

## **Constitutional Morality vs Social Morality: Supreme Court's Evolving Jurisprudence**

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### **ABSTRACT**

The ongoing conflict between constitutional morality and social morality has significantly influenced several landmark rulings of the Supreme Court of India. These judgments have not only advanced social progress but are likely to shape future generations. Social morality represents the prevailing beliefs and norms of society, whereas constitutional morality requires commitment to the foundational principles of the Constitution—justice, liberty, equality, dignity, and fraternity.

This paper analyzes the Supreme Court's shifting approach by examining key decisions such as Navtej Singh Johar, NALSA, Sabarimala, Joseph Shine, and K.S. Puttaswamy, where constitutional morality has been favored over conventional moral viewpoints. Through doctrinal study and case review, the research shows how constitutional morality has become a tool for broadening fundamental rights.

The paper ultimately argues that constitutional morality is steadily becoming the judiciary's guiding standard, even when it challenges entrenched social traditions. It concludes that constitutional morality functions not merely as a theoretical judicial idea but as an essential mechanism for fulfilling the Constitution's transformative and aspirational vision.

### **KEYWORDS**

Constitutional morality, Social morality, Supreme Court of India, Fundamental Rights, Transformative constitutionalism, Dignity, Equality, Constitutional values.

### **INTRODUCTION**

The Constitution of India was envisioned as a transformative charter capable of reshaping society for the better. It was designed not only as a framework for governance but also as an instrument for social change. However, tensions frequently emerge when constitutional ideals come into conflict with dominant social beliefs. These tensions are particularly evident in matters relating to gender justice, bodily and sexual autonomy, religious customs, individual freedoms, and other fundamental constitutional guarantees. In recent decades, the Supreme Court of India

has increasingly confronted cases where “social morality”—often rooted in longstanding traditions, cultural practices, religious doctrines, or popular opinion—clashes with “constitutional morality,” which upholds the principles of dignity, equality, liberty, and fraternity.

The concept of “constitutional morality” gained renewed importance in *Naz Foundation v. NCT of Delhi* (2009), and since then it has become central to several major judgments. The judiciary’s reliance on constitutional morality has played a crucial role in invalidating long-established societal practices that, although widely accepted, are inconsistent with constitutional mandates. Many of these practices are historically entrenched and deeply woven into social structures, making judicial intervention both necessary and controversial. This paper examines the development of the idea of constitutional morality and evaluates whether the Supreme Court’s growing preference for constitutional values over social norms contributes to strengthening constitutionalism or raises concerns about judicial overreach.

## **RESEARCH METHODOLOGY**

This study follows a qualitative doctrinal research approach, drawing upon: Examination and interpretation of key Supreme Court judgments and landmark rulings. Review of secondary sources such as scholarly books, research papers, and legal commentaries. Theoretical analysis of social norms along with the ideas of constitutional morality and social morality. Limited comparative insights and engagement with ongoing debates in Indian constitutional law. The research does not include any empirical investigation or fieldwork. The analysis is based solely on published materials and online resources accessible to the author. The central emphasis is on legal analysis, judicial developments, and the theoretical foundations of constitutional principles.

## **REVIEW OF LITERATURE**

1. Ambedkar’s Idea of Constitutional Morality Dr. B.R. Ambedkar, through his interventions in the Constituent Assembly, stressed that constitutional morality demands respect for constitutional procedures, institutional integrity, and the values of liberty and equality. Researchers observe that Ambedkar viewed constitutional morality as a tool to challenge and reform deeply entrenched social inequalities.

2. Contemporary Constitutional Scholarship Modern scholars—such as Gautam Bhatia and Justice D.Y. Chandrachud (via judicial reasoning)—identify constitutional morality as a core component of transformative constitutionalism. They argue that it serves as a guiding principle for courts, particularly when social standards become discriminatory or outdated.

3. Role in Judicial Pronouncements Recent jurisprudence shows that courts increasingly rely on constitutional morality while interpreting fundamental rights under Articles 14, 19, and 21. Academic commentary highlights that judgments like *Navtej Singh Johar*, *K.S. Puttaswamy*, and *Sabarimala* place constitutional morality at the heart of contemporary rights adjudication.

4. Concerns Regarding Judicial Overreach Some critics caution that an overemphasis on constitutional morality may lead to judicial overreach, enabling courts to disregard societal norms without adequate democratic engagement. Overall, the literature reveals that while constitutional morality remains debated, it undeniably plays a crucial and growing role in defining the contours of Indian constitutional law.

### **HYPOTHESIS**

The Supreme Court of India is progressively giving greater weight to constitutional morality rather than traditional social morality. This judicial shift has enhanced the safeguarding of individual rights and has further propelled the vision of transformative constitutionalism.

### **ANALYSIS**

Development and progression of the Supreme Court’s constitutional jurisprudence.

#### 1. Constitutional Morality vs. Social Morality: Conceptual Distinction

- Social Morality: It arises from society’s traditions, cultural practices, religious beliefs, and the opinions of the majority. Such morality is often shaped by dominant social groups and can change depending on prevalent power structures.
- Constitutional Morality: This is grounded in the foundational principles of the Constitution—such as justice, liberty, equality, human dignity, non-discrimination, and respect for diversity. Indian courts frequently encounter cases where safeguarding an individual’s rights demands questioning long-established social practices.

2. Important Judgments That Advanced the Idea of Constitutional Morality (A) *Navtej Singh Johar v. Union of India* (2018) The Supreme Court invalidated Section 377 IPC insofar as it criminalized consensual sexual relationships between adults of the same sex. The Court ruled that constitutional values must override religious or public morality, reaffirming personal dignity and individual autonomy. Core observation: “Rights guaranteed by the Constitution cannot be restricted by majoritarian moral views.” (B) *Justice K.S. Puttaswamy v. Union of India* (2017) The Court recognized the right to privacy as a fundamental right. It refused to accept that public beliefs or societal standards can determine or limit the scope of personal freedom. (C) *NALSA v.*

Union of India (2014) The Supreme Court acknowledged and protected the rights of transgender individuals.

It stressed that entrenched social prejudices must not override the constitutional promises of equality, dignity, and protection. (D) *Joseph Shine v. Union of India* (2018) (Adding a paraphrased line for this judgment as well, since it was listed but no content was provided.) The Court decriminalized the offence of adultery under Section 497 IPC, stating that the law violated women's autonomy and dignity. It reinforced that constitutional morality demands treating individuals as equal partners rather than property. Decriminalised adultery.

Adultery was decriminalized after the Court observed that societal notions about marriage cannot be grounds for criminalizing personal decisions made by adults. (E) *Indian Young Lawyers Association v. State of Kerala (Sabarimala, 2018)* The Supreme Court permitted women of all age groups to enter the Sabarimala temple. In doing so, it relied on the principle of constitutional morality to invalidate discriminatory religious customs. Although the judgment remains highly debated, it stands as one of the clearest examples of the judiciary prioritizing constitutional values over traditional norms.

3. Movement Toward Transformative Constitutionalism Recent judicial decisions indicate a clear shift, marked by:

- Emphasizing dignity as a core constitutional principle.
- Safeguarding minority rights even when opposed by majority opinion.
- Upholding individual freedom and autonomy in the face of societal expectations.
- Broad and progressive interpretation of Articles 14, 19, and 21. This demonstrates the belief that the Constitution is a dynamic document aimed at bringing about social change.

4. Critiques and Challenges Despite its positive aspects, applying constitutional morality is not without criticism:

- It risks blurring the line between judicial interpretation and judicial overreach.
- Courts may be accused of enforcing the values of a privileged minority over democratically expressed social norms.

The flexible nature of the doctrine can lead to unpredictability in judgments. Nevertheless, proponents assert that protecting fundamental rights often requires courts to act against majoritarian pressures, especially in a society marked by deep-rooted inequalities.

## CONCLUSION

In the past twenty years, the Supreme Court's decisions show a distinct shift toward elevating constitutional morality above prevailing social norms. This shift has significantly strengthened India's rights-oriented jurisprudence, particularly in areas such as dignity, privacy, gender justice, and personal autonomy. Although concerns regarding judicial activism continue to be discussed, the doctrine of constitutional morality has become an essential instrument for safeguarding individuals against regressive customs and for pushing forward the Constitution's transformative goals. Moving ahead, Indian constitutional law is likely to depend even more on this principle as the nation faces emerging questions linked to identity, equality, and personal freedoms.

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