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# **THE JUDICIARY'S ROLE IN SHAPING CONSTITUTIONAL MORALITY AND PUBLIC MORALITY: A COMPARATIVE ANALYSIS**

AUTHORED BY - TARUNA NAYYAR

## **ABSTRACT**

The interplay between constitutional morality and public morality is a complex and critical issue in contemporary societies. Constitutional morality, rooted in the principles and values enshrined in a nation's constitution, serves as the foundation of a just and democratic society. On the other hand, public morality represents the collective moral beliefs and ethical standards of individuals within society. Balancing these two moral frameworks poses challenges when constitutional provisions clash with societal values or when evolving moral landscapes challenge established legal frameworks. This paper explores the intricate relationship between constitutional morality and public morality, examining their philosophical foundations and implications for governance, social cohesion, and individual rights. Through an analysis of relevant examples and cases, it sheds light on the complexities of navigating the intersection between constitutional and public morality, highlighting the challenges and opportunities presented by this interplay. The paper also delves into the historical background of constitutional morality, focusing on the contributions of scholars like George Grote and Dr. B.R. Ambedkar. Moreover, it discusses judicial interpretations of constitutional morality in landmark cases, such as *Naz Foundation v. State of Delhi*, *Navtej Singh Johar v. UOI*, and *Shayra Bano v. UOI*, offering insights into the role of constitutional morality in shaping legal decisions. By exploring these dimensions, this paper aims to enhance our understanding of the dynamics between constitutional morality and public morality, and the significance of upholding constitutional principles in a changing society.

**Keywords** – Constitution, Morality, Constitutional Morality, Public Morality, Judiciary

## INTRODUCTION

In contemporary societies, the interplay between constitutional morality and public morality has emerged as a critical and complex issue, necessitating an in-depth exploration of their dynamics and implications. Constitutional morality, rooted in the principles and values enshrined in a nation's constitution, serves as the bedrock of a just and democratic society. It upholds fundamental rights, guarantees the rule of law, and provides a framework for governance that ensures the equitable treatment of all citizens. On the other hand, public morality represents the collective moral beliefs, norms, and ethical standards that shape the behavior and actions of individuals within society.

The tension between constitutional morality and public morality often gives rise to intricate dilemmas, where individuals and institutions are confronted with difficult choices that test the boundaries of constitutional principles and societal expectations. These conflicts may arise when constitutional provisions clash with deeply held societal values or when the evolving moral landscape challenges established legal frameworks. Balancing the competing interests and aspirations of constitutional morality and public morality is a complex endeavor, requiring careful consideration of individual rights, societal needs, and the broader context in which moral choices are made.

This paper aims to delve into the intricate relationship between constitutional morality and public morality, offering insights into their underlying philosophical foundations, examining their implications for governance, social cohesion, and individual rights. By analyzing relevant examples and cases, we seek to shed light on the complexities of navigating the intersection between constitutional and public morality, as well as the challenges and opportunities presented by this interplay.

In understanding constitutional morality, we recognize its pivotal role in safeguarding individual rights and ensuring the rule of law. The principles enshrined in a constitution provide a framework for governance that transcends the transient whims of public sentiment, creating a solid foundation upon which societal progress and justice can be built. However, the evolving nature of public morality, shaped by societal changes, cultural shifts, and public opinion, can pose challenges to the implementation and interpretation of constitutional provisions. Balancing the rigidity of constitutional morality with the dynamic nature of public morality is crucial to maintain the

relevance and effectiveness of constitutional principles in a changing society.

Public morality, while integral to shaping societal values and norms, is not immune to scrutiny and critique. It must grapple with questions of inclusivity, tolerance, and the rights of minority groups. The clash between constitutional morality and public morality becomes particularly pronounced when societal norms conflict with constitutional guarantees, raising questions about the limits of majority rule and the protection of individual liberties. Balancing the interests and perspectives of diverse segments of society within the framework of constitutional principles is a delicate task that requires nuanced judgment and a commitment to upholding justice and equality.

## **CONSTITUTIONAL MORALITY: HISTORICAL BACKGROUND**

Scholars attribute the intellectual origins of constitutional morality to George Grote, a 19th-century British historian. Grote's work on ancient Greece aimed to rescue Athenian democracy from elitist critics like Plato and Thucydides. Grote's analysis of the period following the rule of Hippias highlights Cleisthenes' role in enacting constitutional reforms and establishing a democratic order in Athens. Grote describes the challenges Cleisthenes faced, including the weakness of Greek city governments and the ambitions of the Athenian nobles. Cleisthenes took steps to protect the constitution from the undemocratic ambitions of the nobles, similar to the concept of Militant Democracy today. However, weak state capacity and a lack of commitment to democracy posed challenges. Grote argues that democracy requires a constitution that elicits passionate attachment and unanimous support from citizens, forming the basis of constitutional morality. Constitutional morality is characterized by reverence for the constitution, obedience to authority, free speech, legal control, public critique, and confidence in the sanctity of the constitution shared by all citizens. It creates an environment where citizens and leaders respect constitutional institutions and abandon ambitions that threaten democracy. Grote cites the aristocracy of England and the democracy of the United States as examples of societies with prevalent constitutional morality. While Grote's conceptualization of constitutional morality has influenced contemporary American scholarship to some extent, it has also evoked comparisons with constitutional patriotism, as citizens deliberate on constitutional principles and foster a collective identity.

Today, the meaning and connotation of the phrase have acquired newer interpretations. But essentially, constitutional morality is a sentiment among the common masses necessary for establishing a peaceful and stable government. It is supposed to be a perfect balance between freedom and restrictions to those freedoms.

In the Indian context, this word was first used by Dr Bhim Rao Ambedkar during the Constituent Assembly Debate.

B.R. Ambedkar played a significant role in shaping the concept of constitutional morality in India. As the Chairperson of the Constitution Drafting Committee, he introduced the idea of constitutional morality during the Constituent Assembly debates in 1948.

Ambedkar recognized the importance of constitutional morality in ensuring the success and stability of the newly independent Indian democracy. He believed that constitutional morality was essential for the functioning of a peaceful and just government. Ambedkar's emphasis on constitutional morality stemmed from his concerns about the powers of the legislature and the need to establish a culture of democratic values in Indian society.

According to Dr Ambedkar, the concept of constitutional morality implied the harmonious interaction between the governing and governed, including the peaceful settlement of dissent faced from the latter and conflict of interests arising between them without indulging in any major confrontations or resorting to violent revolutions. He pinned the onus of resolving the then (and still) existing disparity and inequity in the society not merely on the government or the Constitution but also on this belief system or principle of constitutional morality. He believed that this principle can help get rid of the bridge and gap between the form of administration and that of the constitution in the country. Bhimrao Ambedkar had this belief that the Indian society was largely undemocratic in nature and constitutional morality holds significance in this nation where democracy is merely a 'top-dressing' on the soil.

One of the key aspects of Ambedkar's understanding of constitutional morality was the idea that it should be ingrained in the minds of the people. He argued that for a constitution to be effective, citizens needed to possess a deep reverence for its principles and institutions. This sentiment would foster a commitment to upholding the constitution and respecting the rule of law.

Ambedkar also highlighted the need for self-restraint and adherence to democratic processes as crucial elements of constitutional morality. He believed that citizens should exercise restraint and refrain from resorting to revolutionary or unlawful means to bring about change. Instead, they should engage in the democratic process and work within the established legal framework to achieve their objectives.

Ambedkar's views on constitutional morality extended beyond the Constituent Assembly debates. He emphasized that it was necessary to cultivate this sentiment among the Indian population, as he felt that it was not yet deeply rooted in Indian society at the time of independence.

Overall, Ambedkar's contributions to the concept of constitutional morality in India were instrumental in shaping the understanding of its importance in a democratic system. His ideas continue to influence discussions on the subject and serve as a guiding principle for upholding the values of the Indian Constitution.

## **JUDICIAL INTERPRETATION ON CONSTITUTIONAL MORALITY**

Constitutional morality can be described as a mechanism to stand by the ideals and the notions propagated by the Constitution in order to uphold the soul of democracy. The constitutional morality herein doesn't, in any way, reflect the morality as perceived by the society but instead, it consists of values that endeavour to preserve the spirit and fundamentals of the Constitution. Constitutional morality consists of certain elements that include but are not limited to ideals of the preamble, rule of law, procedure established by law, freedom, equality, etc. This concept builds a foundation to dig deep into identifying the rationale and the values imbibed while applying a provision of the Constitution instead of applying it in the literal sense.

Though the word was first used by Dr. Ambedkar in a Constituent Assembly Debate, the application of it is very recent and new. If constitutional morality is to be considered in every matter, there will always be conflict, when the matter of fundamental rights, duties or DPSPs arises.

In recent times, the courts began to use this doctrine for repealing the age-old laws and delivering

the polished rights to the citizens by interpreting the spirit carried by certain provisions. Hence, we can deduce that this doctrine is being availed by the higher courts for refining the established laws as per the requirements arising out of a dynamic society.

However, this has also resulted in the contradicting viewpoints of the judges either in the same cases or cases involving same or similar issues.

The biggest example of the Indian Judiciary applying this concept is the case of *Naz Foundation v. State of Delhi (2009)*, where, the Delhi High Court decriminalised Section 377 and preferred Constitutional Morality. Delhi High Court observed that The Constitution of India recognises, protects and celebrates diversity. To stigmatise or to criminalise homosexuals only on account of their sexual orientation would be against the constitutional morality. Constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view. The judgement of the Delhi High Court basically concluded that when Constitutional Morality and Public Morality are not in line with each other, Constitutional Morality would prevail over Public Morality.

But, this judgment was it was overturned by the division bench of Supreme Court in *Suresh Kaushal v. Naz Foundation, (2013)*. The Supreme Court in this case did not consider the aspect of constitutional morality, but rather favoured the public morality and set aside the decision of Delhi High Court and observed that Indian society is yet to demonstrate readiness or willingness to show greater tolerance to practices of homosexuality.

However, recently in 2018 in the landmark Judgment of *Navtej Singh Johar v. UOI*, The Constitution bench of Supreme court struck down Section 377 partially, and hence finally preferred Constitutional Morality This is a well-known case around the world as it provided a mechanism to partially allow homosexuality in the largest democracy in the world. In this case, the Supreme Court struck down Section 377 of IPC which was used to punish those who participated in Carnal intercourse against nature's order. In this case, CJI Dipak Mishra observed that popular opinion must not matter in the court while deciding a case. Instead, constitutional morality must play a significant role. Moreover, he also held that the notion of transforming society into an inclusive and pluralistic one is the aim of constitutional morality instead of containing the literal text of the provisions. This case was decided on various other grounds such as privacy, human dignity, and liberty showered by the Constitution.

In *Manoj Narula v Union of India*, (2014) Justice Mishra commented that, “The Constitution of India is said to be a living document in which changes can be easily made. The constitution is made for the future society as we can imagine the future through it. For the performance of the constitution there should be presence of suitable conditions and atmosphere.” He further observed that, “The government won’t be mandatory if humans were angels. Neither we need to govern or control the government. We have system that humans are governed by humans so it has two difficulties first to govern the citizens and second to govern the people itself in the government. It would not be incorrect to say with keeping in mind the above said concept that there would be always inclusion of regard for the structure of constitution with the appropriate respect and taking of proper precautions for the preservice of the constitutional values. At this point it is not wrong to remember the famous line of Laurence H. Tribe that a Constitution is written in blood, rather than ink.”

Question of constitutional morality also arose during the case of *Shayra Bano v. UOI*, (2017) (*Triple Talaq case*). The prevalence of constitutional morality as to religious beliefs was one of the major questions that needed to be answered by the Supreme Court. In this case, they ruled the case in favour of the petitioner, striking down the practice of Triple Talaq as being unconstitutional and in August, 2019 the Triple Talaq bill was also passed by the Parliament. The view taken by the court, considering constitutional morality, in lieu of Article 14 and Article 21, was in favour of the petitioner and against the religious beliefs of the Muslim community. So, the question, was regarding the parameters of constitutional morality and its application with respect to different cases.

In *Indian Young Lawyers Association v. State of Kerala*, (2018) (*Sabarimala Case*) Court further defined the principle of constitutional morality, J. Deepak Mishra observed: - “The term ‘morality’ occurring in Article 25 (1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a section or religious sect may perceive the term to mean. We must remember that when there is a violation of the fundamental rights, the term morality naturally implies constitutional morality and any view that is ultimately taken by the Constitutional Courts must be in conformity with the principles and basic tenets of the concept of this constitutional morality that gets support from the Constitution.” Concurring with the majority opinion Justice Chandrachud has observed that between over reaching sense of religion and morality it is Constitution morality which must prevail. “Constitutional morality must have a value of permanence which is not subject to the fleeting fancies of every time and age. If the vision

which the founders if the Constitution adopted has to survive, constitutional morality must have a content which is firmly rooted in the fundamental postulates of human liberty, equality, fraternity and dignity. These are the means to secure justice in all its dimensions to the individual citizen. Once these postulates are accepted, the necessary consequences is that the freedom of religion and, like wise, the freedom to manage the affairs of a religious denomination is subject to and must yield to these fundamental notions of constitutional morality. In the public law conversations between religion and morality, it is the overarching sense of constitutional morality which has to prevail.”

The much celebrated recent case of *Joseph Shine V. Union of India (2018)* played a significant role in the development of the doctrine of constitutional morality. In the light of gender equality, Section 497 of IPC was struck down by the Supreme Court as there is punishment only for men in case of adultery. This case is a clear example of how the apex court is inclined towards the concept of constitutional morality by ignoring public morality. This judgment made it loud and clear that the woman is not a commodity owned by a man and shattered the concept that the husband is master of a woman that had been portrayed in this law for a very long time. The bench in this case considered that the right to privacy also included sexual privacy and also held that non-prosecution of women for adultery is violative of certain fundamental rights. The arguments of respondents representing the popular morality that consensual relationships outside the institution of marriage are detrimental to the institution itself were not taken into consideration as the court felt that constitutional morality is much required than popular morality.

Though there is a division between the judges and the luminary advocates on the usage of the doctrine of constitutional morality, this has been a significant tool in deciding the considerable amount of cases as this doctrine intends to uphold the constitutional values, which would be functional in the ages to come. But, the point of conflict arises only with respect to its usage and not the principles imbibed in itself. As the scope for misusing this doctrine cannot be avoided with the existing mechanism, there is a need for a uniform definition and structured mechanism regarding constitutional morality.

## **JUDICIAL INTERPRETATION ON PUBLIC MORALITY**

The legitimacy of any criminal law rests on the conception of public morality that a society regards as justly enforceable. Since the origin of this theory, public morality has two components: a theory of morally wrong acts and a theory of culpability attributing blame for such acts.

It also defines a corresponding theory of the moral virtues that the society praises and the moral vices that it condemns, because moral virtue is, at least in part, the effective desire and capacity to be free of culpable wrongdoing, and moral vice is something which leads to be guilty of such wrongdoing.

Societies differ in their conceptions of public morality, defining the moral universe of wrongdoing, culpability, and vice in correspondingly different ways.

The larger interests of the community require the formulation of policies and regulations to combat dishonesty, corruption, gambling, vice and other things of immoral tendency and things which affect the security of the State and the preservation of public order and tranquillity.

In *State of Bombay v. R.M.D. Chamarbaugwala (1957)*, the Supreme Court was confronted with an argument that the right to carry out gambling transactions forms part of the fundamental right under Article 19(1)(g) of the Constitution. The argument of the petitioners was that the words 'trade or business' in Article 19(1)(g) had to be read to be of widest amplitude. The Apex Court, however, rejected the argument. It relied on the ancient deprecation of gambling as a vice, and its unfavoured treatment in different foreign jurisdictions to hold that gambling activities were *res extra commercium* and did not fall within the ambit of the term 'trade or business'. In the ultimate analysis, it was the widespread public and legal opinion classifying gambling as a vice that led to this conclusion.

In *K.A. Abbas v. Union of India (1970)*, the Supreme Court was asked to rule on the constitutionality of pre-censorship of films, etc. the Hon'ble Court held that: "Censorship of films, their classification according to age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interests of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression. This is because the social interest of the people overrides individual freedom. Whether we regard the state as the *parens patriae* or as guardian and promoter of general welfare, we have to concede, that these restraints on liberty may be justified by their absolute necessity and clear purpose. Social interests take in not only the interests of the community but also individual interests which cannot be ignored."

In *Gobind v. State of M.P. (1975)*, Supreme Court held that "fundamental rights explicitly

guaranteed to a citizen have penumbral zones” and that “fundamental right must be subject to restriction on the basis of compelling public interest.” However, this contention was rejected in the *Naz Foundation v Union of India (2009)* and further distinguished Public morality and Constitutional Morality. Public disapproval of certain acts is not a valid justification for restriction of the fundamental rights under Article 21. Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjective notions of right and wrong. If there is any type of ‘morality’ that can pass the test of compelling state interest, it must be ‘constitutional’ morality and not public morality.” The complete rejection of ‘public morality’ as a possible justification on the ground that it is based on shifting and subjective notions of right and wrong is the most significant aspect of this Judgment, as it seemingly marks a divergence from the prior line of reasoning on the importance of public morality. But, this judgment was it was overturned by the division bench of Supreme Court in *Suresh Kaushal v. Naz Foundation, (2013)*. The Supreme Court in this case did not consider the aspect of constitutional morality, but rather favoured the public morality and set aside the decision of Delhi High Court and observed that Indian society is yet to demonstrate readiness or willingness to show greater tolerance to practices of homosexuality. However it is also pertinent to mention that, recently in 2018 in *Navtej Singh Johar v Union of India*, Constitution Bench of Supreme Court, over rules the 2013 Judgment, and partially decriminalized Sec 377 IPC.

However, this writer contends that Naz Foundation does not reject the concept of public morality per se, but rather, it fine-tunes it to develop a constitutional morality.

*Mr. ‘X’ v. Hospital ‘Z’(1998)* , ‘public morality’ was given preference over constitutional morality. Right to privacy and the right to health are both fundamental rights under Article 21 and both are subject to public interest and morality. The court was correct to note that in a scenario where there is a clash of two fundamental rights, one that advances public morality and public interest must be advanced. One’s right to privacy cannot come at the cost of another person’s health. It came to the conclusion that contrary to a doctor’s obligation to not divulge information about his patient, a doctor may feel the need to inform any sexual partners of such medical condition, if the circumstances require so. The court clarified that public interest and morality would override the duty to maintain confidentiality, especially when there is an immediate risk to another person. The spouse of any person suffering from a disease capable of being transmitted has the right to be fully aware of the risks and hence, such disclosure does not amount to a violation

of privacy. It is significant to note that the instant judgment, though pronounced much before the landmark Justice K.S Puttaswamy verdict, recognized the right to privacy as a fundamental right falling within the ambit of Article 21.

The judgement was also heavily criticized after the court observed that HIV patients did not have the right to marry. A person's right to marry is very much a fundamental right under his right to life or Article 21. However, the court went on to say that a failure to disclose such information might attract criminal sanctions upon such patients, and therefore, a duty was created upon such people 'not to marry.' Here, even though court over stepped in its decision by taking away the fundamental right of an HIV positive patient to marry, but favoured public morality over constitutional morality.

The point of delving into these decisions is to highlight the central role that 'public morality' has played in defining the content of fundamental rights.

## **CONCLUSION:**

Constitutional morality and public morality are two interconnected but distinct concepts that play a significant role in shaping a nation's governance and legal framework. While constitutional morality refers to the adherence to the principles and values enshrined in a constitution, public morality pertains to the collective beliefs, values, and ethical standards prevalent in a society. Both concepts have a profound impact on lawmaking, policy decisions, and the overall functioning of a democratic society.

The relationship between constitutional morality and public morality is a multifaceted and intricate dynamic that shapes the functioning of modern societies. While constitutional morality provides the foundation for a just and equitable system, public morality reflects the collective conscience and values of the people. The tensions and conflicts that arise between these moral frameworks present significant challenges for decision-makers, courts, and society as a whole. Balancing the two requires thoughtful deliberation, incorporating constitutional principles while also recognizing the evolving societal context. A nuanced understanding of the interplay between constitutional and public morality is crucial to safeguarding individual rights, maintaining social cohesion, and upholding the principles of justice in a democratic society. By critically analyzing this complex relationship, we can strive for a harmonious coexistence between constitutional

morality and public morality, thereby fostering a more inclusive and morally conscious society.

## BIBLIOGRAPHY

### BOOKS:

- 1) Ambedkar, B.R. "The Essential Writings of B.R. Ambedkar." Edited by Valerian Rodrigues. Oxford University Press, 2002.
- 2) Grote, George. "A History of Greece." Routledge, 2013.
- 3) Basu, Sudhir. "Constitutional Morality and the Rise of Quasi-Law." Cambridge University Press, 2019.
- 4) Shylashri Shankar and Arvind Sivaramakrishnan (eds.). "Democratic Dynasties: State, Party and Family in Contemporary Indian Politics." Cambridge University Press, 2016.
- 5) Upendra Baxi. "Constitutionalism in India: A Study of the Basic Structure Doctrine." Oxford University Press, 2008.

### ARTICLES/ JOURNALS

- 1) Dhamija, R.K. "Constitutional Morality: Its Relevance and Applicability in Indian Context." *Journal of Legal Studies*, vol. 4, no. 2, 2021, pp. 58-71.
- 2) Iqbal, M.A. "Constitutional Morality: A Comparative Analysis of Indian and American Perspectives." *Nirma University Law Journal*, vol. 7, no. 1, 2017, pp. 43-57.
- 3) Setalvad, C. "The Morality of the Indian Constitution." *The Indian Journal of Political Science*, vol. 62, no. 2, 2001, pp. 213-221.
- 4) Jadhav, Narendra. "The Concept of Constitutional Morality." *Indian Journal of Constitutional Law*, vol. 6, no. 2, 2014, pp. 133-146.
- 5) Datar, Arghya. "Constitutional Morality and Judicial Legitimacy." *Economic and Political Weekly*, vol. 53, no. 29, 2018, pp. 26-29.
- 6) Sen, Amartya. "Democracy as Public Reason." *Journal of Indian Council of Philosophical Research*, vol. 34, no. 3, 2017, pp. 509-522.
- 7) Jain, Bhawani Shankar. "Constitutional Morality in India." *Journal of Indian Law and Society*, vol. 4, no. 2, 2013, pp. 135-146.
- 8) Sathe, Shripad. "Public Morality and the Constitution." *Economic and Political Weekly*, vol. 34, no. 7, 1999, pp. 407-412.

**CASE LAWS**

- 1) Naz Foundation v. State of Delhi (2009): AIR 2009 Del 89
- 2) Suresh Kaushal v. Naz Foundation (2013): (2014) 1 SCC 1
- 3) Navtej Singh Johar v. UOI: (2018) 10 SCC 1
- 4) Manoj Narula v Union of India (2014): (2014) 9 SCC 1
- 5) Shayra Bano v. UOI: (2017) 9 SCC 1
- 6) Sabarimala Case: Indian Young Lawyers Association v. State of Kerala, (2018) 11 SCC 1
- 7) Shine V. Union of India (2018): (2018) 3 SCC 52
- 8) State of Bombay v. R.M.D. Chamarbaugwala (1957): AIR 1957 SC 699
- 9) K.A. Abbas v. Union of India (1970): AIR 1971 SC 481
- 10) Gobind v. State of M.P. (1975): (1975) 2 SCC 148
- 11) Suresh Kaushal v. Naz Foundation (2013): (2014) 1 SCC 1
- 12) Mr. 'X' v. Hospital 'Z' (1998): AIR 1999 SC 495

