



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Constitutional Morality v Popular Morality: The Expanding Role of the Supreme Court in Defining Values

Alina Raza^a

^aSOA National Institute of Law, Bhubaneswar, India

Received 25 October 2025; Accepted 26 November 2025; Published 29 November 2025

The idea of ‘Constitutional Morality’ has evolved as a defining principle of Indian jurisprudence, and the Supreme Court of India has increasingly used or referred to the principle of constitutional morality when making its judgments to protect individual rights. In India, the concept was popularised by Dr B.R. Ambedkar during the Constituent Assembly Debates in 1948, where he argued its necessity for a functioning democracy.¹ The literal meaning of constitutional morality is following and upholding the values and spirit of the constitution, even going against the society’s norms, popular or majority beliefs and opinions. Alternatively, Popular morality refers to the moral values, beliefs and norms that are popularly accepted, believed or supported by the majority of people in the society rather than legal or constitutional principles. There has always been an argument between constitutional morality and popular morality. This paper explores how constitutional morality has redefined societal values and protects the individual’s fundamental rights and ensures that the rule of law does not induce over aggressive popular opinions through an analysis of various landmark cases.

Keywords: *constitutional, morality, popular, judicial activism, liberty.*

¹ ‘Constituent Assembly Debates: Volume 7, 04 Nov 1948’ (Constitution of India)

<https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04> accessed 14 October 2025

INTRODUCTION

The Indian Constitution is not merely a written legal document, but it is also a charter of moral principles of democracy, equality, justice and fraternity. Sometimes in India, the Supreme Court and High Court of India interpret the provisions of the Constitution according to the requirements of society. In that way, constitutional morality is also interpreted from the spirit, values, and structure of the constitution; it is not expressly mentioned anywhere in the constitution but embedded in various provisions such as preamble, fundamental rights, DPSP, and separation of powers & rule of law.

The arising tension between the concepts of Constitutional Morality and Popular Morality requires significant consideration. While notions of right and wrong are concerned by both, keen differences are observed in their sources, standards and legitimacy. Popular Morality refers to the moral values and beliefs of the majority of people in the society shaped by culture, religion, custom and traditions, which evolves with the societal norms that shape the immediate emotional and cultural consciousness of the people. On the other hand, Constitutional Morality refers to the principles and values that uphold the rights of individuals instead of believing in the majoritarian opinions.

The Constitutional Morality was first introduced in India by Dr B.R. Ambedkar during the Constituent Assembly Debates in 1948, and gave significance to constitutional morality in the functioning of democracy. According to him, constitutional morality 'is not a natural sentiment; it has to be cultivated.'² He observed that the constitution provides the legal framework for governance, and to make it successful, the moral disposition of the people and their representatives is important. In essence, Ambedkar's view of constitutional morality was ethical, not only legal. It is for the generalisation of constitutional values to protect democracy and prevent it from being it into a Dictatorship or oligarchy. His words remain thoroughly relevant today, as constitutional morality presumes to act as a shield and as a reminder that the real strength of democracy is not in the legal framework of the constitution but in the moral discipline of its citizens.

In contrast, Popular morality refers to the moral values, beliefs, norms and customs or traditions that are accepted by the majority of the population in a particular place or religion.

² *Ibid*

There may be several practices followed by several people, yet the societal practice would be that of the majority, e.g. wearing hijab by minority students led to widespread clashes in Karnataka, raising questions about the balance between individual rights and institutional discipline.³ Sometimes, Popular Morality blocks out the constitutional rights and individual rights of people. For instance, the practice of excluding women between the ages of 10 and 50 years from entry into the Sabarimala Temple is a clear violation of the right of Hindu women to freely practice their religion and their right to equality.⁴ Even now, those women who tried to enter were assaulted and needed police protection. The judgment of the Supreme Court was not accepted by the people. For instance, the ban on LGBTQ relationships and the criminalisation of their consensual relations were justified for decades because such conduct was against the morality of society.⁵ But courts had to step up to protect the rights of LGBTQ people. Even today, Dalits are discriminated against and confined to their caste, which is against Articles 14 and 17 of the Constitution of India. Even now, the Dalit community are not allowed to worship in temples, and Dalit women being raped shows the outrage of the majority over Dalits. Sometimes popular morality can lead to violence.

In consequence, the tension between constitutional morality and popular morality reflects the huge struggle between social majoritarianism and constitutional idealism.

In recent years, the courts have increasingly cited constitutional morality to repeal the laws and practices that reflect the popular or traditional moral standards that lead to violating the noble principles of the Constitution. While this approach of the judiciary unquestionably has advanced individual rights and social justice, it has also raised queries about judicial overreach and the proper limits of judicial interpretation.

CONSTITUTIONAL MORALITY AND THE IDEALS OF LIBERTY, EQUALITY AND FRATERNITY

The essence of constitutional morality is adherence to the ideals of liberty, equality and fraternity as prescribed in the Preamble of the Constitution of India. Dr B.R. Ambedkar regarded these three ideals as the moral pillars of Indian democracy, without which the

³ *Aishat Shifa v State of Karnataka and Ors* (2023) 2 SCC 1

⁴ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1

⁵ *Navtej Singh Johar and Ors v Union of India and Ors* (2018) 10 SCC 1

Constitution would be reduced to a mere legal document.⁶ Liberty refers to the individual freedoms like thought, expression and worship, Equality signifies that all citizens are equal before the law and have equal opportunities regardless of status, caste, or gender, and Fraternity is the sense of common brotherhood that fosters national unity and solidarity among all citizens.⁷ Collectively, they represent the ethical core of constitutional morality.

Dr B.R. Ambedkar signifies that liberty, equality, and fraternity are interdependent with each other and fall together to sustain a just and fair social order. He remarkably observed that ‘without fraternity, liberty and equality could not become a natural course of things.’⁸ The idea reflects his belief that democracy is not only the voting rights, having elections and representative institutions, but it must also be embedded in the values of liberty, equality and fraternity in our daily lives. He called this idea ‘social democracy’, which means a way of life where individuals treat each other as equals, respect each other’s rights, and uphold human dignity.⁹ When he mentioned fraternity, he meant more than a feeling of brotherhood; he expressed it as a moral and spiritual principle that perceives every human being as having inherent worth and self-esteem. Without this sense of morality and mutual respect, society would remain separated by caste, religion, class, etc, which makes our political democracy hollow and unstable. Therefore, the operation of caste discrimination and untouchability is entrenched in the popular morality that directly violates the constitutional morality of equality and fraternity.

One of the earliest and most influential judgments where the concept of morality was discussed with the constitutional ideals was ‘Naz Foundation v Government of NCT of Delhi (2009).’ In this case, the Delhi High Court repealed Section 377 of the IPC, which decriminalised consensual homosexual relationships. The judges held that this law is violating the fundamental rights to equality (Article 14),¹⁰ liberty (Article 21)¹¹ and dignity.¹² The court pulled out the distinction between constitutional morality and popular morality,

⁶ Constituent Assembly Debates: Volume 7, 04 Nov 1948 (n 1)

⁷ Constitution of India 1950, Preamble

⁸ BR Ambedkar, *Annihilation of Caste* (1936, Government of Maharashtra 2014) 47

⁹ ‘DR. AMBEDKAR’S LAST SPEECH IN THE CONSTITUENT ASSEMBLY ON ADOPTION OF THE CONSTITUTION’ (*Chhattisgarh State Judicial Academy*)

<https://csja.gov.in/images/p1195/s_1_constitution_vision_of_Justice/Dr_Ambedkars%20speech.pdf>

accessed 15 October 2025

¹⁰ Constitution of India 1950, art 14

¹¹ *Ibid*

¹² *Naz Foundation v Government of NCT of Delhi and Ors* (2009) 6 SCC 712

and the court observed that ‘moral distress, however powerful, is not the basis for overriding constitutional rights of privacy and dignity.’ The court held that the Constitution protects the individual rights, dignity and liberty, and the constitutional morality must persuade the popular morality. The judgement linked this idea with the preamble of the Constitution of India, which preserved the idea of liberty, equality and fraternity as leading principles of a democratic society.

POPULAR MORALITY AND JUDICIAL REJECTION

The judiciary system of India has constantly emphasised that popular morality cannot be a valid ground to restrict fundamental rights. The laws and practices that are based on the majoritarian beliefs have been invalidated when they violate constitutional principles and individual dignity, freedom or equality.

In *Navtej Singh Johar v Union of India* (2018), the Supreme Court of India decriminalised the consensual homosexual acts between adults by repealing Section 377 of the Indian Penal Code (IPC). The petitioners challenged Section 377 of the IPC, which criminalises the carnal intercourse against the order of nature and argued that this provision violates the fundamental rights to equality (Article 14), non-discrimination (Article 15), and dignity (Article 21).¹³ This case conspicuously highlighted the tension between constitutional morality and popular morality. In this case, many religious, societal, and cultural groups opposed the decriminalisation of homosexual relationships because of their cultural and traditional beliefs. The court emphasised that popular beliefs or morality cannot justify the infringement of fundamental rights.

In *Indian Young Lawyers Association v State of Kerala* (2019), the Supreme Court addressed the long-established practice of prohibiting the entry of women of menstruating age (10-50 years) in Sabarimala Temple in Kerala. The petitioner argued that it violates the fundamental rights to equality (Article 14), non-discrimination (Article 15), and freedom of religion (Article 25).¹⁴ Popular morality of the devotees, who believed that a woman’s entry into the temple would violate the temple deity’s pure nature. The court held that customs and

¹³ *Navtej Singh Johar and Ors v Union of India and Ors* (2018) 10 SCC 1

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

traditions cannot override the fundamental rights, remove discrimination based on biological gender, and give women equal access to a public religious institution.

In *Joseph Shine v Union of India* (2019)¹⁵, the Supreme Court of India abolished Section 497 of the Indian Penal Code (IPC), which criminalised adultery. In this provision, a man would be prosecuted for having a sexual relationship with the wife of another person without her husband's consent. The judgment of this case, given by the Supreme Court that section 497 of IPC was unconstitutional, violates Articles 14, 15 and 21 of the Constitution. The law was discriminatory based on gender, treating women as property and treating them unequally by not giving them an independent identity. This provision perpetuates the stereotypical mindset of society that women are inferior or dependent on their husbands, and Judges also highlighted that the law was interrupting personal relationships and violating individuals' privacy. Justice D.Y. Chandrachud emphasised that the popular morality about women cannot supersede the constitutional understanding of equality. The court reaffirmed that constitutional morality must conquer over patriarchal and majoritarian beliefs. Across these judgements, the court has affirmed that the laws which are based on the majoritarian moral view are overruled by the constitutional morality, even if they are unpopular or controversial.

JUDICIAL EXPANSION AND THE PROBLEM OF SUBJECTIVITY

The judicial system is increasingly relying on constitutional morality, the principle that allows courts to reject laws or customs that indicate the majoritarian views if they contradict the values of liberty, equality and fraternity. This doctrine is denoted as an anti-majoritarian view or opposing the will of the majority; concurrently, it also invites critique as it gives authority to the court to interpret its own views or moral reasoning instead of democracy's consideration. The doctrine of constitutional morality has provided the Indian judiciary with a normative lens to interpret the Constitution and protect foundational values; it has also attracted significant scholarly criticism due to its ambiguous contours and subjective application.¹⁶

¹⁵ *Joseph Shine v Union of India* (2019) 3 SCC 39

¹⁶ Mazhar Khan and Dr. Anuradha Garg, 'Constitutional morality and amendment acts: A critical study of judicial responses to constitutional changes in India' (2025) 11(9) *International Journal of Law* <<https://www.lawjournals.org/assets/archives/2025/vol11issue9/11199.pdf>> accessed 20 October 2025

Some critics argued that when the court abolishes laws or practices based on constitutional morality, it may be engaged in normative policymaking instead of legal interpretation. It happens because constitutional morality is inherently broad and lacks a complete definition in the Constitution. The absence of doctrinal clarity often means that the invocation of constitutional morality lacks grounding in objective parameters.¹⁷ When the court disproves any laws created by elected legislatures based on ‘morality’ instead of true constitutional violation, according to the critics, it disables the democratic functioning.

Attorney General of India, K.K. Venugopal, said, ‘Use of constitutional morality can be very, very dangerous, and we can’t be sure where it’ll lead us to. I hope constitutional morality dies. Otherwise, our first PM, Pandit Nehru’s fear that SC will become the third chamber might come true.’¹⁸ When the decisions of the court’s moral reasoning arise with the disconnection from the opinion of society, then the decision can provoke the people and reduce the legitimacy of the judiciary. For instance, in the case of *Indian Young Lawyers Association v the State of Kerala*¹⁹ (the Sabarimala Case), Critics criticise the judgment that, although there is advanced equality but the approach was seen as insensitive to religious sentiments.

Justice Ruma Pal has made a strong case for judges to be more modest, open, and self-controlling. She mentioned what she dubbed the ‘seven sins’ of the judiciary in a well-known lecture, which included conceit, hypocrisy, a lack of discipline, and secrecy. Her criticism highlights how unbridled judicial moralism can impact institutional legitimacy, even though it is more general in nature. Justice Madan B. Lokur has voiced concerns about judicial activism that infiltrates the formulation of public policy. As previously mentioned, he emphasised that courts should refrain from making orders that are practically unenforceable and refrain from interfering in areas that are rightfully the domain of the legislature or executive.²⁰

¹⁷ Pratap Bhanu Mehta, ‘The Inner Conflict of Constitutionalism: Judicial Review and the ‘Basic Structure’ in Zoya Hasan et al. (eds), *India’s Living Constitution: Ideas, Practices, Controversies* (Permanent Black 2002)

¹⁸ ‘Constitutional Morality Very Dangerous, Hope It Dies: KK Venugopal’ *The Quint* (09 December 2018) <<https://www.thequint.com/news/india/kk-venugopal-attorney-general-constitutional-morality>> accessed 20 October 2025

¹⁹ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1

²⁰ ‘Social Justice is the part of Preamble and a Constitutional responsibility of Judiciary – Justice Madan B. Lokur’ (*Garhwal Post*, 09 March 2020) <<https://garhwalpost.in/social-justice-is-the-part-of-preamble-and-a-constitutional-responsibility-of-judiciary-justice-madan-b-lokur/>> accessed 20 October 2025

Scholars have also highlighted that the judicial embrace of constitutional morality, while important for protecting rights, lacks procedural safeguards and hence invites arbitrary decisions. For example: ‘the unchecked interpretive space around constitutional morality allows it to function as a ‘doctrine without restraint’, lacking the necessary principles to distinguish legitimate judicial intervention from arbitrary judicial activism.’²¹

COMPARATIVE PERSPECTIVE

The constitutional democracies around the world’s courts interpret specific constitutional values like equality, liberty and dignity in order to decide moral and ethical issues rather than relying on nebulous ideas of ‘morality.’ This method ensures that judicial reasoning stays rooted in the text and spirit of the Constitution rather than shifting public opinion by making a distinction between societal morality and constitutional morality.

United States: The U.S. Supreme Court hardly ever uses ‘morality’ as a stand-alone basis for making constitutional decisions. Rather, it places ethical debates within the parameters of constitutional rights, especially the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The court rejected the state’s appeal to public morality and upheld the constitution’s protection of individual liberty and privacy by striking down laws that criminalised same-sex intimacy, for instance, *Lawrence v Texas*.²² The ruling made clear that moral disapproval, no matter how widespread, cannot excuse the violation of fundamental rights.

South Africa: Similarly, South Africa’s constitutional court has based its decision on the principles of equality, freedom and dignity that are expressly stated in the country’s post-apartheid constitution. The court decriminalised same-sex behaviour in *National Coalition for Gay and Lesbian Equality v Minister of Justice*, 1999²³, concluding that ‘the enforcement of the private moral views of a section of a community’ is incompatible with the Constitution’s guarantee of equality and human dignity. Therefore, the South African judiciary’s interpretive compass is the constitutional value framework rather than moral majoritarianism.

²¹ Khan (n 16)

²² *Lawrence v Texas* [2003] 539 US 558

²³ *National Coalition for Gay and Lesbian Equality and Anr v Minister of Justice and Ors* [1998] ZACC 15

Germany: The German Federal Constitutional Court often resolves moral disputes through fundamental rights (Grundrechte). For instance, rather than using social moral standards, the right to human dignity and personal autonomy has been invoked to decide arguments over assisted suicide and euthanasia. German jurisprudence demonstrates how courts balanced the state and individual liberty by framing moral dilemmas as rights-based issues.

India: Public Morality v Constitutional Morality: Similar distinctions are made between public and constitutional morality in India's constitutional approach. Restrictions on free speech may be justified by public morality, as stated in Article 19(2),²⁴ but courts have made it clear that this morality is not absolute and must be consistent with constitutional principles. Invoked in *Navtej Singh Johar* (2018) and *Sabarimala Case* (2019),²⁵ constitutional morality places a higher priority on liberty, equality and dignity even when these values conflict with social or religious norms. India, in contrast to many other democracies, uses the phrase 'constitutional morality' explicitly, granting the judiciary a normative role in defending fundamental rights.

CONCLUSION

A pillar of modern Indian Constitutional jurisprudence, the theory of constitutional morality gives the judiciary a normative framework for interpreting the constitution in a way that protects equality, liberty, dignity and fraternity. As demonstrated by significant cases like *Navtej Singh Johar v Union of India* (2018), which decriminalised consensual same-sex relationships, and *Indian Young Lawyers Association v State of Kerala*, which permitted women to enter the Sabarimala temple, it has been especially important in defending the rights of minorities and marginalised groups against majoritarian pressures, societal prejudices, and discriminatory customs. In these cases, constitutional morality served as a counter-majoritarian principle, guaranteeing that social, religious, or cultural norms that go against the fundamental principles of the constitution do not infringe upon fundamental rights.

However, there are serious issues with judicial subjectivity, overreach, and democratic legitimacy when constitutional morality is applied broadly. Due to the concept's inherent

²⁴ Constitution of India 1950, art 19(2)

²⁵ *Navtej Singh Johar and Ors v Union of India and Ors* (2018) 10 SCC 1; *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1

flexibility and breadth, courts run the risk of replacing rigorous constitutional analysis with subjective or ideological moral reasoning. While the judiciary must defend fundamental rights, scholars and former judges like Justice Ruma Pal and Justice Madan B. Lokur have warned that it must also be humble, open, and restrained to avoid intruding on the legislative branch or seeming to impose its own moral beliefs on society. Without this kind of control, the doctrine runs the risk of being viewed as capricious or anti-majoritarian, which could erode public confidence in legal systems.

All things considered, constitutional morality, which acts as a moral and legal compass for judicial interpretation, is essential to the defence of rights in a pluralistic democracy. It must, however, be applied with caution, openness, and principled reasoning, grounded in the constitution rather than the judges' own moral beliefs. By finding this balance, the Indian Judiciary can maintain the democratic legitimacy and accountability necessary for the rule of law, while also upholding transformative justice and the principles of the Constitution.