

Public Morality Vs. Constitutional Morality: Who Shapes the Soul of the Constitution?

Adv. Keerthana Krishnan

Final Year LLM Student, Markaz Law College, Calicut University

ABSTRACT

In a country as varied and democratic as India, the tension between public morality and constitutional morality has progressively influenced the boundaries of individual rights and the shared conscience. While public morality arises from existing social practices, religious customs, and the beliefs of the majority, constitutional morality requires adherence to specific principles outlined in the Indian Constitution, including liberty, equality, justice, and dignity. This article examines the judiciary's role in prioritizing constitutional morality over public morality, especially in significant legal rulings. It raises the question of whether the judiciary's proactive enforcement of constitutional morality represents a valid progression towards transformative constitutionalism or constitutes an instance of judicial overreach. The paper further examines the philosophical principles established by Dr. B.R. Ambedkar and evaluates how constitutional morality can serve as a counter-majoritarian principle in safeguarding fundamental rights through judicial decisions. This analysis contends that the essence of the Indian Constitution should be preserved not by the shifting dynamics of public morality but by the lasting spirit of constitutionalism. Ultimately, the article advocates judicial balance in the dual principles for framing the judicial laws and uphold the constitutional morality as the superior moral framework needed for authentic social reform and robust democratic resilience.

KEYWORDS: constitutional morality, public morality, transformative Constitutionalism, Indian Constitution, judicial overreach, democratic resilience.

CHAPTER 1: INTRODUCTION

The Indian Constitution represents an extraordinary document that not only defines the structure of governance but also aims to create a just and equitable society. At its core, the Constitution goes beyond being just a legal framework; it serves as a set of moral ideals for a diverse nation. As India progresses in different social, political, and cultural dimensions, tensions have surfaced between the traditional beliefs held by certain segments of the population and the forward-thinking principles enshrined in the Constitution. This is often portrayed as a clash between public morality and constitutional morality. Public morality typically denotes the accepted moral standards embraced by the majority of society at a particular time. Public morality is influenced by cultural customs, religious beliefs, traditions, and social conventions. In a nation as varied as India, perceptions of public morality can differ significantly among various communities, regions, and generations. It tends to be fluid, shaped by evolving social perspectives, media influence, political changes, and grassroots activism. Nevertheless, it may also embody regressive or exclusionary attitudes, especially regarding the rights of women, LGBTQ+ individuals, or religious minorities. Conversely, Constitutional morality signifies a commitment to the fundamental values and

principles established in the Constitution, including justice, liberty, equality, fraternity, secularism, and the respect for individual dignity. This form of morality is shaped not by popular opinion but by the ideals the Constitution seeks to promote and sustain. Dr. B.R. Ambedkar, who was instrumental in formulating the Indian Constitution, emphasized the significance of constitutional morality in directing the functions of state institutions and civil society. He regarded it as crucial for sustaining democracy and defending individual rights against the oppression of the majority. Recently, the Indian judiciary has become crucial in advancing constitutional morality by delivering important judgments that have questioned established social norms. These rulings encompass the decriminalization of homosexuality, the annulment of the adultery law, the entitlement of women to enter the Sabarimala temple, and the ruling against triple talaq. In all these instances, the Supreme Court prioritized constitutional principles over dominant public opinion. These verdicts have sparked renewed discussions regarding the degree to which courts should depend on constitutional morality, particularly when it clashes with entrenched cultural or religious traditions.

The central question this article intends to investigate is: who should ultimately establish the moral framework of society, through public morality or the judiciary and legal system guided by constitutional morality? A democracy must reflect the wishes of its citizens, while also ensuring the protection of the rights of individuals who may not represent the majority. This article examines both the theoretical and practical aspects of public and constitutional morality, and it also examines relevant case laws. Furthermore, it aims to understand how constitutional morality can serve as a guardian of fundamental rights and a catalyst for social transformation. It also looks into finding the right equilibrium between democratic ideals and constitutional principles. By doing so, the article aims to add to the current discourse regarding the ethical basis of the Indian Constitution and who ultimately has the authority and responsibility to define it.

CHAPTER 2: CONCEPT OF PUBLIC MORALITY

Historical Background

Public morality in India has developed over time through a complicated interaction of religion, caste, community values, colonial impact, and contemporary democratic principles. In contrast to constitutional morality, which is based on a documented legal structure and universal concepts of justice, public morality in India has predominantly been influenced by lived experiences, traditional belief systems, and social practices that differ across regions, religions, and communities.

The evolution of public morality in India has occurred over centuries, drawing from religious texts, social traditions, and colonial influences. During ancient times, Hindu scriptures like the Manusmriti and Dharmashastras established standards for moral behavior. These writings promoted social order grounded in caste (varna), gender, and duty, serving as a moral basis for society for numerous generations. Throughout the medieval era, Islamic governance also impacted public morality. In areas ruled by the Delhi Sultanate and the Mughal Empire, Islamic legal principles shaped societal perceptions of morality. These ethical norms varied by religion and community and generally upheld patriarchal and conservative frameworks. During the colonial era, the British introduced legal and moral perspectives into Indian society. British laws, like Section 377 of the Indian Penal Code, embodied the moral standards of the Victorian era, which considered same-gender relationships, indecency, and obscenity to be unethical. Simultaneously, British reformers abolished certain harmful customs, such as sati, and advocated for widow remarriage, proclaiming their intent to "civilize" Indian society.

In the 19th and early 20th centuries, Indian reformers like Raja Ram Mohan Roy and Dr. B.R. Ambedkar began to contest traditional public morality. They condemned caste discrimination, gender inequality, and religious conservatism. Ambedkar, in particular, championed a transition toward constitutional morality, which emphasizes liberty, equality, and dignity for every individual. Following independence, public morality continued to shape Indian laws, particularly concerning censorship, marriage, and sexuality. However, in a democracy such as India, excessive reliance on public morality can pose risks when it reinforces majoritarian viewpoints. This is why the Constitution of India establishes a superior moral benchmark—constitutional morality—which defends the rights of all citizens, rather than merely reflecting the perspectives of the majority.

Definitions of Public Morality

To understand the role of public morality in law, it is necessary to examine how the concept has been defined by jurists :-

According to H.L.A. Hart on Public Morality: “Public morality consists of those moral convictions held by the majority, often shaped by custom, religion, and social institutions. It may or may not coincide with rational or legal principles.”¹

According to Lord Devlin’s Classical View, “Society may use the law to preserve its moral code just as it uses it to safeguard anything else that is essential to its existence.”²

According to Justice Krishna Iyer, “Public morality, like law, is not a fixed concept. It must evolve with time and constitutional values. It cannot be rooted solely in outdated traditions or customs that deny individual dignity.”³ Prof. Upendra Baxi said that, “Public morality in India has too often been interpreted through the prism of dominant cultural elites; true public morality must be inclusive and plural.”⁴

Judicial Interpretations on Public Morality

Public morality has often been used as a ground for lawmaking and judicial decisions in India. It refers to the commonly accepted moral values and beliefs of society at a given time. The Indian judiciary, while interpreting the Constitution, has sometimes relied on public morality to justify restrictions on individual rights, especially in matters related to religion, expression, and lifestyle. The following cases show how the Supreme Court has upheld laws based on public morality.

In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005)⁵ The Court confirmed the prohibition on the slaughter of cows, stating it was inconsistent with public morality and reflected the sentiments of the majority Hindu population. Again in *Rev. Stainislaus v. State of Madhya Pradesh* (1977)⁶ The Court affirmed the anti-conversion laws, stating that the right to promote a religion does not encompass the right to convert individuals, and such laws were valid to maintain public order and morality.

¹ H.L.A. Hart, *Law, Liberty and Morality* 49 (Stanford University Press 1963)

² Patrick Devlin, *The Enforcement of Morals* 10 (Oxford Univ. Press 1965)

³ V.R. Krishna Iyer, *Off the Bench: The Story of a Humanist Judge* 138 (Universal Law Publications 2004)

⁴ Upendra Baxi, *The Future of Human Rights* 88 (Oxford University Press 2012)

⁵ (2005) 8 SCC 534

⁶ (1977) 1 SCC 677

In *Govind v. State of Madhya Pradesh* (1975)⁷ The Court recognized the right to privacy but said it could be limited by laws made in the interest of social order or morality. In *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi* (2010)⁸ The Court upheld the validity of obscenity laws under Section 292 of the IPC, asserting that they serve a legitimate interest in preserving public morality and in *Ajay Goswami v. Union of India* (2007)⁹ The Court upheld press freedom but also accepted that certain content, especially if pornographic or obscene, could be restricted for the sake of community standards and ethical values. From the above cases, it is clear that the Indian judiciary has, at various points, supported laws and actions based on public morality. These decisions show that the courts have considered the values and sentiments of society while interpreting constitutional rights.

CHAPTER 3: CONSTITUTIONAL MORALITY: AN OVERVIEW

Origin of Constitutional morality: Ambethkar's Vision

The Constitution of India is more than just a legal text, but a transformative charter meant to build a welfare and just society. One of the most prominent concepts underpinning this vision is “constitutional morality,” a principle championed by Dr. B.R. Ambedkar. While the Constitution provides the framework for governance, Ambedkar believed that its success depends on the moral commitment of citizens and institutions to uphold its values. To him, constitutional morality was essential for preserving democracy, ensuring equality, and resisting the influence of narrow public or majoritarian interests.

Dr. B.R. Ambedkar, the main architect of the Constitution, put significant importance on the concept of constitutional ethics. He adopted the term from the works of the British historian George Grote, who referred to constitutional morality as a “set of norms and values necessary to preserve the functioning of constitutional institutions beyond mere legal compliance.”¹⁰ He believed that constitutional morality involves a spirit of respect for the Constitution and a commitment to principles such as liberty, equality, fraternity, and the rule of law. He deeply observed that constitutional morality is “not a natural sentiment, it has to be cultivated.”¹¹ In his view, the mere existence of a constitution is insufficient unless the people and their leaders internalize and act upon its core values. Ambedkar envisioned Constitutional morality serves as a protection against the oppression of the majority and the abuse of power. In his Constituent Assembly speeches, he warned that “if constitutional values are not upheld in both letter and spirit, democracy could deteriorate into despotism despite formal legal structures.”¹² He was particularly concerned about caste-based hierarchies and social injustices that could persist under the garb of majoritarian norms.

In this framework, constitutional morality acts as a counterbalance to public morality, which may reflect dominant prejudices. Ambedkar argued that constitutional morality should prevail when societal customs violate basic human rights or undermine social justice. Thus, for him, it was not just about procedural discipline, but also about nurturing an enlightened public conscience that respects the dignity and equality

⁷ (1975) 2 SCC 148

⁸ (2010) 1 SCC 234

⁹ (2007) 1 SCC 143

¹⁰ George Grote, *History of Greece* vol. IV, ch. XLVII (London: J. Murray, 1846)

¹¹ Constituent Assembly Debates, Vol. VII, 4 Nov. 1948, Speech by Dr. B.R. Ambedkar, available at <https://cadindia.clpr.org.in>

¹²Id

of all individuals. His philosophy laid the groundwork for India's constitutional vision as a transformative tool one that does not merely maintain order but strives to bring about social reform.

Meaning of Constitutional Morality

Constitutional morality, though rooted in the philosophical foundations laid by Dr. Ambedkar, has grown into a key interpretative tool in Indian constitutional jurisprudence. Jurists across time have reflected upon its meaning, scope, and significance in safeguarding democratic values. The following definitions by prominent legal thinkers and judges offer deeper understanding of this concept. According to Granville Austin, "Constitutional Morality means a commitment to the values that underlie the constitutional structure and the consistent enforcement of those values by institutions and individuals alike."¹³ Madhav Khosla defines constitutional morality as "a commitment to the norms that give effect to constitutional values especially in a country like India, where democracy must contend with deep social divisions."¹⁴ Justice Nariman emphasized in the Sabarimala case that "constitutional morality is the governing ideal that requires the court to uphold the Constitution's values even in the face of strong social resistance." He saw it as a vital force to empower the marginalized.¹⁵ In the similar case Justice Indu Malhotra emphasized her dissenting opinion that "constitutional morality must also accommodate the plurality of Indian society, including religious freedoms, so long as they do not violate the Constitution."¹⁶

These juristic voices reflect that constitutional morality is not a fixed doctrine, but a living principle that must evolve with time and context. It acts both as a shield for fundamental rights and as a check on the misuse of state power. Together, these definitions reinforce the importance of grounding judicial reasoning in moral values that support constitutional justice and societal progress.

Judicial Analysis

The idea of constitutional morality has developed into a foundational principle for the judiciary in India. It empowers courts to look beyond traditional public morality and entrenched social norms to uphold the values ennobled in the Constitution. This section examines key landmark judgments where the Supreme Court invoked constitutional morality to protect individual rights and promote transformative constitutionalism.

1. Navtej Singh Johar v. Union of India (2018)¹⁷

Facts: The petition challenged the constitutional validity of Section 377 of the Indian Penal Code, that made consensual homosexual activity among adults illegal.

Judgment: The Supreme Court removed the criminal penalties for consensual same-sex relationships, holding that Section 377 violated Articles 14, 15, and 21 of the Constitution. Justice D.Y. Chandrachud noted that "constitutional morality requires that all citizens be treated as equal regardless of their identity or orientation." The judgment emphasized that fundamental rights cannot be denied based on public disapproval or majoritarian views and also the case marked that Constitutional morality should take precedence over conventional public morals rooted in heteronormative beliefs.

¹³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (Oxford University Press, 1966)

¹⁴ Madhav Khosla, *The Indian Constitution* 43 (Oxford Univ. Press, 2012)

¹⁵ (2018) 10 SCC 1, ¶ 481 (Nariman, J.)

¹⁶Id

¹⁷ (2018) 10 SCC 1

2. Joseph Shine v. Union of India (2018)¹⁸

Facts: A PIL was filed questioning the constitutionality of Section 497 IPC, which made adultery a criminal offense and treated the wife as her husband's property.

Judgment: The Court reached a unanimous decision to invalidate Section 497, declaring it unconstitutional. Justice Indu Malhotra and others observed that the law violated women's autonomy and dignity. The judgment highlighted that constitutional morality mandates gender equality and cannot be compromised by outdated patriarchal norms.

3. Indian Young Lawyers Association v. State of Kerala (2018)¹⁹

Facts: The petition contested the exclusion of women between the ages of 10 and 50 from accessing the Sabarimala temple in Kerala, arguing that it infringes on their constitutional rights.

Judgment: The Court decided by a 4:1 majority that the exclusion of women was in violation of Articles 14, 15, 25, and 51A(e). Justice D.Y. Chandrachud emphasized that constitutional morality is founded on individual dignity, equality, and non-discrimination, which must override discriminatory religious practices. The judgment reaffirmed that the Constitution's transformative goals cannot be overridden by societal customs, even when they are religiously sanctioned.

4. Shayara Bano v. Union of India (2017)²⁰

Facts: The case challenged the validity of the practice of instant triple talaq by Muslim men.

Judgment: The Court ruled that the practice was both arbitrary and unconstitutional with a majority of 3:2. Justice Nariman and Justice Lalit relied on constitutional morality to argue that personal laws must also comply with fundamental rights, particularly those ensuring gender justice and dignity.

These landmark cases illustrate how the Indian judicial system has progressively embraced constitutional morality to interpret the Constitution in a progressive and rights-based manner. By doing so, the courts have reinforced that transformative constitutionalism rooted in liberty, dignity, and equality must take precedence over outdated social norms and majoritarian morality. This judicial trend not only affirms the supremacy of the Constitution but also provides a moral compass for future reforms in Indian society.

CHAPTER 4: PUBLIC MORALITY Vs. CONSTITUTIONAL MORALITY: JUDICIAL BALANCING

The Indian judicial system often faces instances where public morality, which is based on customs, religious doctrines, and majority views, clashes with constitutional morality that prioritizes the values of freedom, equality, and dignity as outlined in the Constitution. The judiciary must find a way to reconcile these conflicting principles, frequently serving as the ultimate authority on what conforms to constitutional tenets in a democratic framework.

Recent Case Law Reflecting Judicial Preference**1. Hadiya v. Ashokan K.M., (2018)²¹**

This case involved Hadiya (previously known as Akhila), a Hindu woman who embraced Islam and wed a Muslim man. The Kerala High Court invalidated the marriage based on her father's claim that it was a

¹⁸ (2019) 3 SCC 39

¹⁹ (2019) 11 SCC 1

²⁰ (2017) 9 SCC 1

²¹ (2018) 2 SCC 408

case of forced conversion. Nonetheless, the Supreme Court overturned the ruling, affirming that an adult woman possesses the freedom to select her religion and partner. The judgment emphasized personal liberty and constitutional morality over social anxieties and prevailing religious prejudices. The Court implicitly rejected public morality rooted in patriarchal and communal norms.

2. Farzana Batool & Ors. v. Union of India & Ors., (2021)²²

The Supreme Court underscored the importance of safeguarding the educational rights of women belonging to marginalized communities in Jammu and Kashmir. Though not framed as a morality conflict, the case illustrates the use of constitutional morality in prioritizing equality and dignity in access to education over regressive societal norms that often limit women's choices.

3. Shakti Vahini v. Union of India, (2018)²³

This case dealt with the issue of honor killings and khap panchayats interfering in the marriages of consenting adults. The Court condemned extra-constitutional bodies that enforced caste and community-based moral norms. It directed states to protect individuals exercising their right to marry outside caste and religion. Based on recent judicial analysis, the courts have anchored their rulings on several fundamental principles:

- **Supremacy of Fundamental Rights:** The judiciary places a clear emphasis on Part III of the Constitution, ensuring that personal freedom and individual dignity are non-negotiable, even when they clash with prevalent moral standards.
- **Transformative Constitutionalism:** The Constitution is seen not as an unchanging legal text but as a dynamic, evolving entity. This perspective empowers judges to interpret rights in a progressive manner, frequently broadening their application beyond historical or cultural limits.
- **Equality and Anti-discrimination:** Public morality has often been invoked to rationalize patriarchal or exclusionary practices. Courts have countered this by citing constitutional guarantees of equal treatment and substantive justice.
- **Cautious Judicial Activism:** In cases involving religious practices or personal law, the judiciary sometimes adopts a cautious approach, acknowledging the intricate relationship between faith and law. This selective deference illustrates the delicate balance between safeguarding rights and honoring diversity.
- **Counter-Majoritarian Role:** The judiciary frequently defends individuals and minority groups against prevailing public sentiment, asserting that fundamental rights are not contingent on popular consent.
- **Dignity and Autonomy:** The court's decisions in certain instances stress dignity, privacy, and autonomy as central to the constitutional framework, even in cases where public opinion may oppose them.
- **Proportionality:** The courts utilize the proportionality test to ensure that limitations on rights for moral reasons are legitimate and impose the least restrictions.
- **Secularism:** As a foundational feature of the Constitution, Secularism holds a crucial significance in shielding legal interpretations from beliefs rooted in religious public morality.

The judiciary's focus on constitutional morality rather than public morality indicates a conscious shift towards reaffirming the fundamental principles of the Constitution. This method demonstrates a wider

²²(2021) SCC OnLine SC 230

²³(2018) 7 SCC 192

dedication to transformative constitutionalism, where courts serve not only as interpreters of the law but also as catalysts for social change. By prioritizing constitutional morality, the judiciary confronts traditional norms and majoritarian perspectives that often perpetuate social exclusion, discrimination, or stagnation. This jurisprudential evolution guarantees that individual rights are defended even in the face of public sentiment, thereby fulfilling the Constitution's role as a counter-majoritarian document. However, this developing dynamic is not without dispute. Critics contend that favoring constitutional morality may lead to judicial overreach and a detachment of the legal system from cultural and democratic realities. Nonetheless, such critiques must be weighed against the moral obligation to uphold justice and human dignity. The central guiding principles in this scenario include constitutional supremacy, the safeguarding of essential rights, and the interpretative responsibility of the judiciary to maintain constitutional integrity. As India continues to confront emerging challenges whether related to digital freedom, environmental justice, or gender inclusivity constitutional morality offers a stable, rights-based framework for legal decisions. In this regard, its application by the judiciary not only acts as a shield against regressive norms but also represents a plan for a more inclusive and forward-thinking constitutional framework. Thus, the emphasis on constitutional morality is not simply a legal approach but also a moral and democratic necessity.

CHAPTER 5: CONCLUSION

In a nation as extensive and varied as India, contrasting beliefs, customs, and social values inevitably lead to various interpretations of what is deemed morally right or wrong. Public morality often embodies the majority's perspective, shaped by cultural traditions, religion, or social norms. However, public morality does not always encompass all views, and it has frequently been relied upon to justify discrimination, exclusion, or the denial of rights to certain groups. Constitutional morality, in contrast, is founded on the fundamental principles embedded in the Constitution. It is guided by rationality, fairness, and the essence of democracy rather than by public opinion. When courts turn to constitutional morality, they place these essential values above societal pressure or the beliefs of the majority. This approach guarantees that the law provides equal protection to everyone, particularly those who are marginalized or oppressed.

By maintaining constitutional morality, the judiciary serves as the guardian of constitutional principles, thwarting the decline of fundamental rights. It assists in guiding the nation towards a more equitable and inclusive society, even when public morality is resistant to such transformation. In this manner, constitutional morality acts not just as a legal doctrine but also as the ethical compass of the nation. It guarantees that the Constitution continues to be an adaptable tool that defends the rights of all citizens, not merely those of the majority. Consequently, it is the moral foundation of the Constitution that truly protects its core principles.

REFERENCES

1. H.L.A. Hart, *Law, Liberty and Morality* 49 (Stanford University Press 1963)
2. Patrick Devlin, *The Enforcement of Morals* 10 (Oxford University Press 1965)
3. V.R Krishna Iyer, *Off the Bench: The Story of a Humanist Judge* 138 (Universal Law Publications 1st edition 2004)
4. Upendra Baxi, *The Future of Human Rights* 88 (Oxford University Press 3rd edition 2012)
5. George Grote, *History of Greece* vol. IV, ch. XLVII (London: J. Murray, 1846)

6. Constituent Assembly Debates, Vol. VII, 4 Nov. 1948, Speech by Dr. B.R. Ambedkar, available at <https://cadindia.clpr.org.in>
7. Granville Austin, The Indian Constitution: Cornerstone of a Nation 50 (Oxford University Press, 1966)
8. Madhav Khosla, The Indian Constitution 43 (Oxford University Press, New Delhi 2012)