



CONSTITUTIONAL MORALITY VS. SOCIAL MORALITY: EVOLVING JURISPRUDENCE IN CONTEMPORARY INDIA

Sumit Pradhan*

ABSTRACT

This article examines the conceptual distinction between constitutional morality and social morality, and traces how the Indian Supreme Court over the last decade has deployed the doctrine of constitutional morality to resolve legal conflicts where social practices or majority sentiment clash with constitutional norms. Focusing on landmark decisions, K.S. Puttaswamy¹ (Right to Privacy), Navtej Singh Johar² (decriminalisation of consensual same-sex relations) and Indian Young Lawyers Association v. State of Kerala³ (Sabarimala) the piece analyses doctrinal shifts, critiques of judicialism, and the normative implications for democracy, pluralism and rights protection. It argues that while constitutional morality has become an indispensable tool for protecting individual dignity and minority rights, its application raises difficult questions about judicial legitimacy, democratic responsiveness and the proper limits of constitutional adjudication.

Keywords: Constitutional Morality, Social Morality, Judicial Activism, Majoritarianism, Human Dignity.

INTRODUCTION

Morality is a many-sided concept. Societies are governed not only by rules and institutions but also by shared moral sensibilities that determine what the majority considers right, decent or acceptable. Courts, by contrast, are required to interpret and apply the written constitution, which captures a set of normative commitments that may conflict with prevailing social mores. When judges invoke constitutional morality, they claim fidelity not to majority opinion, but to

*BA LLB (HONS.), THIRD YEAR, ASSAM UNIVERSITY, SILCHAR.

¹ K.S. Puttaswamy and Anr. vs Union of India And Ors. (2017).

² Navtej Singh Johar vs Union of India (2018).

³ Indian Young Lawyers Association vs The State of Kerala (2018).

the text, values and structural principles embodied in the Constitution: dignity, equality, liberty and the rule of law. This normative shift has become especially salient in contemporary Indian jurisprudence, where the Supreme Court has increasingly used constitutional morality to protect minority rights against majoritarian or tradition-based practices.

It maps that doctrinal evolution, asking what is constitutional morality, how does it differ from social morality, how has the Supreme Court applied the doctrine in landmark cases, what are principled criticisms and democratic concerns, and what normative balance should the court strike in a plural, democratic society?

DEFINING THE TERMS: CONSTITUTIONAL MORALITY AND SOCIAL MORALITY

Social morality- Refers to the moral sentiments, customs and normative expectations that prevail within a social group at a particular time. It encompasses religion, tradition, community norms and popularly held beliefs. Social morality is dynamic and rooted in majoritarian preferences; it changes through cultural shifts, political mobilisation and social movements.

Constitutional morality- By contrast, it denotes the ethical commitments and value framework embedded in a country's constitutional order. It is not simply fidelity to constitutional text, but to the spirit of the constitution - the protective commitments (equality, liberty, dignity, secularism) that give the constitution its moral force. Constitutional morality obliges state organs and citizens to honour constitutional norms even when those norms conflict with entrenched social practices. It therefore acts as a counter-majoritarian check: when social morality infringes fundamental rights or contravenes constitutional principles, constitutional morality provides a normative basis for correction. The two conceptualisations can converge. But conflict arises where majoritarian social practices infringe the constitutional rights of minorities or vulnerable groups. In such moments, courts must decide whether to defer to social morality (respecting traditional practices and popular sentiment) or to enforce constitutional morality (protecting rights and principles even against public sentiment).

THE RISE OF CONSTITUTIONAL MORALITY IN INDIAN JURISPRUDENCE

Indian constitutional law has not always foregrounded the explicit term constitutional morality, but the idea has long been implicit in rights protection and in judicial review. In recent years, however, the Supreme Court has invoked the doctrine more overtly and repeatedly, using it as

a principled basis for protecting individual autonomy, equality and dignity in the face of social resistance.

A watershed moment was the unanimous nine-judge decision in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), which recognised privacy as a fundamental right under Article 21. The judgment is complex and delivered through multiple concurring opinions, emphasising autonomy, dignity and individual choice as constitutional essentials. It also signalled judicial willingness to treat constitutional values as normative commitments that can and should check legislative or social intrusions into personal freedoms. Thereafter, the Court turned explicitly to the concept of constitutional morality in cases where social or religious rules collided with fundamental rights. Two 2018 decisions, *Navtej Singh Johar v. Union of India* (decriminalising consensual same-sex relations) and *Indian Young Lawyers Association v. State of Kerala* (Sabarimala temple entry), illustrate how the Court operationalised constitutional morality in practice. In *Navtej Johar*, the Court rejected the penal conviction and moral opprobrium attached to consensual same-sex relations, stressing equality, dignity and non-discrimination as constitutional imperatives that trump social stigma. In the Sabarimala case, the Court confronted a religious practice excluding women of menstruating age from entering the shrine and, in a majority opinion, held that the practice violated fundamental rights to equality and freedom of religion, again invoking constitutional values to restrain a social-religious custom. Commentators view this phase as a revival or a strengthening of constitutional morality as a judicial tool, one that gives the Court moral authority to correct social prejudice and to expand the protective reach of fundamental rights. Empirical and doctrinal analyses highlight how the Court has used constitutional morality to extend privacy, autonomy and equal citizenship in ways that prior majoritarian or tradition-aligned rulings had not permitted.

CASE STUDIES: HOW CONSTITUTIONAL MORALITY WORKS IN PRACTICE

K.S. Puttaswamy v. Union of India (2017): The Puttaswamy judgment is critical because it provided doctrinal foundations for later invocations of constitutional morality. By rooting privacy in Articles 14, 19 and 21, the Court recognised the constitutional value of personal autonomy and dignity that protects citizens from intrusive state action and majoritarian pressures. That doctrinal move reframed questions about private life, sexual choices, intimate relationships, and bodily decisions as matters protected by constitutional morality rather than merely by fluctuating social norms.

Navtej Singh Johar v. Union of India (2018): Building on Puttaswamy, the Court in *Navtej Johar* declared Section 377 (to the extent it criminalised consensual adult homosexual conduct) unconstitutional. The Court emphasised the dignity, autonomy and worth of LGBT persons, locating their protection in constitutional morality against social stigma and moral disapproval. In doing so, the Court explicitly rejected the idea that social morality alone should determine the limits of legal regulation where core constitutional values are implicated.

Indian Young Lawyers Association v. State of Kerala (Sabarimala, 2018): Sabarimala posed a different but related problem: a religious practice excluding a protected class (women of certain ages) from entry. A majority of the Court found that such exclusion could not be sustained when measured against equality and freedom of religion under the Constitution. The Court's reasoning relied on the principle that constitutional morality demands protection of individual rights against discriminatory customs, even when those customs enjoy majority support. The case, however, also generated fierce public debate and subsequent review petitions, illustrating the social tension inherent in making constitutional values override deeply held religious practices.

THE LOGIC AND JUSTIFICATIONS FOR CONSTITUTIONAL MORALITY

The idea of constitutional morality is invoked by courts because it plays a crucial role in ensuring justice goes beyond the pull of majority opinion and political convenience. One of its key logics is the protection of minorities since constitutions are meant to safeguard vulnerable groups from the tyranny of the majority, and constitutional morality ensures that rights and dignity are not sacrificed at the altar of popular sentiment. It also reflects fidelity to constitutional values, treating the Constitution not merely as a legal document but as a moral compass that guides the interpretation of ambiguous or contested rights in light of its founding principles. By emphasising universal values like dignity, liberty, and equality, constitutional morality further brings coherence to the protection of rights, ensuring that doctrines on privacy, equality, or free speech are not seen in isolation but as part of a unified commitment to human dignity. Importantly, courts also rely on it to play a role of moral leadership in societies transforming, where democratic majorities may hesitate or resist protecting minority rights; the judiciary, by enforcing constitutional morality, can act as a catalyst for social reform and set the stage for broader acceptance over time. Underlying all these justifications is the understanding that courts, as guardians of the Constitution, carry the special responsibility of preserving the normative order even when it clashes with prevailing social norms.

CRITIQUES AND DEMOCRATIC CONCERNS

Judicial Overreach and Legitimacy: Critics argue that invoking constitutional morality risks substituting judicial moral judgment for democratic deliberation. When judges invalidate social practices or legislative policies on constitutional moral grounds, critics claim it may undermine democratic decision-making and accountability.

Indeterminacy and Activism: Constitutional morality can be criticised as a vague and malleable concept that risks becoming a vehicle for judicial activism. Without clear standards, judicial appeals to "constitutional morality" may appear subjective.

Cultural Insensitivity and Social Backlash: In culturally diverse contexts, judicial enforcement of constitutional values against deep-seated customs may provoke social backlash and weaken the perceived legitimacy of the judiciary. The Sabarimala aftermath illustrates how court rulings can spark intense social and political controversy.

Balance with Pluralism and Religious Freedom: There is a tension between enforcing constitutional morality and respecting religious autonomy and identity. Courts must carefully balance individual rights and collective religious practices to avoid unjustified intrusions into religious life.

RECONCILING CONSTITUTIONAL AND SOCIAL MORALITY: A PRINCIPLED APPROACH

Reconciling constitutional morality with social morality does not mean treating them as rigidly opposed forces, but rather finding a balanced path where both values can coexist in a principled way. Courts, while upholding the Constitution, should make their reasoning clear by openly identifying which rights and provisions are being applied and how far social practices intrude upon them, so that their judgments do not appear arbitrary. At the same time, they must firmly protect a minimum core of rights like dignity, equality, bodily autonomy, and freedom from discrimination that cannot be compromised under the excuse of tradition or societal opinion. However, not every conflict needs heavy-handed judicial interference; when rights are only marginally affected, or when the issue can reasonably be addressed through legislation and democratic debate, courts can step back and allow the democratic process to play its role. Importantly, instead of issuing judgments in a purely commanding tone, courts should aim to open dialogue with legislatures and communities, encouraging law-making and social

conversations that promote understanding and gradual acceptance of constitutional values. In designing remedies, too, sensitivity is crucial sometimes; gradual, consultative, and carefully measured steps bring more lasting change than sweeping orders that might trigger backlash. This balanced approach enables the judiciary to remain faithful to its role as the guardian of constitutional morality, while also respecting the living social fabric of democracy and ensuring that reforms are accepted not just legally, but socially.

NORMATIVE ASSESSMENT: WHY CONSTITUTIONAL MORALITY MATTERS?

Despite the tensions, constitutional morality performs vital democratic and moral functions. It anchors rights in a public, written framework and provides a principled counterweight to majoritarian preferences that can marginalise vulnerable groups. In India's plural society, where social norms may continue to stigmatise minorities or entrench discriminatory practices, constitutional morality ensures that the promises of the constitutional text - equality, dignity and liberty have teeth. Constitutional morality fosters a moral conversation across society: when courts articulate constitutional principles, they create a public dialogue about the norms that should govern collective life. While judicial pronouncements are imperfect instruments for social change, they often catalyse legislative reform and social movements that eventually align social morality with constitutional values, as seen with decriminalisation and subsequent social acceptance over time.

CONCLUSION

The rise of constitutional morality in contemporary Indian jurisprudence marks a pivotal reorientation: from passive adjudication of legal questions to active guardianship of constitutional values against social prejudice. Leading judgments (*Puttaswamy*, *Navtej Johar*, *Sabarimala*) demonstrate the doctrine's power to vindicate rights of dignity, privacy and equality. At the same time, the doctrine invites careful institutional self-restraint to avoid perceptions of judicial moralism or alienation from democratic constituencies. Ultimately, the legitimacy of constitutional morality will rest on how transparently courts apply it, grounding decisions in clear standards, protecting core rights assertively, deferring where democratic remedies can work, and framing decisions in ways that foster dialogue rather than polarisation. If applied responsibly, constitutional morality will remain an indispensable corrective in a vibrant constitutional democracy: a moral compass that guides the nation toward a pluralistic, rights-respecting future.

REFERENCES

1. Justice K.S. Puttaswamy (Retd.) & Anr. v Union of India - Supreme Court of India, 24 August 2017 (Right to Privacy).
2. Navtej Singh Johar & Ors. v Union of India - Supreme Court of India, 6 September 2018 (decriminalisation of consensual same-sex relations).
3. Indian Young Lawyers Association v State of Kerala (Sabarimala) - Supreme Court of India, 28 September 2018.
4. Abhijith Kumar S., “Analysis of the Application of the Doctrine of Constitutional Morality by Indian Supreme Court” (SSRN, 2022) - discussion of revival and debates around constitutional morality.
5. “Constitutional Morality and Authoritarianism” – comparative journal literature discussing the enabling role of constitutional morality in recent judgments.