



Constitutional Morality and the Transformation of Fundamental Rights Jurisprudence in India

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ABSTRACT

The doctrine of constitutional morality has emerged as one of the most significant principles in contemporary Indian constitutional jurisprudence. Although the concept was introduced in the Indian constitutional discourse by Dr. B.R. Ambedkar during the Constituent Assembly debates, its practical significance has largely been shaped by judicial interpretation, particularly by the Supreme Court of India. Constitutional morality emphasises adherence to the core values and principles embodied in the Constitution, including liberty, equality, dignity, fraternity, secularism and the rule of law. In recent years, the Supreme Court has increasingly invoked constitutional morality while interpreting fundamental rights and resolving conflicts between constitutional principles and prevailing social practices. This article examines the role of constitutional morality in transforming the jurisprudence of fundamental rights in India. It analyses the conceptual foundations of the doctrine, its relationship with transformative constitutionalism, and its development through landmark judgments such as Justice K.S. Puttaswamy v. Union of India, National Legal Services Authority v. Union of India, Navtej Singh Johar v. Union of India, Joseph Shine v. Union of India, Indian Young Lawyers Association v. State of Kerala, Manoj Narula v. Union of India and Government of NCT of Delhi v. Union of India. The article argues that constitutional morality has played a crucial role in expanding the scope of fundamental rights and in ensuring that constitutional guarantees are

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interpreted in light of the transformative vision of the Constitution. At the same time, the article critically examines concerns regarding conceptual vagueness, judicial subjectivity and potential overreach. It concludes that constitutional morality, when grounded in constitutional text, structure and principled reasoning, can function as an effective tool for protecting individual rights and strengthening constitutional democracy in India.

I. Introduction

The Constitution of India is not merely a legal document that distributes powers among the various organs of the State; it is also a normative charter that embodies the moral aspirations of a democratic society. It seeks not only to create institutions of governance but also to transform social relations in accordance with the ideals of liberty, equality, justice and fraternity. In this sense, the Constitution of India represents both a legal framework and a moral project. It is this dual character of the Constitution that has increasingly led courts and scholars to focus upon the doctrine of constitutional morality.

Constitutional morality has emerged as a powerful interpretative principle in Indian constitutional jurisprudence, particularly in the context of fundamental rights. The doctrine is invoked when courts are confronted with a tension between constitutional values and entrenched social practices, between individual liberty and collective prejudice, between democratic aspiration and historical discrimination. In such situations, constitutional morality functions as a normative compass that directs constitutional interpretation towards the values embedded in the Constitution rather than the fluctuating preferences of social or political majorities.

The concept assumes special significance in the Indian context because Indian society has historically been marked by deep inequalities based on caste, gender, religion, class and sexuality. The framers of the Constitution were acutely conscious of these structural inequalities. They therefore crafted a Constitution that would not simply preserve the existing social order but challenge and transform it. The constitutional commitment to equality, dignity and fraternity was intended to provide the foundation for a just social order. Constitutional morality is significant because it seeks to preserve and activate this transformative foundation.

Dr. B.R. Ambedkar, while addressing the Constituent Assembly, observed that however good a Constitution may be, it is sure to turn out bad if those called to work it happen to be a bad lot; and however



bad a Constitution may be, it may turn out good if those called to work it happen to be a good lot.¹ His insistence on constitutional morality was therefore linked to the ethical dimension of constitutional governance. For Ambedkar, constitutional morality required respect for constitutional methods, institutional restraint, and fidelity to the values of liberty, equality and fraternity.

For several decades after the adoption of the Constitution, the doctrine of constitutional morality did not occupy a central place in judicial discourse. The early jurisprudence of the Supreme Court was often characterised by textual formalism and limited engagement with the broader philosophical foundations of constitutional governance. Over time, however, constitutional interpretation in India underwent a marked transformation. Beginning with the emergence of the basic structure doctrine and later with the expansion of Article 21 and the deepening of equality jurisprudence, the Court gradually began to emphasise constitutional values as interpretative guides. It is within this broader evolution that constitutional morality acquired doctrinal force.

In recent years, the Supreme Court has invoked constitutional morality in several landmark judgments dealing with gender justice, sexual autonomy, privacy, equality, religious freedom and constitutional governance. Cases such as *National Legal Services Authority v. Union of India*, *Navtej Singh Johar v. Union of India*, *Joseph Shine v. Union of India*, *Indian Young Lawyers Association v. State of Kerala*, *Justice K.S. Puttaswamy v. Union of India* and *Government of NCT of Delhi v. Union of India* demonstrate how constitutional morality has become central to the transformation of fundamental rights jurisprudence in India.

Yet the doctrine is not free from controversy. Scholars and jurists have raised important concerns regarding its conceptual ambiguity, its susceptibility to subjective judicial use, and the danger that it may become a substitute for clear constitutional reasoning. The doctrine has thus been praised as a transformative tool and criticised as a potentially unstructured judicial device. Any serious examination of constitutional morality must therefore engage with both its emancipatory potential and its doctrinal limitations.

This article seeks to analyse the role of constitutional morality in the transformation of fundamental rights jurisprudence in India. It argues that constitutional morality has played an important role in shifting Indian constitutional law from a formal to a substantive understanding of rights. At the same time, it contends that the doctrine must be applied with methodological clarity, constitutional discipline and democratic sensitivity. The article proceeds by examining the conceptual foundations of constitutional morality, its relationship with transformative constitutionalism, its judicial development in India, its distinction from



popular morality, its use in rights jurisprudence and governance cases, and the principal criticisms directed against it.

II. Concept and Theoretical Foundations of Constitutional Morality

The concept of constitutional morality cannot be understood merely as a moral appeal to “good behaviour” within the constitutional system. It is a more layered concept, rooted in constitutional theory, political morality and democratic institutionalism. At its core, constitutional morality refers to fidelity to the values, procedures and institutional ethics embodied in a constitution. It requires that constitutional actors—judges, legislators, executives and citizens—act in a manner that sustains the normative structure of constitutional democracy.

The expression “constitutional morality” is often traced to the nineteenth-century historian George Grote, who used it in his discussion of Greek democracy. Grote argued that a constitutional order can endure only if those who inhabit it cultivate a respect for constitutional forms and procedures.² In this sense, constitutional morality originally denoted a civic and institutional ethic rather than a substantive rights doctrine.

In India, the concept attained foundational significance through the thought of Dr. B.R. Ambedkar. While introducing the Draft Constitution, Ambedkar noted that constitutional morality is not a natural sentiment and has to be cultivated.³ This observation is of great doctrinal significance. Ambedkar did not assume that a constitution could sustain itself merely through textual provisions. He recognised that constitutional governance depends upon habits of restraint, respect for procedure, and commitment to democratic equality.

Ambedkar’s conception of constitutional morality had at least three dimensions. First, it required respect for constitutional methods of political action. He famously cautioned against the “grammar of anarchy,” by which he meant extra-constitutional methods such as civil disobedience and revolutionary politics after the advent of constitutional democracy. Secondly, constitutional morality required institutional responsibility and restraint. Public authorities had to exercise their powers within constitutional limits and not convert constitutional positions into instruments of domination. Thirdly, constitutional morality was tied to the moral vision of the Constitution, especially liberty, equality and fraternity. In this sense,

² George Grote, *A History of Greece*, Vol IV (John Murray, London, 1869) 432–435.

³ Constituent Assembly Debates, Vol VII, 4 November 1948.



Ambedkar's constitutional morality was neither purely procedural nor entirely substantive; it linked constitutional methods with constitutional values.

Modern constitutional scholarship has elaborated this idea further. Granville Austin described the Indian Constitution as a "social document," intended to transform society through constitutional means.⁴ This social-transformative understanding of the Constitution provides the background within which constitutional morality acquires substantive significance. If the Constitution is a document of social transformation, then fidelity to its moral commitments becomes central to constitutional interpretation.

Upendra Baxi has emphasised that constitutional interpretation in India must be attentive to the ethical ambitions of the Constitution, particularly its concern with human dignity, justice and the rights of the oppressed.⁵ Constitutional morality, in this view, is not merely about institutional etiquette; it is about ensuring that constitutional power remains answerable to constitutional ethics.

III. Constitutional Morality and Transformative Constitutionalism

The doctrine of constitutional morality has become especially important in India because the Indian Constitution is widely understood as a transformative constitution. Transformative constitutionalism refers to the idea that a constitution is not merely an instrument for maintaining order or distributing powers, but a charter for social change. It seeks to restructure social relations, dismantle hierarchies and create the conditions for equal citizenship.

The Indian Constitution was enacted in the aftermath of colonial rule, social exclusion, caste oppression, gender inequality and religious division. Its framers sought not merely to establish representative government but to lay the foundation for a democratic society in which historically oppressed groups could claim equal dignity and equal participation. This transformative ambition is evident in the Preamble, in the fundamental rights provisions, in the Directive Principles of State Policy and in the abolition of untouchability under Article 17.

Constitutional morality is closely related to this transformative project because it serves as the interpretative ethic through which constitutional transformation becomes judicially intelligible. If the Constitution aims at social transformation, then constitutional interpretation must be informed by the

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, New Delhi, 1966) 50–55.

⁵ Upendra Baxi, *The Future of Human Rights* (Oxford University Press, New Delhi, 2002) 89–96.



values that justify such transformation. Constitutional morality therefore acts as a bridge between constitutional text and constitutional aspiration.

The Supreme Court's later jurisprudence has increasingly reflected this understanding. The Court has recognised that equality is not exhausted by formal equal treatment and that liberty is not confined to mere freedom from physical restraint. Instead, equality includes anti-subordination and dignity, while liberty includes autonomy, privacy, identity and freedom of intimate choice. Constitutional morality has played an important role in this shift from formal constitutionalism to substantive constitutionalism.

This movement is also connected with the recognition that social morality may itself be unjust. Transformative constitutionalism requires the Constitution to act as a check upon social hierarchies rather than simply mirror them. In such situations constitutional morality becomes the normative basis for rejecting oppressive customs, stereotypes and exclusions.

The doctrine is therefore particularly important in cases involving caste, gender and sexuality. In each of these domains, constitutional morality has been invoked to insist that the Constitution's promise of equal citizenship cannot be subordinated to traditional practices or majoritarian preferences. It helps the Court move beyond descriptive understandings of society and instead evaluate social arrangements in light of constitutional principle.

IV. Judicial Development of Constitutional Morality in India

The doctrinal rise of constitutional morality within Indian jurisprudence did not occur through a single judgment. It emerged incrementally through a series of cases in which the Supreme Court began to foreground constitutional values in adjudication. Some earlier cases laid the groundwork indirectly, while later decisions explicitly invoked the phrase and developed it doctrinally.

A broad genealogy may be identified. The first phase involves the judicial recognition that the Constitution contains certain fundamental principles that cannot be reduced to literal textualism. This phase includes decisions like *Kesavananda Bharati v. State of Kerala*, where the Supreme Court evolved the basic structure doctrine.⁶ Although constitutional morality was not central to the reasoning, the case established that the Constitution has an underlying identity and set of values that even constitutional amendments cannot destroy. This was a crucial move away from bare textualism.

⁶ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.



The second phase involves the expansion of rights jurisprudence under Articles 14, 19 and 21. Through cases such as *Maneka Gandhi v. Union of India*, *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* and *Olga Tellis v. Bombay Municipal Corporation*, the Court deepened the substantive meaning of liberty and dignity.¹² While these cases did not rely expressly on constitutional morality, they contributed to the moralisation of constitutional rights.

The third phase involves the explicit invocation of constitutional morality in contemporary rights and governance cases. It is in this phase that the doctrine becomes visible as an articulated judicial principle.

One of the early contemporary decisions where constitutional morality acquired a prominent profile was *Manoj Narula v. Union of India*.⁷ The issue before the Court was whether persons charged with serious criminal offences could be appointed as ministers. While the Court declined to impose a direct constitutional prohibition in the absence of an express textual bar, it strongly emphasised that constitutional morality demands integrity, responsibility and fidelity to constitutional values in public life. The judgment is important because it used constitutional morality not as a rights doctrine but as a governance ethic.

In *National Legal Services Authority v. Union of India*, the Court recognised the rights of transgender persons and affirmed their right to self-identify their gender.⁸ The Court held that gender identity is integral to personal autonomy and dignity and that discrimination against transgender persons violates the guarantees of equality and liberty. The judgment marks a significant development because constitutional morality was invoked to protect a historically marginalised group against entrenched social prejudice. The Court moved beyond formal equality and recognised the substantive dignity claims of transgender persons.

The doctrinal force of constitutional morality became far more pronounced in *Justice K.S. Puttaswamy v. Union of India*.⁹ While the case is primarily remembered for affirming privacy as a fundamental right, its significance for constitutional morality lies in its affirmation of dignity, autonomy and decisional freedom as essential constitutional values. The judgment laid a conceptual foundation for later cases in which privacy and autonomy would become central to rights adjudication.

⁷ *Manoj Narula v. Union of India*, (2014) 9 SCC 1.

⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

⁹ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.



The doctrine reached perhaps its most elaborate articulation in *Navtej Singh Johar v. Union of India*.¹⁰ By partially striking down Section 377 of the Indian Penal Code insofar as it criminalised consensual same-sex relations between adults, the Court affirmed that constitutional morality must prevail over social morality. The judgments of Chief Justice Dipak Misra, Justice Chandrachud and Justice Nariman all in different ways emphasised dignity, autonomy, equality and non-discrimination. The decision is doctrinally significant because it placed constitutional morality at the centre of rights adjudication and used it to invalidate a colonial law sustained for decades by social prejudice.

In *Joseph Shine v. Union of India*, the Court invalidated the offence of adultery under Section 497 of the Indian Penal Code.¹¹ The law was held to be unconstitutional because it treated women as passive objects within marriage and denied them agency and equality. Constitutional morality here functioned as a principle that exposed the patriarchal structure of the law and aligned constitutional interpretation with gender equality and personal dignity.

The Sabarimala case—*Indian Young Lawyers Association v. State of Kerala*—extended the doctrine into the domain of religion and gender.¹² The majority held that exclusion of women from the temple violated constitutional principles of equality and dignity and that constitutional morality must guide the interpretation of religious freedom. The case is important because it demonstrates both the power and the controversy of constitutional morality. While the majority viewed the doctrine as a means of protecting women against exclusion, critics argued that it risked judicial overreach into matters of faith.

Taken together, these decisions reveal that constitutional morality has developed along two parallel tracks in Indian jurisprudence. The first track concerns the expansion of fundamental rights through values such as dignity, autonomy and equality. The second concerns the ethical discipline of public power and constitutional institutions. This dual development explains both the strength and the complexity of the doctrine.

V. Constitutional Morality and The Transformation of Fundamental Rights Jurisprudence

The most profound impact of constitutional morality has been on the jurisprudence of fundamental rights. The doctrine has helped shift Indian constitutional law from a narrow, formal and often deferential

¹⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹¹ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹² *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

approach to a richer and more substantive understanding of rights. Three broad transformations may be identified.

First, constitutional morality has deepened the meaning of equality. Earlier equality analysis in Indian constitutional law often focused on classification tests and reasonable differentia. While those tools remain relevant, constitutional morality has enabled courts to move beyond formal equal treatment and to engage with structures of discrimination, stigma and social exclusion. In *NALSA*, *Navtej Johar* and *Joseph Shine*, equality was interpreted not only as formal non-discrimination but as a guarantee of equal citizenship and equal dignity.

Secondly, constitutional morality has expanded the idea of liberty. Liberty is no longer confined to freedom from physical restraint or arbitrary detention. It now includes the autonomy to make intimate, personal and identity-defining choices. The recognition of privacy in *Puttaswamy*, sexual autonomy in *Navtej Johar* and decisional agency in *Joseph Shine* demonstrates this expansion. Constitutional morality has facilitated this shift by requiring courts to interpret liberty in a manner consistent with human dignity and constitutional personhood.

Thirdly, constitutional morality has strengthened the dignity-based reading of Article 21. The Court has increasingly recognised that dignity is not merely an abstract constitutional aspiration but a concrete interpretative principle. The rights of transgender persons, sexual minorities and women have all been articulated through the language of dignity. This dignity-oriented jurisprudence is central to the transformation of fundamental rights.

Another important aspect of this transformation is the Court's insistence that constitutional rights do not depend upon the approval of the majority. Constitutional morality thus acts as a counter-majoritarian principle. It enables the Constitution to protect unpopular minorities and vulnerable individuals against the prejudices of dominant social groups. This is especially significant in a democracy where majoritarian politics may not always align with constitutional justice.

At the same time, constitutional morality has altered the Court's method of reasoning. Instead of treating rights as isolated textual fragments, the Court increasingly reads them in relation to each other and to the broader constitutional ethos. Equality, liberty, dignity and fraternity are no longer viewed as separate; they are interpreted as interconnected values that jointly constitute the constitutional order. Constitutional morality has played a key role in encouraging this integrated mode of interpretation.



It is also important to note that constitutional morality has influenced not only outcomes but the language of rights itself. The vocabulary of Indian constitutional law has expanded to include notions of identity, recognition, anti-stigma, autonomy and constitutional personhood. This linguistic shift reflects a deeper jurisprudential shift, one in which the Constitution is seen not only as a restraint on power but as a guarantor of inclusive citizenship.

VI. Constitutional Morality and Popular Morality

One of the central features of constitutional morality jurisprudence is its contrast with popular or social morality. Popular morality refers to prevailing social beliefs, dominant cultural norms and conventional views of right and wrong within society. These beliefs may be deeply entrenched and widely shared, but they do not automatically acquire constitutional legitimacy.

The Supreme Court has repeatedly emphasised that constitutional interpretation cannot be subordinated to popular morality when fundamental rights are in issue. The Constitution exists precisely to protect individuals and minorities from oppressive majoritarian norms. Constitutional morality therefore functions as a normative check on social prejudice.

This point was most powerfully made in *Navtej Singh Johar*, where the Court rejected the argument that the criminalisation of homosexual conduct could be sustained merely because sections of society considered homosexuality immoral. The Court insisted that constitutional morality, not social morality, must guide judicial interpretation. Similarly, in *Joseph Shine*, the Court rejected patriarchal assumptions embedded in adultery law, making clear that constitutional values cannot be overridden by outdated social notions about marriage and gender.

The distinction is equally visible in the Sabarimala judgment. The majority's reasoning rested upon the idea that religious practices cannot be immunised from constitutional scrutiny merely because they enjoy social acceptance. Constitutional morality requires that such practices be evaluated against the constitutional principles of equality, dignity and non-discrimination.

However, the relationship between constitutional morality and popular morality is not simply one of opposition. Constitutional morality may also shape and gradually transform social morality. Judicial decisions do not operate in a social vacuum. By articulating constitutional values, the Court may influence public discourse and reframe the moral imagination of society. In this sense, constitutional morality has an educative function.



Yet this educative function also raises concerns. If constitutional morality is seen as too aggressively opposed to social traditions, courts may be criticised for moving too quickly and for failing to respect democratic processes of social change. The challenge, therefore, is to ensure that constitutional morality remains a constitutional principle rather than a purely judicially preferred vision of moral progress.

VII. Constitutional Morality in Governance and Institutional Ethics

Although constitutional morality is most visibly associated with rights cases, its relevance extends beyond the domain of personal liberty and equality. The doctrine also performs an important function in cases relating to governance, constitutional structure and institutional ethics.

In *Manoj Narula*, the Court used constitutional morality to emphasise the ethical dimension of public office. Even in the absence of an express constitutional bar, it held that those entrusted with constitutional responsibilities must act in accordance with constitutional values. The case illustrates that constitutional morality may function as a standard of public responsibility.

In *Government of NCT of Delhi v. Union of India*, constitutional morality was invoked to stress the importance of constitutional trust, cooperative federalism and democratic accountability. The Court clarified that constitutional offices cannot be exercised in a manner that defeats the representative character of government.¹³ Here constitutional morality worked not as a substantive rights doctrine but as an institutional principle ensuring fidelity to constitutional design.

Similarly, in *Subhash Desai*, the Court scrutinised the conduct of constitutional authorities during the Maharashtra political crisis and emphasised that governors and other officials must act within constitutional limits and with institutional restraint. This line of cases shows that constitutional morality can regulate not only rights and liberties but also the exercise of constitutional power.¹⁴

This governance dimension is important because it reminds us that constitutional morality is not reducible to judicial protection of marginalised individuals. It also concerns the ethics of constitutional office, the legitimacy of institutional conduct and the preservation of democratic procedure. A constitution may be undermined not only by direct rights violations but also by the abuse of power by those charged with preserving it.

¹³ *Government of NCT of Delhi v. Union of India*, (2018) 8 SCC 501.

¹⁴ *Subhash Desai v. Principal Secretary, Governor of Maharashtra*, 2023 SCC OnLine SC 607.



Thus, constitutional morality has a dual function: it protects individuals against unjust social and legal norms, and it disciplines institutions by requiring them to exercise power in accordance with constitutional values and limits.

VIII. Conclusion

The doctrine of constitutional morality has emerged as one of the most significant developments in contemporary Indian constitutional jurisprudence. It reflects the recognition that the Constitution is not merely a legal instrument of governance but also a normative charter committed to liberty, equality, dignity, fraternity and democratic accountability.

Through its application in a series of landmark judgments, the Supreme Court of India has used constitutional morality to transform the understanding of fundamental rights. The doctrine has enabled courts to move beyond formal conceptions of equality and liberty towards substantive understandings rooted in dignity, autonomy and equal citizenship.

When applied with intellectual rigor and constitutional discipline, constitutional morality can continue to serve as a powerful tool for protecting fundamental rights and advancing the transformative promise of the Indian Constitution.