

---

## REVISITING MATRIMONIAL LAW THROUGH THE LENS OF CONSTITUTIONAL MORALITY AND SOCIAL NORMS

---

S. Asai Mani, BBA, LLB, LLM, SMVEC Centre for Legal Education

### ABSTRACT

The evolution of matrimonial law in India reflects an enduring tension between entrenched social norms and the transformative vision of constitutional morality. Traditionally governed by personal laws rooted in religion and custom, matrimonial disputes have long been influenced by patriarchal values, community expectations, and collective notions of family honour. However, the expansion of fundamental rights jurisprudence particularly under Article 21 has introduced a new normative framework centred on dignity, autonomy, and equality. This paper critically examines the growing role of constitutional morality in reshaping matrimonial law, focusing on judicial interventions that challenge social morality in areas such as marriage choice, divorce, and gender justice. It analyses landmark judgments, statutory provisions, and socio-legal realities, the study evaluates whether constitutional morality has effectively transformed matrimonial adjudication or whether its impact remains limited by social resistance and structural constraints. The paper argues that while constitutional morality has emerged as a powerful tool for reform, its full realization requires deeper alignment between legal principles and societal change. The research adopts a doctrinal and analytical methodology, examining statutory provisions, judicial precedents, and scholarly discourse to assess whether constitutional morality has effectively transformed matrimonial adjudication in India. It also interrogates the limitations of this approach, including judicial inconsistency, societal resistance, and the continued influence of personal laws. The paper argues that while constitutional morality has emerged as a powerful normative tool in reshaping family law, its transformative potential remains contingent upon deeper institutional reforms and evolving social consciousness. Ultimately, the study contributes to the broader discourse on the role of constitutional values in redefining private relationships, advocating for a more rights-oriented and egalitarian framework in matrimonial law that aligns with the constitutional vision of justice, liberty, and dignity.

**Keywords:** Constitutional Morality, Social Morality, Matrimonial Law in India, Fundamental Rights, Individual Autonomy, Human Dignity, Gender Justice.

## Introduction

Matrimonial law in India occupies a unique and complex position at the intersection of law, society, religion, and individual rights. Unlike many other branches of law, it is deeply embedded in personal laws and cultural traditions that govern intimate relationships, family structures, and social conduct. Historically, matrimonial disputes have been resolved within a framework that prioritizes social cohesion, familial stability, and adherence to community norms. These norms, often described as social morality, have played a decisive role in shaping legal outcomes, sometimes at the cost of individual autonomy and gender equality.<sup>1</sup> However, the constitutional framework of India, particularly the guarantees enshrined under Part III, introduces a competing normative standard constitutional morality.<sup>2</sup> Rooted in values such as liberty, equality, dignity, and individual autonomy, constitutional morality seeks to transform society by ensuring that legal principles are aligned with fundamental rights rather than prevailing social attitudes.<sup>3</sup> The Supreme Court of India has repeatedly emphasized that constitutional morality must prevail over social morality, especially in matters involving personal choice and intimate relationships.<sup>4</sup> This doctrinal shift marks a significant transition from a tradition-bound legal system to one guided by constitutional values.

The tension between these two forms of morality becomes particularly pronounced in matrimonial disputes. Issues such as inter-faith and inter-caste marriages, live-in relationships, divorce, reproductive choices, and gender roles often trigger conflicts between individual rights and societal expectations.<sup>5</sup> Despite these progressive developments, the influence of social morality continues to persist within both legal institutions and societal attitudes. Courts at times exhibit inconsistency, and personal laws remain resistant to uniform reform.<sup>6</sup> Moreover, deeply ingrained cultural norms often shape the lived realities of individuals, limiting the practical realization of constitutional ideals. This creates a paradox wherein the law, while formally committed to constitutional morality, operates within a social context that may not fully embrace its transformative vision.

---

<sup>1</sup> Paras Diwan & Peeyushi Diwan, *Modern Hindu Law* (21st ed., Allahabad Law Agency, 2018).

<sup>2</sup> The Constitution of India, Part III (Fundamental Rights).

<sup>3</sup> K.S. Puttaswamy v. Union of India.

<sup>4</sup> Navtej Singh Johar v. Union of India; Joseph Shine v. Union of India.

<sup>5</sup> Shafin Jahan v. Asokan K.M..

<sup>6</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

In this context, the present study seeks to revisit matrimonial law in India through the lens of constitutional morality and social norms. It aims to critically analyse how the judiciary has navigated this tension and to what extent constitutional morality has succeeded in redefining matrimonial adjudication. It examining statutory provisions, judicial pronouncements, and contemporary socio-legal debates, the paper attempts to assess whether Indian family law is undergoing a genuine paradigm shift or merely a gradual and contested evolution. Ultimately, the study situates matrimonial law within the broader project of constitutional transformation, emphasizing the need for a more coherent, rights-based, and socially responsive legal framework.

### **Constitutional Morality**

The concept of constitutional morality occupies a central place in contemporary Indian constitutional jurisprudence, particularly in areas where law intersects with deeply embedded social practices such as matrimonial relations. The term was most prominently articulated by B. R. Ambedkar during the Constituent Assembly debates, where he emphasized that the success of a democratic Constitution depends not merely on its textual provisions but on the commitment of institutions and citizens to uphold its underlying values.<sup>7</sup> Constitutional morality, therefore, refers to adherence to the core principles enshrined in the Constitution namely justice, liberty, equality, and dignity even when such adherence requires departure from prevailing social norms or majoritarian preferences.

In the Indian context, constitutional morality has evolved through judicial interpretation into a guiding doctrine for resolving conflicts between individual rights and societal expectations. It requires that all laws, including those governing family and personal relationships, be tested against the touchstone of fundamental rights. This doctrine is particularly significant in matrimonial law, where traditional practices often reflect patriarchal values and community based moral standards that may undermine individual autonomy and gender equality.<sup>8</sup> The Supreme Court of India has played a pivotal role in expanding and operationalizing the concept of constitutional morality. In *K.S. Puttaswamy v. Union of India*, the Court recognized the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21, thereby affirming that personal choices including those related to marriage, family, and intimate

---

<sup>7</sup> Constituent Assembly Debates, Vol. VII, 4 November 1948 (speech of Dr. B. R. Ambedkar).

<sup>8</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

relationships are constitutionally protected.<sup>9</sup> This judgment laid the foundation for a more robust application of constitutional morality in matrimonial disputes by prioritizing individual autonomy over collective social norms. Subsequently, in *Navtej Singh Johar v. Union of India*, the Court explicitly held that constitutional morality must prevail over social morality. The decriminalisation of consensual same-sex relationships marked a significant departure from traditional moral frameworks and reinforced the idea that the Constitution serves as a transformative instrument aimed at fostering an inclusive and egalitarian society. Similarly, in *Joseph Shine v. Union of India*, the Court invalidated the offence of adultery, recognizing it as a manifestation of gender inequality rooted in outdated social norms.

Constitutional morality thus functions as a normative compass that guides judicial decisionmaking towards the protection of individual rights, particularly in the private sphere of family life. It challenges the legitimacy of customs and practices that conflict with constitutional guarantees, thereby promoting a shift from a tradition-bound legal system to one grounded in principles of autonomy and equality. In the context of matrimonial law, this doctrine has enabled courts to reinterpret legal provisions in a manner that affirms personal liberty, dismantles patriarchal structures, and advances gender justice. However, the application of constitutional morality is not without challenges. Its abstract nature allows for varying interpretations, leading to occasional inconsistency in judicial decisions. Moreover, its transformative potential is often constrained by the persistence of social morality within both legal institutions and broader society. Despite these limitations, constitutional morality remains a powerful and evolving doctrine that continues to reshape the landscape of matrimonial law in India, aligning it more closely with the constitutional vision of a just and equitable society.

### **Social Morality**

Social morality refers to the collective set of norms, values, customs, and beliefs that regulate behaviour within a society. In the Indian context, it is deeply rooted in religion, tradition, caste structures, and long-standing cultural practices. Unlike constitutional morality, which derives its authority from the Constitution and its commitment to individual rights, social morality is shaped by community expectations and majoritarian perceptions of what is considered acceptable or appropriate conduct. It significant role in governing personal relationships,

---

<sup>9</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

particularly within the domain of family and marriage.

In matrimonial law, social morality has historically influenced both the formulation of personal laws and their interpretation by courts. Practices such as arranged marriages, restrictions on inter-caste and inter-faith unions, emphasis on marital permanence, and clearly defined gender roles within the family reflect the dominance of societal norms. These norms often prioritize collective interests such as family honour, social stability, and community cohesion over individual autonomy. As a result, individuals who deviate from accepted standards, especially women, frequently face legal as well as social disadvantages.

The judiciary, particularly in earlier phases, often mirrored prevailing social morality in its approach to matrimonial disputes. Concepts such as cruelty, adultery, and desertion were interpreted through a conservative lens, reinforcing traditional gender roles and expectations. For instance, women were expected to conform to ideals of obedience and sacrifice, and any deviation was often viewed unfavourably in legal proceedings. Similarly, marriages that challenged social norms such as inter-caste or inter-faith unions were subjected to heightened scrutiny, sometimes resulting in indirect judicial endorsement of societal prejudice. Social morality continues to exert a strong influence even in contemporary legal practice. Despite constitutional protections, individuals entering into non-traditional relationships, such as live-in arrangements or same-sex partnerships, often encounter resistance from families, communities, and sometimes even state authorities. The persistence of honour-based violence, social ostracism, and moral policing illustrates the extent to which societal norms can conflict with legally recognized rights.<sup>10</sup> At the same time, social morality is not static; it evolves with changes in social consciousness, education, urbanisation, and exposure to global values. Courts have occasionally acknowledged this dynamic nature, recognizing that societal norms cannot remain rigid in a rapidly transforming society. However, the pace of social change is often slower than legal reform, creating a gap between what the law permits and what society accepts. In the context of matrimonial law, social morality thus represents both a stabilizing force and a source of constraint. While it helps maintain social order and continuity, it can also perpetuate inequality and inhibit the realization of constitutional values. The ongoing tension between social morality and constitutional morality highlights the need for a balanced approach one that respects cultural diversity while ensuring that fundamental rights are not compromised.

---

<sup>10</sup> *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

## **Matrimonial Law and Social Norms**

Matrimonial law in India has historically evolved in close alignment with prevailing social norms, reflecting the deep interconnection between law, religion, and community life. Unlike purely secular branches of law, matrimonial relations are largely governed by personal laws derived from religious doctrines and customary practices. These laws not only regulate the legal aspects of marriage, divorce, maintenance, and succession but also embody the moral expectations of society regarding family structure, gender roles, and acceptable conduct within intimate relationships.<sup>11</sup> As a result, matrimonial law has traditionally functioned as a legal extension of social morality. Social norms in India have long emphasized the sanctity and permanence of marriage, often viewing it as a sacramental union rather than a contractual arrangement. This perception is particularly evident in Hindu law, where marriage has been regarded as an indissoluble bond, thereby historically limiting the scope for divorce. Even where legal provisions for divorce exist, the social stigma attached to marital dissolution continues to influence both litigants and judicial attitudes. Women, in particular, face disproportionate social consequences, including ostracism and economic vulnerability, which in turn shape their access to legal remedies.

The influence of social norms is also evident in the regulation of partner choice. Inter-caste and inter-faith marriages, though legally valid, frequently encounter resistance from families and communities. Such opposition is often justified on grounds of preserving cultural identity and social cohesion, but it can lead to serious violations of individual rights, including coercion and violence.<sup>12</sup> Despite statutory protections and judicial recognition of the right to choose one's spouse, the persistence of honour-based practices demonstrates the enduring power of social morality in matrimonial matters.

Gender roles within marriage further illustrate the imprint of social norms on matrimonial law. Traditional expectations position men as breadwinners and women as caregivers, reinforcing economic dependency and limiting women's autonomy. Legal concepts such as maintenance and alimony, while designed to provide financial support, have sometimes been interpreted through a paternalistic lens that reinforces rather than challenges these roles. Similarly, earlier

---

<sup>11</sup> Paras Diwan & Peeyushi Diwan, *Modern Hindu Law* (21st ed., Allahabad Law Agency, 2018).

<sup>12</sup> *Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475.

legal frameworks dealing with adultery and cruelty reflected patriarchal assumptions about marital fidelity and acceptable behaviour, often disadvantaging women.

Judicial interpretation of matrimonial law has not been immune to these influences. Courts have, at times, relied on societal standards to determine issues such as mental cruelty or reasonable conduct within marriage. This has led to inconsistencies, where similar facts may yield different outcomes depending on the perceived alignment with social expectations. Although recent jurisprudence shows a gradual shift towards a rights-based approach grounded in constitutional values, remnants of social morality continue to shape legal reasoning, particularly at lower judicial levels. At the same time, societal change is exerting pressure on traditional matrimonial norms. Urbanisation, increased education, economic independence of women, and exposure to global perspectives have contributed to a gradual redefinition of family structures and marital expectations.<sup>13</sup> The growing acceptance of divorce, recognition of live-in relationships, and emphasis on individual compatibility reflect an evolving social landscape. However, this transformation remains uneven, with significant disparities between urban and rural contexts. In this dynamic setting, matrimonial law operates as both a product and a regulator of social norms.

### **Judicial Shift Towards Constitutional Morality**

The Indian judiciary, particularly the Supreme Court, has played a transformative role in reorienting matrimonial and intimate relationship jurisprudence from a framework dominated by social morality to one grounded in constitutional morality. This shift reflects an increasing judicial recognition that individual autonomy, dignity, and equality must take precedence over societal norms that are often rooted in tradition, patriarchy, and majoritarian values. Through a series of landmark judgments, the Court has redefined the contours of personal liberty in matters of marriage, sexuality, and intimate choice, thereby reinforcing the centrality of constitutional morality in family law adjudication.<sup>14</sup>

### **Autonomy in Marriage**

A significant milestone in affirming individual autonomy in matrimonial decisions is the

---

<sup>13</sup> Patricia Uberoi, *The Family in India: Beyond the Nuclear versus Joint Debate* (Oxford University Press, 2006).

<sup>14</sup> Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

judgment in *Shafin Jahan v. Asokan K.M.*. Commonly referred to as the Hadiya case, the dispute arose when an adult woman's marriage was annulled by the Kerala High Court on the grounds of alleged coercion and concerns raised by her parents regarding religious conversion. The Supreme Court overturned this decision, unequivocally holding that the right to choose a life partner is an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution.<sup>15</sup> The Court emphasized that neither the State nor society, including parents, has the authority to interfere in the personal decisions of consenting adults. In restoring the validity of the marriage, the Court reaffirmed that autonomy in matters of marriage is a fundamental constitutional guarantee. This judgment is particularly significant in the Indian context, where inter-faith and inter-caste marriages often face intense social resistance. The ruling thus represents a clear assertion that constitutional morality must prevail over social morality, especially when the latter seeks to curtail individual freedom.

### **Decriminalisation of Adultery**

The decision in *Joseph Shine v. Union of India* marked another critical step in dismantling patriarchal norms embedded in matrimonial law. Section 497 of the Indian Penal Code criminalized adultery by treating it as an offence committed by a man against another man, effectively viewing women as passive objects or property of their husbands. The provision denied women agency and autonomy, reinforcing deeply entrenched gender inequalities.<sup>16</sup> The Supreme Court struck down this provision as unconstitutional, holding that it violated the fundamental rights to equality, dignity, and personal liberty. The Court observed that the law was based on outdated notions of marriage that subordinated women and denied them equal status within the marital relationship. In decriminalising adultery, the Court shifted the understanding of marriage from a hierarchical institution governed by control and ownership to a partnership based on mutual respect and equality. Importantly, the judgment clarified that while adultery may still serve as a ground for divorce, it cannot be treated as a criminal offence. This distinction underscores the Court's effort to separate moral disapproval from legal sanction, thereby limiting the role of social morality in shaping criminal law. The decision reflects a broader commitment to constitutional morality, which prioritizes individual autonomy and gender justice over traditional societal expectations.<sup>17</sup>

---

<sup>15</sup> *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 408 (India).

<sup>16</sup> *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

<sup>17</sup> *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

## **Conclusion**

Despite these advancements, the influence of social morality continues to persist in both legal practice and societal attitudes. Resistance to inter-faith and inter-caste marriages, stigma surrounding divorce, and entrenched gender inequalities highlight the enduring gap between constitutional ideals and social realities. Moreover, inconsistencies in judicial application and the continued dominance of personal laws pose additional challenges to the full realization of a rights-based matrimonial framework. In this context, the transformation of matrimonial law remains an ongoing and contested process. While the judiciary has played a pivotal role in advancing constitutional values, sustainable change requires a broader societal shift, supported by legislative reform, legal awareness, and institutional sensitivity. The reconciliation of constitutional morality with evolving social norms is essential to ensure that matrimonial law not only reflects the values of the Constitution but also responds effectively to the complexities of contemporary society. Ultimately, the future of matrimonial law in India lies in its ability to uphold the principles of dignity, autonomy, and equality while engaging constructively with the realities of social change. A truly progressive legal framework must move beyond the constraints of tradition and align itself with the transformative vision of the Constitution, thereby ensuring justice within the most intimate sphere of human relationships.

## **Suggestions**

Matrimonial law in India should be reformed to align consistently with constitutional morality by ensuring gender equality, individual autonomy, and dignity. Judicial training, uniform application of rights, and awareness programs are essential. Legislative reforms must address gaps in personal laws, while promoting mediation and legal aid to ensure accessible, rightsbased dispute resolution in family matters.

## REFERENCES:

### Cases

1. *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).
2. *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).
3. *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).
4. *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 408 (India).
5. *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475 (India).
6. *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India).
7. The Constitution of India, 1950.
8. Indian Penal Code, 1860 (Act 45 of 1860).

### Books

9. M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis 2018).
10. Paras Diwan & Peeyushi Diwan, *Modern Hindu Law* (21st ed., Allahabad Law Agency 2018).
11. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 1999).
12. Patricia Uberoi, *The Family in India: Beyond the Nuclear versus Joint Debate* (Oxford Univ. Press 2006).

### Reports / Debates

13. Constituent Assembly Debates, Vol. VII (4 Nov. 1948) (speech of B.R. Ambedkar).