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WHEN LAW TRANSCENDS ETHICS: THE SHIFTING RELATIONSHIP BETWEEN LEGAL NORMS, MORAL REASONING, AND SOCIAL NECESSITY

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I. ABSTRACT

Throughout recorded history, legal obligation and moral expectation have rarely occupied perfectly coincident territory. Ancient societies tended to ground their regulatory frameworks in religious or philosophical authority, creating the appearance and often the functional reality of unity between the legal and the moral. That picture has since undergone a decisive transformation. Contemporary legal systems are shaped by parliamentary bargaining, judicial interpretation, constitutional text, and institutional inertia, none of which is reducible to any single community's moral outlook. This paper traces that transformation. Its central argument is that while law was historically conceived as derivative of moral order, it has progressively established an authority of its own—one that not only operates independently of prevailing ethical consensus but, in certain contexts, actively overrides it. This development is not lamented here as a pathology of modern governance. In societies marked by deep and irreducible moral pluralism, law's capacity to function without requiring unanimous ethical agreement is precisely what allows it to serve as a shared framework for coexistence. The paper surveys this dynamic across several domains' reproductive rights, end-of-life decision-making, criminal punishment, and digital privacy drawing primarily on Indian, British, and American legal experience. It engages with the principal theoretical accounts of the law-morality relationship, from classical natural law theory through Hartian positivism to the Indian Supreme Court's distinctive doctrine of constitutional morality. Recent developments including the reversal of constitutional abortion protections in the United States and the ongoing operationalisation of

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data protection regimes in India and Europe illustrate with fresh urgency how quickly law's relationship to prevailing ethical consensus can shift. The conclusion advanced is that law's institutional independence from ethics, while real and significant, does not dissolve law's responsibility to remain open to ethical scrutiny, critique, and reform.

II. KEYWORDS

law and morality, legal positivism, constitutional morality, natural law, jurisprudence.

III. INTRODUCTION AND RESEARCH PROBLEM

Every student who enters a law faculty is told, early and emphatically, that law and morality do not map onto each other. An act may be entirely lawful and ethically objectionable; it may be morally required and legally prohibited. This observation is so frequently repeated that it risks losing its force. Yet the question it points toward how the two systems relate, who mediates their conflicts, and what happens when they diverge sharply is among the most consequential in all of jurisprudence.

The question is not merely theoretical. Surrogacy is regulated in India and Ukraine, but surrogacy agreements are void in France and medically facilitated arrangements are criminally restricted in Germany, notwithstanding broadly comparable ethical questions concerning reproductive autonomy.[2] Capital punishment remains a legally authorised sanction in India and parts of the United States but has been dismantled across most of Western Europe, even though the moral case against deliberately killing as a form of state punishment is no less available in jurisdictions that retain it.[3] Physician-assisted dying is legally permitted in the Netherlands, Belgium, and Canada but remains unlawful in the United Kingdom, even though the suffering of terminally ill patients is identical on both sides of the English Channel. In each of these cases, law has arrived at a position that a considerable number of thoughtful, informed

[2] Surrogacy (Regulation) Act 2021, ss 2(1)(b), 4; Family Code of Ukraine 2002, art 123(2); Ministry of Health of Ukraine, Order No 787, 'On Approval of the Procedure for the Application of Assisted Reproductive Technologies in Ukraine' (9 September 2013) (as amended); Code civil (France) art 16-7; Embryonenschutzgesetz (Germany) 13 December 1990, § 1(1)(7), BGBl I 2746.
[3] Bachan Singh v State of Punjab (1980) 2 SCC 684, [261].

people regard as ethically wrong and yet it holds, and its authority is not undermined by that disagreement.

This paper takes these divergences seriously. It examines how the relationship between law and ethics has evolved from ancient systems in which the two were understood as manifestations of a single moral order, through the positivist insistence on their conceptual separation, to modern constitutional systems in which law not only operates without moral consensus but sometimes prevails against it. The argument is not that law is or ought to be morally indifferent. It is, rather, that law has developed a form of institutional authority that does not depend on the moral agreement of those it governs, and that understanding this authority and its proper limits is one of the most pressing tasks of contemporary legal theory.

The research problem, formulated precisely, is this: in what sense, and on what basis, does law in the contemporary period transcend the ethical frameworks from which it historically drew its justification? And what does this transcendence imply for questions of democratic legitimacy, the protection of individual rights, and the long-term health of pluralist societies?

A. Research Objectives

The paper pursues five specific objectives. First, to reconstruct the historical trajectory of law's relationship with moral thought across major legal traditions, identifying how and when law began asserting its own institutional logic. Second, to analyse the principal theoretical frameworks natural law, positivism, sociological jurisprudence, and constitutional morality that have sought to describe or prescribe that relationship. Third, to examine specific legal domains in which the divergence between law and prevailing ethics is most visible and most consequential. Fourth, to assess whether law that overrides moral consensus may still claim democratic legitimacy, and on what institutional grounds. Fifth, to propose a working framework for maintaining ethical accountability within autonomous legal systems without undermining their functional authority.

B. Research Questions

The paper addresses the following questions:

1. Was the historical convergence of law and ethics as complete as conventional accounts suggest, and at what point did systematic divergence begin to emerge?
2. Does legal positivism provide an adequate account of the separation between law and morality, or does it understate the extent to which moral reasoning pervades the practice of legal interpretation?
3. In which contemporary domains is the tension between law and ethics most acute, and what does the legal resolution of those tensions reveal about the nature of law's authority?
4. Can a legal outcome that contradicts majority moral opinion still claim democratic legitimacy, and what institutional structures make this possible?
5. What conception of the law-ethics relationship best serves pluralist, rights-respecting democratic societies?

C. Research Hypotheses

Four hypotheses guide the analysis:

1. Ancient and pre-modern legal orders drew their authority substantially from moral and religious foundations, such that legal and moral obligation were, in the consciousness of most of the governed, coextensive.
2. The positivist movement of the eighteenth and nineteenth centuries produced a decisive conceptual and institutional separation between legal validity and moral merit, with enduring consequences for how law is made, interpreted, and contested.
3. Contemporary democratic legal systems regularly produce outcomes that diverge from prevailing moral opinion, with the divergence most pronounced in bioethics, constitutional rights adjudication, criminal justice, and technology regulation.
4. Law's independence from popular moral consensus is not inherently anti-democratic; in societies where majority moral opinion would otherwise

suppress minority rights, that independence may be a condition of rights protection rather than a departure from it.

D. Research Methodology

This paper employs a doctrinal and analytical methodology. It draws on primary legal materials constitutional provisions, statutes, and judicial decisions alongside secondary scholarship in jurisprudence, legal philosophy, and comparative law. The approach combines historical reconstruction with theoretical analysis, using concrete legal developments as test cases for broader jurisprudential claims.

The jurisdictions examined are primarily India, the United Kingdom, and the United States, with comparative reference to continental European and international frameworks where they illuminate the central argument. India receives particular attention because the Supreme Court of India has, over the last two decades, generated some of the most sophisticated contemporary judicial thinking on the relationship between legal authority and popular morality.

The theoretical framework draws on H L A Hart's legal positivism,[4] Lon Fuller's internal morality of law,[5] Ronald Dworkin's rights-based jurisprudence,[6] and the Indian Supreme Court's doctrine of constitutional morality.[7] These are treated not as competing positions requiring adjudication, but as complementary lenses that together illuminate different facets of the law-ethics relationship. Citations follow OSCOLA 4th Edition throughout.

E. Literature Review

The literature on law and morality is vast and theoretically varied. What follows is a selective account of the positions most relevant to the argument developed in this paper.

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[4]H L A Hart, The Concept of Law (3rd edn, Oxford University Press 2012) 94–99.
[5]L L Fuller, The Morality of Law (rev edn, Yale University Press 1969) 39.
[6]Ronald Dworkin, Taking Rights Seriously (Harvard University Press 1977) 22–28.
[7]Gautam Bhatia, The Transformative Constitution (HarperCollins India 2019) 18–22.

The oldest and most persistent view holds that law derives its binding force from a moral order that exists independently of human will. Aristotle drew a foundational distinction between natural justice, which possesses the same force regardless of whether any community recognises it, and conventional justice, which varies by place and is established by agreement.[8] The tension between these two types was already apparent in classical antiquity: if a superior moral order exists, what follows when positive law contradicts it?

Thomas Aquinas provided the most influential medieval answer. Human law, in his account, represents a specification of natural law applied to particular circumstances. A human enactment that genuinely conflicts with natural law is not truly law but a distortion of it.[9] This position gave moral critique of positive law an enormous institutional and intellectual prestige that continued to animate rights discourse and constitutional argument long after the explicit theological framework had been abandoned.

The decisive theoretical challenge came from Jeremy Bentham. In his view, natural law thinking was not merely philosophically confused but politically dangerous: it provided convenient justification for whatever arrangements already existed and made it harder, not easier, to advocate for legal reform.[10] His insistence on separating the question of what the law is from what it ought to be was, in the first instance, a reformist intervention. John Austin sharpened this into a command theory in which law is simply the command of the sovereign backed by sanctions, entirely independent of its moral character.[11]

H L A Hart's *The Concept of Law* represents the most sophisticated defence of the positivist position. Hart replaced Austin's blunt command model with an account of legal systems constituted by primary rules of obligation and secondary rules

[8]Aristotle, Nicomachean Ethics, Book V (W D Ross tr, Oxford University Press 1998) 1134b.
[9]Thomas Aquinas, Summa Theologica (Fathers of the English Dominican Province tr, Burns Oates & Washbourne 1920) Ia-IIae, q 95, a 2.
[10]Jeremy Bentham, A Fragment on Government (Payne, Elmsly and Brooks 1776) preface.
[11]John Austin, The Province of Jurisprudence Determined (John Murray 1832) 18.

governing the identification, change, and adjudication of those primary rules.[12] His separability thesis that there is no necessary connection between law as it is and law as it ought to be was explicitly a conceptual claim, not a recommendation that law be morally indifferent.[13] Crucially, Hart acknowledged that a legal system's rule of recognition could, in principle, incorporate moral requirements, as fundamental rights provisions in constitutional systems effectively do.

Lon Fuller's response argued that law carries an internal morality: a set of procedural virtues—including generality, promulgation, non-retroactivity, clarity, and congruence between official conduct and stated rules—without which a system of directives cannot be said to function as law at all.[14] In his celebrated exchange with Hart, Fuller contended that a system violating these requirements sufficiently and systematically had not merely produced bad law but had ceased to be a legal system in any meaningful sense.[15] Hart held that this was analytically confused: the Nazi enactments were valid laws that were also morally catastrophic, and intellectual clarity required saying so rather than denying their legal character.

Ronald Dworkin mounted a more sustained challenge to positivism by arguing that law includes not only explicitly enacted rules but also principles—considerations of justice and fairness that bear on legal reasoning without having been formally posited.[16] On his account, hard cases are decided not by the exercise of judicial discretion but by identifying the interpretation that best fits and justifies the existing body of legal materials.[17] Morality, therefore, is not external to law but embedded in legal reasoning itself.

In the Indian context, the Supreme Court has elaborated a doctrine of constitutional morality that operates as a counterweight to what it calls 'popular' or 'social' morality.

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[12]H L A Hart, The Concept of Law (3rd edn, Oxford University Press 2012) 79–99.
[13]ibid 199–200.
[14]L L Fuller, The Morality of Law (rev edn, Yale University Press 1969) 33–94.
[15]L L Fuller, 'Positivism and Fidelity to Law — A Reply to Professor Hart' (1958) 71 Harvard Law Review 630, 644.
[16]Ronald Dworkin, Taking Rights Seriously (Harvard University Press 1977) 81–130.
[17]Ronald Dworkin, Law's Empire (Harvard University Press 1986) 225.

The intellectual origins of this doctrine lie in B R Ambedkar's warning to the Constituent Assembly that constitutional democracy is a fragile achievement, perpetually at risk from majority social morality that may not share its egalitarian commitments.[18] The Court has deployed this distinction in a series of landmark rulings, using it to override prevailing moral opinion in the name of constitutional rights.[19]

Finally, scholars including Shoshana Zuboff have examined a different kind of law-ethics gap: the failure of existing legal frameworks to address the ethical problems generated by digital surveillance, algorithmic governance, and the commodification of personal data.[20] This is not a case of law overriding moral consensus but of law lagging so far behind emerging moral problems that it has ceased to provide meaningful guidance.

IV. RESEARCH AND ANALYSIS

A. The Myth of Ancient Unity: Law and Ethics in Pre-Modern Systems

The familiar narrative in which ancient law and ethics formed a seamless unity does not survive close examination. The Code of Hammurabi presents itself as an expression of divine moral order, but its operative provisions are primarily instruments of commercial regulation, property allocation, and liability assignment—practical tools of governance rather than elaborations of philosophical ethics. The invocation of divine authority served an ideological function: it made the code difficult to challenge without appearing to challenge the gods themselves.

The Dharmashastra tradition of ancient India offers a related example. *Dharma* encompasses law, ethics, religion, custom, and cosmic order simultaneously, and the *Manusmriti* is simultaneously a legal code and a treatise on right conduct in all its dimensions. For present purposes, what matters is the practical consequence of this fusion: because challenges to law were framed as moral and religious challenges,

[18]Constituent Assembly Debates, vol VII (4 November 1948) (B R Ambedkar).
[19]Navtej Singh Johar v Union of India (2018) 10 SCC 1.
[20]Shoshana Zuboff, The Age of Surveillance Capitalism (Profile Books 2019) 176.

reform was correspondingly slow and costly. The separation of legal from moral authority, whatever its disadvantages, has the practical benefit of making law subject to reform without requiring wholesale transformation of a community's moral or religious identity.

Roman jurisprudence is the most instructive ancient example of law developing its own internal logic prior to any formal positivist theory. The Roman jurists—Gaius, Ulpian, Papinian were systematic legal thinkers who elaborated a sophisticated body of private law through the incremental refinement of legal concepts: ownership, contract, delict, succession. Stoic moral philosophy provided a theoretical backdrop, but the actual work of legal development was driven by practical necessity: the requirements of commerce, the management of disputes, the administration of a culturally diverse empire. Here, centuries before Bentham, law was already establishing its own institutional grammar.

B. The Positivist Turn and Its Reformist Significance

Bentham's attack on Blackstone's natural law jurisprudence in *A Fragment on Government* was, at its core, a reformist intervention.[21] The positivist insistence on distinguishing the law as it is from the law as it ought to be was intended not to insulate law from moral criticism but to make moral criticism more tractable: once you accept that a law can be legally valid and morally wrong simultaneously, calling attention to its wrongness becomes a clear and coherent starting point for arguing for its reform.

This point tends to get lost in contemporary debates in which positivism is sometimes depicted as a kind of moral indifference. Hart was emphatic that the separability thesis carried no such implication.[22] His version of positivism made room for legal systems that incorporate moral requirements directly into their rule of recognition as constitutional rights provisions do. In such systems, a sufficiently immoral law may indeed be legally invalid, not because law and morality are the same thing, but

[21]Jeremy Bentham, A Fragment on Government (Payne, Elmsly and Brooks 1776) preface.
[22]H L A Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review 593.

because the legal system has elected to make certain moral commitments conditions of legal validity.

The debate between Hart and Fuller over the legal status of Nazi enactments clarified what was genuinely at stake.[23] Fuller contended that a legal system that had so thoroughly violated its own procedural integrity—through secret laws, retroactive criminal liability, and systematic non-congruence between announced rules and official conduct had forfeited its claim to be called law. Hart replied that denying the legal character of such enactments was analytically misleading: they were real laws, brutally effective in coercing behaviour, and it was more honest to acknowledge this while insisting that their legal validity provided them no moral shield. Both positions illuminate something important: the first about law's dependence on minimal procedural integrity, the second about the irreducibility of moral evaluation to legal categorisation.

C. Law as Social Engineering: The Welfare State and Technical Governance

Roscoe Pound's sociological jurisprudence, developed in the early twentieth century, conceptualised law as a mechanism for reconciling competing social interests rather than as an emanation of moral principle.[24] The lawyer's professional task, on this account, was to identify the relevant interests at stake in any regulatory domain and to design legal instruments capable of balancing them. This technocratic vision shaped the development of labour law, environmental regulation, consumer protection, and public health legislation across the twentieth century.

The practical implications were considerable. The history of industrial relations legislation is not a record of moral argument persuading a moral community; it is a record of political mobilisation, class conflict, and legislative compromise. Whether workers had a right to organise and bargain collectively was settled not by

[23]H L A Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harvard Law Review 593; L L Fuller, 'Positivism and Fidelity to Law — A Reply to Professor Hart' (1958) 71 Harvard Law Review 630.
[24]Roscoe Pound, An Introduction to the Philosophy of Law (Yale University Press 1922) 98.

philosophical consensus but by political arithmetic—and the resulting law reflected that settlement, whatever one's moral view of it.

Environmental regulation provides an even clearer illustration. Setting an acceptable threshold for atmospheric pollutants or permissible pesticide residues in food involves scientific risk assessment, economic modelling, and political judgment. It does not involve moral philosophy. There is no ethical theory that specifies what the maximum permissible concentration of particulate matter in urban air should be. Law here operates in a domain that ethics does not and cannot reach not because the questions are trivial, but because they demand forms of technical expertise and institutional coordination that moral reasoning alone is constitutionally unable to supply.

D. Constitutional Morality and the Override of Popular Ethics: The Indian Experience

The most intellectually rich contemporary illustration of law asserting its authority over popular moral opinion comes from the Indian Supreme Court's development of constitutional morality doctrine. The roots of the doctrine lie in Ambedkar's concern, expressed during the Constituent Assembly debates, that the egalitarian commitments of the Constitution were perpetually at risk from a social morality that had not yet absorbed them.[25]

In *Navtej Singh Johar v Union of India*,[26] the five-judge bench confronted the challenge of striking down the application of Section 377 of the Indian Penal Code to consensual same-sex relations between adults, in circumstances where it was transparently obvious that majority moral opinion did not endorse the decriminalisation. The Court did not pretend otherwise. It reasoned, instead, that constitutional morality the values of dignity, equality, and non-discrimination inscribed in the Constitution—must take precedence over popular morality. Justice Chandrachud articulated this with

[25]Constituent Assembly Debates, vol VII (4 November 1948) (B R Ambedkar).
[26]Navtej Singh Johar v Union of India (2018) 10 SCC 1.

particular clarity: majority acceptance or popular moral sentiment cannot be invoked to justify the infringement of a single individual's fundamental rights.[27]

This is a remarkable assertion of legal authority over moral opinion. It grounds that authority not in a higher natural law but in the Constitution itself, understood as the community's deliberate, reflective, and more considered expression of its foundational commitments. When immediate popular moral intuition conflicts with those foundational commitments, the latter prevail.

The same pattern is visible in *Joseph Shine v Union of India*,[28] which dismantled the offence of adultery, and in *National Legal Services Authority v Union of India*,[29] which affirmed the constitutional rights of transgender persons. In each case, constitutional law moved well ahead of prevailing popular moral opinion, generating legal entitlements that many in the community did not believe people ought to possess. This is not law following ethics. It is law actively shaping the conditions within which existing ethical views can be challenged, contested, and changed.

The limits of this approach are tested most sharply in *Indian Young Lawyers Association v State of Kerala*.[30] By a 4:1 majority, the Court held that devotees of Lord Ayyappa did not constitute a separate religious denomination entitled to protection under Article 26 and that the exclusion of women aged between 10 and 50 from the Sabarimala temple violated Article 25(1); rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965 was consequently invalidated. The subsequent review proceedings referred wider questions concerning religious freedom, essential religious practices, and the content of 'morality' under Articles 25 and 26 to a nine-judge Bench. *Sabarimala* therefore presents constitutional morality at its most contested: its deployment against a deeply held religious practice demonstrates both its capacity to protect equal citizenship and the sustained resistance that may accompany judicial settlement of such disputes.

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[27]Navtej Singh Johar v Union of India (2018) 10 SCC 1, [267] (Chandrachud J).
[28]Joseph Shine v Union of India (2019) 3 SCC 39.
[29]National Legal Services Authority v Union of India (2014) 5 SCC 438.
[30] Indian Young Lawyers Association v State of Kerala (2019) 11 SCC 1.

A further dimension of this development merits attention. The Indian Penal Code 1860 was repealed with effect from 1 July 2024 and replaced by the Bharatiya Nyaya Sanhita 2023. The new legislation does not contain any provision equivalent to the former Section 377. The constitutional decriminalisation achieved in *Navtej Singh Johar* is thus now consolidated in the architecture of the criminal law itself: consensual same-sex relations are not merely decriminalised by judicial intervention but are unaddressed by the successor code, reflecting a legislative acquiescence in the constitutional position. The omission has not gone unnoticed: the Delhi High Court called upon the Centre to address the resulting gap regarding non-consensual offences previously covered by s 377, and the Supreme Court, in October 2024, declined to compel Parliament to legislate on the matter. The legislature's response silent omission rather than principled reform is itself a striking data point for the paper's thesis about law's capacity to act, or to refrain from acting, independently of settled moral and constitutional commitments. This trajectory from judicial override of popular morality to legislative silence in the face of a new constitutional gap illustrates precisely the mechanism by which constitutional morality reshapes, but does not fully determine, the moral and legal landscape that follows.

E. Bioethics and the Law: Decision-Making Without Consensus

Medical ethics and biotechnology present the clearest contemporary examples of law being required to act in the absence of settled moral consensus. The debate over assisted dying engages values of profound weight—the sanctity of life, the moral significance of suffering, the meaning of medical care, the nature of autonomous decision-making—on which thoughtful and well-informed people who share the same broad moral tradition continue to reach contradictory conclusions.

In this situation, law cannot simply codify an ethical consensus, because none exists. It must make a choice—and whatever it decides will be regarded as morally indefensible by a significant portion of the population. The Netherlands, Belgium, and Canada have legalised physician-assisted dying under defined conditions; the United Kingdom has declined to do so. Both legal positions are held by jurisdictions of genuine moral seriousness. Law here is not the servant of ethics but its arbiter: a

decision-making institution that must resolve disputes which ethics, by itself, is unable to settle.

The Supreme Court of India's approach in *Common Cause v Union of India* is instructive.[31] Recognising the right to die with dignity as an aspect of the constitutional right to life, and permitting advance directives specifying the withdrawal of life support in defined circumstances, the Court grounded its reasoning in constitutional rights rather than in any particular ethical theory. The deliberate choice of constitutional rather than moral language is significant: it acknowledges that moral consensus is unavailable while identifying a substitute decision-making framework that possesses its own independent institutional authority.

The trajectory of surrogacy law illustrates a related difficulty. The Surrogacy (Regulation) Act 2021 prohibits commercial surrogacy and restricts altruistic surrogacy to close relatives.[32] The ethical arguments surrounding this policy—about exploitation and autonomy, about the commodification of reproductive capacity, about the interests of children born through surrogacy—are genuinely contested and remain so. The law has arrived at a particular regulatory position, but that position cannot claim to express a settled moral consensus. It reflects cultural assumptions, institutional preferences, and lobbying pressures. The ethics are unresolved; the law has moved on.

Post-2021 litigation concerning the Surrogacy (Regulation) Rules and donor gametes has reinforced this picture. In *Arun Muthuvel v Union of India*, petitioners challenged the 14 March 2023 notification amending Form 2 under rule 7 to prohibit the use of donor gametes by intending couples. The Supreme Court issued case-specific interim directions in October 2023. The Surrogacy (Regulation) Amendment Rules 2024, notified on 21 February 2024, subsequently restored limited access to donor gametes where a District Medical Board certifies medical necessity, provided that the child has

[31]Common Cause v Union of India (2018) 5 SCC 1.
[32]Surrogacy (Regulation) Act 2021 (India), ss 2(b), 4.

at least one gamete from the intending couple.[33] The Court's engagement with these challenges, and its 2023 clarifications to the framework for Advance Medical Directives established in *Common Cause*, both demonstrate a consistent pattern: in fields where ethical consensus is genuinely unavailable, courts do not wait for it. They proceed on the basis of constitutional principle, setting provisional legal frameworks while ethical debate continues. Law here functions not as ethics' executor but as its enabler creating procedural structures within which contested moral questions can continue to be argued without paralysing the governance of affected individuals' lives.

F. Reproductive Rights and Competing Moral Visions

Few areas of law illustrate more starkly the divergence between legal norms and ethical consensus than reproductive rights. The legal frameworks governing abortion in particular reveal that law does not merely reflect prevailing moral opinion—it actively constitutes the terrain on which moral conflicts are fought, and it can reverse position without any corresponding shift in the underlying ethical disagreement.

The trajectory of abortion law in the United States is the clearest recent illustration. In *Roe v Wade*,[34] the Supreme Court grounded a constitutional right to abortion in the Due Process Clause, effectively imposing a uniform national framework on a question that divided the population along deep moral and religious lines. For nearly fifty years that framework defined the legal landscape, regardless of whether it commanded ethical consensus and the evidence is overwhelming that it did not. Then, in *Dobbs v Jackson Women's Health Organization*,[35] the Court reversed course entirely, holding that the Constitution confers no right to abortion and returning the question to state legislatures. The moral arguments on both sides of the question were not materially different in 2022 from what they had been in 1973. What changed was the legal answer

[33] Arun Muthuvel v Union of India, Writ Petition (Civil) No 756 of 2022, order dated 9 October 2023 (SC); Arun Muthuvel v Union of India, Writ Petition (Civil) No 756 of 2022, order dated 23 February 2024 (SC); Surrogacy (Regulation) Amendment Rules 2024, GSR 119(E), r 2.
[34] Roe v Wade 410 US 113 (1973).
[35] Dobbs v Jackson Women's Health Organization 597 US 215 (2022).

demonstrating that law's relationship to ethical consensus is not one of reflection but of construction and reconstruction.

The comparative picture amplifies this lesson. The Medical Termination of Pregnancy Act 1971[36] established permissive abortion access in India decades before any comparable ethical consensus had formed in Indian society; its subsequent amendments in 2021 expanded access still further, in a legal environment in which public moral debate on the question remained limited. The Abortion Act 1967 in the United Kingdom[37] similarly preceded widespread social consensus, establishing a statutory framework that has shaped rather than merely reflected the evolution of British public attitudes toward reproductive autonomy. In each case, law has not waited for ethics. It has acted as an institution possessed of its own authority, making choices that ethics continues to contest.

G. Criminal Justice: The Ethics of Punishment and the Reality of Legal Practice

Criminal law is the domain in which the divergence between law and ethics is most directly and physically felt by individuals. The justification for the state's deliberate infliction of deprivation on its own citizens through imprisonment, fines, or, in some jurisdictions, execution has occupied moral philosophers for centuries without producing consensus. Retributivism holds that punishment is deserved and self-justifying; consequentialism holds that it is justified only by the benefits it produces. Both frameworks have been challenged on ethical grounds; neither command universal assent.

What is striking about actual criminal justice systems is how little they resemble either theory in its rigorous form. Sentencing law as practised blends retributive and consequentialist elements in proportions that reflect political culture, electoral considerations, and institutional inertia rather than any coherent moral logic. Mandatory minimum sentences express retributive thinking; diversion programmes

[36]Medical Termination of Pregnancy Act 1971 (India), as amended by the Medical Termination of Pregnancy (Amendment) Act 2021.
[37]Abortion Act 1967 (UK).

and suspended sentences express consequentialist thinking; victim impact statements respond to restorative imperatives. The result is a system that is internally inconsistent from the perspective of any single moral theory—and yet entirely effective as a legal institution.

Capital punishment represents the extreme case of this divergence. In *Bachan Singh v State of Punjab*,[38] the Supreme Court of India held that the death penalty is constitutionally permissible but must be confined to the 'rarest of rare' cases—a standard that has been applied inconsistently and controversially in the decades since. The Law Commission of India's 262nd Report recommended abolition for all offences other than those related to terrorism.[39] That recommendation remains unimplemented. The legal position and the position held by a considerable portion of the legal and human rights community are in open conflict. Law has not followed ethics here; it is maintaining a position that its own advisory bodies have found difficult to defend.

H. Technology, Privacy, and the Ethics That Law Has Not Yet Reached

The emergence of mass digital surveillance, algorithmic decision-making systems, and platform-based capitalism has produced a zone of ethical concern that existing legal frameworks were not designed to address. The moral problems are readily identifiable: the collection and aggregation of personal data without meaningful informed consent erodes individual autonomy; algorithmic systems that make consequential decisions about bail, creditworthiness, or welfare eligibility without transparency or accountability violate procedural fairness; the concentration of informational power in a small number of private entities raises questions about democratic governance that competition law was designed for a different world to answer.[40]

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[38]Bachan Singh v State of Punjab (1980) 2 SCC 684.
[39]Law Commission of India, '262nd Report: The Death Penalty' (August 2015) [1.1].
[40]Shoshana Zuboff, The Age of Surveillance Capitalism (Profile Books 2019) 176–200; Upendra Baxi, The Future of Human Rights (3rd edn, Oxford University Press 2008) 189.

The legal response has been partial and frequently inadequate. The European Union's General Data Protection Regulation represents a serious attempt to construct a comprehensive regulatory framework, grounded in principles of consent, transparency, and data minimisation.[41] Its practical effectiveness has been constrained by enforcement challenges, the complexity of regulated activities, and the persistent informational asymmetry between regulated entities and regulatory bodies. The right to erasure is one of its most significant innovations, but its application has generated new tensions between privacy and the legitimate public interest in historical record.

In India, the Supreme Court's recognition of privacy as a fundamental right in *Justice K S Puttaswamy v Union of India* placed the country among jurisdictions that take data rights seriously at a constitutional level.[42] The subsequent Digital Personal Data Protection Act 2023 has attracted criticism for the breadth of exemptions it provides to central government and for the relative weakness of its enforcement mechanisms.[43] Once again, the gap between constitutional aspiration and legislative reality reflects the operation of political interests that bear no necessary relationship to ethical argument.

The promulgation of the Digital Personal Data Protection Rules 2025 represents the first step in operationalising the Act, establishing the Data Protection Board of India and setting out procedures for processing complaints. Yet the constitutional debates surrounding the Act's broad governmental exemptions remain live and unresolved. From February 2026, constitutional petitions have been filed—including by Venkatesh Nayak and others—challenging ss 17(1)(c), 17(2), 33(1), 36, and 44(3) of the DPDP Act and Rules 17 and 23(2) of the DPDP Rules, targeting in particular the government surveillance exemptions and the carve-outs from information access rights. These petitions directly instantiate the law-versus-ethics tension that this section is built around: the legislature has enacted a framework, but a significant body of legal and civil society opinion holds that it has done so in a manner that sacrifices privacy

[41]General Data Protection Regulation (EU) 2016/679, art 17.
[42]Justice K S Puttaswamy v Union of India (2017) 10 SCC 1.
[43]Digital Personal Data Protection Act 2023 (India), ss 17–18.

accountability for administrative convenience. The pattern here is consistent with the paper's central thesis: law has moved, but the ethical and constitutional debate about whether it has moved rightly continues unabated.

V. SUGGESTIONS AND RECOMMENDATIONS

The analysis in this paper points toward several practical conclusions about managing the relationship between legal authority and ethical accountability more productively.

1. **First, on the legislative process:** law-making in areas that engage fundamental rights or raise acute ethical contestation should incorporate structured deliberation beyond ordinary parliamentary committee review. Independent ethics advisory bodies analogous to those that already operate in the context of biomedical research could provide non-binding assessments of the ethical dimensions of proposed legislation. This would not grant ethics a veto over law but would ensure that the ethical implications of legislative choices are explicitly addressed before enactment.
2. **Second, on constitutional adjudication:** the Indian Supreme Court's doctrine of constitutional morality offers a valuable precedent for distinguishing between constitutional commitments and majority moral preferences. Other jurisdictions might examine how their own constitutional frameworks can perform a similar function protecting individual and minority rights against majority moral pressure without transforming constitutional courts into unaccountable moral authorities. The key discipline is anchoring constitutional review in constitutional text and principle rather than in judicial moral preference.
3. **Third, on legal education:** the progressive marginalisation of jurisprudence and legal philosophy in many law curricula is a practical problem, not merely an academic one. Lawyers who lack the analytical tools to identify, characterise, and assess the ethical dimensions of legal questions are less able to serve their clients, their institutions, and the public interest. Jurisprudence should be treated as a core requirement of legal training, not an optional supplement.

4. **Fourth, on bioethics and technology law:** in domains where, moral consensus is genuinely absent end-of-life decisions, reproductive technology, artificial intelligence regulation law should aspire to procedural fairness rather than substantive moral resolution. The European Union's Artificial Intelligence Act[44] represents a notable attempt to impose risk-based regulatory structure on AI governance before ethical consensus has formed. The goal is not to adjudicate between competing ethical positions but to design decision-making processes that are transparent, inclusive, revisable, and defensible regardless of which moral position ultimately prevails. Legislation in these domains should be explicitly provisional, incorporating mandatory review mechanisms at defined intervals.
5. **Fifth, on the culture of law-making:** legislators, judges, and legal scholars should resist treating law's institutional independence from ethics as permission for moral indifference. The fact that legal validity does not require moral justification does not diminish the importance of moral justification—it means that justification must be pursued through channels other than validity claims: law reform advocacy, public interest litigation, academic critique, and civil society engagement. These channels should be actively supported rather than treated as inconvenient pressures on legal institutions.

VI. CONCLUSION

The relationship between law and ethics has never been simple, and accounts that romanticise a premodern period of perfect alignment do not survive historical scrutiny. Ancient legal systems were moral documents in their self-presentation and instruments of social control, economic regulation, and political authority in their operation. The positivist movement did not create the separation between law and ethics; it made that separation explicit, theoretically articulate, and intellectually productive.

[44]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L 2024/1689.

The findings of this study substantially support the research hypotheses formulated at the outset. The historical inquiry demonstrates that although law and morality were often presented as interconnected, legal systems have long possessed institutional functions that extend beyond purely moral considerations. The analysis of positivist jurisprudence confirms that the distinction between legal validity and moral merit has become a defining feature of modern legal thought. Further, the examination of constitutional adjudication, bioethics, criminal justice, and technology regulation reveals that contemporary legal systems frequently operate independently of prevailing ethical opinion while continuing to claim legitimacy through constitutional, democratic, and institutional processes. Accordingly, the research concludes that law has developed an autonomous authority of its own; however, that authority remains most effective and legitimate when it remains open to ethical evaluation, public scrutiny, and principled reform.

What distinguishes the contemporary situation is the scale and candour of law's claim to independent authority. Constitutional courts override popular moral opinion in the name of fundamental rights. Administrative agencies establish technical standards that have no recognisable moral content. Legislatures reach compromises that satisfy no coherent ethical theory but command sufficient political support to become law. In all of this, law operates as an autonomous institution with its own logic, its own procedures, and its own sources of authority—sources that neither depend on moral consensus nor wait for it.

This is not a development to be mourned without qualification. In pluralist societies where citizens hold deep and irreconcilable moral disagreements, a legal system that required moral consensus as a precondition for its validity would be chronically paralysed. Law's capacity to function in the absence of ethical agreement is part of what makes shared civic life possible for people who disagree profoundly about ultimate values. The Indian Supreme Court's protection of LGBTQ+ rights against majority moral opposition, its recognition of the right to die with dignity against those who regard all human life as inviolable: these are outcomes that, from the perspective of constitutional rights, are more defensible than the moral consensus they set aside.

Yet there is genuine risk in law's disconnection from ethical accountability. Legal institutions that treat their own procedures as self-validating and their own outputs as beyond moral challenge tend toward technocracy at best and oppression at worst. The central lesson of the twentieth century is that legal validity is not a moral credential. Formally valid law can be morally catastrophic, and intellectual clarity requires maintaining that distinction rather than resolving it by definitional fiat. Preserving the distinction—insisting that valid law can be morally evaluated and reformed, and that the mechanisms of moral critique and legal reform must be kept open and functioning—is the most practically important contribution that jurisprudence can make to contemporary governance.

In the most meaningful sense, law has grown beyond the ethical frameworks from which it once drew its authority. It has developed institutions, procedures, and sources of legitimacy that moral philosophy alone cannot supply. But it has not grown beyond the need for ethical accountability—the persistent, uncomfortable insistence that law be asked not only whether it works but whether it is just. That question, which the natural lawyers posed at the foundation of the Western legal tradition, remains as urgent as it has ever been.[45]

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