

Expanding Judicial Activism through the Principle of Constitutional Morality: Reflections on Some New Cases

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Abstract

We, the People of India, have given ourselves 'the Constitution' which remains supreme all the time irrespective of the fact that sometimes it disturbs public sentiment, morals and thus, in turn, goes rather against the 'will of the people'. Many a times it seems clear that the Judiciary often crosses lines and ignore the public sentiments by advancing the Indian Society towards more progressive society much on the lines of the Western countries. While doing so, the Judiciary seems to completely ignore the notions and the pillars on which the Indian Society stands and rather it does try to customize and thrust the law much in tune of the foreign laws turning a blind eye to the Indian Customs and age-old thoughts. Many critiques believe that the Indian Judiciary through its weapon of the Principle of Constitutional Morality has ignored the notions of public morality and have pronounced the judgments way beyond their realm. This paper attempts to achieve a fine balance between the public and the constitutional morality. It also aims at justifying the judicial pronouncements which through the principle of constitutional morality has sidelined some of the elements of public morality and has paved a way to establish a more powerful and progressive society in these changing times. The present paper shall focus on the new judicial rulings of the Supreme Court of India where the Court has justified the supremacy of the doctrine of Constitutional Morality in India.

- Keywords: Constitutional Morality, Public Morality, Will of the People, Westernization of law, Progressive Society

I. INTRODUCTION

The most revered and visionary Preamble of the Indian Constitution begins with the very words 'We, the People of India' thereby representing the strong and robust will of the people of India to adopt the Constitution to themselves.

While doing so, a firm commitment towards the will of the people was demonstrated through various subsequent political, social and economic events and subsequent judicial pronouncements hailing the cause of justice, that is, to reach out to the poorest of the poor in the country.

One must also note that this was the constitution which was a 'Homemade Constitution' purely tailored and was customized to suit the needs of the Indian Society and also to comfort the age-old Indian customs and Traditions which were, it was thought to some extent were compromised by the Britishers who ruled India for almost a century and half.

By adopting the Constitution, the People of India wished that they can be ruled by none but by themselves as per their beliefs and moral principles which have been gifted to them by their ancestors and which strongly dominated both the stronger and the weaker sections of Indian Society.

However, in the sacred chambers of the Apex Court, a systematic and rigorous process which re-calibrates the ontological notions of public morality is taking place.

This paper sharply dissects the ongoing conflict between the primordial idea of public morality and the radiant prescriptions of Constitutional Morality. By deploying an analytical survey of the recent cases decided by the apex court, I argue that the expansionist activism of the Judiciary is not contrary to the fabric of the Indian democracy but rather becomes complimentary in nature marching towards the ideal progressive society where each individual is at liberty to adhere to their own codes and conduct yet respecting each other.

By scaling the Counter-Majoritarian Difficulty, the Indian Judiciary is quietly guiding the Indian Republic out of a 'Culture of Authority' towards a 'Culture of Justification'.

This gap — between what the Constitution demands and what the public is prepared to accept — is the space in which the debate between Constitutional Morality and Public Morality unfolds. It is not a new debate. Philosophers and legal theorists have wrestled with the relationship between positive law, moral sentiment, and social custom for centuries. But in the Indian context, it takes on a peculiar urgency, because the Constitution was always intended to be a reforming document — one that would drag a resistant society towards a more just future, not merely codify the arrangements of the present.

SITTLICHKEIT Vs CONSTITUTIONAL REASON

To live the life governed and adored by the principle of 'Dharma' or in Hegelian term 'Sittlichkeit' i.e. the 'ethical life', has always been the motive of members of the Indian Society. No matter how rigid the rules are, how cruel punishments are, or how inhuman processes are, whatever is posit us in the holy scriptures or in the various religious texts, members of the society must adhere to the norms of the same.

As a result, a tension between social fabric and an egalitarian document of enlightenment is clearly visible in the present context. This tension further escalates as a dualism between Collective Conscience and the Constitutional Conscience and often left one wonder as to how to settle this conflict.

The expansion of Judicial Activism through the principle of Constitutional Morality is a Copernican revolution. It dictates that the will of the People is a sub-constitutional relic which has to be managed against the ethical spirit of the society. When the Judiciary overthwarts the public sentiments, it is not demonstrating its juristocratic arrogance, but performing its holy duty to protect the crystalline rights of the individuals against the ephemeral whims of the majority.

JUDICIARY'S MARCH WITH CONSTITUTIONAL MORALITY: THE EVOLVING JURISPRUDENCE OF INCLUSION, TOLERANCE AND FREEDOM

In one of the landmark case of Navtej Singh Johar V. Union of India, the Supreme Court boldly launched the principle of Constitutional morality which bluntly indicated the shift towards Legal Formalism to Substantive Jurisprudence, in which the letter of law meets the spirit of justice.

Applying the the Constitutional Morality while de-criminalizing consensual intimacy, the Court institutionalized the concept of Constitutional Morality shedding away the calcified layers of Victorian Morality that had long stifled the individual autonomy of people.

The decision of the Court in Navtej proved to be a boon to the identity and the dignity of millions those who had lost the hope for their recognition and the Court once again proved to people that the Constitution remains not just as a piece of paper but a living organism which breathes the air of liberty.

The Court's ratio decidendi established a conception of privacy as an inalienable corollary of dignity, effectively privatizing the moral sphere. In doing so, the Judiciary utilized Constitutional Morality as a prophylactic measure against the tyranny of the collective, thereby enshrining the supremacy of the individual within the constitutional cosmos.

What made the judgment especially significant for the Constitutional Morality debate was the Court's explicit acknowledgment that public sentiment was on the other side — and its explicit refusal to treat that as a reason to retreat. Justice Chandrachud's concurring opinion drew a clear line between Constitutional Morality and social morality, observing that the former exists precisely to protect individuals from the oppressive weight of the latter when that weight falls upon the vulnerable. The colonial origins of Section 377 were also noted with some force: the very provision being defended as an expression of Indian culture had been imposed by British rulers who held that culture in contempt.

Then came the Sabarimala Judgement, which became monument to egalitarianism, a situation in which the Court was entangled with the esoteric logic of the holy place. The Bench threw down the hurdles of the religious exclusionary practices. The Court invoked the doctrine of Constitutional Morality postulating that the individual liberty is the sun round which a communal orbit must revolve. In this case, the Court once again demonstrated its readiness to proceed with the idea of Constitutional Morality against the wider public perception which was hitherto abided by the people since time immemorial.

The Joseph Shine Case was yet about the related but distinct question of sexual autonomy within marriage. Section 497 of the IPC — the adultery provision — made it a criminal offence for a man to have sexual relations with another man's wife, but only if the husband complained. The wife herself had no standing to complain, and the man who had consensual relations with a married woman committed no offence if her husband consented. Women, in other words, were constructed by the provision as their husbands' property: the wrong of adultery was a wrong done to the husband, not an autonomous act by the wife.

The Court struck down the provision unanimously, and the reasoning is instructive. The argument for retaining Section 497 was essentially a Public Morality argument: marriage is a sacred institution; adultery disrupts the social fabric; criminal sanction reflects and reinforces the community's moral disapproval of infidelity. The Court accepted none of it. The provision, it held, was built on a premise — that women are appendages of their husbands rather than autonomous persons — that the Constitution of India had long since rejected. No appeal to tradition or social sentiment could rehabilitate a law that treated women as legally subordinate to their spouses. Constitutional Morality, understood as the Constitution's own commitment to gender equality, required that the provision go.

THE GENETIC FRONTIER: APARNA FIRODIA AND THE ONTOLOGICAL SANCTITY OF THE CHILD

The latest 2023 Aparna Firodia adjudication serves as a normative check on the potential for technological tyranny to disrupt the social and legal status of the individual. Here, the Supreme Court grappled with the epistemic tension between 'Biological Truth' and 'Legal Legitimacy.'

The Court reaffirmed that the Presumption of Legitimacy—the pater est quem nuptiae demonstrant (the father is he whom the marriage points out)—is not merely a rule of evidence, but a prophylactic against social stigmatization. By refusing to grant a DNA test as a 'matter of course,' the Court signaled that Constitutional Morality demands the protection of the child's right to identity over a father's desire for genetic certainty.

The ruling established a rigorous threshold of proportionality, dictating that judicial orders for DNA profiling must navigate the Scylla of truth-seeking and the Charybdis of privacy infringement. The Court posited that a child should not be reduced to a genetic artifact to resolve matrimonial disputes. This signifies an Aspirational Jurisprudence that recognizes Privacy as an Emanation of Dignity, ensuring that the 'Tyranny of Truth' does not override the 'Ethics of Care.'

THE FRONTIERS OF 2025-: ALGORITHMIC ACCOUNTABILITY AND THE SENTIENCE OF NATURE

The recent adjudications signify a transition from Human-Centric Constitutionalism to a Universalist Normative Order, where the 'spirit of the law' is invoked to regulate entities both digital and biological, previously considered outside the scope of traditional *Sittlichkeit*.

In this landmark 2025 ruling, the Court addressed the opacity of AI-driven governance. By invoking Constitutional Morality, the Bench held that 'black-box' algorithms used for citizen-profiling must adhere to the Principle of Non-Arbitrariness. The Court established that an algorithm cannot be a 'jurisdictional vacuum.' It mandated Algorithmic Transparency as a facet of Substantive Due Process, asserting that the Right to Reasoned Decision-making is an inalienable property in the digital age. While not specifically citing 'Constitutional Morality,' the Court held that systems must comply with non-discriminatory, reasonable, and accessible standards.

CONCLUSION:

The expansion of judicial activism through the conduit of Constitutional Morality is the final frontier of the Indian legal project.

The development of judicial activism in the perspective of Constitutional Morality is the working out of the soul of the Republic.

Although it undoubtedly ends up in the turbidity of the prejudices of the past, it does so to prepare the way, to a purer and more enlightened future.

The Judiciary is the Sentinel on the *Qui Vive*, a transformative force that realizes that in order to truly flourish, its law must not merely be the reflection of what it was, but a lamp that shines on what it can become.

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