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# PRIVATE INTERNATIONAL LAW AND CONSTITUTIONAL MORALITY IN INDIA

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## ABSTRACT

In recent years, India's engagement with the international community has grown significantly. Factors such as migration, employment opportunities abroad, international marriages, overseas education, and the expansion of digital trade have increased interactions across national borders. As a result, disputes involving foreign elements have become more frequent. Indian courts now regularly confront legal issues related to jurisdiction, applicable law, and the recognition and enforcement of foreign judgments, particularly in matters like matrimonial disputes and international commercial dealings.<sup>1</sup>

Traditionally, these issues were handled under the framework of private international law, also known as conflict of laws. This field developed a set of structured and technical rules designed to manage cross-border disputes. The primary purpose of these rules was to maintain certainty, consistency, and respect among different legal systems, often referred to as international comity. Historically, private international law was viewed as largely procedural and neutral, focusing more on determining the appropriate legal system rather than examining broader questions of justice or individual rights.

This traditional perspective has begun to change. While cross-border disputes have increased, Indian constitutional jurisprudence has also developed in important ways. Courts have placed stronger emphasis on constitutional values such as dignity, equality, liberty, and personal autonomy. The idea of constitutional morality, highlighted in landmark Supreme Court judgments like *Navtej Singh Johar v. Union of India*, *Indian Young Lawyers Association v. State of Kerala*,<sup>2</sup> and *Joseph Shine v. Union*

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<sup>1</sup> Tarasha Gupta & Saloni Khanderia, Cross-Border Litigation and Comity of Courts: A Landmark Judgment from the Delhi High Court, *Conflict of Laws* (Mar. 30, 2024), <https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court>

<sup>2</sup> Dharmesh, An Analysis of Transformative Constitutionalism in India and the Role Played by the Judiciary in Shaping the Constitution, *5 Int'l J.L. Pol'y & Soc. Rev.* 129 (2023), <https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court>

<sup>3</sup> Mazhar Khan & Dr. Anuradha Garg, Constitutional Morality and Amendment Acts: A Critical Study of Judicial Responses to Constitutional Changes in India, *11 Int'l J. of Law Iss.* 9 24 (2025),

of India, <sup>4</sup>stresses that constitutional principles should prevail over discriminatory traditions or majoritarian social practices.

This paper examines how the idea of constitutional morality is beginning to influence the development of private international law in India. It suggests that courts are increasingly assessing foreign laws and foreign judgments through the lens of constitutional values, particularly in areas such as family law, gender equality, and the application of the public policy exception. Through this approach, India appears to be gradually shifting from a purely technical conflict-of-laws framework toward one that places greater importance on rights and constitutional principles.

**Keyword:** Constitutional Morality, Private International Law, Jurisdiction, Choice of law, Foreign Judgments, Public Policy, etc.

## Introduction to Private International Law in India

Private International Law, commonly referred to as Conflict of Laws, deals with legal disputes involving more than one jurisdiction. It determines which country's courts have jurisdiction, which legal system should be applied, and how foreign judgments should be recognized or enforced. With globalization, migration, international trade, and cross-border marriages becoming more common, disputes involving foreign elements have significantly increased in India. Consequently, Indian courts frequently confront questions concerning jurisdiction, choice of law, and recognition of foreign judgments. <sup>5</sup>

Unlike public international law, which governs relations between states, private international law regulates disputes between private individuals or entities where multiple legal systems are involved. Typical cases include international commercial contracts, matrimonial disputes involving foreign nationals, cross-border inheritance issues, and international child custody conflicts. These disputes require courts to determine which legal rules apply and how to reconcile differences between national legal systems.

Historically, private international law evolved to ensure fairness, predictability, and cooperation between legal systems. Courts rely on principles such as comity of courts, jurisdiction, choice of law, and recognition of foreign judgments to resolve cross-border

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<https://www.lawjournals.org/assets/archives/2025/vol11issue9/11199.pdf>

<sup>5</sup> Saravan kumar, Manikannadan, Private International law and constitutional Morality in India Indian Journal of Legal Review, (IJLR), 6 (2) OF 2026, PG. 271-282, APIS – 3920 – 0001 & ISSN - 2583-2344.  
<https://ijlr.iledu.in/wp-content/uploads/2026/03/V6I230F.pdf>

disputes. Comity refers to mutual respect between sovereign legal systems, allowing courts to recognize and enforce foreign judgments under certain conditions. At the same time, courts must ensure that foreign judgments do not violate domestic public policy or fundamental legal principles.

In India, private international law has largely developed through judicial decisions rather than a comprehensive statutory framework. The Code of Civil Procedure, 1908, provides some rules for recognizing and enforcing foreign judgments, but many aspects of conflict-of-laws doctrine remain governed by case law. Indian courts often rely on common law principles inherited from the British legal system while adapting them to the Indian constitutional framework.

Recent developments indicate a shift in how Indian courts approach private international law. Courts are increasingly evaluating foreign laws and judgments through the lens of constitutional principles, particularly those related to fundamental rights such as equality, dignity, and liberty.<sup>6</sup> This approach reflects the growing influence of constitutional morality in judicial reasoning. Instead of merely applying neutral conflict-of-laws rules, courts are examining whether the application of foreign law would undermine constitutional values.

For example, in cases involving matrimonial disputes, gender rights, or discriminatory foreign laws, courts have refused to enforce foreign judgments that violate Indian constitutional principles. This development suggests a transformation from a purely technical framework of conflict-of-laws toward a rights-based approach guided by constitutional norms.

Therefore, the interaction between private international law and constitutional morality is becoming an important aspect of contemporary Indian legal discourse. As globalization increases cross-border interactions, Indian courts must balance international cooperation with the protection of constitutional values.

### **Concept of Constitutional Morality in India**

The concept of constitutional morality plays a crucial role in modern Indian constitutional jurisprudence. Constitutional morality refers to adherence to the core values and principles

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<sup>6</sup> Saravan kumar , Manikannadan , Private International law and constitutional Morality in India Indian Journal of Legal Review , (IJLR), 6 (2) OF 2026, PG. 271-282, APIS – 3920 – 0001 & ISSN - 2583-2344. <https://ijlr.iledu.in/wp-content/uploads/2026/03/V6I230F.pdf>

enshrined in the Constitution, including justice, liberty, equality, and dignity. <sup>7</sup>It requires individuals, institutions, and governments to act in accordance with constitutional ideals rather than merely following social or majoritarian morality.

The idea of constitutional morality was originally articulated by Dr. B.R Ambedkar during the debates of the Constituent Assembly. Ambedkar emphasized that a constitution alone cannot guarantee democratic governance; the success of constitutional democracy depends on the willingness of citizens and institutions to respect constitutional principles. Constitutional morality therefore acts as a guiding framework that ensures that state actions align with the spirit and purpose of the Constitution.

In Indian jurisprudence, constitutional morality has gained prominence through several landmark Supreme Court judgments. The judiciary has invoked this doctrine to protect fundamental rights and prevent discriminatory social practices. Constitutional morality requires courts to prioritize constitutional values even when societal customs or public morality conflict with them.

A key aspect of constitutional morality is its role as a counter-majoritarian principle. In democratic societies, the majority may sometimes support practices that undermine the rights of minorities or marginalized groups. Constitutional morality ensures that such practices are subject to constitutional scrutiny. Courts therefore rely on constitutional morality to safeguard individual rights and promote equality before the law.

The doctrine also plays a vital role in interpreting fundamental rights. Articles 14, 15, 19, and 21 of the Constitution guarantee equality, freedom, and personal liberty. <sup>8</sup>Constitutional morality ensures that these rights are interpreted in a progressive and inclusive manner. By emphasizing dignity and individual autonomy, the judiciary has expanded the scope of these rights in recent decades.

Furthermore, constitutional morality is often contrasted with social morality. Social morality is based on prevailing cultural, religious, or societal norms, whereas constitutional morality is

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<sup>7</sup> Adv. Keerthana Krishnan, *International Journal for Multidisciplinary Research*, , E-ISSN: 2582-2160 <https://www.ijfmr.com/papers/2025/4/52490.pdf>

<sup>8</sup> Saravan kumar , Manikannadan , *Private International law and constitutional Morality in India* *Indian Journal of Legal Review* , (IJLR), 6 (2) OF 2026, PG. 271-282, APIS – 3920 – 0001 & ISSN - 2583-2344. <https://ijlr.iledu.in/wp-content/uploads/2026/03/V6I230F.pdf>

grounded in constitutional values. When conflicts arise between the two, Indian courts have increasingly favored constitutional morality to uphold democratic principles.

This concept has also influenced debates on gender equality, LGBTQ+ rights, freedom of expression, and religious practices. By invoking constitutional morality, the judiciary has sought to transform the legal system into a tool for social justice.

In the context of private international law, constitutional morality becomes relevant when courts evaluate whether foreign laws or judgments are compatible with constitutional values. If a foreign law violates principles of equality or dignity, courts may refuse to apply or enforce it under the public policy exception.

Thus, constitutional morality serves as an ethical and constitutional compass that guides judicial interpretation and ensures that the legal system remains aligned with democratic ideals.

### **Historical Development of Private International Law**

The origins of private international law can be traced back to medieval Europe, where the growth of trade and commerce created disputes involving individuals from different regions. Early legal scholars developed principles to resolve conflicts between different local laws. These principles later evolved into the modern doctrine of conflict of laws.

During the Medieval period, Italian city-states such as Venice and Florence developed early forms of conflict-of-laws rules to regulate commercial transactions between merchants from different jurisdictions. Scholars such as Bartolus of Saxoferrato formulated theories that allowed courts to determine which law should govern cross-border disputes.

The development of private international law accelerated during the 17th and 18th centuries with the expansion of international trade. European legal scholars began to formalize principles such as territorial jurisdiction and the recognition of foreign judgments. The doctrine of comity emerged as a key concept, encouraging courts to respect foreign legal systems while protecting domestic interests.

In the British legal tradition, which heavily influenced the Indian legal system, private international law developed through judicial decisions rather than codified statutes. English courts formulated rules governing jurisdiction, choice of law, and enforcement of foreign

judgments. These principles were later introduced to colonial territories, including India.

During the colonial period, British administrators applied common law conflict-of-laws principles to resolve disputes involving British subjects and local populations. After independence in 1947, India retained much of this legal framework while adapting it to the constitutional system established by the Constitution of India.<sup>9</sup>

Today, private international law in India is still largely governed by judicial precedents. While some statutory provisions exist—particularly within, the Code of Civil Procedure 1908 many aspects of conflict-of-laws doctrine remain underdeveloped in legislation. Courts therefore play a central role in shaping the evolution of private international law.

Globalization has significantly increased the importance of private international law in India. Cross-border commerce, international employment, global education, and transnational marriages have created complex legal disputes involving multiple jurisdictions. Courts must therefore interpret conflict-of-laws principles in a manner that promotes fairness and legal certainty.

At the same time, Indian courts are increasingly integrating constitutional values into conflict-of-laws analysis. This development reflects the growing influence of constitutional morality in judicial reasoning. Rather than mechanically applying foreign law, courts examine whether the application of such law would violate constitutional principles.

Consequently, the historical development of private international law in India demonstrates a gradual transition from traditional common law rules toward a constitutionalized framework that prioritizes fundamental rights.

### **Relationship Between International Law and Indian Constitutional Framework**

The relationship between international law and domestic law in India has long been a subject of constitutional debate. The Indian Constitution adopts a dualist approach, meaning that international treaties and conventions do not automatically become part of domestic law unless they are implemented through legislation. However, Indian courts have often adopted a flexible

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<sup>9</sup> Tejaswini Kaushal ,<https://blog.ipleaders.in/private-international-law>

approach when interpreting international norms.

Under the dualist framework, Parliament must enact legislation to give effect to international treaties. This principle ensures that democratic institutions retain control over the incorporation of international obligations into domestic law. Nevertheless, the judiciary has frequently referred to international law as an interpretative tool when interpreting constitutional provisions and fundamental rights.

The Supreme Court of India has played a crucial role in bridging the gap between international law and constitutional principles. In several cases, the Court has relied on international conventions and human rights treaties to expand the scope of fundamental rights. This approach reflects the judiciary's commitment to aligning Indian constitutional law with global human rights standards.

One of the key constitutional provisions governing the relationship between international and domestic law is Article 51, which encourages the state to respect international law and treaty obligations. Although Article 51 is part of the Directive Principles of State Policy and is not directly enforceable, it provides guidance to courts when interpreting legal issues involving international law.

The judiciary has also recognized that international law may be incorporated into domestic law if it does not conflict with existing legislation. This approach reflects a gradual movement from strict dualism toward a more flexible system that allows international norms to influence domestic legal interpretation.

In the context of private international law, the relationship between international and domestic law becomes particularly significant. Courts must often decide whether to apply foreign laws, enforce foreign judgments, or recognize international legal principles. While doing so, they must ensure that such decisions do not violate the Constitution of India.

The increasing importance of constitutional morality has further influenced this relationship. Courts are now more willing to evaluate international legal rules through the lens of constitutional values. If a foreign legal rule conflicts with fundamental rights, Indian courts may refuse to apply it even if it would otherwise be recognized under traditional conflict-of-laws principles.

Thus, the interaction between international law and constitutional law in India demonstrates a dynamic legal framework that balances global cooperation with constitutional supremacy.<sup>10</sup>

### **Role of Judiciary in Promoting Constitutional Morality**

The Indian judiciary has played a transformative role in promoting constitutional morality and expanding the scope of fundamental rights. Through progressive interpretations of the Constitution, the Supreme Court has emphasized that constitutional values must prevail over social or majoritarian morality.

One of the primary functions of constitutional courts is to protect individual rights and ensure that state actions conform to constitutional principles. In India, the Supreme Court and High Courts exercise the power of judicial review, enabling them to invalidate laws or government actions that violate the Constitution.

Several landmark judgments have highlighted the importance of constitutional morality. In *Navtej Singh Johar v. Union of India* (2018),<sup>11</sup> the Supreme Court decriminalized consensual same-sex relations, emphasizing that constitutional morality must prevail over social prejudice. Similarly, in *Indian Young Lawyers Association v. State of Kerala* (2019),<sup>12</sup> the Court relied on constitutional morality to strike down discriminatory religious practices.

The judiciary has also invoked constitutional morality in cases involving gender equality, privacy, and personal liberty. These decisions demonstrate the courts' commitment to protecting individual autonomy and human dignity.

In the context of private international law, the judiciary's role becomes particularly significant. Courts must determine whether foreign laws or judgments are compatible with constitutional values. When conflicts arise, constitutional morality acts as a guiding principle that ensures the supremacy of the Constitution.

Thus, the judiciary serves as the guardian of constitutional morality and plays a crucial role in shaping the evolving relationship between private international law and constitutional

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<sup>10</sup>Prabhash Ranjan , <https://link.springer.com/article/10.1007/s10991-022-09314-6>

<sup>11</sup> *Navtej Singh Johar v. Union of India* (2018), <https://manupatracademy.com/legalpost/manu-sc-0947-2018>

<sup>12</sup>*Lawyers Association v. State of Kerala* (2019), <https://www.manupatracademy.com/legalpost/manu-sc-1094-2018>

principles in India.<sup>13</sup>

### **Jurisdiction in Private International Law**

Jurisdiction is one of the foundational principles of private international law. It determines which court has the authority to hear and decide a dispute involving foreign elements. In cross-border disputes, multiple courts may potentially claim jurisdiction, which makes the determination of the appropriate forum crucial for ensuring fairness and efficiency in legal proceedings.

In India, jurisdiction in cases involving foreign elements is primarily governed by the Code of Civil Procedure, 1908. Sections 13 and 14 of the statute outline the conditions under which foreign judgments are recognized and enforced. Indian courts examine whether the foreign court had competent jurisdiction, whether the proceedings were conducted in accordance with principles of natural justice, and whether the judgment violates Indian public policy.

The principle of jurisdiction ensures that disputes are heard in a forum that has a legitimate connection to the case. In international disputes, courts generally apply jurisdictional rules based on factors such as the place where the contract was made, the place where the cause of action arose, or the residence of the parties involved. These principles aim to prevent forum shopping, where litigants attempt to bring their cases before courts that may offer more favorable outcomes.

Indian courts have also developed jurisprudence on *forum conveniens*, a doctrine allowing courts to decline jurisdiction if another forum is more appropriate for resolving the dispute. This principle ensures that cases are adjudicated in the jurisdiction that has the closest connection to the dispute. For instance, if a dispute arises from a contract executed and performed in another country, an Indian court may determine that the foreign court is the more appropriate forum.

The concept of jurisdiction is increasingly influenced by constitutional values in India. Courts must ensure that jurisdictional decisions do not violate fundamental rights such as equality before the law and access to justice. Constitutional morality therefore requires courts to adopt

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<sup>13</sup>Maitra Varun Chotia , <https://ijrlm.com/journal/when-constitutional-values-collide-with-social-norms-constitutional-morality-as-an-interpretive-tool-in-post-johar-jurisprudence/>

a fair and rights-based approach when determining jurisdiction.

Additionally, technological advancements and digital transactions have introduced new challenges for jurisdictional rules. Online contracts, cross-border digital services, and international e-commerce have complicated the determination of territorial jurisdiction. Indian courts are gradually adapting traditional principles to address these modern realities.<sup>14</sup>

### **Choice of Law in Private International Law**

Choice of law refers to the process through which courts determine which legal system should govern a dispute involving multiple jurisdictions. In cases involving foreign elements, different countries may have conflicting laws that could potentially apply to the same dispute. Choice-of-law rules help courts select the most appropriate legal system.

In India, the concept of choice of law has evolved largely through judicial decisions rather than comprehensive legislation. Courts rely on established principles such as the *lex loci contractus* (law of the place where the contract was made) and *lex loci delicti* (law of the place where the tort occurred).<sup>15</sup> These doctrines help determine which law should apply to contractual and tort disputes respectively.

In commercial contracts, parties often include choice-of-law clauses specifying the legal system that will govern their agreement. Indian courts generally respect such clauses, provided they are not contrary to public policy or statutory provisions. Respecting party autonomy promotes predictability in international commerce and strengthens India's position as a participant in global trade.

However, the application of foreign law is not automatic. Courts must ensure that the chosen law does not violate constitutional principles or fundamental rights. For example, if a foreign legal rule discriminates against women or minorities, Indian courts may refuse to apply it under the public policy exception.

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<sup>14</sup> Saravan kumar , Manikannadan , Private International law and constitutional Morality in India Indian Journal of Legal Review , (IJLR), 6 (2) OF 2026, PG. 271-282, APIS – 3920 – 0001 & ISSN - 2583-2344. <https://ijlr.iledu.in/wp-content/uploads/2026/03/V6I230F.pdf>

<sup>15</sup> YUSUF KATHAWALA , International journal of Law Management and Humanities <https://ijlmh.com/wp-content/uploads/Concepts-of-Choice-of-Law-and-Jurisdiction-under-Private-International-Law-International-Contracts.pdf>

The growing influence of constitutional morality has significantly shaped choice-of-law analysis in India. Courts increasingly examine whether the application of foreign law aligns with constitutional values such as equality, dignity, and justice. This approach reflects the broader transformation of private law under constitutional norms.

Furthermore, globalization has expanded the scope of choice-of-law issues in India. International commercial arbitration, cross-border investments, and multinational business transactions frequently involve complex choice-of-law questions. Courts must therefore balance respect for international legal frameworks with the protection of domestic constitutional values.

Ultimately, the choice-of-law doctrine ensures that disputes are governed by the most appropriate legal system. By integrating constitutional morality into this process, Indian courts ensure that foreign legal rules do not undermine the fundamental principles of the Constitution.

### **Recognition and Enforcement of Foreign Judgments.**

#### **Definition of Constitutional Morality**

Constitutional morality refers to the practice of respecting and following the fundamental values and principles embedded in a constitution. It requires individuals and institutions to act in accordance with constitutional ideals while promoting a democratic and inclusive system that balances both individual rights and collective welfare. In the Indian context, constitutional morality is rooted in core principles such as democracy, equality, justice, liberty, secularism, and national unity. These values are broadly expressed in the Preamble of the Constitution, which outlines the guiding philosophy of the Indian constitutional framework.

The idea of constitutional morality implies that governance and public actions must remain within the boundaries of constitutional principles. Authorities and citizens alike must avoid arbitrary actions that undermine the rule of law or violate constitutional norms. In this sense, constitutional morality serves as a guiding framework for institutional functioning and democratic governance. It ensures that public authorities exercise power responsibly and in accordance with constitutional mandates.

Furthermore, constitutional morality requires that traditions, social practices, and institutional norms evolve with time to remain consistent with constitutional values. A democratic system

can survive and prosper only when both the public and those holding positions of power strictly follow constitutional rules and limitations. When institutions act within these boundaries, they maintain integrity and public trust. Therefore, a genuine commitment to the Constitution becomes an essential element of constitutional morality.

Importantly, constitutional morality is not limited to the literal interpretation of constitutional provisions. Instead, it reflects the broader spirit and philosophy underlying the Constitution. It aims to harmonize individual freedoms with collective societal interests. In India, the concept is still developing and has gradually evolved through judicial interpretation.

In recent years, the Supreme Court of India has frequently relied on the doctrine of constitutional morality while reviewing laws and social practices. The Court has used this principle to examine whether legislation or state actions are consistent with constitutional values, even when such laws reflect popular opinion or majoritarian morality. Through such decisions, constitutional morality has gained increasing significance in Indian constitutional jurisprudence.

### **Sources of Constitutional Morality**

The word “morality” is not extensively defined within the Constitution itself, the concept of constitutional morality can be derived from several sources.

The first and most direct source is the Constitution itself. Key constitutional provisions such as the Fundamental Rights (Articles 12–35), Directive Principles of State Policy (Articles 36–51), the Preamble, and the Fundamental Duties collectively values like justice, liberty, equality, and dignity. When interpreted together, these provisions reflect the underlying moral framework that guides constitutional governance.

The second important source comes from the debates and discussions held during the Constituent Assembly. The speeches and ideas presented by the framers of the Constitution particularly Dr. B. R. Ambedkar offer deep insights into the philosophical foundations of constitutional morality. These debates reveal the intentions behind constitutional provisions and highlight the importance of maintaining democratic values and institutional responsibility.

A third source can be found in the historical circumstances surrounding the drafting of the Constitution. The framers were influenced by India’s colonial past, social inequalities, and the

desire to build a modern democratic state. These historical experiences shaped the constitutional framework and contributed to the development of constitutional morality.

Finally, judicial decisions play a crucial role in defining and expanding the meaning of constitutional morality. Over time, the Supreme Court and various High Courts have interpreted constitutional principles while resolving disputes. In many cases, courts have invalidated laws or practices that contradict constitutional values, thereby reinforcing the importance of constitutional morality in maintaining democracy and protecting fundamental rights.

### **Importance of Constitutional Morality**

Constitutional morality is often regarded as a transformative principle that helps strengthen democratic governance and promote social justice. One of its primary functions is to ensure that the rule of law is upheld while allowing the legal system to adapt to changing social conditions and evolving societal values. In this way, constitutional morality provides a balance between stability and progress within the legal framework.

Another significant aspect of constitutional morality is that it promotes cooperation and coordination among various institutions and stakeholders involved in governance. By encouraging adherence to constitutional goals, it strengthens democratic institutions and fosters trust among citizens. When people believe that institutions operate according to constitutional principles, public confidence in democracy increases.

Constitutional morality also plays a role in challenging outdated laws and practices that conflict with modern values. Courts may rely on this doctrine to reinterpret or invalidate legislation that no longer aligns with constitutional ideals. For example, social reforms such as laws abolishing harmful customs or protecting vulnerable groups have often been supported by constitutional principles emphasizing equality and human dignity.

In a diverse country like India, constitutional morality is particularly significant. Indian society consists of people belonging to different religions, languages, castes, genders, and cultural backgrounds. Constitutional morality acknowledges this diversity and encourages an inclusive approach to governance. By promoting tolerance and equality, it helps create a society where all individuals can coexist peacefully and enjoy equal rights.

Additionally, constitutional morality encourages individuals within the system to work actively toward improving democratic institutions. Rather than withdrawing from governance structures when injustices occur, the concept encourages individuals to remain engaged and strive to correct unconstitutional practices through lawful means.

### **Critical Analysis of Constitutional Morality**

Constitutional morality extends beyond specific constitutional provisions and reflects the broader spirit of the Constitution. It emphasizes the protection of fundamental rights and democratic values that allow individuals to live with dignity and freedom. The doctrine often serves as a counterbalance to public morality, which may sometimes reflect prevailing social prejudices rather than constitutional ideals.

The concept has also been linked to the basic structure doctrine, which allows courts to ensure that the fundamental principles of the Constitution remain intact. Through this approach, courts can examine the deeper purpose and philosophy of constitutional provisions rather than relying solely on literal interpretation.

Although constitutional morality has contributed to progressive legal developments, it is not free from criticism. One major concern is that the concept is not clearly defined in the Constitution. Because of this lack of clarity, some critics argue that judges may interpret constitutional morality according to their personal views or subjective understanding.

Different judicial interpretations of the same doctrine have sometimes created confusion. For instance, in the Sabarimala temple case, different judges relied on constitutional morality but reached contrasting conclusions. While some judges argued that constitutional morality required eliminating discriminatory practices, others believed that religious traditions should be respected. Such differences demonstrate the flexible and evolving nature of the doctrine.

Therefore, while constitutional morality provides an important framework for protecting rights and ensuring justice, there is also an ongoing debate about how it should be applied. Some scholars suggest that clearer guidelines may be necessary to prevent inconsistent interpretations.

### **Landmark Judgments on Constitutional Morality**

The Supreme Court of India has relied on constitutional morality in several landmark

judgments that have shaped modern constitutional law. One important Navtej Singh Johar v. Union of India (2018). In this case, the Supreme Court partially struck down case is Section 377 of the Indian Penal Code, which criminalized consensual same-sex relations. The Court emphasized that constitutional morality must prevail over societal prejudice and majority opinion. The judgment recognized the rights of LGBTQ individuals and highlighted the importance of dignity, privacy, and equality under Article 21 of the Constitution.<sup>16</sup>

Another significant case Joseph Shine v. Union of India (2018). The Court declared Section 497 of the Indian Penal Code, which criminalized adultery, unconstitutional. The judges observed that the law treated women as the property of their husbands and therefore violated principles of gender equality and individual autonomy. By striking down the law, the Court reaffirmed that criminal laws must align with constitutional values rather than traditional social morality.<sup>17</sup>

The doctrine of constitutional morality was also discussed in Indian Young Lawyers Association v. State of Kerala (Sabarimala Case). The Supreme Court ruled that the exclusion of women of certain age groups from entering the Sabarimala temple violated constitutional principles such as equality, freedom, and dignity. The Court held that religious practices must comply with constitutional standards of non-discrimination. Through these judgments, the judiciary has demonstrated how constitutional morality can be used to promote social reform and protect fundamental rights.<sup>18</sup>

### **Gender Justice and Constitutional Morality**

Gender justice is an essential aspect of constitutional governance in India. It refers to the establishment of fairness, equality, and dignity for all genders within legal and social frameworks. Constitutional morality plays a critical role in advancing gender justice because it requires that laws and social practices conform to the fundamental values of the Constitution, particularly equality, liberty, and human dignity.

The Constitution of India guarantees gender equality through provisions such as Article 14

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<sup>16</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018, <https://indiankanoon.org/doc/168671544/>

<sup>17</sup> Joseph Shine vs Union Of India on 27 September, 2018, <https://www.alec.co.in/judgement-page/joseph-shine-v-union-of-india-2018>

<sup>18</sup> Indian Young Lawyers Association vs The State Of Kerala on 28 September, 2018, <http://www.manupatracademy.com/legalpost/manu-sc-1094-2018>

(equality before law), Article 15 (prohibition of discrimination), and Article 21 (right to life and personal liberty). These provisions form the foundation for ensuring that women and other gender minorities are treated equally within society. However, social customs and traditional practices have often created barriers to achieving true gender equality. In such circumstances, constitutional morality acts as a guiding principle that allows courts to challenge discriminatory practices.

The judiciary has played a crucial role in promoting gender justice through the application of constitutional morality. Courts have emphasized that traditional social beliefs cannot override constitutional guarantees of equality and dignity. By adopting this approach, the judiciary has addressed several forms of gender discrimination embedded in laws and cultural practices.

For example, courts have struck down laws that treated women as subordinate to men or restricted their personal autonomy. Such decisions highlight the principle that legal systems must evolve in order to protect the rights of all individuals. Constitutional morality encourages the transformation of social norms that conflict with democratic values.

Another important dimension of gender justice involves the protection of women's rights in family law. Issues such as inheritance, marriage, divorce, and maintenance often involve deeply rooted cultural practices. When these practices undermine the dignity or equality of women, courts may rely on constitutional morality to ensure that fundamental rights are upheld.

Furthermore, constitutional morality supports the recognition of gender diversity and the protection of rights for individuals who do not conform to traditional gender identities. By promoting equality and respect for human dignity, the doctrine encourages a more inclusive legal system that acknowledges the rights of all individuals regardless of gender.

In a diverse society like India, gender justice is essential for achieving social progress. Constitutional morality provides the framework for balancing cultural traditions with constitutional principles. By ensuring that laws and policies respect gender equality, the doctrine strengthens democracy and promotes a more inclusive society.

Thus, gender justice and constitutional morality are closely interconnected. While gender justice focuses on eliminating discrimination and ensuring equal opportunities, constitutional morality provides the moral and constitutional foundation for achieving these goals within the

legal system.

### **Human Rights Perspective on Constitutional Morality**

The concept of constitutional morality is closely connected with the protection of human rights. Human rights represent the fundamental freedoms and entitlements that every individual possesses simply by virtue of being human. These rights include equality, freedom of expression, privacy, dignity, and protection from discrimination. Constitutional morality ensures that these rights are respected and protected within the framework of constitutional governance.

In India, the Constitution provides a strong foundation for the protection of human rights. The Fundamental Rights outlined in Part III of the Constitution guarantee essential freedoms and protections for all citizens. These rights include the right to equality, the right to freedom, and the right to life and personal liberty. Constitutional morality strengthens these provisions by ensuring that they are interpreted in a manner consistent with democratic values and human dignity.

Courts often rely on constitutional morality when interpreting fundamental rights in cases involving human rights violations. By doing so, they ensure that constitutional provisions are not interpreted narrowly or mechanically. Instead, judges examine the broader purpose of the Constitution and the values it seeks to promote. This approach allows the legal system to address emerging human rights challenges in a dynamic and progressive manner.

Another important aspect of constitutional morality is its relationship with international human rights standards. India is a signatory to several international conventions that promote human rights and social justice. While international treaties do not automatically become domestic law, courts often refer to these standards when interpreting constitutional provisions. This practice strengthens the protection of human rights within the national legal framework.

Constitutional morality also helps safeguard minority rights. In democratic societies, the interests of minority groups may sometimes be overlooked due to the dominance of majority opinion. Constitutional morality ensures that minority rights are protected even when they conflict with prevailing social attitudes. By prioritizing dignity and equality, the doctrine provides a safeguard against discrimination and social exclusion.

Moreover, constitutional morality promotes accountability and responsible governance. Government institutions must operate within constitutional limits and respect the rights of citizens. When state actions violate fundamental rights, courts can intervene to restore constitutional balance.

Therefore, constitutional morality plays a crucial role in advancing the protection of human rights. It ensures that constitutional principles are applied in a manner that respects human dignity, promotes equality, and protects the freedoms of all individuals.<sup>19</sup>

### **Comparative Analysis: Constitutional Morality in the UK, US, and EU**

The concept of constitutional morality is not limited to India; similar principles can be observed in other democratic systems around the world. A comparative analysis of constitutional practices in the United Kingdom, the United States, and the European Union helps illustrate how constitutional values guide legal systems in different jurisdictions.

In the United Kingdom, the constitution is largely unwritten and based on statutes, conventions, and judicial decisions. Although the term “constitutional morality” is not explicitly used, similar ideas exist in the form of constitutional conventions and principles such as the rule of law, parliamentary sovereignty, and judicial independence. These principles guide the conduct of political institutions and ensure that government power is exercised responsibly.

The United States has a written constitution that emphasizes fundamental rights and democratic governance. The U.S. Supreme Court plays a significant role in interpreting constitutional principles and protecting civil liberties. Judicial decisions often rely on the broader spirit of the Constitution rather than its literal text. This approach resembles the concept of constitutional morality because it allows courts to interpret constitutional values in response to changing social conditions.

The European Union operates under a unique constitutional framework that combines elements of international and domestic law. The European Court of Justice and the European Court of Human Rights play important roles in protecting fundamental rights across member states. These institutions emphasize principles such as human dignity, equality, and non-

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<sup>19</sup> Smriti Chandra, Gujarat National Law University, <https://www.ijllr.com/post/gender-justice-through-the-lens-of-transformative-constitutionalism-the-role-of-indian-constitution>

discrimination, which are similar to the values associated with constitutional morality.

Despite differences in legal systems, these jurisdictions share common constitutional values. Democratic governance, protection of fundamental rights, and adherence to the rule of law are central features of modern constitutional systems. Courts in these countries frequently rely on constitutional principles to resolve conflicts between individual rights and government authority.

India's approach to constitutional morality reflects a broader global trend in which courts emphasize the spirit of the constitution when interpreting legal provisions. However, India's diverse social and cultural landscape gives the concept a unique significance. Constitutional morality in India often involves balancing traditional practices with constitutional values such as equality and social justice.

Thus, a comparative analysis demonstrates that constitutional morality is part of a broader global commitment to democratic principles and the protection of fundamental right

### **Challenges in Private International Law**

Private international law in India faces several challenges due to the increasing complexity of cross-border legal disputes. As globalization expands economic and social interactions between countries, legal systems must adapt to address disputes involving multiple jurisdictions.

One major challenge is the absence of a comprehensive codified framework governing private international law in India. Many principles related to jurisdiction, choice of law, and enforcement of foreign judgments are derived from judicial precedents rather than detailed legislation. This reliance on case law can sometimes lead to uncertainty and inconsistency in legal decisions.

Another challenge arises from conflicts between foreign laws and Indian constitutional principles. Courts must carefully evaluate whether applying foreign law would violate fundamental rights or public policy. While constitutional morality provides a guiding framework, determining the compatibility of foreign legal rules with constitutional values can be a complex task.

Technological developments have also created new challenges. Digital transactions, cross-border online services, and international data flows raise questions about jurisdiction and applicable law. Traditional legal doctrines based on territorial boundaries may not always provide clear answers in such situations.

Additionally, family law disputes involving international marriages and child custody cases often create legal complications. Different countries may have conflicting legal standards, making it difficult to determine which law should govern the dispute.

Another issue is the limited awareness and understanding of private international law among legal practitioners and policymakers. The lack of specialized training and academic focus on conflict-of-laws principles can hinder the development of consistent legal frameworks.

Therefore, addressing these challenges requires legal reforms, improved judicial guidelines, and greater academic research in the field of private international law.<sup>20</sup>

## **Conclusion**

Private International Law and Constitutional Morality are both important concepts in the Indian legal system. Private International Law deals with legal disputes that involve more than one country, such as international marriages, foreign divorce judgments, international contracts, or property disputes involving people from different nations. In such situations, Indian courts must determine which country's law should apply and whether the foreign judgment can be recognized in India.

At the same time, the idea of Constitutional Morality ensures that every legal decision in India respects the values of the Constitution, such as equality, freedom, dignity, and justice. The concept of constitutional morality was strongly highlighted by B. R. Ambedkar during the drafting of the Indian Constitution. It means that courts should follow constitutional principles even if social traditions or external legal rules suggest otherwise.

The Supreme Court of India has played an important role in explaining and applying this concept through several judgments. For example, in *Navtej Singh Johar v. Union of India* (2018), the Court held that constitutional morality must be given priority over social morality,

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<sup>20</sup> Pooja Baghel, Marathwada Mitra Mandal's Shankarrao Chavan Law College, <https://www.ijllr.com/post/the-public-policy-exception-in-indian-private-international-law-guarding-sovereignty-or-hindering-c>

and it protected the rights and dignity of individuals by decriminalizing consensual same-sex relationships.

In another case, *Joseph Shine v. Union of India* (2018),<sup>21</sup> the Supreme Court struck down the adultery law because it violated equality and personal dignity guaranteed by the Constitution. In matters involving foreign judgments, the Court in *Y. Narasimha Rao v. Y. Venkata Lakshmi* (1991)<sup>22</sup> explained that foreign divorce decrees cannot automatically be accepted in India unless they follow principles of fairness and are consistent with Indian law.

These cases show that while India respects international legal practices through Private International Law, it does not allow them to override the fundamental principles of the Constitution. Therefore, constitutional morality acts as a guiding principle that ensures justice, protects fundamental rights, and maintains the integrity of the Indian legal system even in cases involving international elements.

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<sup>21</sup> Aiswarya Lakshmi J.S, SASTRA Deemed To Be University ,<https://ijirl.com/wp-content/uploads/2022/07/CONSTITUTIONAL-MORALITY-AN-OVERVIEW.pdf>

<sup>22</sup> YUSUF KATHAWALA , International journal of Law Management and Humanities <https://ijlmh.com/wp-content/uploads/Concepts-of-Choice-of-Law-and-Jurisdiction-under-Private-International-Law-International-Contracts.pdf>

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