
LAW AND MORALITY IN INDIA: REVISITING THE HART– DWORKIN DEBATE THROUGH CONSTITUTIONAL JURISPRUDENCE

***DR. WASIM RAZA**

ABSTRACT

H.L.A. Hart and Ronald Dworkin's long-running debate gets to the core issue of law and morality. If you look at Indian constitutional law, you can actually see their ideas playing out in the way courts reason through tough questions. Hart's legal positivism draws a clear line he says the law gets its authority from social practices and not because it's morally right. Dworkin, though, argues that law and morality aren't separate at all. He thinks judges should always read the law with justice, fairness, and rights in mind.

In India, Dworkin's approach is turning up more and more in Supreme Court decisions. Judges now talk about things like constitutional morality and transformative constitutionalism ideas that push courts to interpret rights broadly, not just stick to a strict reading of the law. A lot of landmark rulings rely on moral arguments to defend personal freedom, equality, and dignity. So, Indian courts aren't locked into Hart's rigid division between law and morality. They move past it, weaving moral values right into the fabric of their reasoning. Still, there's value in what Hart offers, especially for keeping the law certain and predictable. But when you look at big cases and the language judge's use, Indian jurisprudence feels like a blend. The system doesn't make law and morality enemies it treats them as collaborators. That's why the Hart-Dworkin debate still matters. It helps us make sense of how Indian constitutional interpretation has changed, and why it keeps evolving.

Keywords: Legal Positivism, Interpretivism, Law and Morality, Constitutional Morality, Judicial Review, Fundamental Rights

1. INTRODUCTION:

The relationship between law and morality remains one of the most contested themes in modern jurisprudence. This debate reached its most refined expression in the contrasting theories. Hart,

*Assistant Professor ,Excellent Law College Borabas, Kota, Rajasthan

as a leading voice of legal positivism, maintained that the validity of law rests on its social sources rather than its moral content¹. Dworkin, however, challenged this strict separation, contending that moral principles are inseparable from law and inevitably inform judicial reasoning. India's constitutional experience provides a compelling lens through which to revisit this debate. Over the years, Indian courts have increasingly interpreted constitutional provisions through the prism of moral values, particularly following the expansive reading of Article 21. This jurisprudential shift has marked a departure from rigid legalism toward a purposive and value-oriented approach, underscoring the judiciary's role in aligning constitutional interpretation with broader ethical commitments. The emergence of doctrines such as constitutional morality, transformative constitutionalism, the basic structure principle, and substantive due process highlights the judiciary's readiness to weave moral reasoning into constitutional adjudication. These interpretive tools have allowed courts to safeguard foundational values even against legislative or executive encroachment². Landmark judgments in recent years ranging from the recognition of privacy as a fundamental right to the decriminalization of same-sex relations demonstrate how constitutional values remain central to judicial interpretation³. Together, these developments underscore the Indian judiciary's evolving role in ensuring that the Constitution functions not merely as a legal text but as a living document animated by ethical commitments and social aspirations. It looks at whether the Indian constitutional jurisprudence is a reflection of Hartian positivism or Dworkinian interpretivism. It explores how the Indian courts strike a balance between legality and morality⁴.

2. OBJECTIVES:

S.NO.	Objectives
I	To study the jurisprudential debate between Hart and Dworkin on law and morality
II	To study the evolution of constitutional morality in India.

¹ H.L.A. Hart, *the Concept of Law* (Oxford: Clarendon Press, 1961) Ch. IX, pp. 185–186.

² *Indira Nehru Gandhi v. Raj Narain* (1975) Supp SCC 1, at pp. 45–50.

³ *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1, at paras 298–302;

⁴ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford: Oxford University Press, 2002) pp. 45–50.

III To examine the function of moral reasoning in Indian constitutional adjudication

IV To determine whether Indian constitutional jurisprudence is more in accord with Hartian positivism or Dworkinian interpretivism.

3. RESEARCH METHODOLOGY:

Research paper followed doctrinal and analytical. Primary sources are constitutional provisions and judicial decisions of the Supreme Court of India. Secondary sources include books, journal articles, and recent works on constitutional law. Theories of Hart and Dworkin have been assessed through comparative jurisprudential analysis in the Indian context.

4. HEART'S THEORY OF LAW AND MORALITY:

The greatest figure in the 20th century jurisprudence was H.L.A. Hart, who published his seminal work in jurisprudence called the concept of Law. . He attacked both the command theory of law of Austin and the natural law theory of law. In Hart's view law is a compound of primary and secondary rules, in which primary rules impose duties, and secondary rules confer powers of recognition, adjudication, and change. The most important point of view held by Hart is the concept of the "separation thesis," which argues that there is no logical relationship between morality and law. The law may be immoral but will be legitimate as long as it meets the requirements of the recognition of the legal system. Though Hart acknowledged that morality played a significant role in law making, it was not morality that determined the legality of the law. In his celebrated argument with Lord Devlin about whether the law should enforce morality, Hart asserted that private immorality is not something the state should punish on the ground that it is wicked⁵. Hart's doctrine advocates for, the principle of rule-based legality, Institutional legitimacy, judicial restraint and the separation of law from moral evaluation. This approach has been significantly applied in early constitutional interpretation in India especially

⁵ P.M.S. Hacker, "Hart's Philosophy of Law" in Richard Tur & William Twining (eds.), *Law, Morality and Society: Essays in Honour of H.L.A. Hart* (Oxford: Clarendon Press, 1977) pp. 25–30.

in initial post-independence period, where courts took textual and formalism approach towards constitution⁶.

5. DWORKIN'S CRITIQUE OF POSITIVISM:

Dworkin argues that the law must not be viewed solely as an apparatus of rules; rather, it must also involve ethical principles, which judges apply to solve hard cases. Hartian positivism was criticized by Ronald Dworkin who wrote in 'Taking Rights Seriously'. In hard cases where legal rules are silent, judges go beyond simple discretion. They base their decisions on legal principles derived from within the legal system's traditions. These rights act as 'trumps' over majority preferences His theory of 'law as integrity' argued that judicial decision-making should involve reading the law as a system and to "present it, where possible, as a system of principles and policies that is as good as can be made Thus interpretation by judges is constructive interpretation where justice, fairness, and political morality play a crucial role⁷.Key characteristics of Dworkin's theory include:

S.NO.	Key characteristics
I	Law and morality are inseparable
II	Right-based adjudication
III	Moral reading of constitutional provisions
IV	Judicial creativity through principles.

Dworkin's theories have been acknowledged extensively by the Indian constitution makers, especially when it comes to the rights of dignity, privacy, equality and autonomy.

⁶ Srishti Roy, "Applicability of Hart's Concept of Law in India" (2022) 3(5) *International Journal of Research Publication and Reviews* 45, at pp. 47-52; Sheela Rai, "Hart's Concept of Law and the Indian Constitution" (2002) *Practical Lawyer* (Eastern Book Company) pp. 15-22.

⁷ *Ibid* pp. 413-418.

6. CONSTITUTIONAL MORALITY IN INDIA:

One of the most interesting features of modern Indian constitutional law is the concept of constitutional morality. The concept of 'constitutional morality' was for first time uttered by B.R. Ambedkar during Constituent Assembly debate. It refers to obedience of the constitution as also values like equality, freedom, secularism, fraternity and dignity. It is one tool that has become instrument of the Indian Judiciary to strike down evil discriminatory social practices and upholding the individual rights and freedom. This shows that, from the social morality to constitutional morality we moved one step ahead. It has clearly been made evident through several judgments of Supreme Court that right may not be subservient to public morality. It can be distinctly called the Dworkinian approach which says that a constitution can guide judgment over and above the textual explanation.

7. EARLY INDIAN JURISPRUDENCE POSITIVIST TURN:

In the early period of post-independence, Indian constitutional jurisprudence also presented a positivist turn. The judicial approach towards Fundamental Rights in the case of *A. K. Gopalan vs. State of Madras*⁸ had been strict and fragmented. The court focused on legality, rather than morality, and thus adopted a Hartian positivist approach. Also in the case of *Shankari Prasad & Sajjan Singh*⁹ we find judicial self-restraint in terms of the omnipotence of the parliament. These amendments were to be viewed as law irrespective of their implications for rights. The rigid adherence to the principle in these decisions reflects a formalistic judicial thinking of this phase, without resorting to the moral dimension of the legal rules. The judiciary's formalistic approach of the period revealed a hesitation to employ moral arguments in constitutional adjudication.

8. TRANSFORMATIVE SHIFT: KESAVANANDA BHARATI AND BEYOND:

In this judgment, the SC gave shape to the Basic Structure Doctrine stating that, the Basic structure of the Constitution cannot be amended by the Parliament. This development signifies

⁸ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

⁹ Shankari Prasad v. Union of India, AIR 1951 SC 458.

a shift from hard positivism, acknowledging that some constitutional principles have a transcended existence above any text amendable law. It embraces moral and structural principles including, Rule of law, judicial review, democracy, secularism, federalism and dignity, as an indispensable component of a living Constitution. The doctrine embodies Dworkin's argument about principles as an integral part of law and the Kesavananda Bharati ruling continues to be considered a landmark decision in the realm of Indian constitutional morality and judicial review¹⁰.

9. MANEKA GANDHI CASE:

The landmark judgment paved way for the invocation of Article 21 and lay down that the procedure as per Article 21 shall be fair, just and reasonable¹¹. The Court subsumed under the purview of the law the provisions of Article 14, 19 and 21. Thus, the narrow approach of interpreting the law taken in A.K. Gopalan's case was overruled. This is an example of the shift from legal positivism to moral constitutionalism. This was because fairness and reasonableness were introduced into the legal discourse. After Maneka Gandhi's case, moral interpretation of Constitution has become increasingly dominant and the principles of morality are: Human dignity Liberty Fairness and Equality The above principle reflects the interpretivism espoused by Dworkin.

10. CONSTITUTIONAL MORALITY AND INDIVIDUAL RIGHTS:

In Navtej Singh, a seminal judgement, the Supreme Court read down Section 377 of the Indian Penal Code, thereby decriminalizing consensual sexual relationships between persons of the same sex. Significantly, in this decision, the Court clarified that constitutional morality was not identical to social morality and that "constitutional values can never give way to the prejudice of majority"¹². In yet another significant case, the Court interpreted the meaning of Section 497 IPC, as the section was unconstitutional and infringed upon the right to life of an individual because it provided unequal treatment and dignity to an individual. The Court gave precedence

¹⁰ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹¹ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

¹² Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

to individual autonomy over morality¹³ In yet another revolutionary judgement, the Supreme Court barred the entry of women into the Sabarimala temple on grounds that cannot be considered as those related to the constitutional morality, but those of traditions and social conventions that violate the equality principle under the Constitution¹⁴.

11. HART VERSUS DWORKIN IN THE INDIAN CONTEXT:

The Indian constitutional experience is not a clear-cut case of positivism or unadulterated moral interpretation. It reflects a combination of both approaches

1. **Hartian Influences on Indian Jurisprudence:** Some aspects of Indian constitutionalism are congruent with Hartian positivism, namely Reverence for the constitutional text, Institutional legitimacy, judicial self-restraint, Democratic separation of powers. Judicial recognition of parliamentary supremacy within constitutional constraints persists

2. **Dworkinian Influences on Indian Jurisprudence:** At the same time, Dworkinianism pervades Indian constitutional adjudication, including Rights based interpretation, Moral reading of the Constitution, Upholding dignity and autonomy, Use of constitutional principles in hard cases. Indian courts treat the Constitution as a normative instead of a purely legal document.

12. CRITICISMS OF MORAL CONSTITUTIONALISM:

While having certain merits as a progressive interpretation model, the use of moral reasoning in constitutional adjudication faces several problems like:

Judicial activism/overreach: Judicial morality-oriented constitutional interpretation according to critics allows judges to masquerade their personal moral views in the guise of constitutional interpretation

¹³ Joseph Shine v. Union of India, (2019) 3 SCC 39.

¹⁴ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

Democratic challenges: Judicial invalidation of legislation on the grounds of morality undermines the will of the democratic majority in parliament and challenges parliamentary sovereignty.

Indeterminacy and subjectivity: Moral reasoning leads to indeterminate and unstable legal decisions.

13. CONSTITUTIONAL MORALITY AND TRANSFORMATIVE CONSTITUTIONALISM:

Constitutional Transformatism is a law-based ideology that believes that a constitution should be treated not as a book of laws, but as an instrument of change, which can transform society from its very roots. This ideology has gained momentum in India's legal system by making Constitutional Morality take precedence over social morality.

14. KEY FEATURES OF TRANSFORMATIVE CONSTITUTIONALISM:

The Indian Supreme Court is using this principle more frequently as a means of connecting the past characterized by injustice to a future that is driven by respect for human rights and human dignity.

Substantive Equality: Going beyond mere "formal" equality (equality before the law) to achieve substantive equality, or treating people equally in outcome.

Elimination of Institutional Biases: Working toward addressing structural inequalities that give some an advantage at the expense of others.

Dignity and Inclusivity: Highlighting the fact that individual freedom and living in dignity is an imperative.

"Living" Constitution: Seeing the constitution as a living document that evolves to adapt to socio-political realities.

15. COMPARATIVE PERSPECTIVE:

Features	Hart's Theory of Legal Positivism	Dworkins theory of transformative
Law source	Law social facts	Principles and values
Judicial role	Application of rules	Discovering best manner for law to be administrated
focus	Certainty and structure	Justice and transformation
Relationship between Morality and law	Separation of Morality and law	Recognition of law as morally right

CONCLUSION:

The Hart-Dworkin debate is still very important to the judicial development of the Indian Constitution. Whereas early judicial interpretation was influenced by Hartian positivism and textual legality, newer interpretations of the Constitution turn more frequently toward Dworkinian moral interpretation as the basis for judicial decision making. The development of concepts such as constitutional morality, transformative constitutionalism, substantive due process, and dignity jurisprudence shows that Indian constitution courts often look to moral principles in their adjudications. Landmark cases, such as Kesavananda Bharati, Maneka Gandhi, Navtej Singh Johar, Joseph Shine, and Puttaswamy, show that the judiciary is committed to upholding the constitutional values, even in the face of majoritarian ethicality or state abuses. Despite the evident shift towards Dworkinian philosophy, Indian jurisprudence has not fully abandoned the philosophical position of positivism. Courts continue to honour the institutional boundaries established by the Constitution, and the judicial approach to the Constitution remains consistent with the "spirit" of the Constitution model of separation of powers, checks and balances and federalism. Therefore, the Indian Constitution represents a harmonious amalgamation of both the legality and morality core elements of the Constitution. As a result, the Indian Constitution is not just a legal document; it is a moral and transformative document. The judiciary's interpretative exercise reflects Dworkin's view that law is necessarily connected to the principles of justice, dignity and fairness. Therefore, in India today, constitutional morality is the thread that links law with the ethical governance of the Constitution.