
JUDICIAL CONSTRUCTION OF SOCIAL MORALITY IN INDIA: A STUDY OF LANDMARK CONSTITUTIONAL JUDGMENTS

Ms. Nidhi Indorey, Assistant Professor, Chameli Devi Institute of Law, Indore (M.P.)

ABSTRACT

The paper takes a closer look at how the Supreme Court of India and the High Courts have played a crucial role in shaping social morality through their interpretation of the constitution. By examining landmark judgments from the past seven decades, it argues that Indian courts have gone far beyond traditional legal judgments to directly tackle issues related to culture, religion, gender, sexuality, and personal freedom. The paper traces this judicial journey from the early days after independence to the significant constitutional changes of the 2010s, analyzing key decisions like *Navtej Singh Johar v Union of India* (2018), *Shayara Bano v Union of India* (2017), *Indian Young Lawyers Association v State of Kerala* (2019), *Justice K.S. Puttaswamy v Union of India* (2017), and *National Legal Services Authority v Union of India* (2014). It examines the tension between the courts' assertion of constitutional morality and the democratic legitimacy of prevailing moral standards. The paper concludes that while the Court's involvement with social morality has generally been progressive, it is still inconsistent, and there is a genuine risk of replacing one form of moral paternalism with another, which warrants ongoing scholarly scrutiny.

I. Introduction

The constitution functions as more than a legal document. It functions as a declaration of values which defines the societal goals that a community seeks to attain. The Constitution of 1950 served as a bold aspiration for India to achieve its most ambitious goals. A society that had adopted the constitution faced challenges from its established caste system and its religious divisions and its patriarchal customs and its colonial legacy. The framers understood that legal frameworks would not achieve immediate societal transformation. The Constitution established rights that would eventually change the cultural traditions from which they were established.

The unexpected outcome is that courts have become the primary institution which interpreted those rights through their application in everyday life. The Supreme Court of India has evolved into a moral authority which establishes boundaries for religious expression and sexual freedom and evaluates conflicts between traditional values and personal dignity and decides how much state protection should extend into citizens' private affairs.

This Paper evaluates that entire process through critical analysis. It examines judgments which address social morality through their evaluation of both positive and negative effects. The study investigates how courts interpreted morality in its judgments while assessing the strength of their reasoning and its impact on equality in democratic systems.

II. The Concept of Constitutional Morality vis-à-vis Popular Morality

The first step of the process requires us to create a conceptual framework which enables us to assess specific judicial decisions. The term 'social morality' has two distinct meanings, which exist in Indian constitutional discussions. The first definition establishes popular morality as the ethical standards which dominate a specific society during its current time period. The second definition of constitutional morality defines it as the fundamental values which exist within the constitutional document and its organizational framework although these values may not match the prevailing beliefs of the public during any given time period.

The distinction between these two concepts carries critical importance. The fundamental rights system protects citizens from majority groups so courts must not follow popular morality standards. The judiciary faces two dangerous paths which the Supreme Court needs to avoid

when solving this problem.

The Court established its preferred solution during the past ten years which states that constitutional morality should take priority over popular morality. This position draws support from Ronald Dworkin's philosophy which states that rights function as 'trumps' because they protect individuals from being sacrificed to majority interests. The application of this principle has faced both inconsistent implementation and significant debate which the following cases will demonstrate.

III. Sexuality and Dignity: The Section 377 Journey

A. The Initial Challenge and the Delhi High Court

The legal battle about Section 377 from the Indian Penal Code 1860 shows how the Court addresses matters that challenge societal standards. The Delhi High Court in *Naz Foundation v Government of NCT of Delhi*¹ Section 377 did not apply to consensual sexual activities between adults who engaged in those activities at private locations. The High Court's reasoning rested on a triangle of rights which included equality through Article 14 and discrimination protection through Article 15 and the right to life and dignity through Article 21. The judgment established its main argument through its examination of identity because it recognized sexual orientation as an essential part of human identity which must not be made illegal by governmental authorities.

B. The Supreme Court's Reversal in Koushal

The Supreme Court delivered a decision in *Suresh Kumar Koushal v Naz Foundation* (2014) which overturned earlier rulings with an extreme sort of force, and it became the reason for widespread backlash. The two-judge bench said that Section 377 did not breach fundamental rights, and in the same breath it restored the full criminal framework back to its original state. The Court's explanation had multiple features which then created issues, and people started noticing how those points didn't really line up with what had been said before. The Court dismissed LGBTQ+ individuals as 'a minuscule fraction of the country's population' whose rights could not justify striking down a law upheld by Parliament. The Court established a pattern of showing excessive respect to legislative morality which treated Parliament's decision

¹ *Naz Foundation v Government of NCT of Delhi*, (2009) 160 DLT 277 (Delhi High Court).

not to revise the law as a demonstration of support for the existing law. The Court showed a level of respect that directly opposed the fundamental purpose behind judicial review.

C. Navtej Singh Johar: The Constitutional Correction

The five-judge constitutional bench in *Navtej Singh Johar v Union of India* (2018)² overruled *Koushal* and decriminalised consensual same-sex conduct between adults. The court decision established a foundational legal precedent which later defined all subsequent judicial decisions because it determined that popular societal values could not serve as legal justification for governmental enforcement actions.

Chief Justice Misra, writing for himself and Justices Khanwilkar and Bhushan, held that constitutional morality cannot be held hostage to popular morality. He stated that social standards should not function as mechanisms which strip people of their essential entitlements. Justice Chandrachud's concurring opinion went further. He contended that criminal laws against homosexuality created an attack on personal identity since laws which prohibit same-sex relationships discriminate against individuals based on their sexual orientation. He also confronted the colonial origin of Section 377 directly, noting that it was a Victorian-era import that had been discarded even in England long before it was being litigated in India.

The Court in *Navtej* established a fundamental right to privacy through its earlier decision in *Justice K.S. Puttaswamy v Union of India* (2017)³ which then enabled the Court to develop a comprehensive definition of intimate autonomy. The Court determined that sexual identity existed within the private realm which the state needed to respect unless it had strong reasons to enter. The analysis reached a major new level because it connected sexual minority rights protection to equality and established an independent right to personal identity which exists beyond any need for comparison with others.

IV. Gender, Religion and Personal Law: The Triple Talaq Case

People who support personal law have shown their strongest opposition to constitutional standards through their practice of religious morality. The roots of this tension go back to *Mohd Ahmed Khan v Shah Bano Begum* (1985)⁴, where the Supreme Court held that a divorced

² *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1.

³ *Justice K.S. Puttaswamy (Retd.) v Union of India*, (2017) 10 SCC 1.

⁴ *Shah Bano case: Mohd Ahmed Khan v Shah Bano Begum*, (1985) 2 SCC 556.

Muslim woman was entitled to maintenance under Section 125 of the Code of Criminal Procedure. The political aftermath of the Congress government overturning the judgment through legislative measures under pressure from conservative religious groups serves as a prominent example which demonstrates judicial limits when facing organized religious opposition.

The Court in *Sarla Mudgal v Union of India*, 1995⁵ expressed its dissatisfaction about the lack of Uniform Civil Code which Article 44 of the Constitution requires but it did not force lawmakers to create such legislation. The Court established a pattern through its cases which showed it would express constitutional discontent about personal law systems but it would not make any efforts to stop those systems.

The Supreme Court reached its final decision on the validity of triple talaq through instant divorce during *Shayara Bano v Union of India* (2017), which a five-judge panel reviewed. The bench reached a three-to-two decision on its findings, while the majority deemed the practice unconstitutional. Justice Nariman and Justice Lalit judged the practice to be inherently arbitrary, which led them to conclude that it violated Article 14. Justice Nariman established his reasoning through judicial precedent which assesses religious practices by evaluating their consistency with constitutional standards that prohibit arbitrary actions. This approach enabled the Court to bypass the religiously contentious issue regarding the status of the practice as an 'essential religious practice' which earlier cases established through the *Shirur Mutt* doctrine.

The *Shayara Bano* decision marks a critical moment in the Supreme Court's evolution of its approach to personal law matters. The court now shows it will assess religious customs through constitutional requirements which protect dignity while preventing arbitrary treatment when these customs mostly harm women's fundamental rights. The analytical superiority of Article 14 arbitrariness doctrine provides an advantage because it allows more straightforward analysis than essential religious practices which exist in disputed legal territory.

V. Privacy, Identity and the Transgender Recognition Case

The Supreme Court established transgender individuals as a third gender category which receives full fundamental rights protection according to its decision in *National Legal Services*

⁵ *Sarla Mudgal v Union of India*, (1995) 3 SCC 635.

Authority v Union of India (NALSA) (2014)⁶. The judgment required the government to deliver affirmative benefits to transgender individuals through educational and employment reservation programs. The Yogyakarta Principles on sexual orientation and gender identity together with international human rights principles and Articles 14, 15, 16, 19 and 21 of the Constitution served as the basis for this decision.

The NALSA judgment presents multiple important aspects which make it significant. The first requirement for this ruling prohibited discrimination yet it needed to establish affirmative identification as itself. The second requirement established a system where people could decide their gender identity without medical or legal regulations. The previous requirement demanded surgical procedures to obtain legal recognition for gender changes. The third requirement established rights for a community which faced severe social exclusion and criminalization under the Criminal Tribes Act and Section 377 who received protection from US constitutional rights.

The NALSA decision must be read together with the privacy judgment in Puttaswamy, where Justice Chandrachud explicitly stated that the right to privacy includes the right to identity and the right not to have one's identity suppressed or denied by the state. The two judgments create a constitutional framework which protects the self through its most private aspects of gender and sexuality.

VI. Religious Practice and the Limits of Judicial Intervention: The Sabarimala Controversy

The Sabarimala case shows how far the Court will use constitutional morality in order to reject religious customs according to the ruling of Indian Young Lawyers Association v State of Kerala⁷ from 2019. The Sabarimala temple practice which banned women from entry during their menstruation period between ages 10 and 50 years was declared unconstitutional by the five-judge bench which ruled 4 to 1 because it breached their rights protected under Articles 14 15 17 and 25 of the Constitution. Chief Justice Misra declared that public religious spaces should not exclude people based on their physical traits because such practices constitute a type of 'untouchability' which falls under Article 17.

⁶ National Legal Services Authority v Union of India, (2014) 5 SCC 438.

⁷ Indian Young Lawyers Association v State of Kerala, (2019) 11 SCC 1 (Sabarimala Temple Entry case).

Justice Indu Malhotra's lone dissent deserves careful attention. She argued that the court should be slow to interfere with religious practices on grounds of rationality or morality, particularly in the absence of a complaint from worshippers of the faith itself. She believed that judicial reform of religious practice would create constitutional imperialism which deprived believers of their right to govern their own traditions because she viewed women's rights as important. The argument presents a contention which connects to ongoing constitutional debates concerning the extent of judicial review power in democracies.

The period after the Sabarimala ruling brought about political instability. The judicial decision faced strong opposition from the people of Kerala who blocked access to the temple for women during the three months that followed the ruling. A nine-judge constitutional bench reviewed the case to decide multiple issues which included determining the extent of essential religious practices doctrine. The Court system faces internal conflict because it uses two different methods to display constitutional morality through judicial decisions which judges use to show their values.

VII. Adultery, Morality, and the Limits of Criminalisation

The Court's interpretation of sexual morality through legal processes reached another milestone when the Court decriminalised adultery in the case *Joseph Shine v Union of India* (2018)⁸. The Indian Penal Code Section 497 established adultery as a crime which only men could pursue when they filed complaints about their wives' infidelity. The Supreme Court struck down the provision unanimously.

Justice Chandrachud's concurring opinion is particularly incisive. He argued that Section 497 contained a law which viewed women as unable to make sexual decisions and needed to be safeguarded from their personal decisions which violated their constitutional rights to equality and dignity. He demonstrated that the law treated women as non criminals because it treated them as people who lacked criminalizable autonomy. She served as the crime's target who did not take part in any part of the criminal activity. The Court demonstrates its highest level of performance because it analyzes legal rules through their constitutional basis instead of simply using constitutional language.

⁸ *Joseph Shine v Union of India*, (2018) 2 SCC 189.

The Court in *Joseph Shine* stopped short of establishing a constitutional right to commit adultery. The judgment is about decriminalisation, not endorsement. The Court did not establish that adultery has moral value. The state must not use criminal law to enforce marital fidelity. The Court determined that personal morality, which includes non-harmful choices, exists outside a penal law system.

VIII. The Right to Privacy as a Constitutional Foundation

The right to privacy which the court recognized in *Justice K.S. Puttaswamy (Retd.) v Union of India* (2017) serves as the basic foundation for all the judgments which this document examines. The nine-judge bench established that privacy constitutes a fundamental right according to Article 21 which invalidated previous rulings from *Kharak Singh v State of U.P.* (AIR 1963 SC 1295) and *M.P. Sharma v Satish Chandra* (AIR 1954 SC 300) which denied privacy its status as a fundamental right. The plurality opinion which Justice Chandrachud put forward to *Puttaswamy* establishes an essential architectural structure which links privacy rights to both liberty rights and identity rights and dignity rights. He explained that privacy protects a person's capacity to make their own choices because it guarantees citizens their right to keep their private spaces safe from any intrusion. This particular formulation establishes constitutional protections which prevent state authorities from conducting surveillance on intimate personal matters which people want to keep private regardless of what the majority believes to be right.

IX. Critical Assessment: Progress, Inconsistency, and Democratic Concerns

A. The Progressive Arc

The judgments described in this Paper create a fundamental change in the way Indian constitutional law interacts with social moral values. The Court has transitioned its approach from observing public moral standards to evaluating the constitutional principles which protect dignity and equality and personal autonomy. The results of this transformation have produced progressive outcomes which extend rights to women and sexual minorities and transgender individuals and religious minority groups. The Court has developed an increasing tendency to examine international human rights standards together with comparative constitutional law. The Court employs the Yogyakarta Principles through its decision in *NALSA* and uses references to international homosexual decriminalisation laws in *Navtej* and investigates global

privacy rights standards in Puttaswamy to demonstrate its belief that it engages in worldwide discussions about fundamental constitutional principles. This practice fits the situation because constitutional framers developed their ideas from studying other countries' constitutions which should remain as an ongoing tradition for judicial courts.

B. The Inconsistencies

The Supreme Court demonstrates two different approaches to social moral matters which it handles. The Supreme Court decision created a four-year period during which LGBTQ+ individuals faced criminal charges because of their sexual orientation. The Court demonstrates two different approaches to Muslim personal law because it showed disapproval of triple talaq through its entire history until it finally abolished the practice.

The Sabarimala referral shows another instance of judicial inconsistency. The Court showed strong opinions about constitutional morality in 2019 but later postponed the issue to a larger bench after it became clear which political effects would follow. The situation does not indicate bad faith but it demonstrates that judicial power reaches its boundaries when judicial actions proceed before political and social situations have evolved. Upendra Baxi has pointed out that the Supreme Court creates legal principles which it enforces through limited institutional resources to enforce them.

C. The Democratic Deficit Argument

The fundamental critique demands attention because it requires examination. Social moral judicial activism critics use Jeremy Waldron and other scholars to argue that democratic societies should empower legislatures as their main body for establishing shared ethical values while prohibiting judicial institutions from performing this duty. Courts use constitutional morality to invalidate laws which results in judges imposing their personal values instead of electing representatives who should make democratic choices. The critique makes valid arguments because the majoritarian legislature failed to decriminalize homosexuality and to abolish triple talaq and to open Sabarimala, yet the courts succeeded in these matters.

People view the situation as positive or negative based on their assessment of how much trust they should place in Indian judicial and legislative systems. People who observe how majoritarian politics control legislative activities and how Parliament progresses with legal

reforms and how marginalized communities have been denied political access will consider judicial intervention to be both necessary and authorized. People who are concerned about judicial accountability problems and who believe judges should not dictate moral values to others will view the same interventions as problematic.

The most truthful response shows that both existing concerns need to be evaluated to determine their validness because social morality requires specific judicial and legislative partnerships that depend on each situation. The judicial system needs to intervene when the legislative body fails to safeguard minority rights against majoritarian threats because constitutional morality provides a strong justification for such action. The Sabarimala case shows that judicial systems should exercise caution when their decisions may lead to the suppression of authentic religious and cultural diversity.

X. Conclusion

The Supreme Court of India has developed a comprehensive set of social morality rules during its seven decades of existence which define the limits of state power to enforce laws and maintain public order while safeguarding essential rights. This legal system developed through its various stages to enhance individual dignity while restricting governmental authority to enforce common ethical standards on people who do not want them.

The recent legal framework requires judges to use constitutional principles instead of public opinion to determine legal cases which presents an accurate understanding of current jurisprudence. The purpose of rights is to shield people from the power of majority groups. A court that defers to popular moral norms whenever fundamental rights are at stake is a court that has abandoned its constitutional function. The Court demonstrated its willingness to perform its duties through decisive moments when it showed both intellectual strength and courage.

The democratic deficit argument brings forward several issues which need to be assessed because they constitute a valid concern. Indian courts operate as unelected institutions which select their judges from specific social classes while lacking public support that comes from political engagement. The power to establish social morality through constitutional authority must be viewed as a restricted and disputable force. The ideal Court requires active participation with constitutional texts while it maintains clear understanding of its value

judgments and shows respect for diverse moral values which exist throughout Indian society. The Indian judicial system has not established permanent social standards because its development continues through ongoing dialogue between the Constitution and the society it governs and between rights and culture and between individual dignity and collective identity. The future development of this dialogue during the upcoming decades will determine which democratic system India will select as its governing model.

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