

A series of white, overlapping geometric lines on a black background, forming various polygons and creating a sense of depth and movement on the left side of the slide.

MODULE 1

By Divya Tamrakar

Assistant Professor, School of Law,
MIT Art, Design and Technology
University.

Rajbaug, Loni Kalbhor, Solapur
Highway, Pune - 412201,
Maharashtra.

MEANING OF LAW

- The term law has different meanings in different Places/societies at different times (as it is subject to amendments).
- In the Hindu religion law implies “Dharma” in Muhammadean religion (Islam) it is “Hukum” in Roman it is “Jus”, in French, it is “Droit” in Arabic, Alqanoon, in Persian and Turkish, its Kunoon, in Latin its “Legam” in Philipino its “Batas” in the Albanian language its “Ligj” in Czech its “Zakon” in Danish its “Lor” in Dutch its “Wet” in Italian its “Legge” and in Lithuanian its “Teise” and so on.
- It varies from place to place in the sense adultery is an offence in India (under section 497 of the Indian penal code, 1860) while it is no offence in America.
- Law differs from religion to religion in the sense of personal laws viz. Hindu law, Muslim law etc. differ from one another. For instance, A Muslim can have four wives living at a time, but a Hindu can have only one wife living at a time (Monogamy).
- If a Hindu male marries again during the lifetime of his first wife, he is declared guilty of the offence of bigamy and is Punishable under sec. 494.
- The law is subject to change with the change in society and also change in the Government/legislative through the amendments/Acts.

MEANING OF LAW

Generally, the term law is used to mean three things:

First, it is used to mean “legal order”. It represents the regime of adjusting relations and ordering conduct by the systematic application of the force of organized political society.

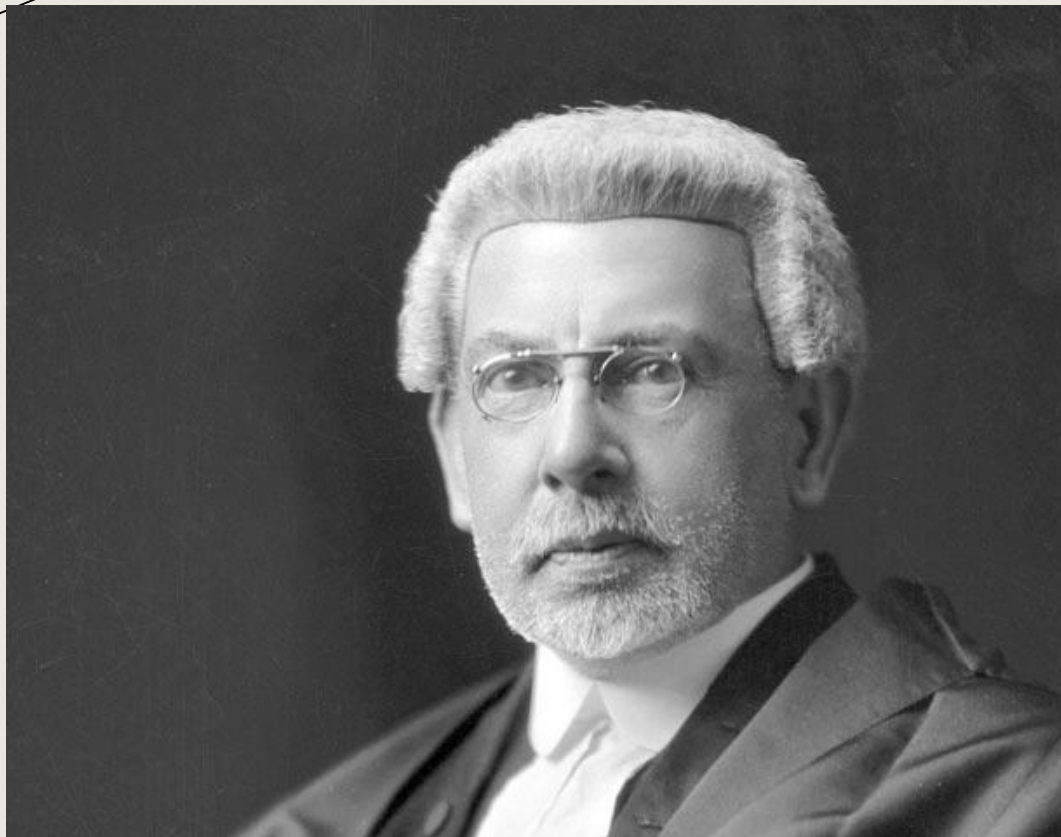
Secondly, law means the whole body of legal Percepts which exists in a politically organized society.

Thirdly, law is used to mean all official control in a politically organized society. This lead to the actual administration of Justice as contrasted with the authoritative material for the Guidance of Judicial action. Law in its narrowest or strict sense is the civil law or the law of the land.



DEFINITIONS OF LAW

- It is very difficult to define the term law.
- Many Jurists attempted to define the term law.
- According to **Salmond** “the law may be defined as the body of principles recognized and applied by the state in the administration of Justice.
- **Criticism of Salmond’s definition of law:** Salmond did not define the expression Justice. Keeton says what has been considered to be just at one time has frequently not been so considered at another.
- **Criticism by Dean Roscoe Pound:** Dean Roscoe Pound has criticized the definition of Salmond as reducing law to a mass of isolated decisions and the law in that sense to be an organic whole.
- Further, it is criticized on the ground that Salmond’s definition applies only to lax law not to Statute.
- Despite criticism, Salmond’s definition is considered a workable definition.



Sir John William Salmond KC was a legal scholar, public servant and judge in New Zealand.

Born: 3 December 1862, North Shields, United Kingdom

Died: 19 September 1924 (age 61 years), Wellington, New Zealand

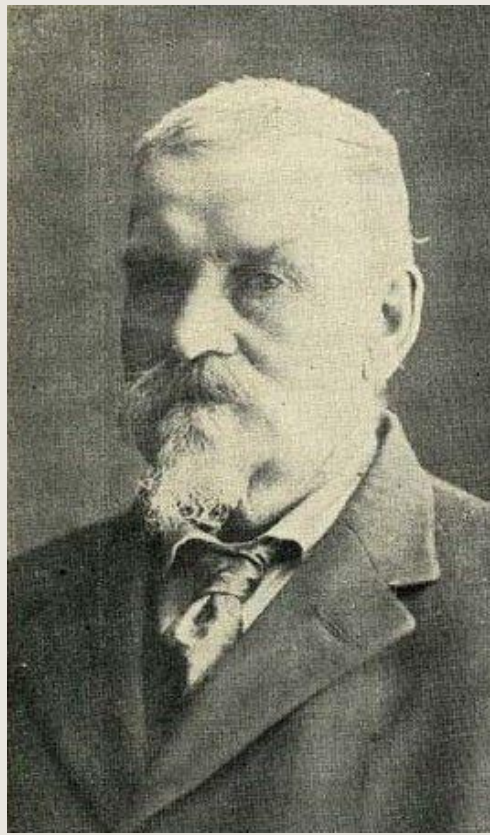
Education: University College London

Nationality: New Zealand



AUSTIN'S DEFINITION OF LAW

- John Austin an English jurist expounded the concept of analytical positivism, making law as a command of sovereign backed by sanction.
- He developed logically, a structure of legal system in which he gave no Place to values, morality, idealism and Justice.
- According to Austin, a law, in the strict sense is a general command of the sovereign individual or the sovereign body. Issued to those in subjectivity and enforced by the physical power of the state.
- According to Austin “law is aggregate of rules set by men politically superior or sovereign to men as politically subject.”
- Austin says, “A law is a command which obliges a person or persons to a course of conduct.”
- **Criticism of Austin's definition of law:** Austin's definition of law is subjected to criticism on the ground that it ignores completely the moral and ethical aspects of law and unduly Emphasized the imperative character of law.



John Austin was an English legal theorist who posthumously influenced British and American law with an analytical approach to jurisprudence and a theory of legal positivism. Austin opposed traditional approaches of "natural law", arguing against any need for connections between law and morality.

Born: 3 March 1790, Suffolk, United Kingdom

Died: 1 December 1859 (age 69 years), Weybridge, United Kingdom

HOLLAND'S DEFINITION OF LAW

- Thomas Erskine Holland, a reputed Jurist, who followed Austin's concept and nature of law attempted to define law as law is a General rule of external human action enforced by a political sovereign.
- Holland also measures or defines law with preference to sovereign devoid of moral, ethical or ideal elements which are foreign to law and Jurisprudence.

Sir Thomas Erskine Holland KC, FBA was a British jurist.

Born: 17 July 1835, Brighton, Brighton and Hove, United Kingdom

Died: 24 May 1926 (age 90 years), Oxford, United Kingdom



HANS KELSAN'S DEFINITION OF LAW

According to Kelsen, legal order is the hierarchy of the norms, every norm derive its validity from the superior norm and finally, there is the highest norm known as grundnorm.

He gave **the pure theory of law**.

Hans Kelsen was an Austrian jurist, legal philosopher and political philosopher.

He was the principal architect of the 1920 Austrian Constitution, which with amendments is still in operation.

Born: 11 October 1881, Prague, Czechia

Died: 19 April 1973 (age 91 years), Berkeley, California, United States



BENTHAM'S DEFINITION OF LAW

Bentham is often regarded as the genuine founder of legal positivism.

Bentham proposes two types of jurisprudence:

- a) Expositorial jurisprudence, which explains what law is, and
 - b) Sensorial jurisprudence, deals with the utilitarian concept.
- His legal positivism is based on sensorial jurisprudence, which is the idea or philosophy of utilitarianism.
 - Bentham's ideas on what constitutes law were disclosed in his book *An Introduction to the Principles of Morals and Legislation* which asserts "law everywhere was regarded as the legislative will of a sovereign".
 - Law, according to him, is not something found in nature. It is a social construct that legislatures have created.

BENTHAM'S DEFINITION OF LAW

- Bentham believed that a legal system based only on a sovereign's expressed legislative will would provide better and more definite laws than the common law system.
- His inclination for the legislation was based on utilitarian moral philosophy, which he firmly believed in.
- According to Bentham, a law is "an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended that such declaration should upon occasion be a means of brinkmanship."

JEREMY BENTHAM

Jeremy Bentham was an English philosopher, jurist, and social reformer regarded as the founder of modern utilitarianism. Bentham defined the "fundamental axiom" of his philosophy as the principle that "it is the greatest happiness of the greatest number that is the measure of right and wrong." (Theory of Utilitarianism)

Born: 15 February 1748, Houndsditch, London, United Kingdom

Died: 6 June 1832 (age 84 years), Westminster, London, United Kingdom



DEFINITION OF LAW

- **H.L.A. Hart** says Law is the combination of primary rules of obligations and secondary rules of recognition.
- **Savigny** says that law is not the product of direct legislation but is due to the silent growth of custom or the outcome of unformulated public or Professional opinion. He says that law is not a body of rules set by the determinate authority, but rules consist partly of social habitat and partly of experience. He says law is found in society; it is found in custom.
- **Ihering** defines law as the form of Guarantee of the conditions of life of society, assured by the state's power of constraint. He says the law is a means to an end and the end of the law is to serve its purpose which is social, not individual."
- **Dean Roscoe Pound** defines law as a social institution to satisfy social wants. He says law is a social engineering, which means that law is an instrument to balance between the competing or conflicting interests.

DIFFERENCE/DISTINCTION BETWEEN ‘THE LAW’ AND ‘A LAW’

- The subject matter of jurisprudence being the study of law, it is necessary to understand the distinction between the terms ‘the law’ and ‘a law’.
- The term ‘the law’ or law connotes the whole legal system in its totality. It has been termed ‘jus droit’ in Latin.
- According to **Roscoe Pound**, *“The expression ‘the law’ or law means the legal system operating in a country. On the other hand, the term ‘a law’ is termed as lex loci in Latin which means a particular statute in its isolated form.”*
- According to **Jeremy Bentham**, the term ‘the law’ means – *“neither more nor less than the total of several individual laws taken together.”* Thus, every Act or Statute of Parliament is called “a law” whereas the aggregate of Acts comprising legal systems are known as ‘the law’ or ‘law’ of the country.

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NATURE OR BASIC FEATURES OF LAW

The law may be described as a normative science, that is, a science which lays down norms and standards for human behaviour in a specified situation or situation enforceable through the sanction of the state.

The concept of law may be understood by analyzing the features common to all laws. Among these features, the ones considered as essential or basic include:

1. Generality: Law is a general rule of conduct. It does not specify the names of specific persons or behaviours. Its generality is both in terms of individuals governed and in terms of the social behaviour controlled. The extent of the generality depends upon whom the law is made to be applicable.

For example:

- I. everyone has the right to life, liberty and security of a person under Article 3 of the Universal Declaration of Human Rights (UNDHR). This law is made applicable to everyone in this world; therefore, it is universal.
- II. The State shall not deny to any person equality before law or the equal protection of laws within the territory of India (Article 14 of the Constitution). This law applies to every person residing in India; therefore, it is national in character.

NATURE OR BASIC FEATURES OF LAW

2. Normativity: Law does not simply describe or express the human conduct it is made to control, but it is created to create some norms in society. The law creates norms by allowing, ordering or prohibiting social behaviour. Under this heading, the law can be classified as follows:

- a. Permissive Law:** It allows or permits subjects to do the act they provide. E., every person who is arrested has a right to be produced before the nearest Magistrate within a period of 24 hours. Of his arrest. The term “has the right” used in this provision shows that the subject is given the right.
- b. Directive Law:** It orders, directs, or commands the subjects to do the act provided in the law. It is not optional. (if there is a contract between the parties that any particular act must be performed by the parties themselves, then they must perform it personally.)
- c. Prohibitive Law:** It discourages the subject from doing the act required not to be done. All criminal laws are usually prohibitive laws. (no one should enter the property of another person against the will of that person.)

NATURE OR BASIC FEATURES OF LAW

3. Sanction: Every member of society is required to follow the laws. Where there is a violation of law, sanctions should follow.

The term sanction is derived from the Roman word “Sanctio” which means that part of the statute imposes a penalty or has made some other provision for its enforcement. In general, sanction means ‘penalty’.

Definitions of Sanction

- a. **Salmond** defined sanction as an instrument of coercion by which any system of imperative law is enforced. The state uses its physical force as a sanction for the administration of justice.
- b. According to **Friedrick Pollock**, the sanction in modern sense means constant readiness of the state to use its force for ensuring justice to be done to both i.e., for law abiding person as also to the evil-doer.

NATURE OR BASIC FEATURES OF LAW

KINDS OF SANCTION

a) Criminal Sanction (7 types)

- i. Capital punishment
- ii. Imprisonment
- iii. Corporal punishment
- iv. Fine
- v. Deprivation of civil and political rights
- vi. Forfeiture of property
- vii. Deportation/transportation

(b) Civil Sanction (5types)

- i. Damages
- ii. Costs
- iii. Restitution of property
- iv. Specific performance
- v. Injunctions



FUNCTIONS OF LAW

The law serves many purposes and functions in society. Many jurists have expressed different views about the purpose and function of law.

According to Holland: *“the function of law is to ensure the well-being of the society.”* Thus it is something more than an institution for the protection of individual’s rights.

According to Roscoe Pound: there are mainly four main functions to law, i.e.

- (a) maintenance of law and order in the society;
- (b) to maintain the status quo in society;
- (c) to ensure maximum freedom of individuals; and
- (d) to satisfy the basic needs of the people.

According to Salmond, *“The object of law is to ensure justice. This justice may be distributive or corrective. Distributive justice seeks to ensure fair distribution of social benefits among the members of the community and corrective justice seeks to remedy the wrong”.*



FUNCTIONS OF LAW

The following are the major functions or purposes of law:

- ❑ **Establishing Standards:** The law is a guidepost for minimally acceptable behaviour in society. Some acts, e., are crimes because society (through a legislative body) has determined that it will not tolerate certain behaviours that injure or damage persons or their property. (for example, it is a crime to cause physical injury to another person without justification, as it generally constitutes the crime of assault).
- ❑ **Maintaining Order:** Some semblance of order is necessary in a civil society and is therefore reflected in law.
- ❑ **Resolving Disputes:** Disputes are unavoidable in a society made of persons with different needs, wants, values and views. The law provides a formal means for resolving disputes – the court system.
- ❑ **Protecting Freedoms and Rights:** Every person has some fundamental freedoms and rights, and it is the function of law to protect these freedoms and rights from violations by persons, organizations or government. (For example, subject to certain exceptions, there is a fundamental right of equality before the law, i.e., every person is equal in the eyes of the law and if any person feels that his fundamental right is violated may approach the court for remedy.)

KINDS/CLASSIFICATION OF LAW

- As stated earlier, the term 'law' is used in different senses.
- It denotes different kinds of rules and principles.
- The jurists have classified law according to their legal perception.

Salmond's Classification of Law:

1. **Imperative Law:** It means a rule which prescribes a general course of action imposed by some authority which enforces it by superior power either by physical force or any other form of compulsion.

He further divided imperative law into two types:

- Divine law:** It consists of the commands imposed by God upon men either by threats of punishment or by hope of his blessings.
- Human law:** Human laws are the laws by analogy. It is further divided into four different kinds

KINDS/CLASSIFICATION OF LAW

KINDS OF HUMAN LAW

- a. **Civil law:** imperative law imposed and enforced by the State is called civil law.
- b. **Moral Law:** imperative law imposed and enforced by members of society is moral law.
- c. **Autonomic law:** those enforced and enforced by different institutions or autonomous bodies, like universities, airline companies etc.
- d. **International law:** those imposed upon the State by the society of States and enforced partly by international option and partly by the threat of war.

KINDS/CLASSIFICATION OF LAW

2. **Physical or Scientific Law:** Physical laws are laws of science which are expressions of the uniformities of nature. They are not created by humans and can't be changed by humans. They are invariable forever. Examples of physical law are the law of gravity, the law of air pressure etc.

3. **Conventional law:** It is the body of rules or system of rules agreed upon by persons for their conduct towards each other. E., international law and rules of club or cooperative societies, rules of game or sport are best examples of conventional law.

4. **Customary law:** There are many customs which have been prevalent in the community from time immemorial even before the States came into existence. They have assumed the force of law over time. (ex. under Hindu personal law, a man can't marry his brother's widow, however, if there is any custom which allows the same then the marriage will be valid).

According to **Salmond**, "any rule of action which is observed by men when a custom is firmly established, it is enforced by State as a law because of its general approval by the people."

KINDS/CLASSIFICATION OF LAW

5. Practical or Technical Law: Practical laws are the rules meant for a particular sphere by human activity, e. laws of health, and laws of architecture.

6. International law: It is also known as the law of nations as it applies to States rather than individuals. It consists of rules which regulate relations between the States inter-se

7. Civil Law: The law enforced by the State is called civil law and it contains sanction behind it. Civil law is territorial in nature as it applies within the territory of the State concerned.

KINDS/CLASSIFICATION OF LAW

Austin's Classification of Law

- **Divine Law**
- **Human Law**
- **Positive Morality**

He treats only divine law and human law as law in the real sense of the term and does not consider positive morality as law since it lacks sanction or binding force.

KINDS/CLASSIFICATION OF LAW

Holland's Classification of Law

He classified laws according to their functions. He classified law into the following five categories.

1. **Private and Public law:** Private law determines the relationship between person and person whereas public law deals with the relationship between a person and the State. In private law, the State is only the enforcing authority while in public law, the State is an interested and enforcing party. Examples of private law: laws of property, contracts, torts, trusts etc are instances of private law. Example of public law: law of crimes,

Public law is further divided into two parts:

- a. **Constitutional law:** constitutional law includes all rules which directly or indirectly affect the distribution or exercise of the sovereign power of the State. It is the body of those legal principles which determines the Constitution of the State.
- b. **Administrative law:** it describes in detail how the government shall exercise those powers that were outlined in the constitutional law.

KINDS/CLASSIFICATION OF LAW

2. **General and Special Law:** The territorial law of a country is called General Law. For example, Indian Penal Code and, the Indian Contract Act are the general laws of the country because they have general application throughout the territory of India. Besides the general law, there are certain kinds of special laws. E. laws applicable to particular locality (the Punjab Police Act etc.).

3. **Substantive and procedural law:** Substantive law is that law which defines a right while procedural law determines the remedies. Substantive law is concerned with ends that which administration of justice seeks to achieve while procedural law deals with how those ends can be achieved. (E. law of contract, transfer of property, law of crimes etc. are substantive laws whereas the Civil Procedure Code or Criminal Procedure Code are procedural laws.

4. **Antecedent and Remedial Law:** Antecedent law relates to independent specific enforcement without any resort to any remedial law. (e., the law relating to the specific performance of a contract is the best example of antecedent law). The remedial law provides for the remedy. (e. Law of torts, writs etc. come within the category of this law)

5. **Law in Rem and Law in Personam:** Law in rem relates to the enforcement of rights which a person has against the whole world or the people in general whereas law in personam deals with the enforcement of rights available against a definite person or persons. (E. law of inheritance, succession, ownership etc. are subject matter of law in rem, while the law of contract, trust etc. are examples of law in persona



LAW AND MORALITY

- There was a time when there was no distinction between law and morality. Society was governed by the morals that were law also.
- Later on, distinction was made between obligatory rules and regulatory rules.
- In Europe, Greeks and Romans recognized natural law as the basis of law.
- During the Middle Ages Christian morals were considered as the basis of law.
- The 17th and 18th centuries saw another change in reverse and theories of natural law became foundation.
- The Nineteenth Century saw the complete separation of law from morals when Austin said that law is the command of the sovereign.
- Kelsen find only the legal norm as the subject matter of jurisprudence and excludes morals from the sphere of law.



LAW AND MORALITY

- The approach of sociological jurists was different as they studied morals indirectly. They included morals while tracing the origin, development, function and ends of law.
- The object of law is the submission of the individual to the will of organized society, while morality tends to subject the individual to the dictates of his conscience.
- Law is concerned with the social relationship of men rather than the individual whereas ethics concentrates on the individual rather than society.
- Ethics considers motive and law emphasizes conduct, but the ethical duties of man cannot be considered without considering his obligation to his fellows or his place in society.



WHAT IS LAW?

Black's Law Dictionary says that law is "A body of rules of action or conduct prescribed by controlling authority and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequence is a law."

Simply said, the law is a collection of guidelines created by the legislative body and implemented by the executive body, all of which have legal standing. And which residents must adhere to avoid legal repercussions.

WHAT IS MORALITY?

The concept of morality has evolved beyond philosophical contexts and norms of behaviour in the workplace.

Morality is concerned with right and wrong and are typically passed down within a community or institution from generation to generation.

A social institution known as morality is defined as a collection of values that are universally accepted by people in a culture. The ideas, values, beliefs, and behaviour developed and upheld by society are, in a nutshell, what is meant by morality.

They lack legal sanctity, yet they impose social obligations on individuals or depend on their moral convictions.



Pray to God

↓

Moral

↓

Not Mandated
by Law



LAW AND MORALITY

Arndts finds following distinction between law and morals:

1. In law, man is considered as a person because he has free will. In morals, we have to do with determining the will towards the good.
2. Law considers man only in so far as he lives in community with others; morals give a guide to lead him even if he were alone
3. Law has to do with external acts (Actus reus), morals look to the intention- the inner determination and direction of will. (only thinking good for others entails the blessing of God but doing wrong is punishable under religious precepts and law)
4. Law governs the will (external behaviour) morals seek a free determination towards the good.
5. Law talks about strict liability i.e., even if there is no fault but morals excuse the person if there is no fault.



FOUR STAGES IN THE DEVELOPMENT OF THE LAW WITH RESPECT TO MORALITY

Prof. Roscoe Pound describes four stages in the development of the law with respect to morality.

1. Morals as a **BASIS** of law
2. Morals as a **TEST** of law
3. Morals as the **END** of the law
4. Morality as **PART** of law

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1. MORALS AS A **BASIS** OF LAW

- Throughout history, no clear distinction has been made between law and morality.
- By virtue of a lack of distinction, all laws found their origin in what was considered morally correct by the people in a society.
- Eventually, the state picked up what was morally correct and gave it the form of laws or rules and regulations.
- Therefore, the law finds its origin and is based on the values that float amongst the people, creating a similarity between the two concepts, i.e. law and morality. For example, it is morally wrong to kill someone or to rape someone.
- This value has taken the form of a law.
- Morality may with time have been distinguished from laws, but it remains an integral part of legal development.
- Law essentially involves certain basic principles such as the principle of fairness and equality, and these principles are derived from ethics and morals.

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2. MORALS AS A **TEST** OF LAW

- The entire purpose of having laws is to uphold justice in society and act in a way that is best for everyone's well-being.
- Any law that violates moral principles needs to be repealed, and the morality of the law can be assessed by considering whether it is consistent with moral principles.
- There shouldn't be any conflict between law and morality, according to many jurists, because the principle of fairness falls squarely within the purview of morality.

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3. MORALS AS THE **END** OF THE LAW

- As stated before, the end goal of enacting laws is to maintain a society that is based on principles of justice, fairness, and equality.
- The entire purpose of having certain moral standards is also to maintain some sort of order in the society which would lead to fewer conflicts.
- This shows that more or less, the purpose of both these phenomena is the same.
- It is believed by jurists that if the law is to stay involved in the lives of people, then it cannot ignore morals.
- If there is a law that is against moral standards, people may be hesitant to obey it which will create further conflicts within the society.

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4. Morality as **PART** of law

- It is said that morality is somehow an essential component of law or the formation of the law, even though law and morals can be distinguished from one another.
- According to some jurist, the law is more than just a set of rules; it also makes use of certain principles.
- Although it is acknowledged that this does not allow the rules themselves to be rejected on the grounds of their morality, the skillful application of these principles to legal norms causes the judicial process to extract a moral element out of the legal order.
- Even the positivist admits that morality can and often does work against the creation of a legal rule.