



Etymology of conscience and the birth of law: A moral perspective

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Abstract

The present paper analyses the etymology behind the birth of conscience and how it is a predicate for the Law. The relationship between the Conscience and law forms a fundamental and often a curious, inquisitive area of inquiry in jurisprudential philosophy. While law represents a uniform, formal codification of rules mandated by sovereign, consciences embody the inner will of the sovereign. The present paper also explores the complex interplay between these two metaphysical concepts; the paper also considers the psychological underpinnings of conscience and evaluates how the personal conscience can conflict with public law. The paper unravels the inquiry of how an act regarded as 'act of service' is considered a 'sin' now or how the common consciousness collectively with religious and customary influences is responsible for the legislation of law and the concept of law aligning with the symbiotic relation between the conscience is dictated along with its consequences. The present paper also explores the how the role of principles of justice, equity and good conscience is still relevant and prevalent over the Indian legal system, whether in constitution or judicial precedents. Landmark cases like 'KS Puttaswamy vs Union of India' ^[1] or the recent 'Ram Charan vs Sukhram Supreme' ^[2] have given precedence to individual conscience, while also limiting the limits of conscience while also acknowledging how distorted beliefs can be a grave loss. Ultimately the paper argues for triumph of righteousness for a balanced legal ecosystem that neither ignores or suppress the conscience nor permits its 'un-adjudicated' rules. By the conscience as a predicate, the pillars of the law could dig deeper in depth and soar higher in the sky strong.

Keywords: Conscience, law, morality, religious influences, customary influences, psychological development, equity, justice

Introduction

We are foreign to ourself, we remain unknown to oneself, each one is a complete stranger to itself, this originality authenticity of 'individualism' is burdened in the roots of conscience of oneself. So, due to this tree of 'Conscience', what fruit does this 'tree' bear that we can distinguish between GOOD and EVIL, RIGHT or WRONG. What's the distinction between it, how the meaning derives behind the act, what's the true origin behind it. What is 'GOOD', According to a belief, 'Selfless acts were originally lauded and called good by their beneficiaries, those to whom they were useful' and EVIL as whatever rejects this 'altruistic behaviour', But the inquisitive curiosity of our scepticism denies the whole narrative and ideals and rather quest for the answer of this unquenchable doubt by this own investigation, therefore this analysis of mine dwells further into the etymology of conscience and how does it helps as a predicate for the legal structure in theoretical and practical approach. However, this impugned concept will be understood by this rationality behind conscience and its practical utilisation with the law. This particular assessment leads to the etymology behind the origin of conscience and how does it align with the conduct of law. Thus, this paper aims to analyse (1) The rationality behind the veil of Conscience. (2) Conscience as a predicate of Law (3) The optimistic and pessimistic consequences of the relationship between the conscience and the Law.

What is Conscience

According to the Merriam – webster ^[3], the definition follows- "the sense or consciousness of the moral goodness or blameworthiness of one's own conduct, intentions, or character together with a feeling of obligation to do right or be good"; the statement suggest a definite but yet an

ambiguous meaning of the word, due to as the statement can be further argued or impugned as 'what is really a morally good conduct', some parents may suggest that waking before sunrise is a beneficial and a sign of a good and active conduct and yet some oppose the same notion, some people may suggest that any act which may inflicts pain is a sin and yet that sin is continuously practiced by everyone regardless of intention. So, the suspicion of the definition remains unsolved.

Hence it is important to unravel the enigma by our own investigation, the term the word "conscience" comes from the Old French conscience, which was borrowed from the Latin *cōnscientia* ^[4], meaning "knowledge within oneself" (This phrase doesn't provide the answer but rather substantial doubts regarding the conscience). We all humans are unknown and foreign to ourselves with no intrinsic desire or wants, our desires and curiosity are subsequent by-products conceived by our knowledge and perception of ourselves nurturing with this organic life formed on the societal norms and ideals, shaped by our CONSCIENCE. Owing to my instinctive scepticism, I must confess reluctantly that we are nothing but some benighted individuals going wild in the search of meaning, the thoughts we understand or formulate in our rational mind are based upon the posteriori knowledge we begotten from our experiences or by teachings of the society, therefore the origin of conscience lies with the receptivity of our sensitivity through our perspective. Hence, conscience can be frugally concluded as the cognitive receptivity.

Rationality behind birth of conscience

As quoted by Albert Einstein ^[5], a physician and the greatest mind of our history quoted, "The important thing is not to stop questioning. Curiosity has its own reason for

existence.", following this inherent desire for being curious, I must proceed with the investigation; we do often inquisitively wonder as to how ideas are conceived in our brain and how these ideas sometimes tend to be distinctive and sometimes just a mere replication of others, what channelize these ideas in our mind which leads to shower thoughts and understanding and for that reason analysis wanders into it by introspecting the anatomy of the birth of conscience by various conducts such as:-

Biological Roots

As the human civilization in the ancient period (Early Human age) blossomed with existentialism, the only act they performed and preached was survival and aggressiveness towards oneself and the world, the only thing whichever survived at the period of time was the insatiable bloodshed and hunger, that brutal world which does not exhibit anything other than cruelty was in dire desperate need of a soul to exhibit serenity. In order to subsist with aggressiveness and savagery, the nuanced and paranoid humans borne the concept of non-violence, not to rule but to incarcerate the mental intention of the stronger fellows for ensuring their survival by inflicting the same paranoia and that led to belief in humans adhering to this thought of concept. The 'conscience' revolt in morality begins when paranoid and resentment itself become creative and have birth to values. The stronger simply felt themselves to be "content" as now they did not have to manufacture their insurance for survival which led to Humans started descending into the refuge of warmth of sympathy (which was tragically conceived from fear and resentment) and eventually after the gradual withering of savagery, the morality was conceived to fight the utter cold cruelty present in the world. The Humans felt obligated or to put it bluntly TAMED to kneel to this "morality" due to its apparent abundance among the paranoid humans which led it to be universal and immutable and assisted to provide a shelter among the chaos of barbaric and animal lifestyle in prehistoric times. In the midst of the utter absurdity of vicious existence, the pacifists found refuge in the idea of reasoning of peaceful resolutions (which prevented violent revolutions) and thus the savagery was reformed into pacifism. The intelligence of those pacifists gave rise to the morality in the skin of struggle to thrive. Thus, morality resulted from a man's intelligent response to his surroundings.

The humans sought for the eradication of the violence and chaos by welcoming the cordial and amiably relations between each other's to restrict conflicts and ensured herculean domination of barriers to NOT be transgressed (which are the ethos of virtue). Thus, morality refined into the skin coating of a universal ethical imperative.

Religious influence

As the human life progressed our idleness and quest for existentialism persuaded us for the logic behind the veil of life; as there was no plausible reliability of reasoning (or maybe people were being ignorant of it) the human opted for the adoption of a common belief shared by many, that was religion.

'Conscience is the internal perception of God's Moral Law' quoted by the Scottish writer Oswald Chambers [6]. From the beginning of the time, the Human civilization has

situated an official narrative about Religion. Every religion in the world believes in the faith and worship of The Supreme Lord and their teachings which often compels people to have a altruistic conscience for the betterment of society and most importantly for the blessings of God and as a guide for the gate of heaven.

“अर्जुन, दुष्टेभ्यो मुक्तः, दयालुः, अहंकाररहितः, आसक्तः, मे समीपः”

[7] This Shloka is taken from the Hindu Mythology epic tale famously referred as Bhagwat Geeta meaning, "He who is free from malice towards others and full of kindness, who is free from possessiveness and ego, is close to me" This shloka symbolises that acting in the goodfaith and with clear conscience is the paradigm set by god.

“وَلَقَدْ خَلَقْنَا الْإِنْسَانَ وَ نَعْلَمُ مَا تُوَسْوِسُ بِهِ نَفْسُهُ ۗ وَ نَحْنُ أَقْرَبُ إِلَيْهِ مِنْ ۙ وَ لَقَدْ خَلَقْنَا الْوَرِيدَ ۝ (Qaf, 50: 16)” [8] taken from Holy Quran meaning, "We verily created man and we know what his soul whispers to him and We are nearer to him than his jugular vein" implying that Allah (God) dictates the conscious of the soul.

"The LORD gave us mind and conscience; we cannot hide from ourselves" [9] taken from Holy Bible Proverbs 20:27 [10], implying that the ethics, values and the principles of a human is derived from the God's love.

Religion has profoundly preached about peace and good conscience of the society that people tend to have dilemma in differentiating between morality and religion. This abundance submission towards God and divinity led to birth of the constructive conscience [11].

This incessant and loyal submission and devotion of every religion is loosely based on the idea of 'SELF-CONTEMPT' as about how our existence is forever in debted and owed to God, and about how the philosophies of God's are the stairs marching for redemption. Therefore, this cunning manipulative narrative furnished with crassest lies led to paradise of common natural law, which compromised the birth of conscience and therefore it played an alterable role. (like for an example killing a cow is a sin for a devotee of Hinduism but on the contrary killing a cow is considered like accustomed lifestyle for 'steak-eaters'), The 'SELF CONTEMPT' philosophy tangles the people belief into their life being trivial without the blessing of the God. further it inspires the common consciousness of the religious group to act in the uniformly deciphered interpretation of the group. It promotes the idea of certain customs (which I will discuss later) and acts. These acts are governed by the religious norms as a labour to achieve the love of the God. These acts of free will are forced with LATENCY to labour for redeeming and forgiveness from the God and brands it as a will of the God. So, about the origin of 'Conscience' as a moral value, and its distinctive altruistic features ARE GROWN from the same will of SELF -CONTEMPT. Perhaps this is the very origin of the Gods, that is, an origin in fear. This feeling of indebtedness towards religion without being impugned for several millennia, hence the moralization of this SELF-CONTEMPT gave the birth to conscience.

Customs and cultural influences

According to the Merriam – webster, the definition follows- "a usage or practice common to many or to a particular place or class or habitual with an individual" [12], Customs can be noted as repetitive behaviour practiced by certain individual or a group of people that it has been adopted as a precedent

for a long period of time from generation to generation.

As to how Custom became an integral instrument for shaping the conscience lies in the repetition of the custom without being impugned or questioned. There is various impression in the past which supports Custom as the cosmos for commanding the conscience. Like for an instance, Sati Pratha^[13], also known as suttee, was an ancient Hindu funeral practice where a widow would immolate and burn herself on her husband's funeral pyre for the sake of preserving her 'purity'. The practice was forced on the widow who have just suffered an unbearable emotional loss of her beloved. The practice has a deep-rooted history in India which was later abolished by Raja Ram Mohan Roy^[14] or like the Slave system^[15], which meant to enslaved innocent, fragile humans by force or influence and profiting from selling a literal human as a slave by mistreating them harshly, according to the Old Testament^[16] quoting, "(Peter 2:18-20 orders slaves to submit to their masters)", the customs played a pivotal role in influencing the generation on how to oblige with the norms and that gave a huge impact on the conscience. At the time of Sati Pratha, there were less people who were against this ideology, but as soon the custom started diminishing the opposition towards the same escalated and same with the slavery system, the human which was considered as a mere slave made for the sole purpose as an asset for their owner to enrich their nobility and riches were soon steeping into the opposition of the same. Hence the gradual repetition of customs, socially enforced and participated by people absorbed and dwell their way into the conscience of the people through education, upbringing, observation or social approval. These influences paved the path for a moral obligation, not just a social act.

Social Conditioning

As the concept of 'Common Consciousness' given by Durkheim^[17], defined collective consciousness as "the totality of beliefs and sentiments common to average citizens of the same society"^[18] implying the set paradigm shaped by the idealistic practiced norms in society. The people in the same society are observed to share certain patterns of attributes in moral, attitude and norms within a society or community. It focuses on the fact that conscience is not born in a seclusive or isolation but rather through the interaction with the shared ethical codes in a society. The jewel of virtue or sins lies in the hives of the interconnected social life, it's through that hive the birth of consciences takes place. As every human is a foreign and alone filled with the echoes of loneliness, he is forever inclined to yearn for being accepted, to cure his deadly disease also called 'desolate', therefore the same human bargains or compromised his hollow perceptions with the ideals of the society for being accepted, to belong he adjust to their behaviour and shape themselves in the accordance of the common consciousness of the society, by sacrificing or destroying himself he gives to birth of a conscience which supersedes his infancy. The essence of the common consciousness then produces a tame and civilized the person and this is followed unquestionably that we must regard as the supreme and instinctive behaviour by which we should comply. Therefore, the social condition paves the path to shaping the conscience. The society is the 'indiscreet sovereign' of the conscience, which subjugate the internalised judgement of the person.

Psychological Development

Sigmund Freud^[19], the father of Psychoanalysis explained conscience as a mere mirror or a replication of the human psyche. According to him, the conscience is not a born-trait but rather a bundle of knowledge that one gathers as he develops through his life.

Freud gave the concept of the STRUCTURE OF MIND^[20] into Id, Ego, Superego. The 'ID' refers to the raw instincts or the innate desires of a person, 'EGO' refers to the prudent and rational thinking of self and the surrounding and 'SUPEREGO' refers to the balance of 'ID' and 'EGO', implying the cognizant classification of moral judgment. Hence conscience.

According to Freud, this SUPEREGO creates a moral ethic on the individual which further shapes the intellect and experiences of the person.

Jacques Lacan^[21], often called as 'French Freud' believed that conscience is not a pure or natural inherent voice but rather a echo of unconscious or society's expectation. He described as that how when an infant is taught to what to abstain and what to act, it leaves a interminable mark which echoes in his life, therefore his inner conscience.

Morality results from man's intelligent response to his surroundings. Therefore, it can be deduced from his innate rationality.

Therefore, the human psyche dwells deeper into the profound rationality behind the conscience. All the moral or ethical judgment are derivative of the formulative cognizant of our thoughts and understanding. Hence, I can state there is no doubt hesitation that all our knowledge is borne from psychological aspects of the human mind.

All these prospects conjoined helps in shaping the conscience of an individuals. Conscience is a receptive thought of our perception, which differs from one individual to another, there can be similar values enshrined in groups of individuals but not the equivalent or uniformly correlative, hence they can be congruent in some aspects but still varying or even polar opposites, thereby the uniform structure is a natural requisite to condemn an act as RIGHT or WRONG universally, therefore the Law is legal affirmation of conscience, which is uniform and immutable for a state to follow. The Law is an adherent framework which does not waivers from perspective to perspective like conscience and remains an irrefutable structural principle governed by the administrative body to supervise and monitor.

Law

According to the Juristopedia, the definition follows- 'The legal meaning of law is a multifaceted concept that is foundational to the functioning of societies and the governance of human behaviour. At its essence, the law is a system of rules created and enforced through social or governmental institutions to regulate conduct, ensuring order, justice, and predictability within a society'^[22]

According to the Cambridge dictionary, the definition follows – 'a rule, usually made by a government, that is used to order the way in which a society behaves.'^[23]

According to the Merriam Webster, the definition follows- 'a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority'^[24],

From various definitions of law, it can be concluded that laws are considered a set of conduct of how the society must

strive. But what I want to seek is the etymology or the jurisprudential aspect in the genealogy of law.

The jurisprudential origin of law has been researched thoroughly through various schools like Natural School of law, Analytical Law School, Historical Law School, Sociological School of law^[25] etc and etc. But one thing that has been universally preached in all schools of law is the dire need of set norms for the advancement of the society and promotion of just.

Law can be referred as a metaphysical chain, which tightens the grip around the society to prevent any transgression and prevent any act which goes contrary to it. This mechanism of law reforms, tames, encourage, pampers and refine the individual to follow the norms or the conduct which are beneficial for the common good of the society and thereby maintain the rule of law. The predominance of spirit of law is maintained by its administration by providing certain rights and duties, which dictates the acts and abstains.

The law is the authority governing the set of rules and regulations which gains its origination from the conscience, customs, reasoning or the needs of ever advancing society. The law can be defined as a social contract which enables and entrust us with certain obligations and free will under the pretext of certain restrictions. Thus, legal rights are infallible prima facie power to enjoy the imperative freedom granted by the rigmarole process of law by enshrining some restrictions.

Everyone loves the liberty of enjoying life, the thirst and yearn for liberty has been an intrinsic passion dominating the hearts of us all. The enjoyment of this liberty is called a 'Right'. These rights are entitled by everyone around us, which ironically limits our right due to concurrently exercising by everyone. The rights are free-will desire of an individual which conceives the birth of the animus which can either be charitable or menacing for others thus leading to the urgency of sanctions to mold and shape these rights into a sociological framework to progress the advancement of the society. Thus, we can situate that we are incarcerated in our liberty paradoxically.

The Etymology of rights have taken birth from the narrative of 'free will', but to give them legal enforceability the rights are nourished by legality and are flourished by the law under some certain obligations also referred as LEGAL DUTY. The LEGAL RIGHTS are the rights which are unswayable in nature and promised to every individual in the extent of the welfare of his/her surroundings by the law. The concept of legal rights can be summarized as the imperative freedom with restrictions these restrictions are contractual obligations of the society borne from LEGAL DUTY towards the preservation of the society with a set conduct.

The set paradigm of law entrusts every individual with equality, which grant every person with equal legal rights. The quote of a jurist Sir Immanuel Kant^[26], "act only according to that maxim whereby one can, at the same time, will that it should become a universal law."^[27] conceives the assumption that the rights and duties are equally trusted to the society to act in the manner of preservation of harmony and tranquillity. The RIGHT of enjoying liberty must be balanced harmonically with the necessarily DUTY of cherishing other's liberty.

Hence it is the duty of the society as a whole to not inflict any mala fide injury to the rights of others, thereby that act

of injuring someone's right becomes an offence or an act of savagery.

The most drastic and effective measure, to be taken by the administration against the Savagery, animosity and vindictiveness led to establishment of law, an imperative declaration or a decree of what is to be regarded as permissible and lawful, and what is prohibited and unlawful. On this principle 'right' and 'wrong' first came into the establishment of law.

Conscience - A Predicate of Law

From the above description, we can collate that the law is the authority governing the set of rules and regulations, but what gives the reign over these laws; we know how social conditioning, customary and religious influences influence the law, but what grip does conscience holds over it.

To put it bluntly, conscience helps in differing the core ideas of 'good' and 'evil', which helps in upholding the conventional framework of law. The Law is the same as the conscience but the law divides the acts into 'lawful' and 'unlawful', thus the LAW IS SOVEREIGN'S CONSCIENCE.

But how does Conscience can be adjudicated as the PREDICATE, so to grasp it more feasible, I must dictate the term 'predicate'; in logic and philosophy a Predicate is something that tells us more about the subject OR is dependent upon the subject.

So, I will steer about the symbiotic relationship between the conscience and the law,

The conscience of an individual's often promotes values like compassion, forgiveness, and non-violence, which serves as a pathway to achieve the peace and stability of the society but it is also be simultaneously reasoned with the existence of intelligence reasoning with a codification to uphold this belief into an irrefutable, unalterable conduct to transcend the maximum potential for a good conscience, thus eventually giving birth to a law.

As the Law is majorly weighed upon the balance scale of morality, as law is made for reaching the needs and desires of the morality, which is to constitute a welfare social solidarity and kindness among each other with compassion. Law is the hybrid of morality and pragmatic codification, aiming to evolving humanistic values, meanings and societal harmony.

As in the natural law, the law is considered to be a divine affirmation on the judgements of RIGHT and WRONGS, the civil law of a country is majorly inspired by the above facts and simultaneously relies on the values of conscience.

The Law of a country is made for the tranquillity of the society and its depth dwells into the darkest pit of hell and elevates into the crown of serene heaven. The Law is the legal interpretations of the social conduct, which dictates the person to meet their higher goals while simultaneously progressing towards the advancement of the society by co-depending upon each other with unity and fraternity without any shed of aggression or violence. The Law has taken its major influence from the morals, ethics, values practiced in the society for common good, like for an instance, the concept of altruistic behaviour is considering an integral part of the human civilised code and it has always been appreciated to uphold these principles in law. Thus, implying that the Law is the heir of conscience.

According to Sir Thomas Hobbes^[28], he believed that 'the

law is the public conscience' and therefore strongly suggesting the indispensable fact that the law is based upon the common consciousness of the people which dictates the law and inspires or influence the law.

Whereas for Friedrich Nietzsche ^[29] he quoted in his non-fictional prose 'On the genealogy of morals' ^[30] that, "we are not born moral agents. We are made moral; the mark of the moral is an imprint of our history; it bears traces of our past, of our most important social, economic and legal relationships". He debated the belief of conscience formatting and shaping law but rather the contrary as the law shaping the conscience quoted, "law does not find its normative ground in morality, rather morality is grounded in law, whose expressive impact and ability to order social relations undergirds and fills out morality". However, as what may be the catalyst for each other, it is worthy to establish that both the Conscience and Law has a symbiotic relation with each other sharing ideals mutually.

Law is the governing body of protecting society from harmful and dangerous deeds of persons who disregard rights and interests of other people and society as a whole, while conscience is the inertia of the body to prevent such transgression. Hence the rational law and irrational conscience are considered a predicate for each other and both shapes or construct each other. As the law is the abstract structure of uniformity whereas conscience is personal interpretation or inner judgement, there can absolutely be clashes between the same, so the question arises: -

Can a law be lawful if it violates conscience

Before the modern era, all thinkers were under the impression in their understanding of morals as the basis of law. They considered conscience to be a natural source of legislation. The modern era brought about an idea of separate existence of law and conscience, independent from each other.

This has been quite an enigmatic dilemma throughout the course of history, while some people condone and supports the idea of law, even if it violates conscience and some oppose and discard the same.

The rise of secularisation and incessant widespread of positivism led to resulted in the modern increasing gaps between law and conscience, which gave rise to various anarchist and fascist theories.

However as the question follows, Yes the laws may still remain lawful even if it violates the conscience, like for an instance, THE APARTHEID LAWS ^[31] in South Africa, these laws permitted the slave trading up to some extent but that law was against the pillars ideals of human dignity and value of a human in a society or the NUREMBERG TRIAL ^[32] held after world war 2 for punishing the guilty German soldiers responsible for committing war crimes, however even if the accused were criminals the punishment was still morally atrocious.

Some People has opposed the validation of law if it violates conscience like, according to Mahatma Gandhi ^[33] quoted, 'In matters of conscience, the law of the majority has no place.', the importance of conscience prevails over the statute of laws. The fundamental human consciences supersede the rule of law if it violates the principles of conscience.

According to Jack Kevorkian ^[34], 'When your conscience

says law is immoral, don't follow it', this phrase signifies the importance of consciences prevails and should be compass for domination and navigating the righteous path.

WHEREAS some Writer like Thomas Hobbes wrote in his novel *Leviathan* ^[35], quoted 'Law are made to be followed, not judged by every man's conscience', he signified the independence of law from the judgement or prejudice of conscience, he argued that inner judgement eventually leads to chaos and further peace depends on obedience to sovereign laws.

According to Lord Devlin ^[36], a British Judge stated that 'Conscience is a matter of priest, not for judges' he suggested that the law needs to be separated from the human conscience, as he felt that conscience differs which leads to blurring the real substantive objective of society which therefore weakens the Law.

In 1930s, the rise of Nazi ^[37] in Germany, the Nationalist Socialist German workers party began to take control over the Germany and led to legislate the laws which were considered to be violent and biased towards some ethnicity like 'Jews' ^[38], however the rules were still labelled as the Law even if the law was a beacon of biased suffering and against the moral values of the society.

'Government cannot be religious and self-assertive at the same time. Religious experience needs a spontaneity which laws inevitably suppress. And you cannot govern without laws. Your laws eventually must replace morality, replace conscience, replace even the religion by which you think to govern. Sacred ritual must spring from praise and holy yearnings which hammer out a significant morality. Government, on the other hand, is a cultural organism particularly attractive to doubts, questions and contentions. I see the day coming when ceremony must take the place of faith and symbolism replaces morality.' These lines are taken from the *DUNE* ^[39] Franchise novels written by Frank Herbert ^[40], which is a dystopian novel about how a tyrant triumph over his state by deceiving the public by slowly obsoleting the conscience and usurping them with the sovereign law, these lines depict how the conscience is upstaged by the law and eventually diminishes by stirring an active refusal against conscience.

A law is considered lawful even if it is not morally accepted or violates the fundamental principles of conscience but only if they are measured as the dire necessarily steps for the progress.

From the above said, it can be worthily noted that Laws are lawful even if they violates the conscience but it is still a necessary requisite to have the value of principles of good faith, equity and conscience shined with it, but even if the law goes against the fundamental ideals of conscience it should still not forget its objective, as the Laws are made for securing the rights and duties of the individual, which should never wither away, even in the face of Armageddon.

Prevalence of Conscience in the Modern-India Legal System

The prevalence of conscience in the modern-Indian legal system refers to the moral judgement and ethical reasoning superseding the statutes by establishing a STARE DECISIS ^[41] for the subsequent cases. The conscience is still a pivotal wheel for delivering the justice to the public. While the law is a codified structure that is followed without any obstructions or hindrances yet the moral compass of

conscience still finds its way in the judgement.

Constitutional's inclination towards Conscience

- Article 21 of the Indian Constitution of India states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." The "right to life" under Article 21 includes the right to live with human dignity, autonomy on moral conscience.
- Article 25 of the Indian Constitution guarantees freedom of conscience and the right to freely profess, practice, and propagate religion. This right ensures the preach of conscience which should remain unaffected by the laws.
- Preamble declares the country of India as Sovereign, socialist, secular, democratic, republic committed to justice, equality, liberty and fraternity; all of the idealistic principles which deeply resonates with the moral conscience.
- Fundamental rights ^[42] and Directive Principles of states policy ^[43] reflects the ethical ideals upon which the nation should strive, thus highlighting the prevalence of conscience as an individual deeply entwined with nation.

Landmark Judgements driven by ethical principles

▪ **K.S. Puttaswamy vs. Union of India (2017)** ^[44]

Issue: Whether the Right to Privacy is a fundamental right under the constitution of India?

Held: The Supreme Court recognized the right to privacy as a fundamental right under Article 21. The judgment emphasized the individual's right to moral autonomy and freedom of conscience, protecting inner thoughts and personal decisions like sexual orientation, beliefs, etc. This judgement highlighted the desperate need of autonomous conscience which should remain unaffected by any contamination or infringement.

▪ **Gurunath Manohar vs. Kamlabai Narsingh Rao Shinde (1995)** ^[45]

Issue: Adoption rights, whether a Hindu widow could adopt without the express authority of her deceased husband under customary Hindu Law.

Held: The HMA, 1956, was silent on whether a widow could adopt without her husband's express authority so the court relied on the principles of justice, equity and good conscience to provide the judgment the court observed that Conscience must override the patriarchal customs and the wife must not be denied solely due to lack of written permission.

▪ **Namdeo Lokman Lodhi vs. Narmadabai (1953)** ^[46]

Issue: Can the court enforce an unfair contract if it clearly violates equity and conscience?

Held: The court held that even if a contract is technically valid under the law, a court should not enforce it if it violates "justice, equity, and good conscience." thus, thereby promoting the simultaneous law with the conscience. The famous line from the judgement quoted, "No court in this country is bound to enforce a bargain that is inequitable,

unconscionable or opposed to good conscience."

▪ **Ram Charan vs. Sukhram Supreme (2025)** ^[47]

Issue: Inheritance Rights of Tribal Women

Held: On July 17, 2025, the Supreme Court declared that tribal women have equal inheritance rights in the ancestral property. This was a major stride towards the gender equality and justice, which shook away the common unquestioned custom of patriarchy practiced in tribes in favour of constitutional morality.

Conclusion

Ever since the human life has grasp the taste of existentialism, we have always pondered about the 'why' and 'how', and in the search for this scepticism, we came across the need for a civilisation, the bond of fraternity and brotherhood has always been more precious to us than our unquenchable yearn for our genesis. That brotherhood or the civilisation has always compelled and narrated by incorporating us with the conscience, whether that attribute has been inspired from religion, customs, psychological or society.

The dynamic interwoven between conscience and law musters an enduring dilemma in the jurisprudence and psychological theories. And yet the relationship between them is far more complex that it reveals a paradoxical or an anomaly narrative, in a generalised sense, their relation needs to be maintained with certain restrictions for the progressive advancement of society, the conscience must serve as a predicate for the law, if felt necessary. Whereas the law should be applied in the prospect that it does provide maximum welfare to the state and its subject.

Therefore, the relationship between the conscience and law must be viewed as a dialectical, rather than contradiction. Law must be adjudicated to retain its moral legitimacy, while conscience must be guide by law and principles of equity, justice and good conscience to avoid moral relativism.

The conscience must also be adjudicated for its approach on morality, as the conscience is a psychological human development instrument as said by Freud, it is a perception of a development of a human through its experiences, therefore some people's conscience may differ violently than others. 'Marriage' for example, was for a long time regarded as infringing upon the rights of the community; in former times a man had to make amends for having the audacity to claim a woman.

As our society progresses, the transgression of crossing the line of conduct eventually blurred and therefore, the society's morality vary. The variation and erratic behaviour of morals and conscience eventually leads to destruction of the human values or to the growth of a new conscience which eventually usurps into a norm, which we have witnessed for millennia, that virtue slowly ceases and steep in our conscience. In adverse regime, when the law usurps the common consciousness, it's the duty of the society to never let the flame of morality be extinguished, as it is the last refuge of humanity.

The objective of this paper is to strengthen the resilience towards our Inner Dilemma and keeping the flame of

conscience burning even if the situation compels you to succumb against unprecedented opportunities and complex challenges which questions your judgement.

“There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts” – Mahatma Gandhi.

42. Article 12 to Article 35

43. Article 36 to Article 51

44. (2017) 10 SSC 1

45. AIR 1995 BOM 375

46. AIR 1953 SC 228

47. 2025 INSC 865

References

1. (2017) 10 SCC 1
2. 2025 INSC 865
3. <https://www.merriam-webster.com/dictionary/conscience>
4. <https://www.etymonline.com/word/conscience>
5. A renowned Physicist and a Nobel prize Laurette
6. A Scottish evangelist.
7. A phrase from the holy book ‘Bhagwat Geeta’, written by Shri Ved Vyas.
8. A phrase from the Islamic Holy book ‘Quran’
9. A phrase from the holy book of Christianity ‘Bible’.
10. Written by King Solomon.
11. An instrument of virtue
12. <https://www.merriam-webster.com/thesaurus/custom>
13. Hindu custom in which the widow of the dead man immolated herself willingly by sitting on her husband’s funeral pyre.
14. Indian reformer and writer
15. system in which people are bought and sold as property, forced to work, or held in captivity against their will.
16. first division of the Christian biblical canon
17. French sociologist and a Jurist.
18. As stated by Durkheim.
19. Austrian neurologist and father of Psychoanalysis
20. Published in 1923
21. French psychoanalyst
22. <https://juristopedia.com/law-definition/>
23. <https://dictionary.cambridge.org/dictionary/english/law>
24. <https://www.merriam-webster.com/dictionary/law>
25. Various schools for researching the source of Law.
26. German philosopher and writer of ‘The critique of Pure Reason’
27. As stated by Kant.
28. English philosopher, mathematician, and political theorist.
29. German philosopher, cultural critic, and classical philologist
30. Nietzsche’s non-fictional essay.
31. a racist political and social system in South Africa and South West Africa (Namibia) during the era of white minority rule.
32. were a series of trials involving the senior surviving Nazis to hold them accountable for waging war and committing war crimes.
33. Indian independence activist
34. American pathologist
35. Novel written by Thomas Hobbes
36. British judge and jurist
37. The Nazi was the political party of the mass movement known as National Socialism German workers party.
38. An ethnic group
39. A fictional story franchises.
40. An American writer.
41. meaning in Latin “to stand by things decided,” is a legal principle that directs courts to adhere to previous judgments