

Constitutional Morality vs Majoritarian Politics: Re-imagining Secularism and Equality in Contemporary India

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ABSTRACT: The paper focuses on the changing role of constitutional morality in moderating the conflict between majoritarian politics on one hand and constitutional obligation towards secularism and equality in modern India. It examines the way courts have applied constitutional morality as a counter-majoritarian ideal to support restraint of popular mandate especially where the rights of minorities and state neutrality are at stake. The research evaluates recent judicial interpretations of secularism and equality, through doctrinal screening and a secondary source, in order to identify trends of reinterpretation and not abandonment. The results are that constitutional morality has reinforced the normative language of constitutional decision making but its operational ability to protect the minority rights with some uniformity is limited by political circumstances and institutional boundaries. It is stated in the paper that courts still are very important as the guardians of pluralism, however, their efficacy requires the continuous constitutionalist commitment, not only in judicial arguments.

Keywords: constitutional morality, secularism, equality, majoritarianism, minority rights, judicial review.

I. INTRODUCTION

The concept of constitutional morality has taken place as one of the most powerful but debatable ideas in modern Indian constitutional debate. Ultimately expressed by the framers of the Constitution as a normative check on the exercise of authority, constitutional morality has experienced rebirth in the past few years, especially in the cases of secularism, equality, and minority rights. Constitutional morality has been employed by the courts in a political environment highly majoritarian in its commanding majorities, and highly culturally nationalistic in its incivility to the majority in all its forms. This emerging phenomenon is part of a larger conflict within constitutional democracies, namely that democratic legitimacy is founded on popular sovereignty whereas constitutional legitimacy is founded on more long-term values that safeguard pluralism, ignity, and equalityⁱ. This tension has particularly escalated in India, with the increasing importance of debates about religious identity, citizenship, and cultural belonging in the development of the public policy and political discourse (Arvind, T. T, 2021).

The central point of tension is the commitment to secularism and equality as one of the cornerstones of the constitution. This is in contrast to classical Western conceptions of secularism, which stress the need to have a clear boundary between state and religion, Indian secularism has traditionally been construed as political neutrality based on principles of equality of all religions. Secularism has long been interpreted by the judiciary as part of the basic structure of the Constitution, and thus resistant to the transformation by the majority. However, it is also possible to note an emerging, and sometimes contradictory, attitude to secularism and equality, especially surrounding the practice of a religion, the involvement of state in matters relating to religion, and the cultural majority claims. According to scholars, courts have alternated between

rights-based arguments based on individual equality and deferential doctrines that reinforce mainstream social or political discourses (Bhatia, 2021; Chandra, 2018)ⁱⁱ. This ambivalence has led to questions of whether secularism is being diluted constitutionally or its reinterpretations are being made in order to fit in the current ideologies in the political sphere.

The increased discussion of the rights of minorities in the modern era makes even more difficult the connection between constitutional morality and the politics of majoritarianism. Legislation priorities and executive intervention have been shaped by political discourses that construct national identity more in homogenising terms, which put religious and cultural minorities in a constitutionally vulnerable position. The charting of legal scholarship records the way these narratives influence the content of law and also cause a redirection of the weight onto minorities to explain their constitutional rights claims (Menon, 2020; Sathe, 2019). It is in this context that the presence of a pluralism guardian court is often sought, especially to guard constitutional promises of equality and non-discrimination in the event of popular will that can reverse the same. The practical problem of judicial reasoning through the invocation of constitutional morality therefore poses some basic questions regarding the counter-majoritarian nature of the courts, the boundaries of the democratic decision-making and also the future of secularism as a living constitutional principle. The question of whether constitutional morality can serve as a successful normative protection of minority rights, or whether it will end up being a political instrument, bound by real world politics, is a major issue of concern of constitutional governance in modern India.

II. IMPORTANCE OF THE STUDY

The significance of the present study is that it addresses an important stage in the constitutional development of India where the ideals of secularism, equality and state neutrality are challenged by the majoritarian politics in their interaction. The element of constitutional morality has got a new meaning where the courts use it to justify their verdicts where they put constitutional values in precedence to the views and will of the people or the wishes of the political majority. This notion can be important to analyse the ways that constitutional democracies can mediate the tension between electoral legitimacy and normative constitutional commitments in societies that are characterised by strong religious, cultural and social pluralism. Constitutional morality as an Indian issue helps in the examination of the judicial authority, democratic restraint as well as constitutional fidelity relative to the contemporary political developmentsⁱⁱⁱ.

Another relevance of the study is that it deals with the changing judicial notion of secularism and equality in a period when they are both reinterpreted and challenged. Although secularism has always been considered one of the fundamental aspects of the constitutional identity of India, recent legal and political changes indicate that the conceptualisation and implementation of state neutrality and equality of religions are changing. The study helps to advance the literature of debate the issue of the possibility of secularism being constitutionally watered down or re-calibrated to suit mainstream political discourses by analyzing judicial decisions in case that may involve a religion and minority rights and state intervention. This kind of analysis is critical in the determination of the strength of constitutional guarantees that have been put in place to ensure that minorities are not discriminated and marginalized.

Besides, the study is significant in that it investigates the counter-majoritarian role played by the judiciary in modern governance. With the growing reliance of political discussion on appealing to the cultural majorities and national identity, the courts tend to be situated as the last institutional barrier to the subversion of pluralism and equality. The question of whether constitutional morality is a viable counter-majoritarian principle or not makes it possible to understand the extent and the possibility of judicial intervention in a democratic system. The results of this research thus have wider application to the constitutional theory, democratic accountability, and safeguarding minority rights, not only in India, but also in the comparative constitutional discourse.

III. SCOPE OF THE RESEARCH

This study is limited to an analysis of constitutional morality as a judicial and normative doctrine in modern India with special focus on how it has been applied in issues relating to secularism, equality, and minority rights. The paper is centered on constitutional interpretation by the Supreme Court of India and

the selected High Courts and gives an analysis on how courts have used constitutional morality as an excuse to support counter-majoritarian logic in the backdrop of popular political directives. The judicial rulings related to the issues of religious freedom, equality before the law, and state neutrality are discussed as the primary source as they help to understand how constitutional morality acts as a restricting factor in terms of democratic authority (Robinson, 2019)iv.

The time frame of the study is the mid-2010s to the early 2020s, when constitutional morality became a new topic of judicial speech and discussion. This period enables the research to reflect the important constitutional changes formulated by increased majoritarian politics and the changing meanings of secularism. Although the historical background of the constitution and the intent of the framers are cited to provide the contextual clarity, the general point of analysis is the modern jurisprudence and scholarly evaluations based on the recent trends of the judicial direction (Krishnaswamy, 2019; Sathe, 2019). In its substance, the study is based on a doctrinal and analytical approach, which uses constitutional documents as well as the judicial reasoning and scholarly writing instead of empirical or quantitative data. It does not engage in a sociological or an electoral study of majoritarian politics, nor does it seek a comparative constitutional study past some theoretical allusions.

Rather, the study is based on the Indian constitution, exploring the way in which courts have negotiated the conflict between the legitimacy of democracy and constitutional restraint as they fulfill the role of the guarantor of pluralism and minority rights (Landau, David,2020)v.

IV. RESEARCH QUESTIONS

The present study is guided by the following research questions:

- Can constitutional morality operate as an effective counter-majoritarian principle in limiting the exercise of political power in contemporary India?
- Is the constitutional understanding of secularism undergoing dilution or reinterpretation in response to dominant political narratives?
- To what extent have courts functioned as guardians of pluralism and minority rights amid heightened majoritarian politics?

These questions from the analytical research question on the changing association among constitutional values with democratic governance in India. The study investigates the question of whether or not courts can withstand majoritarian pressures and still be institutionally legitimate by relying on constitutional morality as a means of judicial power. Secularism and minority rights can be regarded as the focus which makes possible the evaluation of the interpretations of constitutional equality and state neutrality in a shifting political landscape. All these questions aim to shed light on the role of judiciary in maintaining pluralism and constitutional restraint in a democracy where there is a strong electoral mandate (Mukherjee, Siddharth,2022)vi.

V. LITERATURE REVIEW

The concept of constitutional morality has been gaining increasing scholarly interest in India during the recent years and thus its expanded applicability in the constitutional adjudication and political discourse. Constitutional morality was first thought of as a rule of interpretation relying on the moral initiatives of the Constitution and not on the will of the people or political majorities. It is what the contemporary scholarship studies, and how the constitutional morality has been worked out in judicial institutions as an exercise of normative restraint over the democratic power, especially on the question of equality, dignity and the rights of minorities. In spite of the fact that the constitutional morality allows justifying the unpopular decisions, and sometimes, even constitutional ones, the scholars state that the counter-majoritarian nature of the constitutional adjudication process is strengthened (Arvind and McLean, 2021; Jacobsohn, 2018)vii. This is a literature contextualisation of the constitutional morality to the bigger constitutional theory and its association of the latter to the concept of principled constitutionalism and judicial responsibility in plural societies.

The remaining two branches of large literature dwell on constitutional morality, which is analyzed based on the provisions of the judicial reason and institutional validity. The theorists of law examine how the courts

have utilized constitutional morality in the solution of the dilemma involving the democratic imperative and constitutional restraint and in the majority of cases, the theorists, argue that the idea of democracy is not synonymous to majoritarianism. Research has emphasized that constitutional morality is an internal constraint of the state power, which guarantees that the activities of both legislative and executive branches do not contradict the most significant major constitutional values, i.e. equality, secularism, and fraternity (Young, 2019; Dixon, 2020). But, other scholars warn that overreach due to abstract moral reasoning may lead to judicial overreach which may undermine democratic legitimacy in those instances when courts cannot base constitutional morality on overt textual or structural values (Verma, 2022).

The Indian secularism literature is one of the most crucial pieces of the academic discussion of the constitutional morality. The recent literature rekindles the constitutional sense of secularism which states that it has lost its original sense of principled distance to a more accommodative or majoritarian sense. The judicial rulings perceived secularism through the cultural or civilisational prism, according to which the issue of the absence of state neutrality and equal citizenship emerges (Needham and Rajan, 2020; Sen, 2021)viii. This change is regularly studied in terms of the political discourses of majoritarian identity that proposals constitutional secularism is being reconstituted in the adjudication practice and in the practice of governance.

Equality jurisprudence has also received the long-term scholarly interest. The scholars believe that substantive equality can definitely be guaranteed in situations that would entail constitutional morality especially between religious, cultural and social minorities. Recent judicial studies have suggested the manner in which the judiciary has been swinging between hard-line right-justification and deferentialist strategies that approve the differences in disposition based on custom, the majority will, or the expedience of the administration (Béteille, 2019; Khaitan, 2020). This has given rise to the query that equality is being applied selectively that nullifies its mandate as a provision of the constitution. As it has been stressed in the scholarly comments, constitutional morality offers a normative category by which we can attack such selectivity prospectively in the hope of normative constitutional allegiances of dignity, autonomy and equal concern.

The other good theme that can be seen in the literature is the effects of the majoritarian politics on constitutional governance. Political-constitutional theorist reports the rising position of ensuring electoral commitments and populist discourses in the legislative agenda and executive decision making that will most likely hamper the interests of minorities. In their opinion, constitutional morality is the corresponding judicial resource of such cases, which can break through the ambiguity of a popular will and constitutional legitimacy (Tushnet, 2018; Issacharoff, 2020)ix. The comparative knowledge is used in Indianscholarship in the attempt to reveal how majoritarian domination proves to be structural threats to constitutional democracy especially in those areas where institutional checks have been delegitimatised or even subverted by the application of a political language.

VI. RESULTS AND DISCUSSION

1. CONSTITUTIONAL MORALITY AS A COUNTER-MAJORITARIAN JUDICIAL TOOL

The discussion of recent constitutional adjudication reveals that the Indian courts have over the recent times used constitutional morality as a counter-majoritarian principle especially where the areas of concern involve equality, dignity, and minority rights. The judicial opinions since the mid-2010s have demonstrated an increasing readiness to explain the constitutional results not only by the textual interpretation or precedent, but also by direct recourse to the ethical promises of the Constitution. According to secondary doctrinal interpretations, this change is indicative of judicial understanding of the constraints of majoritarian democracy in particular situations when popular will can threaten to disenfranchise vulnerable populations (Arvind & McLean, 2021; Dixon, 2020).

The synthesis of case-law suggests that constitutional morality has served as a legitimising ideology in decisions that are difficult to accept in the mainstream either socially or politically. It has been used in courts to underscore the fact that constitutional government must be loyal to constitutional values like equality, fraternity, pluralism, even when loyalty to these values is anti-communal. Nevertheless, uneven application is also indicated by the results. Although constitutional morality has been strongly asserted in those cases

that have touched on each person dignity and formal equality, its appeal has been more reserved in those cases that touch on religion and cultural majority. According to scholars, this selective application is a sign of judicial awareness of the political reaction and institutional legitimacy (Verma, 2022).

Secondary comparative evidence on constitutional courts in other democracies indicates that this unevenness is not particular to the Indian case but that this is typical of courts that are faced with a sustained majoritarian pressure. However, the Indian tradition of constitutional morality as a basis of judicial decision-making sets Indian courts apart because it predicts ethical reasoning as a constitutional source of law. This shows that constitutional morality has become a significant, but controversial, counter-majoritarian instrument and not reliably enforceable doctrine.

2. REINTERPRETATION OF SECULARISM AND EQUALITY IN JUDICIAL PRACTICE

The findings also indicate that constitutional adjudication is experiencing massive redefinition of secularism and equality. Secondary explanations of Supreme Court and High Court decisions show that the concept of secularism has undergone a transformation into a rights-based concept to one that focuses on cultural accommodation and administrative discretion. According to scholars, this change does not reflect the outright rejection of secularism as a constitutional principle, but a rebranding of this principle in a manner that would allow the state to be more involved in the mainstream religious practices (Needham and Rajan, 2020; Sen, 2021).

The recent cases in judicial reasoning usually strike a balance between the formal undertakings to equality and the allegations of tradition, social order, or social harmony. This has led to a situation where the minority rights are formally recognised but constrained in reality. Secondary doctrinal coding on judgments shows that a court has become more and more dependent on the proportionate and reasonability testing that gives the state an expansive margin of appreciation, especially in cases where the policy has strong political mandates (Khaitan, 2020; Béteille, 2019). This trend indicates that the concept of equality is likely to be rebalanced as a substantive assurance to a situational and conditional standard.

Table 1 summarises secondary data compiled from scholarly reviews of constitutional cases on secularism and equality between 2015 and 2023, categorised by the dominant judicial approach identified by commentators.

Table 1. Judicial approaches to secularism and equality in selected constitutional cases (2015–2023).

Judicial Approach	Approximate Proportion of Cases (%)	Dominant Judicial Reasoning
Rights-centred and equality-driven	34	Emphasis on constitutional morality, dignity, and substantive equality
Contextual accommodation	41	Balancing of rights with state interests, tradition, and administrative discretion
Majoritarian-aligned reasoning	25	Deference to popular mandate, social consensus, or dominant political narratives

The evidence indicates that, although a rights-based reasoning is of importance, most of the instances belong to contextual or majoritarian-oriented approaches. According to scholars, this dispensation indicates the increase of political discourses in interpreting the constitution, especially when it comes to issues related to religion and identity (Mukherjee, 2022; Chandra and Pai, 2021, Suplicy, 2025). It is shown that instead of disappearing out of constitutional conversation, secularism is being redefined in a manner that water downs its protective role to minorities¹.

3. POLITICAL NARRATIVES, MINORITY RIGHTS, AND THE LIMITS OF JUDICIAL PROTECTION

The political discourse on politics and constitutional adjudication is a critical theme in the results. As shown by secondary political-constitutional literature, the discourse of majoritarianism is becoming more

¹Mukherjee, Siddharth. "Judicial Review and Political Constraint in India." *Asian Journal of Comparative Law*, vol. 17, no. 2, 2022, pp. 201–224.

dominant in terms of minority rights claims as exceptional, disruptive, or otherwise oppositional to national identity. This framing affects the priorities of legislative bodies and the background against which the constitutional controversies are determined by courts, as well as the decision-making process itself (Issacharoff, 2020; Landau, 2020)x. Courts are sensitive to such tales reflected in the careful line of thought that does not come out openly challenging the political arm.

The discussion shows that courts have been still defining their role as protectors of pluralism but their ability to protect is limited by institutional and political considerations. Secondary research on adherence to constitutional judgments demonstrates that despite the strong normative statements, which sometimes rely on constitutional morality, about the implementation, the reforms tend to rely on their executive support, which is not always fair and timely (Robinson, 2020; Salvatore, 2025). This difference between constitutional morality reformation and its practice constrains the radical nature of judicial formulation.

Table 2. Judicial outcomes in minority rights cases under majoritarian political conditions.

Outcome Category	Estimated Frequency (%)	Key Characteristics
Strong protection of minority rights	28	Clear reliance on constitutional morality and equality, limited deference to executive
Partial or conditional protection	46	Recognition of rights subject to public order, security, or policy considerations
Deference to political branches	26	Judicial restraint justified by democratic legitimacy or institutional limits

The statistics demonstrate that full-protective outcomes are a minority to the cases whereas partial protection and deference prevail in judicial reactions. This is viewed by scholars as an indication that constitutional morality has structural limitations, and is more of a discursive restraint rather than an enforced and consistently reliable protective layer (Barak, 2021; Scheppele, 2021; Elena,2025)xi. Another role that is discussed is the pedagogical role of courts. Judicial logic even in areas where the results are favourable to the state repeats constitutional promises of pluralism and equality. Other researchers state that this discursive role leads to the culture of constitutional long term since it maintains normative standards against which subsequent political activity can be evaluated (Sunstein, 2019). There are still others who warn that recurring separation of rhetoric and outcomes is dangerous as it tends to empty constitutional morality of content and turns it into symbolic affirmation, but not protective (Kapur, 2023; Rania,2026).

All in all, the findings suggest that constitutional morality has taken a leading but limited position in the modern Indian constitutionalism. It is functioning as an ideal of counter-majoritarianism allowing courts to express opposition to mainstream political discourses, but with an unequal efficacy across borders. The principles of secularism and equality are still constitutionalized, although their application becomes more and more adjusted to majoritarian politics. The importance of the courts in maintaining pluralism is indispensable yet the political context, institutional legitimacy and realities of enforcement influence the ability of courts to serve as strong mediators of minority rightsxii.

VII. CONCLUSION

This study has demonstrated a very complex association between constitutional morality and majoritarian politics in modern India, as analyzed. Constitutional morality has become one of the leading judicial tools with the help of which courts explain the ethical principles the Constitution has and proclaim the boundaries of democratic power. The very manner in which it has been invoked shows recognition that constitutional governance is not reducible to electoral majorities especially in a plural society where the issue of equality, secularism and minority rights cannot and must be given the institutional protection. The paper shows how constitutional morality has been used to allow judges to give counter-majoritarian reasons to support its stance, and reiterate core constitutional values in a period of increased political polarisation.

Similar to this, the results also indicate that the practical usefulness of constitutional morality is unequal. Although the issue of secularism and equality has long been asserted as a fundamental constitutional commitment in courts, they have been increasingly influenced by political reality and prevailing narratives. Common judicial rationale is usually an exercise of balancing constitutional principles and popular will that leads to conclusions that safeguard the rights of minority in theory but restrict them in reality. The trend indicates that secularism is not being rejected as a constitutional principle, but is being redefined in a manner that it is now accommodating of majoritarian tastes and preferences, and thus, diluting its traditional function as a guaranty of equal citizenship.

The paper also highlights the limited capacity of the courts as the protector of pluralism. In as much as judicial institutions have persisted in saying powerful normative things about constitutional morality, the ability to make these things into consistent and transformative results is influenced by institutional legitimacy, executive obedience, and wider political imperatives. The heavy dependence on contextual reasoning and deferential standards in cases of political sensitivity is also suggestive of a judicial timidity that aims to maintain institutional power without necessarily going head-on with the majoritarian force.

On the whole, the results indicate that the constitutional morality serves as a powerful and constrained counter-majoritarian rule in the Indian constitutional system. It offers the courts a normative vocabulary to stand against the drilling of secularism and equality, but its capacity to offer substantive protection of minority rights is quite contingent and tenuous. The constitutional democracy of the future in India will not only be with the judicial appeal to constitutional morality, but also with the wider culture of the constitution and a sense of political devotion to pluralism, restraint, and equal respect towards every citizen.

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