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Constitutional Morality vs. Popular Morality: A Doctrinal Tug of War in Indian Jurisprudence

AASTHA SHARAN* AND ANAND SHARAN**

ABSTRACT

The dichotomy of constitutional morality versus popular morality marks an important fault line in Indian constitutional law. Constitutional morality, as articulated by Dr. B.R. Ambedkar, entails adherence to the values and ethos of the Constitution, including liberty, equality, justice, fraternity, secularism, and the rule of law. Popular morality, by contrast, rests on dominant social norms, majoritarian attitudes, religious customs, and prevailing practices that may resist progressive change. This doctrinal tension is most visible in matters of personal autonomy, religious practice, gender rights, and the rights of sexual minorities. Indian courts, and particularly the Supreme Court, have increasingly adopted the doctrine of constitutional morality to defend fundamental rights against public opinion, as illustrated by Navtej Singh Johar v. Union of India, which decriminalised consensual same-sex relations, Indian Young Lawyers Association v. State of Kerala, the Sabarimala case, and Joseph Shine v. Union of India, which struck down the offence of adultery. These developments have provoked debate over the legitimacy of the judiciary as a moral agent, with one line of critique urging that the judiciary respect democratically endorsed values and avoid overreach, and another insisting that the courts must act as sentinels of transformative constitutionalism. This paper examines the philosophical foundations, judicial interpretations, and democratic implications of invoking constitutional morality in the face of popular resistance. It evaluates whether constitutional morality operates as a necessary counter-majoritarian force or risks becoming an elitist imposition, and considers the balance it strikes between democratic legitimacy and constitutional supremacy in India.

Keywords: *Constitutional morality, popular morality, transformative constitutionalism, majoritarianism, judicial overreach, democratic legitimacy, substantive democracy, judicial self-restraint.*

I. INTRODUCTION

"When the soul of the Constitution speaks, it often whispers against the roar of the majority. Constitutional morality is not the echo of what is popular, but the conscience of what is just."

* Author is a Ph.D. Research Scholar at Dharmashastra National Law University, Jabalpur, Madhya Pradesh, India.

** Author is a student of B.A. LL.B. at Dharmashastra National Law University, Jabalpur, Madhya Pradesh, India.

In recent years, the trajectory of Indian constitutional jurisprudence has shifted significantly, particularly within the higher judiciary and especially the Supreme Court, in the way courts now interpret the Constitution. One of the most important developments to emerge from this change is that the elements of constitutional morality have progressively become part of the lexicon of the Supreme Court.¹ Understood as a constitutional limitation, constitutional morality² requires adherence to the primary tenets and principles of the Constitution, even where such adherence is inconsistent with popular beliefs, long-standing customs, or the will of the majority. Although the notion emanates from Dr. B.R. Ambedkar's original conception of constitutional morality as the foundation of constitutional democracy³, the warning being that constitutional values will erode if not guarded, the doctrine came to the fore in the Supreme Court's decisions concerning personal liberty, gender equality, gender identity, freedom of religion, and the rights of LGBTQIA⁴ persons. This judicial focus has not been without challenge. It has opened a conversation about the judiciary advancing the ideals of transformative constitutionalism while weighing them against the sociocultural morality of a section of civil society. The tension is particularly pronounced in judgments such as *Navtej Singh Johar v. Union of India*⁵ (2018), which decriminalised consensual same-sex relations; *Indian Young Lawyers Association v. State of Kerala*⁶ (2018), which permitted women of all ages to enter the Sabarimala temple; and *Joseph Shine v. Union of India*⁷ (2018), which struck

¹ The Supreme Court has progressively incorporated three central elements of constitutional morality into its jurisprudence: individual liberty and dignity, substantive equality, and constitutional fraternity. These principles have served as touchstones in landmark decisions such as *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1; and *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1. See also GAUTAM BHATIA, THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY IN NINE ACTS 23-30 (HarperCollins India 2019).

² Constitutional morality refers to the ethical values, principles, and spirit enshrined in the Constitution, which guide the functioning of the State, the judiciary, and citizens beyond the literal text of the law. It demands that public power be exercised in a manner that upholds liberty, equality, justice, dignity, and fraternity, even where these conflict with popular customs or majoritarian views.

³ Dr. B.R. Ambedkar introduced the concept of constitutional morality during the Constituent Assembly Debates on 4 November 1948, describing it as the foundation of a successful constitutional democracy. Drawing on George Grote, a historian of ancient Greece, Ambedkar emphasised that constitutional morality requires a "diffusion of respect for the rule of law, institutions, procedures, and constitutional norms" among both the State and its citizens. He believed that the mere adoption of a constitutional form of government was insufficient; what was vital was a deep-seated commitment to constitutional values such as liberty, equality, fraternity, and justice. Ambedkar famously stated that constitutional morality is not a natural sentiment but must be cultivated, especially in a country marked by social inequality, caste divisions, and historical injustice. *Constituent Assembly Debates*, Vol. VII, 4 Nov. 1948 (Part II), <https://indiankanoon.org/doc/843976/>.

⁴ The acronym LGBTQIA stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, and Asexual or Ally. It is an inclusive term representing a diverse spectrum of gender identities and sexual orientations beyond the heterosexual and cisgender binary.

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India). The Supreme Court decriminalised consensual same-sex relations between adults by reading down Section 377 of the Indian Penal Code, affirming the dignity and autonomy of LGBTQIA persons through the lens of constitutional morality.

⁶ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India). The Court held that the exclusion of women from the Sabarimala temple was unconstitutional, reinforcing gender equality and challenging religious patriarchy through constitutional morality.

⁷ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India). The Court struck down Section 497 of the Indian Penal Code criminalising adultery, declaring it violative of Articles 14 and 21, and underscored personal autonomy, gender neutrality, and substantive equality as tenets of constitutional morality.

down Section 497 of the Indian Penal Code⁸ criminalising adultery. These judgments were regarded as progressive and rights-affirming, yet were also criticised for unsettling widely held public beliefs and religious practices, raising questions about judicial encroachment and whether the courts are democratically situated to act as moral agents.

In light of these issues, it is important to unpack some of the key concepts at work in this discussion. Constitutional morality comprises normative values such as liberty, equality, fraternity, secularism, and the rule of law. It expresses the aims and objectives of the Constitution, including its vision of social transformation, and becomes an active force in the legal landscape. Popular morality,⁹ by contrast, is derived from prevailing social beliefs, cultural traditions, and the majority's perceptions of right and wrong. Constitutional morality is abstract and aspirational in character, whereas popular morality is immediate, tangible, present in the minds of the people, and democratically asserted.¹⁰

This framing raises several important questions. Can constitutional morality coexist with popular morality in a democracy? Should unelected judges assume the authority to valorise abstract constitutional values over the beliefs of the majority? Or is such judicial intervention a necessary corrective to protect minorities, women, and marginalised groups from the tyranny of the majority?

This paper addresses these questions by examining the philosophical underpinnings, judicial decision-making, and socio-political implications of invoking constitutional morality in Indian judicial discourse. It contends that, while constitutional morality is central to realising the transformative potential of the Constitution, its reckless invocation, without due regard for democratic processes and public engagement, risks pushing aside the very society the Constitution seeks to protect. The judiciary must therefore balance its role as a custodian of constitutional morality with sensitivity to the plurality and diversity of Indian society.

II. CONCEPTUAL FOUNDATIONS

A. Defining constitutional morality

Dr. B.R. Ambedkar first invoked the term constitutional morality to underscore that the viability of democracy is contingent not only on the constitutional structure but also on the principles of

⁸ Section 497 of the Indian Penal Code, before being struck down in *Joseph Shine v. Union of India*, criminalised adultery, making it an offence for a man to have sexual relations with a married woman without her husband's consent. The law treated the woman as a passive victim and denied her agency, reflecting patriarchal assumptions. It was declared unconstitutional for violating Articles 14, 15, and 21 of the Constitution. See *The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)*, § 497; *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

⁹ Popular morality refers to the dominant moral values, norms, and customs of a society, often shaped by tradition, religion, and majoritarian belief. It reflects public opinion and social consensus but may conflict with constitutional principles, especially in matters of individual rights and equality.

¹⁰ UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS* 156-58 (3d ed., Oxford Univ. Press 2008) (discussing the tension between democratic majoritarianism and constitutionally guaranteed rights).

the Constitution being adhered to by the people.¹¹ Constitutional morality refers to the principles and values of liberty, equality, fraternity,¹² and justice, binding not only the State but civil society as a whole. It requires legal and political practice in line with the spirit of the Constitution, not merely its text.

In this sense, constitutional morality is distinct from individual morality, which incorporates personal views, choices, and beliefs shaped by religious, cultural, or ideological dispositions. Constitutional morality insists on adherence to the spirit of the Constitution even where it conflicts with the prevailing moral consensus of the day. There is an essential distinction between legitimacy grounded in tradition, that is, the conventions and customs of society, and legitimacy grounded in fundamental rights, that is, the principles of justice and individual entitlement guaranteed under the Constitution.¹³

Constitutional morality requires that practices be assessed with recognition of the role the Constitution plays in the application of judicial and legal reasoning, most significantly in a court's interpretation of Part III of the Constitution¹⁴ (the guarantee of fundamental rights). This connection is also reflected in comparative jurisprudence, where courts have anchored constitutionally sourced liberties such as dignity and autonomy independently of, and at times contrary to, prevailing public opinion.¹⁵

Granville Austin¹⁶ described the Indian Constitution as a "social document" oriented towards social revolution and animated by constitutional morality.¹⁷ Building on Austin's legacy,

¹¹ *Constituent Assembly Debates*, Vol. VII, 4 Nov. 1948 (Part II), at 38 (Dr. B.R. Ambedkar referencing constitutional morality), <https://indiankanoon.org/doc/843976/> (last visited July 17, 2025); see also Pratap Bhanu Mehta, *What Is Constitutional Morality?*, SEMINAR No. 615, at 12-13 (Nov.-Dec. 2010) (discussing Ambedkar's invocation of Grote's concept).

¹² The principles of liberty, equality, and fraternity, drawn from the French Revolution, are enshrined in the Preamble of the Constitution and signify individual freedom, equal legal treatment, and social solidarity respectively. See MADHAV KHOSLA, *THE INDIAN CONSTITUTION* 25 (Oxford Univ. Press 2012).

¹³ There is a crucial distinction between legitimacy rooted in traditional norms, stemming from cultural and social convention, and legitimacy anchored in fundamental rights and justice, which flows from constitutional guarantees of individual dignity and equality. See Rajeev Bhargava, *Political Secularism: Why It Is Needed and What Can Be Learnt from Its Indian Version*, in *SECULAR STATES AND RELIGIOUS DIVERSITY* 82-85 (Bruce Berman et al. eds., UBC Press 2013).

¹⁴ Part III of the Constitution, comprising Articles 12 to 35, guarantees fundamental rights such as equality, liberty, and protection against exploitation, and provides constitutional remedies for their enforcement, thereby forming the foundation of constitutional governance and individual dignity in India. See D.D. BASU, *INTRODUCTION TO THE CONSTITUTION OF INDIA* 120-39 (LexisNexis 25th ed. 2021).

¹⁵ See *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (Can.), where the Supreme Court of Canada emphasised that constitutional liberties such as dignity and autonomy are not contingent upon majoritarian approval or public morality, and must be safeguarded even in conditions of perceived social deviance, reinforcing the primacy of individual rights over collective consensus.

¹⁶ Granville Austin (1927-2014) was an American constitutional historian, best known for his works on the Indian Constitution. His books *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (1966) and *WORKING A DEMOCRATIC CONSTITUTION: THE INDIAN EXPERIENCE* (1999) are widely cited for their insight into the framing and functioning of India's constitutional democracy. Austin argued that the Constitution rests on three core pillars, liberty, equality, and fraternity, and described it as a "seamless web" of principles designed to promote social revolution and national unity.

¹⁷ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 50 (Oxford Univ. Press 1966).

Upendra Baxi¹⁸ urges that the Constitution be understood as a living and contested space that must be continually re-enacted through commitments to justice, dignity, and resistance to majoritarian dominance.¹⁹ In a similar vein, Rajeev Dhavan²⁰ emphasises the socio-legal complexity of interpretation in a plural society, cautioning against both judicial overreach and populist reductions of the Constitution to a merely sacred text.²¹ Niraja Gopal Jayal²² extends these explorations by distinguishing moral from democratic citizenship, suggesting that the moral weight of the Constitution derives not from the document as an entity but from citizens' inclusive practices within a fractured societal order.²³ Collectively, this multidisciplinary body of thought offers a rich understanding of constitutional morality that transcends mere legalism, viewing it through the lenses of substantive justice, public reason, and democratic ethics.

B. Understanding popular morality

Popular morality reflects the dominant norms, traditions, customs, and religious beliefs of a particular society. It mirrors majoritarian consensus, is shaped by the culture of its time, and is embedded in social and cultural institutions. In the Indian context, popular morality has historically been conditioned by caste, patriarchy, orthodox fundamentalism,²⁴ and nationalism. While popular morality may reflect a democratic conscience, it is not necessarily just or fair. In societies where inequality is embedded in social relations, popular morality often merely reflects the status quo. The fact that norms supporting untouchability, the exclusion of women from religious spaces, and the criminalisation of same-sex relationships were sanctioned by popular morality for many years does not render them consistent with the values of the Constitution.

The real concern arises when popular morality is presented as democratic legitimacy. While democratic governance operates on the principle of majority rule, constitutional democracy constrains that rule through minority rights and institutional checks.²⁵ It is here that the judiciary

¹⁸ Upendra Baxi is an eminent Indian legal scholar and jurist known for his contributions to constitutional theory, human rights, and the sociology of law. A former Vice-Chancellor of the University of Delhi, he has been a pivotal figure in developing the idea of the Indian Constitution as a dynamic and emancipatory document.

¹⁹ Upendra Baxi, *The Indian Constitution as a Living Document*, in *POLITICS AND ETHICS OF THE INDIAN CONSTITUTION* 30-33 (Rajeev Bhargava ed., Oxford Univ. Press 2008).

²⁰ Rajeev Dhavan is a distinguished Indian jurist, constitutional expert, and Senior Advocate at the Supreme Court of India, known for his scholarship in constitutional law, minority rights, and public interest litigation, and for his contributions to debates on judicial activism, constitutionalism, and civil liberties.

²¹ RAJEEV DHAVAN, *THE SUPREME COURT OF INDIA: A SOCIO-LEGAL CRITIQUE OF ITS JURISTIC TECHNIQUES* 25-29 (N.M. Tripathi 1977).

²² Niraja Gopal Jayal is a leading Indian political scientist whose work explores citizenship, democratic governance, and constitutionalism in India, with particular attention to how constitutional morality intersects with identity, inclusion, and democratic ethics in deeply plural societies.

²³ NIRAJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* 284-87 (Permanent Black 2013).

²⁴ Orthodox fundamentalism denotes a strict and uncompromising commitment to traditional beliefs and practices, particularly in religion, that resists reform or reinterpretation. It often stands in contrast to the evolving and inclusive ethos of constitutional morality, which prioritises individual rights, dignity, and secular governance over rigid social hierarchies or religious dogma.

²⁵ See ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 185-88 (Yale Univ. Press 1989) (distinguishing between majoritarian rule and constitutional democracy and emphasising minority rights and institutional limits as

plays a crucial role, adjudicating against popular but regressive norms that violate fundamental rights.

C. Comparative perspectives

Many liberal democracies have grappled with tensions between popular and constitutional morality. In the United States, *Obergefell v. Hodges*²⁶ (2015), which gave legal recognition to same-sex marriage despite strong majority opposition in many states, prioritised dignity and equality over conservative moral codes.

In the United Kingdom, the European Convention on Human Rights²⁷ has functioned as a constitutional instrument capable of shifting public opinion on issues such as prisoners' voting rights. South Africa, through its post-apartheid Constitution, has likewise adopted an explicitly transformative approach. Its Constitutional Court has affirmed the rights to equality and dignity even where constitutional rulings conflicted with cultural or religious values. The most prominent of these cases was *Minister of Home Affairs v. Fourie*²⁸ (2005), which legalised same-sex marriage. These examples demonstrate that constitutional morality shapes the law across many constitutional democracies, with courts upholding values not yet embedded in the social fabric.

III. THE DEVELOPMENT OF CONSTITUTIONAL MORALITY IN INDIAN JURISPRUDENCE

A. Early judicial reluctance

For several decades after independence, Indian courts were reluctant to engage seriously with the idea of constitutional morality. Judicial interpretation was largely confined to textual readings and legislative intent. In *A.K. Gopalan v. State of Madras*²⁹ (1950), the Supreme Court

intrinsic to the latter).

²⁶ *Obergefell v. Hodges*, 576 U.S. 644 (2015). The U.S. Supreme Court held that same-sex couples have a fundamental right to marry under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, thereby legalising same-sex marriage across all fifty states, and underscored dignity, liberty, and equality as essential to constitutional morality in a liberal democracy.

²⁷ The European Convention on Human Rights, adopted in 1950 by the Council of Europe, is an international treaty aimed at protecting fundamental human rights and freedoms in Europe. It established the European Court of Human Rights, allowing individuals to seek redress against violations by State parties, thereby setting a robust framework for human dignity, liberty, and justice across member States.

²⁸ *Minister of Home Affairs v. Fourie*, [2005] ZACC 19 (CCT 60/04) (S. Afr.). The Constitutional Court of South Africa held that the common-law definition of marriage as being only between a man and a woman violated the constitutional rights to equality, dignity, and freedom, amounting to unfair discrimination against same-sex couples, and ordered the legislature to amend the law within one year. The Court emphasised that constitutional values must guide social transformation even where popular morality resists change.

²⁹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India). The Supreme Court interpreted the right to life and personal liberty under Article 21 in a narrow, procedural sense. The petitioner, a communist leader, challenged his preventive detention under the Preventive Detention Act, 1950, as violative of Articles 19 and 21. The majority held that each fundamental right is distinct and to be interpreted in isolation, and that "procedure established by law" under Article 21 did not require the procedure to be just, fair, and reasonable. This interpretation was later overruled in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, where the Court held that Articles 14, 19, and 21 are interconnected, and that any law depriving a person of liberty must satisfy the test of fairness, justice, and reasonableness.

narrowly interpreted the scope of fundamental rights, subordinating substantive considerations to procedural ones established by the State.

The Supreme Court began to assert itself as a custodian of constitutional values following the basic structure doctrine³⁰ established in *Kesavananda Bharati v. State of Kerala*³¹ (1973). The experience of the Emergency (1975 to 1977) reaffirmed the value of an institutional guardian against arbitrary power.

B. Judicial recognition of constitutional morality

*Naz Foundation v. Govt. of NCT of Delhi*³² (2009) marked the first significant judicial engagement with constitutional morality. The Delhi High Court read down Section 377 of the Indian Penal Code,³³ holding that criminalising consensual same-sex relations violated Articles 14, 15, and 21 of the Constitution.³⁴ The judgment was notable for invoking constitutional morality in its critique of majoritarian bias.

In *Suresh Kumar Koushal v. Naz Foundation*³⁵ (2013), the Supreme Court overturned the Delhi High Court's decision and restored Section 377. The bench reasoned that a "minuscule minority" could not determine how a constitutional right was to be interpreted. The decision was widely criticised for substituting popular morality for constitutional morality.

In *Navtej Singh Johar v. Union of India*³⁶ (2018), a five-judge Constitutional Bench reinstated the earlier position and decriminalised consensual same-sex relations, overruling *Suresh Kumar Koushal*. The Court held that constitutional morality takes precedence over social morality.³⁷ Justice D.Y. Chandrachud observed: "Our Constitution is a document of trust. It is a trust

³⁰ The basic structure doctrine is a judicial principle evolved by the Supreme Court of India in *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, holding that while Parliament has wide powers to amend the Constitution under Article 368, such power does not extend to altering or destroying its "basic structure." The doctrine ensures that core constitutional values, such as the supremacy of the Constitution, the rule of law, separation of powers, judicial review, secularism, federalism, and the rights guaranteed in Part III, remain inviolable, acting as a safeguard against majoritarian excess and authoritarian amendment.

³¹ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

³² *Naz Foundation v. Govt. of NCT of Delhi*, (2009) 160 DLT 277 (Del.) (India).

³³ Section 377 of the Indian Penal Code, 1860, criminalised "carnal intercourse against the order of nature" with any man, woman, or animal. Historically, the provision was interpreted to cover consensual sexual acts between adults of the same sex, leading to widespread discrimination against the LGBTQIA community. A colonial-era law reflecting Victorian morality rather than constitutional values, it was read down in *Navtej Singh Johar v. Union of India* to decriminalise consensual same-sex relations between adults, the Court holding that it violated Articles 14, 15, 19, and 21 of the Constitution. See The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India), § 377.

³⁴ Article 14 provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India," forming a cornerstone of the rule of law and prohibiting arbitrary State action while permitting reasonable classification. Article 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth, while Articles 15(3) and (4) permit special provisions for women, children, and socially and educationally backward classes, including Scheduled Castes and Scheduled Tribes. Article 21 provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law," and has been judicially expanded to include rights such as privacy, dignity, livelihood, and a clean environment. See INDIA CONST. arts. 14, 15, 21.

³⁵ *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1 (India).

³⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

³⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, ¶ 68 (India).

between the State and the individual."³⁸ The judgment recognised dignity, privacy, and autonomy as non-negotiable, anchoring them in the spirit of constitutional morality.

In *Indian Young Lawyers Association v. State of Kerala*³⁹ (2018), the Sabarimala temple case, the Supreme Court considered whether women of menstruating age could be barred from entering the temple, and held that the exclusion violated the constitutional guarantees of equality and non-discrimination.

In *Joseph Shine v. Union of India*⁴⁰ (2018), the Court declared Section 497 of the Indian Penal Code,⁴¹ which made adultery a criminal offence, to be unconstitutional. Invoking constitutional morality, it held that the provision treated women as the property of their husbands and affronted the dignity and autonomy guaranteed under Article 21.

In *Shafin Jahan v. Asokan K.M.*⁴² (2018), the Hadiya case, the Court upheld the right of an adult woman to choose her faith and her partner, and set aside the annulment of her marriage ordered by the Kerala High Court. The Court reiterated that the Constitution protects individual choice even where it conflicts with the wishes of family or society.

C. The role of individual judges

The emergence of constitutional morality as a doctrine of jurisprudence owes much to certain judges with progressive approaches. Justice D.Y. Chandrachud,⁴³ in particular, has been a leading exponent of constitutional morality, stressing that the Constitution can and does reshape social norms. His judgments consistently relate dignity, autonomy, and equality to constitutional morality.

By contrast, Justice Indu Malhotra's dissent in *Sabarimala*⁴⁴ cautioned against judicial overreach into matters of religion, concluding that constitutional morality should not be used to

³⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, ¶ 60 (India) (Chandrachud, J., concurring).

³⁹ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India).

⁴⁰ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

⁴¹ Section 497 of the Indian Penal Code criminalised adultery by punishing a man who had sexual relations with a married woman without her husband's consent, while the woman herself was not liable. The provision was widely criticised as patriarchal and discriminatory, treating women as the property of their husbands and denying them agency. In *Joseph Shine v. Union of India*, the Supreme Court unanimously struck it down as unconstitutional, declaring it violative of Articles 14, 15, and 21 of the Constitution.

⁴² *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (India).

⁴³ Justice D.Y. Chandrachud, the 50th Chief Justice of India, is widely regarded for his progressive and transformative constitutional jurisprudence. His landmark opinions include *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (right to privacy); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (decriminalisation of consensual same-sex relations); *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (Sabarimala); *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (adultery); and his dissent in *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1 (Aadhaar). His judgments consistently champion constitutional morality, gender justice, personal liberty, and privacy.

⁴⁴ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India) (Malhotra, J., dissenting). Justice Indu Malhotra, the first woman advocate to be directly elevated to the Supreme Court from the Bar, opposed judicial intervention in long-standing religious practices, holding that the exclusion of women aged ten to fifty at the Sabarimala shrine was based on essential religious practice protected under Article 25. She cautioned against the overextension of constitutional morality as a tool to override faith-based custom without clear constitutional transgression and urged courts to leave scope for democratic dialogue and social consensus in reforming religious practice.

abrogate faith-based practices without a comprehensive and considered understanding of their significance.

Justice R.F. Nariman⁴⁵ has also invoked constitutional morality in his judgments on religious freedom and personal liberty, particularly in *Joseph Shine* and *Navtej Singh Johar*, emphasising the judiciary's role in challenging entrenched prejudice.

IV. TENSIONS AND CRITICISMS

A. Democratic dissonance

One of the primary criticisms of constitutional morality is that it may override the majority will within a democracy. In a parliamentary democracy such as India, public morality expressed through legislative enactments, cultural practices, and electoral choices is often accepted as a legitimate manifestation of the people's will. When courts overturn such manifestations by recourse to constitutional morality, many regard this as an affront to, or decoupling from, the democratic mandate.

This poses a serious concern: does constitutional morality override the majoritarian will and, by implication, democracy itself? Critics contend that when unelected judges nullify democratically accepted practices, such as religious customs or penal provisions, on the basis of abstract constitutional principles, they risk alienating the public, weakening democratic institutions, and arresting the progress of democratic constitutionalism.

Even Dr. B.R. Ambedkar warned against unchecked judicial supremacy.⁴⁶ While praising the idea of constitutional morality, he insisted that it be realised through democratic processes, particularly Parliament; otherwise, replacing parliamentary supremacy with judicial supremacy would be contrary to the democratic ethos of the Constitution. His caution is apposite to the present context, where courts no longer merely interpret the law but are directly engaged in effecting social change.

B. Judicial overreach

Closely connected to democratic dissonance is the critique of judicial overreach, in which courts are accused of expanding their constitutional jurisdiction under the guise of constitutional morality. This invocation has led to allegations of moral paternalism, with judges said to impose their own conception of constitutional values upon society without sufficient regard for ground realities.

⁴⁵ Justice Rohinton Fali Nariman, a former Judge of the Supreme Court of India, is known for his scholarly depth and doctrinal clarity. Before his elevation, he served as a senior advocate and as Solicitor General of India. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, and *Joseph Shine v. Union of India*, (2019) 3 SCC 39, he invoked the doctrine of constitutional morality to strike down Sections 377 and 497 of the Indian Penal Code respectively, holding that entrenched social prejudice could not trump constitutional guarantees of personal liberty and dignity, and emphasising the judiciary's duty to uphold transformative constitutionalism.

⁴⁶ See B. SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION: A STUDY 59 (Universal Law Publishing 2004) (vol. V); *Constituent Assembly Debates*, Vol. XI, 25 May 1949, at 979.

One of the most prominent examples is *Sabarimala (Indian Young Lawyers Association v. State of Kerala)*,⁴⁷ 2018). The majority held that the prohibition on the entry of women aged ten to fifty years infringed Articles 14 and 25 of the Constitution and accordingly directed that the exclusion be lifted. In doing so, the judgment placed exceptional emphasis on constitutional morality to ground its conclusion that the ban was unconstitutional.

Critics assert that, in reaching this conclusion, the Court disregarded the deeply entrenched cultural significance of the tradition⁴⁸ and acted in a manner that might be viewed as legislating from the bench.⁴⁹

Was the judgment an imposition of an elite, urban morality upon lived religious practice? Or was it a principled rejection of gender-based exclusion from the temple? This dilemma captures the ambivalence between interpretation and imposition, and illustrates the judiciary's difficult navigation between constitutional ideals and the coexisting sensibilities of a democratic society.

C. Critique by the legal academy

Scholars occupy a range of positions on how far, and to what extent, constitutional morality may properly be relied upon in judicial reasoning. The principle has recently become a contentious issue in Indian constitutional debate, dividing scholars over its meaning, legitimacy, and relevance to the judicial process. Prof. M.P. Singh,⁵⁰ a pre-eminent scholar of Indian constitutional theory, maintains that constitutional morality is essential to the Indian constitutional order, while insisting on checks drawn from constitutional text, structure, and history. He warns that constitutional morality could easily become an overly expansive fiction that transforms judges into philosophers of morality wielding power with limited democratic

⁴⁷ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India).

⁴⁸ The prohibition on the entry of women of menstruating age (ten to fifty years) into the Sabarimala temple was rooted in the belief that Lord Ayyappa, the presiding deity, is a *naishtika brahmachari* (eternal celibate), and that the presence of women in their reproductive years would interfere with the celibate nature of the deity and the spiritual discipline of male devotees. This practice was reinforced by traditional notions of ritual purity associated with menstruation in certain sects of Hinduism, and was defended by its proponents as an essential religious practice under Article 26 forming part of a unique denominational tradition. See *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India); Arvind Narrain, *Faith, Feminism and the Freedom of Religion: The Sabarimala Judgment and the Dissent of Justice Indu Malhotra*, 4(1) INDIAN L. REV. 100 (2019); T.K. Rajeev Kumar, *Custom and the Constitution: The Sabarimala Controversy*, 5 NUJS L. REV. 1 (2019).

⁴⁹ In her dissenting opinion, Justice Indu Malhotra argued that the issue pertained to essential religious practice under Article 26(b) of the Constitution, and that matters of faith should not be subject to rationalist scrutiny by courts. She cautioned against imposing constitutional morality in contexts where religious pluralism and autonomy are at stake. See *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, ¶ 11 (India) (Malhotra, J., dissenting).

⁵⁰ Prof. Mahendra Pal Singh is one of India's most eminent constitutional scholars, a former Vice-Chancellor of the West Bengal National University of Juridical Sciences and a senior professor at the University of Delhi, who has made foundational contributions to comparative constitutional law, legal pluralism, and human rights discourse. His revision of V.N. Shukla's CONSTITUTION OF INDIA remains a standard reference. He argues that, in a deeply diverse and hierarchical society such as India, formal equality alone is insufficient and must be backed by a robust ethical commitment to justice, liberty, and dignity, while warning that the judicial invocation of constitutional morality must be principled and grounded in constitutional text and structure to preserve institutional legitimacy.

accountability.⁵¹ Taking a more historical view, Ramachandra Guha⁵² argues that India's Constitution is not merely an elaborate legal instrument but a moral and social call to build a society free of caste and communal prejudice. Yet Guha too cautions against the use of constitutional morality as a form of judicial encroachment that weakens popular sovereignty or erodes the distinction between judicial review and judicial supremacy.⁵³

Fali S. Nariman,⁵⁴ one of India's most respected constitutional jurists, expresses similar reservations. While recognising that constitutional morality is a legitimate framework for assessing fundamental rights, he warns that applying it with little structure can produce legal unpredictability. The judiciary, he argues, must be mindful to preserve the boundary between invoking and enforcing constitutional convention and infringing upon legislative purview.

Prof. Nivedita Menon⁵⁵ draws on feminist and postcolonial theory to analyse popular morality as a socially constructed ideal that suppresses individuals such as women, Dalits, and sexual minorities. For Menon, constitutional morality, grounded in dignity, equality, and liberty, offers a radical alternative to the patriarchal discourse of popular morality.⁵⁶ She characterises it as a necessary legal doctrine, given the tendency of popular morality to silence dissenters, deviant minorities, and individuals with non-normative identities.

Ultimately, the divide within the academy reflects a deeper philosophical disagreement about the role of courts in a democracy: should courts defer to society's values, or should they act as a catalyst for social change?

D. The role of civil society and public perception

A dimension that is frequently overlooked is the perception of judicial legitimacy in the public eye. While courts may enforce the law on the authority of the constitutional text, they ultimately derive their legitimacy from their credibility before the public. When judicial decisions are

⁵¹ M.P. Singh, *Constitutionalism and the Basic Structure Doctrine: An Indian Perspective*, 13(1) INDIAN J. CONST. L. 1, 12 (2019).

⁵² Ramachandra Guha is one of India's foremost historians and public intellectuals, widely known for his works on Indian democracy, politics, and modern history, and a recipient of the Padma Bhushan. He has engaged critically with the judiciary's expanding role in shaping social norms, contending that an overreliance on constitutional morality can lead to judicial overreach and blur the line between judicial review and judicial supremacy. See RAMACHANDRA GUHA, *DEMOCRATS AND DISSENTERS* 147-51 (Penguin India 2016).

⁵³ Ramachandra Guha, *The Judiciary's Overreach*, THE HINDU, Jan. 26, 2018.

⁵⁴ Fali S. Nariman (1929-2024), one of India's most respected constitutional jurists and Senior Advocates, was known for his measured liberalism and firm belief in the democratic ethos of the Constitution, and served as a nominated member of the Rajya Sabha. He cautioned against the judicial overuse of constitutional morality as a tool to override majoritarian will, arguing that courts must exercise restraint and allow space for democratic dialogue, and observed that constitutional morality should not become a substitute for popular morality to the extent that judicial fiat replaces parliamentary function. See FALI S. NARIMAN, *THE STATE OF THE NATION: IN THE CONTEXT OF INDIA'S CONSTITUTION* 135-37 (Hay House India 2013).

⁵⁵ Nivedita Menon is a feminist scholar and political theorist and a professor at Jawaharlal Nehru University, known for her work *SEEING LIKE A FEMINIST*, who has written extensively on gender, law, and democratic politics. She critiques popular morality as deeply embedded in structures of caste, patriarchy, and majoritarianism that exclude marginalised voices, and argues that constitutional morality must act as a tool of radical inclusion and the subversion of dominant social hierarchies. See NIVEDITA MENON, *RECOVERING SUBVERSION: FEMINIST POLITICS BEYOND THE LAW* 93-97 (Permanent Black 2004).

⁵⁶ NIVEDITA MENON, *SEEING LIKE A FEMINIST* 121-27 (Zubaan 2012).

perceived as disconnected from people's social contexts, they can provoke public protest or non-compliance, as seen in the protests following *Sabarimala*.

Civil society, however, can act as a mediator between courts and citizens. In *Navtej Singh Johar*, for example, legal advocacy organisations such as the Lawyers Collective helped develop constitutional arguments concerning dignity and privacy. Public campaigns shifted the discourse from morality to rights and enabled the judiciary to decide with greater confidence and societal support.

Civil society thus serves as a bridge in translating constitutional morality into social consciousness, and vice versa. The development of constitutional morality is not simply a project of the courts but a process generated through dialogue among courts, citizens, activists, and institutions.

V. THEORETICAL AND PHILOSOPHICAL DIMENSIONS

A. Transformative constitutionalism

Although the Indian Constitution is often regarded as a document that merely provides legal guidance, it fundamentally embodies a vision of social change.⁵⁷ Transformative constitutionalism, a term coined by scholars such as Karl Klare and later adapted to the Indian context by Gautam Bhatia and others, views the Constitution as a living document directed at remedying injustices rooted in history.⁵⁸

This view depends heavily on constitutional morality. Articles 14, 15, and 21, together with the Preamble, guide the development of a just society founded on dignity, equality, and fraternity. The Preamble functions not merely as an opening statement but as a touchstone of constitutional legitimacy, enabling the courts to interpret fundamental rights broadly, even against majoritarian public sentiment.

For this reason, transformative constitutionalism justifies the operation of constitutional morality as a judicial mandate that should not lightly be dismissed as activism; rather, it represents judges giving effect to what the Constitution aspires to achieve.

⁵⁷ The term transformative constitutionalism refers to a progressive interpretive approach that envisions the Constitution not merely as a static legal document but as an instrument of social transformation. Originating in post-apartheid South African jurisprudence and popularised by Karl Klare, it gained prominence in Indian constitutional discourse through the Supreme Court's rights-expanding judgments. It entails the judiciary's role in reshaping entrenched social hierarchies based on caste, gender, sexuality, and class by invoking values such as dignity, liberty, equality, and fraternity, and underscores that the Constitution must evolve to fulfil its emancipatory promise, especially for historically marginalised communities.

⁵⁸ Karl E. Klare, a noted American legal scholar and professor at Northeastern University School of Law, introduced the concept of transformative constitutionalism in the South African context, proposing that constitutional interpretation be used to overcome structural inequality and enable substantive justice. See Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. AFR. J. ON HUM. RTS. 146 (1998). Gautam Bhatia, an Indian constitutional scholar, has extended the concept to the Indian framework, arguing that the Constitution's text, structure, and moral vision seek to dismantle entrenched hierarchies and usher in radical egalitarianism. See GAUTAM BHATIA, *THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY IN NINE ACTS* (HarperCollins India 2019).

B. Morality and law: the Hart-Fuller debate

The Hart-Fuller debate is recognised as one of the most important discussions in jurisprudence concerning the relationship between law and morality, and it carries significant implications for the Indian context. H.L.A. Hart,⁵⁹ regarded as the leading legal positivist,⁶⁰ argued that law and morality are separate and distinct. For Hart, law is a system of rules independent of moral values, and legal obligation does not require moral evaluation.⁶¹ He maintained that the validity of law rests on the legitimacy of its process rather than its moral content. In his influential work *The Concept of Law*⁶² (1961), Hart contended that a legal system consists of a union of primary and secondary rules, the validity of which need not depend on moral worth.

In direct opposition, Lon Fuller,⁶³ widely regarded as a prominent natural law theorist, argued that a legal system can be legitimate only if the law possesses an "inner morality."⁶⁴ For Fuller, a legal system is more than a collection of enacted rules; it must comply with certain principles of justice and fairness. His views are set out in *The Morality of Law*⁶⁵ (1964), where he argues that, to be effective and just, a legal system must satisfy moral principles such as generality, clarity, and the capacity to be understood and followed by those to whom it applies. For Fuller, law and morality are inseparable, and law is not merely a mechanism of social control but a system that serves the moral requirements of society.⁶⁶ Accordingly, a rule that is procedurally valid will not qualify as law if it fails to satisfy these essential moral principles.

This debate is further complicated in the Indian context, particularly given the tension between constitutional morality, focused on justice, equality, and dignity, and popular morality, often grounded in the norms of a tradition-bound society heavily influenced by culture or religion.

⁵⁹ H.L.A. Hart was a pre-eminent British legal philosopher and a leading figure in legal positivism. He served as Professor of Jurisprudence at the University of Oxford and is best known for *THE CONCEPT OF LAW* (1961), in which he refined legal positivism by introducing the distinction between primary and secondary rules and a "rule of recognition," arguing that the validity of a law depends on its sources rather than its moral merit.

⁶⁰ A legal positivist is a jurist or scholar who holds that the validity of law depends not on its moral content but on its source, typically enacted by a recognised legal authority following prescribed procedures. Legal positivism maintains a strict separation between law as it is and law as it ought to be. Thinkers such as Jeremy Bentham, John Austin, and H.L.A. Hart are central to this school, arguing that laws derive their authority from social facts and institutional rules rather than from ethical considerations.

⁶¹ H.L.A. HART, *THE CONCEPT OF LAW* 181-200 (Oxford Univ. Press 2d ed. 1994).

⁶² H.L.A. HART, *THE CONCEPT OF LAW* (Oxford Univ. Press 1961) is a foundational text in modern jurisprudence, offering a systematic account of legal positivism. It introduces the distinction between primary and secondary rules and argues that law derives its authority from social practice rather than moral content.

⁶³ Lon L. Fuller was a prominent American legal philosopher who challenged legal positivism by asserting that law must possess an "inner morality" to be valid. In *THE MORALITY OF LAW* he proposed that legal systems must adhere to principles such as generality, clarity, non-contradiction, and constancy over time, maintaining that the legitimacy of law stems not merely from procedure but from its moral content and capacity to promote justice.

⁶⁴ Inner morality, a concept developed by Lon L. Fuller, refers to the procedural values that render a legal system just and legitimate. According to Fuller, a system of rules qualifies as "law" only if it adheres to eight principles: generality, publicity, prospectivity, clarity, non-contradiction, possibility of compliance, constancy, and congruence between official action and declared rule.

⁶⁵ LON L. FULLER, *THE MORALITY OF LAW* (Yale Univ. Press rev. ed. 1969).

⁶⁶ LON L. FULLER, *THE MORALITY OF LAW* (Yale Univ. Press 1964; rev. ed. 1969). Fuller (1902-1978), a professor at Harvard Law School, argued that legal systems lacking internal coherence with moral principles cannot truly qualify as law.

While Hart's theory would suggest that law in India could be justified on the basis of procedural legitimacy alone, Fuller's view captures the Indian constitutional ideal, which is tethered to the moral principles embedded in the Constitution. On this view, those principles should inform judicial interpretation and the enforcement of justice, particularly in current debates over rights and social justice.

This distinction continues to shape jurisprudential controversy in India, especially in contested matters concerning the moral content of the law. In cases such as *Navtej Singh Johar v. Union of India*⁶⁷ (2018) and *Joseph Shine v. Union of India*⁶⁸ (2018), the Indian judiciary has often relied on constitutional morality to overcome discriminatory or regressive social practices, in a manner consonant with Fuller's view that law must be rooted in moral values.

C. Substantive versus procedural democracy

This raises a final theoretical question: should courts prefer substantive justice over procedural democracy? In procedural democracies,⁶⁹ legitimacy is found in elections, legislative enactments, and the will of the majority. Substantive democracy, by contrast, is concerned with outcomes, dignity, equality, and justice for all, regardless of what the majority wants.

Courts may feel compelled to intervene when Parliament either fails to enact just laws or actively reinforces regressive social norms. But how far is too far? Should courts fill legislative gaps, strike down cultural practices, or redefine morality? A door must remain open for the legislature and the public to participate in the law-making process, and courts must remain institutionally modest about their role and the moral consequences of their actions. Courts that become too involved may, in the name of democracy, suffocate democratic participation and invite a political backlash that weakens the very constitutional values they seek to uphold.

VI. RECONCILIATION AND MOVING FORWARD

A. The need for judicial self-restraint

While constitutional morality is essential to safeguarding fundamental rights and building a more just society, if left unchecked it can lead to judges functioning as a moral authority that imposes its views without meaningful interaction with other institutional actors and society. It is therefore necessary for courts to practise judicial self-restraint and to guard against

⁶⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

⁶⁸ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

⁶⁹ Procedural democracies are political systems in which the legitimacy of governance derives primarily from regular, free, and fair elections rather than from the substantive protection of rights or the promotion of social justice. They emphasise formal mechanisms such as electoral processes, separation of powers, and the rule of law, while potentially neglecting deeper egalitarian or participatory dimensions. Critics argue that procedural democracy may become hollow if democratic procedures are not accompanied by substantive values such as inclusivity, equality, and civil liberties. See FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* 89-113 (W.W. Norton 2003); PRATAP BHANU MEHTA, *THE BURDEN OF DEMOCRACY* 24-37 (Penguin India 2003); Niraja Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India*, in *THE OXFORD COMPANION TO POLITICS IN INDIA* 45-58 (Niraja Gopal Jayal & Pratap Bhanu Mehta eds., Oxford Univ. Press 2010).

constitutional morality slipping into judicial fiat. As guardians of the Constitution, judges are tasked not only with upholding and interpreting the text but also with respecting the social and democratic processes through which society develops its norms.

This is not to suggest that courts should refrain from protecting fundamental rights. Courts can and must move society forward, not by abruptly dismantling tradition, but by laying the foundation for change that unfolds in an orderly and legally grounded manner that is socially sensitive and democratically legitimate. Justice Chandrachud, for instance, has on several occasions described the pedagogical role of the judiciary: it must illuminate and offer perspective without arrogating to itself the position of moral arbiter.⁷⁰

B. The role of the legislature and civil society

The task of implementing constitutional morality cannot fall on the judiciary alone. A dialogic democracy⁷¹ requires that constitutional values be developed through sustained engagement and exchange among courts, legislatures, and civil society. Courts may interpret and activate constitutional values, but durable change ultimately depends on legislative action and acceptance within society.

Consider the *Navtej Singh Johar* judgment, which decriminalised consensual same-sex relations. Genuine equality for LGBTQ+ persons will come only when Parliament enacts legislation providing protection against discrimination, workplace safeguards, and family rights. Likewise, the *Sabarimala* backlash demonstrates the limits of relying on courts to resolve deeply emotive and religious questions. In both instances, civil society organisations were instrumental in mobilising support, countering stigma, and working alongside legislators to translate judicial pronouncements into lived reality.

Constitutional morality must therefore be situated within an entire system of institutions, with courts articulating the norm, legislatures upholding it, and civil society driving acceptance and participation.

⁷⁰ Justice D.Y. Chandrachud has highlighted the judiciary's pedagogical role, asserting that while courts may illuminate constitutional values and offer interpretive guidance, they must refrain from assuming the role of moral arbiters, thereby respecting the autonomy of democratic institutions and public reasoning. See D.Y. Chandrachud, *Unheard Voices: Marginalisation and the Law*, 10 NUJS L. REV. 1 (2017); D.Y. Chandrachud, *The Role of the Supreme Court in a Constitutional Democracy*, Justice H.R. Khanna Memorial Lecture (2020).

⁷¹ Dialogic democracy refers to a form of democratic engagement in which institutions, especially the judiciary, sustain a continuous and respectful dialogue with the legislature and the public rather than exercising unilateral authority. Rooted in deliberative democratic theory, it was popularised in legal scholarship by Peter Hogg and Allison Bushnell through their articulation of "dialogue theory" in Canada, envisioning courts not as final arbiters but as participants in an ongoing constitutional conversation. In the Indian context it has been explored by scholars such as Arun Thiruvengadam and Madhav Khosla, particularly in relation to constitutional interpretation and the separation of powers. See Peter W. Hogg & Allison A. Bushnell, *The Charter Dialogue Between Courts and Legislatures (Or Perhaps the Charter of Rights Isn't Such a Bad Thing After All)*, 35 OSGOODE HALL L.J. 75 (1997); ARUN K. THIRUVENGADAM, *THE CONSTITUTION OF INDIA: A CONTEXTUAL ANALYSIS* (Hart Publishing 2017); MADHAV KHOSLA, *THE INDIAN CONSTITUTION* (Oxford Univ. Press 2012).

C. A middle path

In charting a reconciliatory course, it is important to identify a middle path that enables the transformative mandate of the Constitution while respecting democratic legitimacy. Courts must be willing to act when core rights or values are curtailed, particularly where no political body is willing to address legislative inertia or where there is majoritarian oppression. However, where public opinion is divided or social practices are deeply entrenched, courts should exercise restraint and allow space for public deliberation, facilitating incremental or gradual change.

Constitutional morality should be viewed as a minimum floor rather than a maximum ceiling. It is a baseline below which constitutional norms must not fall, not a wish list of progressive aspirations to be pursued from the bench. On this revised conception, constitutional morality establishes the baseline of constitutional norms, while democratic institutions and public deliberation define the broader moral landscape.

By recognising their important but limited role, courts can add genuine value to constitutional democracy without being cast as moral overlords. This model of collaborative, incremental development is better suited to India's pluralistic and complex social fabric, where competing moralities frequently coexist in constant contestation.

VII. CONCLUSION

In a stratified society such as India, constitutional morality is not merely a judicial philosophy but a moral imperative. It enables the courts to rise above reactionary traditions, safeguard minority rights, and give effect to the aspirational principles of the Constitution. At the same time, the growing reliance on constitutional morality raises difficult questions about the legitimacy of judicial review, democratic engagement, and the limits of moral adjudication.

While courts are charged with correcting injustice, they must also take care not to alienate democracy by disregarding the will of the people or overriding it without sufficient consideration. Constitutional morality and popular morality need not be viewed as oppositional; they may operate as dialogical and negotiating spheres through which democracy develops.

This paper has argued for a balanced approach in which courts intervene where rights are threatened, but not as a substitute for the evolving morality of the polity. Constitutional supremacy must develop alongside democratic participation, so that the Constitution serves not only as a bulwark for the marginalised but also as a shared aspiration of the people. Only then can constitutional morality realise its transformative potential and its legitimacy.
