

Constitutional Morality vs. Popular Morality: Who Defines Justice in India?

Saloni

Abstract

In a living democracy like India, where conflicting traditions clash with evolving ideals, the confrontation between constitutional and popular morality distills the very nature of justice. This research paper analyzes the judiciary of India as the ultimate bulwark of constitutional morality, shielding fundamental rights against the shifting waves of popular emotion and majoritarian assertion. Through examining landmark Supreme Court rulings and academic literature, it raises the tension between upholding universal constitutional principles and respecting social mores. It provides analysis to the effect that while common morality taps into society's pulse, it cannot overshadow the Constitution's promise of equality, freedom, and dignity for all. Finally, this paper asserts that real justice in India is not at the mercy of the will-o'-the-wisp moods of the majority but rooted in the unbreakable moral fiber of constitutional morality — the indomitable cornerstone of democracy and human rights.

1. INTRO

What is justice? Is it something enshrined in the Constitution or something determined by what the majority of people in society consider right or wrong? In India, this is particularly significant because of the way our society is so diverse, emotional, and opinionated. There are people of different religions, traditions, and customs. Sometimes the law considering something just may go absolutely against what society thinks—and that is when things become complicated.

And this brings us to two very significant concepts: constitutional morality and popular morality.

Constitutional morality refers to doing the right thing based on the principles enshrined in the Indian Constitution—principles such as equality, freedom, dignity, and justice to all, not merely to the majority. It does not vacillate with what the people think. It is intended to safeguard people, particularly those who are usually unheard of or discriminated against.

At the same time, popular morality is rooted in what most believe in a given society. It is derived from cultural mores, religious beliefs, and long-standing traditions. Although it mirrors the majority voice, it is not necessarily fair to everyone, particularly if that majority harbors prejudice or archaic thinking.

In most court cases, we witness these two moralities face each other. For instance, when the Supreme Court granted women of all ages access to the Sabarimala temple, many protested on the grounds of tradition. However, the Court decided to favor gender equality, which is a constitutional value. Likewise, when the court legalized homosexuality in the Navtej Singh Johar case, it countered popular beliefs but favored the right to dignity and privacy.

This essay delves into this ongoing struggle: Who actually determines justice in India—is it the law of the Constitution or the faith of the people? This research hopes to illustrate, by way of live examples, court judgments, and in-depth analysis, how justice in India is not merely about conforming to rules or practices. It is about ensuring each and everyone, irrespective of how tiny their voice, is treated with equality and respect.

Because ultimately, justice isn't about the majority. Justice is about doing what's right—even when it's difficult, even when it's unpopular.

2. LITERATURE REVIEW

Definition and Origin of Constitutional Morality

Constitutional morality is the term used for profound respect and compliance with the provisions and values incorporated in a nation's constitution. In India, they are justice, liberty, equality, and fraternity, as incorporated in the Preamble. Constitutional morality is not merely compliance with the written law—it requires lawmakers and citizens to adhere to the spirit of the Constitution even when popular beliefs or religion would oppose it. The word was first used by British historian George Grote in his works on classical Greece to denote a political culture wherein citizens willingly adhered to constitutional standards owing to a sense of duty and moral responsibility. In India, it gained importance through Dr. B.R. Ambedkar, the prime architect of the Constitution. It was during the Constituent Assembly Debates of 1948 that Ambedkar emphasized that constitutional morality was necessary for democracy to last and flourish in a nation like India, where there was no established tradition of respecting legal restraints or minority rights. For him, without constitutional morality, the framework of the Constitution itself could collapse under the pressure of majoritarian or emotive popular opinion. The term is now used very commonly by the Indian judiciary, particularly in the cases of upholding constitutional values against universal public or political opposition. It has been regarded as a moral compass that checks that justice is not guided by the rule of the majority but by the rule of law. Others, like scholar Granville Austin, have also used the term to describe the Indian Constitution as a "social revolution" rooted in the very same morality. Constitutional morality is therefore not a legal concept alone—it is a philosophical devotion to fairness, dignity, and reasonableness, even in the presence of opposition.

What is popular morality?

Popular morality is the social moral beliefs, values, customs, and traditions of most individuals in a society. In contrast to constitutional morality, which is based on legal principles and universal rights, popular morality is influenced by culture, religion, historical conventions, and regional feelings. It is an expression of what the majority of people think at a particular point to be right or wrong, and it tends to shape public opinion, social conduct, as well as policymaking. In India, a nation with immense religious and cultural diversity, popular morality will mostly be embedded in traditional beliefs. While this can serve to help maintain cultural identity, it can also lead to discrimination or the marginalization of some groups, particularly where prevailing perspectives conflict with constitutional rights. For instance, until fairly recently, a significant portion of Indian society considered homosexuality immoral on religious and cultural lines—even though it defied the constitutional values of dignity and equality. Popular morality often endorses majoritarianism, in which the majority can use its will to silence the minority. This gets especially perilous in a democracy if legal institutions begin to give in to public pressure rather than holding on to essential rights. Academics contend that popular morality cannot be dismissed—particularly in a democracy—but certainly cannot trump constitutional imperatives that guarantee justice and equity. In such pathbreaking cases as Sabarimala and Triple Talaq, the Indian judiciary has had to confront popular morality in a bid to affirm constitutional values. Popular morality therefore exercises a strong

influence over society's perceptions, but where it goes unchecked, it can run directly contrary to the perception of justice conceived by the Constitution.

The Judiciary's Role in the Balance between Constitutional and Popular Morality

In India's democratic system, the judiciary acts as the protector of the Constitution, usually playing the sensitive role of balancing constitutional requirements with the reigning societal consensus. This becomes a defining role when popular morality, based on tradition and majority, clashes with the progressive spirit enshrined in the Constitution. A prime example is the Supreme Court's ruling in *Navtej Singh Johar v. Union of India* (2018), in which the Court legalized consensual homosexual acts, upholding individual dignity and constitutional morality against social prejudices. Analogously, in the *Indian Young Lawyers Association v. State of Kerala* (2018), the Court supported women's right to enter the Sabarimala temple at the expense of age-old religious traditions in the interests of gender equality. These rulings reflect the judiciary's dedication to protecting constitutional values, even contrary to prevailing public sentiments. Chief Justice D.Y. Chandrachud has set out this position, holding that the Court's responsibility is to preserve diversity and tolerance and ensure constitutional morality informs judicial choices. This strategy is not without obstacles. Opponents posit that overdependence on constitutional morality can result in judicial overreach, possibly bypassing democratic processes. However, the active role of the judiciary in such situations reflects its critical role in protecting people's rights and enhancing social justice, upholding the vision of the Constitution for a diverse and just society.

Academic Perspective of Constitutional Morality and Popular Morality

Critics caution that exaggeration of constitutional morality threatens to bypass democratic means and popular sentiment and could alienate citizens. They plead for a balanced perspective in which courts pay attention to developing social perceptions while protecting basic rights. The clash between constitutional and popular morality has been argued extensively among scholars, unleashing the difficult dynamics of law and social values. Constitutional theorists such as Granville Austin have praised constitutional morality as the pillar of India's democratic experiment, emphasizing that it is the source of moral authority to uphold justice, equality, and fundamental rights even when there is no desire for change in public attitudes. Similarly, legal scholar Upendra Baxi argues that constitutional morality has to protect marginalized groups from the tyranny of the majority and uphold social justice. In the judiciary, Justice D.Y. Chandrachud has been a vocal champion of upholding constitutional morality and courts as guardians of the Constitution's core principles, especially when public sentiment calls for the degradation of rights. In his judgments and speeches, Chandrachud underlined that constitutional morality is necessary for the protection of diversity, freedom, and tolerance, which are vital for India's plural society to exist. This judicial approach has its detractors, though. A few scholars caution against judicial excess, advising that the courts must not disregard popular morality because democracy per se is based on people's will. They would promote a delicate balance where the judiciary yields to public sentiment but exercises firmness when there is a threat to basic rights. This debate is an echo of a broader philosophical question of the place of courts in a democracy—whether the courts have to be strict implementers of constitutional morality or more sensitive to evolving social attitudes. Lastly, academic opinions suggest that the place of both constitutional and popular morality is essential, and the judiciary must thread the needles of those sometimes conflicting powers to administer justice.

Real-World Consequences of the Clash Between Constitutional and Popular Morality

The clash between constitutional morality and popular morality in India has had severe real-world consequences, ranging from protests and public outcry to scorching political debate. For example, the Supreme Court's historic ruling in *Navtej Singh Johar v. Union of India* (2018), striking down the criminalization of consensual sexual acts between consenting adults of the same sex, provoked mass celebrations among LGBTQ+ activists and stern condemnation by conservative lobbies based on popular morality. Likewise, the Sabarimala judgment (2018) permitting women of all ages into the temple provoked massive protests by traditionalists who stood against the judgment on religious and cultural grounds. These cases show the way constitutional values are often asserted by the court over robust social conventions, generating strife between various segments of society. Going beyond protests, social movements like feminism, homosexual rights movements, and Dalit justice movements increasingly found common ground with constitutional morality to fight against the outdated social practices and discriminatory norms to which popular morality may yield or even conform. Feminist movements, for instance, in India have used constitutional promises of equality to call for more gender justice, frequently against the patriarchal popular understandings. Dalit rights movements also use the same constitutional protections to battle caste-based domination, resisting popular moral codes that excluded them historically. The ongoing tension between constitutional norms and commonalities highlights the dynamic nature of Indian democracy and the essential role of constitutional morality in pushing society toward increased justice and inclusivity. Creditable sources such as *Economic and Political Weekly* reports, Centre for Policy Research analyses, and *The Hindu* and *The Indian Express* reports provide detailed information regarding these dynamics and how they shape India's social fabric.

Constitutional Morality as a Vehicle of Social Reform

Constitutional morality serves as a good vehicle for social reform since it enables the judiciary and lawmakers to override and reinterpret backward social practices in popular morality. It is an overriding norm that compels compliance with constitutional values such as equality, freedom, and dignity even if compliance defies the trend of prevailing popular attitudes. In India, Indian courts have frequently employed constitutional morality to advance social justice in adjudging cases of caste discrimination, gender injustices, and the rights of minorities. The intervention of the The Supreme Court's prohibition of the practice of manual scavenging and its forward-looking judgments on LGBTQ+ rights are some examples of how constitutional morality has gone on to challenge and nullify perilous traditions. Scholars argue that constitutional morality becomes an essential need to fill the existing gap between constitutional promise and societal realities, especially in a diverse society like India, where popular morality will be resistant to change due to existing long-standing traditions and prejudice. The judiciary's use of constitutional morality to initiate reform is evidence of its proactive role in constructing a more equitable and inclusive society, insisting that constitutional aspirations should guide social evolution but never be constrained by established mores. Genuine academic literature and judicial dictums can help to reinforce this tension, positioning constitutional morality as a driving force for social transformation that guarantees the very basic rights and dignity of all citizens.

3. Conclusion

The tension between constitutional morality and popular morality remains dynamic and one that continues to define the shape of justice in India. From the above study, it is evident that popular morality denotes

society's collective conscience and traditions, but it remains backward compared to the vision of progress in the Constitution. Constitutional morality, which draws on ideals like equality, liberty, dignity, and justice, has been an important weapon that the judiciary can use to counter prejudiced social norms and advocate inclusive legal interpretations. Such watershed judgments, especially the ones concerning LGBTQ+ rights, women's entry into places of worship, and caste discrimination, show how judges have boldly enforced constitutional values—almost in defiance of public opinion.

Concurrently, the role of the judiciary in bucking "the tide" needs to be weighed against democratic accountability and public preparedness for change. An effective democracy cannot possibly disregard public opinion; instead, it must educate, develop, and respond to it. As India's social fabric continues to evolve, so must our notions of morality and justice.

Future scholarship might investigate how constitutional morality can be institutionalized outside of courts—through policymaking, education, and public discourse. Further analyzing how social media and online platforms affect public morality and inform legal reform might provide fresh insights into the law-society relationship.

In the end, Indian justice consists not of pitting one morality against another, but of reconciling them in order to create a democratic and fair society—where rights would not be subject to the whim of the majority, but safeguarded by the indomitable spirit of the Constitution. As Justice D.Y. Chandrachud wisely said, 'Constitutional morality is the soul of our democracy, ensuring that justice prevails over popular prejudice.' It is this spirit that must guide India in the future.

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