
CONSTITUTIONAL MORALITY OF INDIA VS POPULAR MORALITY: A CRITICAL ANALYSIS OF SUPREME COURT OF INDIA

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ABSTRACT

This article critically tracks the rise of constitutional morality in Indian jurisprudence, following its intellectual lineage from George Grote, through Dr. B.R. Ambedkar's memorable deployment of the idea in the Constituent Assembly, to its present-day use by the Supreme Court. Although the phrase never appears verbatim in the Constitution, constitutional morality has steadily hardened into a key interpretive device for handling clashes between individual fundamental rights and dominant social expectations. By reading landmark rulings such as Naz Foundation, Puttaswamy, Navtej Singh Johar, and the Sabarimala controversy together, this article argues that constitutional morality operates as a self-conscious judicial method for placing the Constitution's transformative ethos above fleeting majoritarian moods. Still, the doctrine carries real difficulties: conceptual vagueness, anxiety about judicial subjectivity, doubts about democratic legitimacy, and the stubborn challenge of nurturing constitutional values in a society where, as Ambedkar warned, democracy is "a top-dressing on an Indian soil essentially undemocratic." The article ends with recommendations to sharpen the doctrine's internal coherence, while also accepting a basic truth: its long-term life can't depend on courtrooms alone, but must be cultivated through legislatures, educational institutions, and sustained citizen participation.

Introduction

The Indian Constitution isn't merely a technical manual that parcels out state power and lists rights; it is, in a deeper sense, a transformative project meant to rework society around justice, liberty, equality, and fraternity.¹ Achieving that project takes more than literalism. It calls for an interpretive approach that keeps faith with the document's animating commitments. That's the space in which "constitutional morality" has moved to the foreground of Indian legal conversation. Even without an explicit textual home in the Constitution, constitutional morality now sits near the center of the Supreme Court's most consequential interventions: the decriminalization of homosexuality, the expansion of privacy protections, challenges to exclusionary religious practices, and even the Court's handling of federal arrangements. When Dr. B.R. Ambedkar introduced the notion to the Constituent Assembly in 1948, he issued a blunt warning: "constitutional morality is not a natural sentiment. It has to be cultivated. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic". That line frames the problem this article focuses on. When widespread moral intuition collides with constitutional principle, which one gets the final word. The claim developed here is that the Court's turn to constitutional morality is not accidental; it reflects a deliberate effort to privilege constitutional values over short-term public mood. But it also opens up uncomfortable questions. What, exactly, is this elastic idea supposed to mean. How do we stop judicial preference from being dressed up as constitutional interpretation And can constitutional morality really be "cultivated" through judgments alone. "Constitutional morality" is commonly traced back to the British historian George Grote. In *History of Greece* (1846), he described the habits that made Athenian democracy workable: citizens had to maintain "a paramount reverence for the forms of the constitution" while also practicing "unrestrained censure of those very authorities as to all their public acts."² In Grote's telling, constitutional morality is a two-part discipline: fidelity to constitutional process, and an active, critical civic temperament. Ambedkar imported the concept into the Indian framing debates when critics questioned why the Constitution contained such detailed administrative provisions. In places where constitutional morality comes naturally, he suggested, a slimmer constitutional text might be enough. India, however, was not working with that advantage. It was a society shaped by deep hierarchies and uneven democratic habits, so constitutional practice would need

1 See Preamble to the Constitution of India; Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50-63 (Oxford Univ. Press 1966) (describing the Constitution's "consensus" on transformative social goals).

2 George Grote, *History of Greece* (1846), quoted in *Manoj Narula v. Union of India*, (2014) 9 SCC 1, 67 (referencing Grote's formulation).

conscious training rather than mere hope. Indian constitutional jurisprudence turns, again and again, on the gap between constitutional morality and popular morality. Constitutional morality draws legitimacy from the Constitution's text, structure, and basic commitments justice, liberty, equality, fraternity, secularism. It functions as a measuring stick: laws and social practices are to be tested against it. Popular morality, on the other hand, borrows its authority from tradition, religious endorsement, or majority approval. When courts invoke constitutional morality to strike down a statute or invalidate a social custom, they are explicitly choosing foundational constitutional commitments over prevailing sentiment. In a constitutional democracy, that move is not an optional flourish; it is part of why fundamental rights exist in the first place.

Supreme Court with Constitutional Morality

The Delhi High Court's 2009 ruling in *Naz Foundation v. Government of NCT of Delhi* did not rely heavily on the phrase "constitutional morality," but it effectively set the stage for the doctrine's later prominence. In reading down Section 377 insofar as it criminalized consensual same-sex relations, Chief Justice A.P. Shah refused to treat "popular morality" as an adequate ground for limiting rights, noting that such morality depends on "shifting and subjecting notions of right and wrong." On this account, only constitutional morality rooted in constitutional values could justify restrictions on fundamental rights. In *Manoj Narula v. Union of India* (2014), the Court examined whether individuals facing criminal charges could be appointed as ministers. Article 75 contains no clear prohibition. Even so, the Chief Justice articulated a "legitimate expectation" that the Prime Minister would refrain from appointing persons facing serious accusations. The Court described constitutional morality as "bowing to the Constitution's norms" and resisting arbitrariness. The case is important because it shows constitutional morality operating as a framework for constitutional expectations even where a strict, enforceable rule is missing. Justice K.S. Puttaswamy v. Union of India (2017) affirmed privacy as a fundamental right under Article 21. Justice Chandrachud grounded privacy not as a narrow legal privilege, but as an expression of dignity and autonomy values that fit comfortably within the idea of constitutional morality³. The judgment, in effect, constitutionalized the individual's moral agency and protected it from the push and pull of majoritarian instinct. *Navtej Singh Johar v. Union of India* (2018) is perhaps the doctrine's most emphatic judicial statement. Overruling *Suresh Kumar Koushal*, the five-judge bench

³ Puttaswamy, (2017) 10 SCC 1, ¶ 126 (Chandrachud, J., concurring).

held Section 377 unconstitutional to the extent it criminalized consensual same-sex relations. Chief Justice Dipak Misra stated that constitutional morality must serve as “the guiding light” whenever social morality collides with fundamental rights. Justice Chandrachud stressed that safeguarding minorities from majoritarian domination is not peripheral but central to constitutional morality. *Indian Young Lawyers Association v. State of Kerala* (2018) revealed how contested constitutional morality remains. The majority invoked it to invalidate the exclusion of menstruating women from the Sabarimala temple, holding that the practice offended equality and dignity. Justice Chandrachud argued that constitutional morality requires active resistance to entrenched discrimination, including when such discrimination is embedded within religious communities. Justice Indu Malhotra’s dissent pushed back in a different key. She warned that constitutional morality should not be used in a way that effectively dissolves religious identity, and she emphasized that courts should be cautious about stepping into theological terrain. The striking feature here is that both sides claimed constitutional morality, yet arrived at opposing outcomes. That split underscores the doctrine’s indeterminacy and helps explain why the issue was referred to a larger bench for clarification.

Theoretical Challenges and Critiques

What constitutional morality “really” means is still debated. Skeptics argue that its looseness invites judges to smuggle personal convictions into constitutional adjudication. Attorney General K.K. Venugopal described it as a “dangerous weapon,” precisely because it can be stretched to fit almost anything. Sabarimala, with its sharply divided bench, illustrates the worry: two reasonable interpretations can point in opposite directions while claiming the same guiding principle. Supporters reply that many cornerstone legal ideas—reasonableness, arbitrariness, public order—are inevitably broad and gain content through judicial elaboration over time. On this view, constitutional morality is not free-floating; it is tethered to constitutional text, structure, and precedent, not to judicial whim. When courts use constitutional morality to invalidate legislation, they displace decisions made by elected representatives. That raises the counter-majoritarian problem in its classic form: what justifies this kind of judicial power in a democracy. The Court’s usual answer depends on a particular understanding of constitutional democracy: some commitments are deliberately insulated from majoritarian politics because they are foundational. Constitutional morality becomes a label for those insulated commitments. Even so, this defense works best when courts can clearly anchor their reasoning in the Constitution’s text and structure. Where judges rely heavily on

constitutional “silences” or an expansive appeal to constitutional “spirit,” the legitimacy question becomes harder to dismiss⁴. Ambedkar’s insistence that constitutional morality must be cultivated points to a deeper dilemma: can courts generate constitutional morality from the top down. The backlash after Sabarimala suggests that judicial invalidation of entrenched practices may sometimes provoke resistance rather than acceptance. Constitutional transformation, in the real world, also depends on education, social movements, and grassroots organizing tools that courts simply don’t control. If India remains “essentially undemocratic” in certain social habits, then judges being products of that society may not always embody constitutional values in a full-blooded way. The judiciary’s demographic concentration disproportionately upper-caste, male, and privileged can shape which harms are recognized as urgent and how constitutional principles are interpreted. This observation does not negate the doctrine, but it does suggest the need for restraint and self-awareness when courts claim to speak as the sole custodians of constitutional morality.

Conclusion

First, the larger bench considering Sabarimala should set out a clearer, more systematic account of constitutional morality its sources, its content, and its relationship to fundamental rights, directive principles, and the basic structure doctrine. Second, courts should articulate transparent criteria for its use: grounding conclusions in text, openly explaining the value choices involved, and engaging precedent with candor. Third, constitutional morality cannot be sustained by courts alone and needs broader institutional reinforcement: legislatures should apply rights-based scrutiny to proposed laws; executives should internalize constitutional commitments in everyday administration; educational institutions should strengthen constitutional literacy. Finally, social movements and civil society remain essential for converting judicial declarations into lived constitutional practice. Constitutional morality now occupies a central place in Indian constitutional jurisprudence, giving courts a vocabulary and a rationale for defending foundational commitments against majoritarian pressure. Its path from Grote’s Athens, to Ambedkar’s Constituent Assembly interventions, to modern Supreme Court decisions shows both its flexibility and its friction. The doctrine faces serious problems vagueness, subjectivity, democratic legitimacy, and cultivation but those problems argue for refinement rather than abandonment. As Ambedkar anticipated, constitutional morality is a

⁴ See Upendra Baxi, *The Indian Supreme Court and Politics* 234-56 (Eastern Book Co. 1980) (critiquing judicial expansionism).

slow-growing habit that must be nurtured over generations. Courts can articulate principles and enforce limits, but durable transformation requires legislatures, educators, civil society, and citizens to do their share. That project is unfinished, and constitutional morality will likely remain one of the Constitution's main tools for pushing India toward its founding promise.