together is unethical, the law cannot be judged on this basis. As we are all aware, morality varies from society to society and occasionally.

Like it is quoted by Aristotle -

"Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice."

In order to prevent criminal crimes in society and injury to the society's weaker segments, we need codified legislation to govern the many legal aspects of live-in relationships. The Indian judiciary will have a better chance of making decisions that are in line with the letter and spirit of the law, as well as in the interests of justice, equity, and good conscience, without being constrained by societal morality, if our society accepts live-in relationships. Therefore, constitutional morality is preferable to societal morality in terms of the Constitution's enforceability.

⁸ Ganguly in *Revanasiddappa v. Mallikarjun* Regarding 31 March, 2011 SCC