



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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# **BETWEEN TRADITION AND CONSTITUTIONAL VALUES: EXAMINING POST-COLONIAL CONTINUITIES IN INDIAN JUDICIAL DISCOURSE**

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## **Abstract**

The most complex tensions that remain within Indian constitutional adjudication are the relationship between tradition and constitutional values. India adopted the constitution in 1950, which aimed to create a society based on fairness, freedom, dignity and equality. Inequalities that existed during both the colonial period and earlier times, the Constitution wanted to remove those social inequalities. However, courts Even after independence, sometimes continue to think and reason in such ways that were influenced by the colonial legal ideas. The judges usually deal with the issues involving religion, tradition, morality and community systems while deciding cases. Individual rights and equality are supported by the Constitution, but sometimes the traditions conflict with these values. An important question is being raised based upon this: the Indian constitutional thinking has fully moved away from colonial ways of thinking, or does it still rely on them? This paper studies how the apex court of India deals with the constitutional and traditional values. Further, the paper question's that whether the courts still use old colonial ideas that tend to define religion narrowly and rigidly, or whether they truly interpret the Constitution in a new, independent, and progressive way. The paper has three main goals: firstly, to clearly explain what is actually meant by traditional constitutional morality and colonial influence in Indian legal thinking. Secondly, to examine the important Supreme Judgments, especially those judgments which deal with social reform, personal and religious, and to examine whether colonial patterns still appear or not. Thirdly, to see whether the recent judgments show a positive shift towards a more independent and progressive constitutional approach or not. The constitutional provisions and important Supreme Court judgments are the main focus of the researcher. Further, the research focuses on the pattern used in judicial reasoning rather than discussing the Legal aspects in detail. The paper argues that the thinking of the Indian Constitution is complex. Some landmark cases of the Supreme Court have used the constitutional values to challenge the unfair traditions. However, at the same time, the Honourable sometimes continue to use Methods And ideas that originally came from colonial rule itself. For example, the "essential religious practises" Doctrine shows how

courts still define and classify religion in a structured way that has colonial roots in it. Newer Judgments that focus on individual freedom, privacy and dignity do come into the picture. At the same time which eventually shows signs of change. The decisions laid down in these judgments suggest that the Indian constitutional law may be slowly moving towards a more independent and thoughtful approach. The paper concludes that India's Constitutional journey is still ongoing. Usually, the courts move forward sometimes with progressive ideas, but at Sometimes They hold on to older ways of thinking. To become truly independent in spirit, for constitutional law, the judges must be more aware of these inherited ideas. Moreover, the judges need to be careful while accepting the Indian traditions. Accepting the traditions blindly isn't feasible at all, and the judges must consistently give priority to the constitutional values over social customs.

**Keywords-** Tradition, Constitutional values, colonial influence, judicial reasoning, Constitutional morality

### **Introduction**

The most important moment in India's history is when India adopted its constitution in 1950. After the independence from British rule, for almost 200 years, India created its own legal system. Along with the independence from the British rule It also inherited the British way of thinking Law and courts. Hence, India did not start completely fresh. In order to bring about a big social change, the Indian Constitution was written. The Constitution did not promise freedom only, but it promised equality and brotherhood. It was not meant to simply manage the society, but also to improve it and remove the unfair practises and this is the reason why Indian constitutional law is often called "transformative" in nature because it tends to transform the society. After independence too, the Indian court System Continue to follow the British methods for a long time; hence, the changes did not happen overnight. The Indian courts often used to decide cases involving old traditional values. For example The issues which are related to religious practises our personal law, women's rights or temple entry, etc. The Constitution Tends To protect the dignity Equality And individual freedom at the same time; therefore, the judges often face a difficult task. The Indian legal system can't ignore that traditions completely, but on the other hand The system cannot allow the traditions to violate the constitutional rights. The honourable Supreme Court of India, over the years have supported traditional practises and sometimes supported the constitutional values over traditions. The respect for social customs is also being seen in numerous decisions by the Honourable Court.

In some cases The Honourable Court has strongly defended privacy, personal freedom, gender rights, and equality of individuals. The Way in which judges use to decide these cases shows how they understand tradition and how much power they believe they have in defining it. The issue is not just about the legal theory, but it is more than that. The court's decision may affect the minority, democracy and the balance between communities and individuals too. The decision of whether the Religion Is important or custom is important, or individuals right is important, is the parameter which decides the future of the country. Perhaps the future lies in the hands of the Indian legal system. The most important question is Whether the Are still thinking in colonial ways or whether they are truly creating an independent post-colonial approach.

The paper, therefore, asks three main questions, which are as follows:

1. How do Indian legal system Understands and the term tradition while deciding a constitutional case?
2. When talking about constitutional morality, does it mean that the court is breaking away from colonial thinking, or are they still using old frameworks?
3. The recent Supreme Court Judgments do show real change, or do they still follow the older pattern of reasoning?

The paper, therefore, focuses only on the important Honourable Supreme Court's decisions. Rather than discussing every case, instead, it carefully studied selected judgments to see patterns in judicial thinking. The Goal of the Constitution is not only to keep a real check on the shift towards independent constitutional thinking But also to understand whether there is a continuity with the colonial ideas or not. The Indian constitutional law shows both change and continuity, and this is the main argument of this paper. The Apex Court's some important Judgments strongly support dignity and equality. But at the same time, when the Is dealing with traditions, it continues to think in ways influenced by the colonial ideas. Recognising this parameter of Tension is important if India wants to develop a truly independent and self-aware constitutional system.

### **Conceptual framework**

To understand whether the Indian legal system still follows the colonial ways of thinking, or not, we need to clearly understand the important aspects of post-colonial continuity, constitutional morality, and tradition. These storms are usually used in legal discussions, but are never properly explained. This section of the paper explains these terms in simple terms.

## **Tradition as a legal idea**

Tradition is not just about the culture or the old customs, especially in India. During British rule, the colonial government tried to take control of Indian society by organising religious and customary practices under the guise of clear legal rules, as they treated religion and customs as fixed, written systems, whereas in real life, they were very flexible and changing. The way in which the religion is being classified did not completely disappear after independence. As seen earlier and even in today's world, the justice system only decides that whether a practise is an essential religious practise to be followed or not, as they assume that certain core parts of religion are there that can be clearly defined. The idea was first clearly defined in the landmark case of "*The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*<sup>1</sup>". In this case The Honourable Supreme Court was of the view that only the essential parts of the religion would be Protected By Constitution. This statement by the Honourable Court allowed the judges to examine the Practises Relating to Religion and decide which ones are truly essential. Therefore, traditions are not something that exists naturally; the judges are the ones who used to shape them. They are the ones who used to decide what tradition is valid and which is not, and while deciding this, the tradition can be changed, protected or even rejected.

## **Constitutional morality**

Following the basic values such as respect for all people, dignity, equality, freedom and justice for all is called constitutional morality. But simply following these values doesn't make one constitutionally moral, which most people in society believe. In "*Navtej Singh Johar v. Union of India*<sup>2</sup>". Here, the honourable court was of the view that the constitutional values are more important than social prejudice; perhaps the right of LGBTQ+ persons should be protected even though many people in society disapprove. Similarly, in another landmark case titled "*Indian Young Lawyers Association v. State of Kerala*,<sup>3</sup>" The court here used constitutional morality as a tool to examine the religious practices and decide whether these practises violated equality or not. The power to question the unfair custom and protect individual rights is given to the honourable courts by constitutional morality. Here, an important question Arises That: who decides what constitutional morality actually means? Since judges interpret it, some

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<sup>1</sup> Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (1954) SCR 1005 (India).

<sup>2</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

<sup>3</sup> Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1 (India).

people worry that it gives them too much power.

### **Post- Colonial Continuity**

Even after independence for so many years, some ideas and systems from postcolonial times continue to exist. Which means postcolonial continuity. The functioning of courts, judges relying on the precedents and how legal arguments are made are some parts of the British legal system that India kept with its legal system too. The courts are well-versed in the habit of defining and classifying religion in a structured way. Adopting the parts of the British legal system by India in its legal system doesn't mean that nothing has changed. Many other positive developments have been made. But on the other hand, some old ways of thinking still exist to influence the court's understanding of tradition and religion. A truly independent constitutional system, not just add new values, but would also question whether those old methods are suitable for Indian society today or not.

### **Dharma and Constitutional Values**

The idea of Dharma was very broad in the Indian tradition. Dharm In Indian tradition is referred to as the social responsibility, ethical behaviour and moral duties. Moreover, it was not just about legal rules; it also guided how people should live and act. Personal laws are nothing but these specific legal rules which are derived from the broad idea of Dharma during the British rule itself, but after independence, the constitution introduced another set of values that are the fundamental rights of the constitution, like equality, freedom of speech, dignity etc. Dharma and constitutional morality are not the same, but neither is the opposite. Dharma is developed through social and cultural practices overtime, whereas the constitutional morality, that is the constitutional values, are written in a legal document and are interpreted by the honourable courts. Both talk about the moral duties. However, they come from completely different backgrounds. The Court of law, when it examines the religious practices, use to treat the constitution as the highest authority. Which is legally correct, but at the same time, the way courts analyse and define religion may sometimes follow the same pattern used during colonial times.

### **Conclusion of the Framework**

This section helps to understand that tradition and constitutional values are not simply enemies to each other, but the real issue is how honourable courts balance them. Moreover, the

important question here is that when judges mediate between tradition and constitutional values, are they still using colonial ways of thinking, or are they developing a new and more independent approach?

### **Colonial Legacy and Judicial Reasoning**

In 1950, the Indian Judiciary did not become a completely new system. Values and goals were changed by India as soon as they got the independence and adopted the Constitution. But the legal system and the working of the judges are mostly inherited from the British rule itself. Moreover, history still influences the workings of the courts and the decisions of the cases.

### **How British Shaped Law and Religion**

The administrators during the British rule portrayed India as a country with different religions, each having their own laws to be followed. To manage this diversity, the British courts used to organise Hindu and Muslim laws into a clear set of rules and regulations. Religious texts were relied upon, and their translation required the assistance of experts. Over time, they turned into flexible and living traditions into written and structured legal systems. After this Religion was no longer a social belief or a practise to be followed; rather, it became something which courts could define and interpret. The Judges began deciding what was truly an essential part of the religion and what was not. In the Landmark case of “*The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*”<sup>4</sup>, the honourable court was of the view that only the essential part of the religion would be given protection under the garb of the Constitution of India. Which means that the Judges themselves decide which part of the religion is essential and which is not. This rule was introduced to stop the misuse of the power given under the name of religious freedom; it gave the courts the power to examine religious beliefs closely. While doing so, the courts or the Juges use to think similarly to the colonial judges used to, that is, classifying and defining religion from a legal point of view.

### **The Common Law Way of Thinking**

The courts rely upon the past judgments, which show that Indian also kept the British method of deciding cases. Judges, while delivering a judgements, do compare the new cases with the

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<sup>4</sup> Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (1954) SCR 1005 (India).

older ones and follow established legal tests and following this system helps to maintain stability and consistency. However, this method keeps the older ways of thinking alive. Early Supreme Court cases often relied upon the British decisions. Even today, the Indian jurists refer to and often rely upon the judgments from the courts of the UK and the USA. Learning from other countries does help to handle the case with ease, but this habit continues with certain ways of thinking shaped during the colonial period. Courts often divide the issues of a case into clear categories such as essential versus non-essential, secular versus religious matters and public versus private matters, this categorisation helps to make cases easy to handle, and as far as real life is concerned, it turned out to be more complex as compared to these clear divisions.

### **Secularism and the Role of the State**

During the colonial rule, the British did not separate the religious practice completely from the government; perhaps they used to interfere in the religious matters, especially when these religious practices violate the individual rights or the public at large. After independence, India adopted its own model of secularism, where the state keeps a respectful distance from religion but often steps in when it comes to the protection of rights and fairness. In the landmark case of the apex court titled "*S.R. Bommai v. Union of India*"<sup>5</sup>, was of the view that secularism is a basic feature of the constitution and the state must treat every religion as equal. This was one of the most important and progressive declarations by the Honourable Supreme Court. But at the same time, the Court's role as a neutral regulator balancing the different religious groups looks somewhat similar to the colonial idea of managing diversity to maintain order.

### **Power of the Supreme Court**

The Privy Council in London was at the top, under British rule, as they used to follow a strong and centralised court system. Similarly, after independence, in India, a similar structure was followed, but now the Supreme Court is at the top. The constitution gives the Supreme Court immense power, where the honourable court can strike down the laws and governmental actions too which violate the constitutional rights. Articles 32 and 226 of the Indian Constitution give the power to intervene in the legislative and executive actions. The power of the Supreme Court is really important to protect democracy. The fact that the power is concentrated in one central court also shows that there is the existence of the colonial system.

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<sup>5</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1 (India).

The judiciary remains the final authority on the question of the Constitution as well as the tradition or morality. Besides all these continuities, the Indian Constitution has changed in numerous powerful ways. For instance, in one of the landmark judgments of the Honourable Supreme Court titled “*Kesavananda Bharati v. State of Kerala*”<sup>6</sup>, the Court created the “basic structure” doctrine, which says that not even the Parliament is allowed to change the basic structure of the Constitution. Which makes this as a bold move from the Honourable Court’s end and shows that the Court sees itself as the guardian of the constitutional principles.

### **Judicial Engagement with Tradition and Morality**

The Indian courts often have to deal with conflicts between old traditions and constitutional values. Many people argue that certain practices are part of the religion and culture, and they should be followed and protected too, but at the same time, it becomes a very difficult situation for the court and especially judges, as being the guardians of the constitution, they have to maintain equality, dignity, and freedom among every individual. Here, a very important question comes before the Judges: whether traditions should be followed or constitutional values should come first? The answer given by the Judges to these questions shows their progressive goals and the complexity of their thinking.

### **The “Essential practices” test**

One of the most important tools used by the courts is the “essential religious practices” test. This idea came from the case titled “*The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*”<sup>7</sup> Here, the Honourable Supreme Court was of the view that only the essential parts of the religion are protected by the Constitution. This means that the Judge must decide whether a particular practise is truly central to the religion or just optional. Over time, this became a regular method, that is, if a practise is considered essential, it is protected under the constitution; otherwise, it can be completely banned by the government. This method was introduced to protect religious freedom, which eventually gave the power to the Judges to examine religion very closely, and in order to use the power, they used to look after the texts and beliefs related to religion, and it was truly necessary too. However, critics are of the view that the Judges do act as the religious experts.

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<sup>6</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

<sup>7</sup> *Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) SCR 1005 (India).

## **Between Managing Tradition and Transforming the Society**

Indian courts show two different tendencies, namely Management and Transformation. Management refers to regulating tradition carefully using structured legal tests, whereas transformation refers to the use of constitutional values to change unfair or discriminatory customs. The Courts often talk about freedom, equality and dignity, which shows movement towards the transformation, but at the same time they continue to use the older methods like the essential practise test. This shows that some colonial patterns of thinking are still there. Therefore, the journey is not complete; Indian constitutional law is moving forward, but it still carries traces of its past.

### **Critical Analysis**

#### **The strength of Transformative Commitments**

The biggest strength of the honourable Indian Supreme Court is its belief that the Constitution is meant to bring social change, whereas the court does not see the Constitution as old or fixed and instead it sees it as a living document that should help create a fairer society. In the landmark case like "*Navtej Singh Johar v. Union of India*"<sup>8</sup>, The Honourable Court of the view that even though society is not ready to accept certain groups, their rights must be protected. Moreover, the Honourable Court strongly supported dignity, privacy, equality and personal freedom. The "*Kesavananda Bharati v. State of Kerala*"<sup>9</sup> case is another example of strength, where the courts were of the view that parliament cannot change the basic structure of the constitution, which protects democracy and stops those in power from misusing their authority. Altogether, these decisions show that today's court focuses much more on protecting individual rights than colonial courts ever did.

### **Conclusion**

The Indian courts do not simply accept tradition as it is. They treat tradition as something that must be examined and tested against the constitutional values. Moreover, the idea of constitutional morality, which means the principle of dignity, equality and liberty, shows an important shift in thinking. However, this shift still operates within older legal frameworks. Therefore, there has been real progress, but the process of fully moving beyond colonial influence is not yet complete. In the end, building a truly post-colonial constitutional system

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<sup>8</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

<sup>9</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

does not mean rejecting everything from the past; perhaps it means carefully adapting old structures so they serve the constitution's larger goals, like creating a fair and inclusive society. For this job, if courts align their methods with their progressive values, they can better fulfil the Constitution's promises of justice for all.

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