



---

## Constitutional Morality and Gender Justice in India: A Feminist Legal Analysis

Ashish Chauhan

Research Scholar, Department of Law, University of Lucknow, U.P., India

---

DOI : <https://doi.org/10.5281/zenodo.20622472>

---

### ARTICLE DETAILS

**Research Paper**

**Accepted:** 20-05-2026

**Published:** 10-06-2026

### Keywords:

*Constitutional Morality,  
Gender Justice, Feminist  
Jurisprudence,  
Transformative  
Constitutionalism, Equality.*

---

### ABSTRACT

In Indian constitutional jurisprudence, particularly in the context of evolving gender justice and individual rights, the doctrine of constitutional morality is a new and emerging concept. With roots in the ideals of liberty, equality, dignity, and fraternity, constitutional morality demands that the values enshrined in the constitution triumph over social, religious, and patriarchal discriminatory values. This study critically analyzes the nexus between constitutional morality and gender justice in India using feminist legal theory. It analyzes the Indian judiciary's employment of constitutional morality as a constitutional tool to dismantle oppressive practices, discriminatory personal laws, and gender stereotypes. The article examines key Supreme Court cases, such as *Shayara Bano v. Union of India*, *Joseph Shine v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)*. Each illustrates the court's dedication to the principles of transformative constitutionalism and substantive equality. The analysis contends that the judiciary's embrace of constitutional morality provides the courts the ability to view women and gender minorities as self-governing constitutional subjects deserving of dignity, privacy, equality, and freedom. Using feminist jurisprudence, the paper demonstrates how laws and legal systems reproduce patriarchal power structures, even when they formally guarantee equality. It stresses the need for an intersectional approach to gender discrimination, especially concerning caste, religion, or ethnic

---



and economic status. Although an extended interpretation of constitutional morality has moved the gender justice agenda forward, the article also notes the debates on the judicial overreach, gaps in implementation, and social resistance toward progressive change. The article argues that for real and comprehensive gender justice in India to be achieved, the understanding of constitutional morality is required to go beyond the purview of the judiciary and integrate itself into governance, institutions, and society, creating a culture of constitutional morality.

---

## 1.Introduction

The Constitution of India is a “revolutionary document which seeks to enshrine justice, equality, and liberty. With regard to governance, the Constitution seeks to eliminate inequities which have been historically entrenched in Indian Society. Gender discrimination continues to be the most multitude of social injustices. This is in spite of provisions of the constitution and legislative measures designed to eliminate it. Structural injustices related to personal laws, employment, religion and religious practices, bodily autonomy, inheritance, and the right to participate in public life remain unaddressed for women and gender minorities. The need for gender justice and the protection of fundamental rights, in this regard, has made the doctrine of constitutional morality an essential constitutional principle

B. R. Ambedkar highlighted the importance of constitutional morality in the Constituent Assembly Debates. He said constitutional governance would endure only if the people and the institutions placed their allegiance to the Constitution and not to the majority or to social morality. Constitutional morality demands loyalty to the Constitution's fundamental values. These values include equality, liberty, dignity, and fraternity, as well as secularism and justice. It acts as a shield against arbitrary actions of the State and oppressive social customs that infringe upon individual rights. In recent times, the Supreme Court of India has increasingly used constitutional morality to invalidate laws that are discriminatory, as well as social customs that are patriarchal and undermine the autonomy and dignity of women.

From a feminist legal standpoint, constitutional morality is an advanced tool in dismantling the patriarchal systems in place in many laws and in society. Feminist jurisprudence subjects the legal system to critique, stating that the legal system is male-centric and creates a framework to maintain and legitimize the substantive inequalities that women and other marginalized genders experience. Justice and



equality are not only the absence of discrimination” or inequality in a legal context, but also the presence of equitable social, economic, and cultural realities. Thus, constitutional morality allows courts to give new meanings to rights enshrined in the Constitution to recognize one’s agency, right to (substantive) equality, and privacy, and the integrity of one’s body. The *Shayara Bano v. Union of India*, *Joseph Shine v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Indian Young Lawyers Association v The State of Kerala* are all examples of the courts’ positive approach to informative Constitutionalism and gender Justice.

Progressive judicial reforms have not eliminated gender inequality due to social backlash, institutional hurdles, and ingrained patriarchal attitudes. Hence, studying constitutional morality is important for interpreting the application of constitutional values for deeper, fuller gender justice in India. This article provides a critical analysis of the transformative potential and limitations of constitutional morality to advance feminist constitutionalism within the context of Indian society.

## **2. Meaning and Evolution of Constitutional Morality**

The idea of constitutional morality has emerged as one of the most significant doctrines in the contemporary Indian constitutional jurisprudence. Instead of mindless submission to social customs, religious practices, or the so-called popular morality, it is obedience to the basic values, principles, and ideals embodied in the Constitution. Constitutional morality requires all institutions of the state, all public authorities, and all citizens to act in accordance with the values of justice, liberty, equality, dignity, secularism, and fraternity. It is a guiding principle to protect the rights of the oppressed and the minority against the tyranny of the majority, and to sustain constitutional democracy.

British historian George Grote first used the phrase “constitutional morality” when discussing Athenian democracy. In relation to India, it was of greater importance to B. R. Ambedkar during the Constituent Assembly Debates. During the debates, Dr. Ambedkar argued that constitutional morality was a value to be developed and was especially a concern for the functioning of democracy in the social and institutional order to which it was meant to be governed. The existence of written constitutional documents, in his view, was not the determining factor for the continued existence of constitutional “democracy, but rather regard for constitutional doctrine and the ethics of principles worth upholding.

In India, the Preamble and the First and Third Parts of the Constitution provide the basis for constitutional morality. The values of equality in Article 14, non-discrimination in Article 15, liberty in Article 19, and dignity in Article 21 constitute the essence of constitutional morality. Such provisions,



therefore, demand the supremacy of constitutional values over irrational traditions and prejudicial social practices.

“Justice +Liberty+Equality+Fraternity = Constitutional Morality”

At first, Indian courts did not often use the doctrine. However, with transformative constitutionalism, Indian constitutional courts began to use the doctrine of constitutional morality as a central interpretative principle in constitutional adjudication. The Supreme Court began to use the doctrine of constitutional morality more and more to settle clashes between individual rights and social or religious morality. The development of constitutional morality can be seen in many important landmark judgments.

In *Naz Foundation v. Government of NCT of Delhi*, the Delhi High Court decided that in relation to the rights of sexual minorities, protecting their rights calls for the greater need for constitutional morality rather than public morality. Even though this ruling was later overturned, the principle was later on approved by the Supreme Court in *Navtej Singh Johar v. Union of India*, where the decriminalization of same sex relations was conducted. The Court noted that even in the case in which the attitudes of a majority of society are still extremely conservative, the dignity and freedom of a person must be protected.

In the case of *Indian Young Lawyers Association v. the State of Kerala (the Sabarimala case)*, for instance, the Supreme Court invoked the notion of constitutional morality to eliminate the practice of religious discrimination against women in relation to access to places of worship. In *Joseph Shine v. Union of India*, the Supreme Court, in effect, held that the law on adultery was an infringement on the dignity and autonomy of women, and hence unjust. These cases exemplify the commitment of the courts to the application of constitutional morality in the promotion of substantive equality and social” justice.

As a concept, constitutional “morality has received some criticism despite its progressive contributions. Critics claim that in cases where the courts excessively depend on constitutional morality, they risk overreaching and interpreting the Constitution in a subjective manner. Others argue that even in a pluralistic society such as India, where social morality may be shaped by patriarchy, caste, and religious conservatism, the doctrine continues to have a place.

Thus, the transformation of constitutional morality indicates the shift of Indian constitutionalism from a formal legal system to a progressive tool of social justice. It continues to influence constitutional interpretation by ensuring that democratic governance is anchored in human dignity, equality, and freedom.



### 3. Feminist Jurisprudence and Constitutionalism

Feminist jurisprudence examines law and gender inequality, and thereby critiques legal theory. It argues against the traditional view that law is neutral, objective, and universally applicable. Legal systems, according to feminist scholars, developed in patriarchal societies and thus include mainly male values, experiences, and interests. As a result, women, as well as other marginalized and oppressed genders, are often denied equal participation in social, political, and legal systems. Feminist jurisprudence identifies these structural inequalities and aims to reconstruct legal systems to achieve structural equality, dignity, and social justice.

The Indian Constitution establishes a robust base for feminist constitutionalism within the framework of its commitment to equality and social transformation. The Preamble pledges justice, liberty, equality, and dignity to all citizens. The Fundamental Rights bar discrimination on the grounds of sex and provide equal protection of the law. Articles 14, 15, and 21 have gained particular prominence in the struggle for women's rights and gender justice in India. According to feminist constitutionalism, these constitutional guarantees should not be interpreted as rights in the formal sense but as means to eradicate structural and institutional forms of discrimination.

Feminist jurisprudence makes a distinction between formal and substantive equality. While formal equality is concerned with the law treating men and women the same, substantive equality recognizes historical disadvantages and therefore, the law must provide "greater equality through measures such as affirmative action and "differential treatment. Substantive equality is embedded in the Indian Constitution in Article 15(3) by allowing the State to create affirmative action laws for women and children. This also shows the Indian Constitution's recognition that the same treatment for all does not always lead to just and equitable outcomes.

Judicial interpretation has advanced feminist constitutionalism in India. Increasingly, Indian courts have adopted a gender sensitive approach in cases dealing with personal freedoms, workplace issues, reproductive rights, sexual harassment and customs of discrimination. The Supreme Court in *Vishaka v. State of Rajasthan*, recognized that sexual harassment in the workplace violates Articles 14, 15, and 21 and provided the first guidelines in this area to ensure the protection of women's dignity and equality. In the Same way, the Court in *Suchita Srivastava v. Chandigarh Administration*, recognized reproductive rights as an integral part of personal dignity and liberty as stated in Article 21.



*Shayara Bano v. Union of India* is a prime example of a case where feminist constitutionalism played a vital role in breaking down of patriarchal customs and laws. In this case, the Supreme Court of India deemed the practice of instant triple talaq as unconstitutional as it goes against the principles of equality and dignity. In a similar case, *Joseph Shine v. Union of India*, the Court ruled against the adultery law on the grounds that the law viewed a wife as a property of the husband and thereby restricted the sexual independence of the woman. Both of these cases show the positive relationship and growing collaboration between feminist movements and the use of feminist theory to interpret constitutional rights by the judiciary.

Critics from feminist perspectives acknowledge that although India does have some progressive provisions in its Constitution, the Indian legal system still embodies patriarchal beliefs. The Judiciary, legislature, and law enforcement bodies continue to be male dominated. There is still a considerable amount of legal reasoning and implementation influenced by gender bias. Furthermore, issues of caste, religion, sexuality, and class also combine with gender to multiply women's experiences of injustice. Because of this, feminist perspectives in the context of the Constitution focus on the need for intersectional approaches" to inequality.

Together, feminist jurisprudence, and feminist constitutionalism work to change the law from a tool of oppression to one of empowerment and inclusion. Feminist constitutionalism helps achieve substantive gender justice in India by focusing on the experiences of people and integrating the existing social structures with the lived experiences alongside the values enshrined in the Constitution.

#### **4. Constitutional Morality as a Tool for Gender Justice**

The doctrine of Constitutional Morality has become a vital means of advancing gender justice in India. It posits that the values of the Constitution - equality, liberty, dignity, and dignity - ought to give way to social morality, customs, and traditions of a discriminatory and patriarchal nature. It plays a significant role in offering protection to women and gender minorities who are especially marginalized, against abuses that are culturally or religiously justified and are covert expressions of oppression. Thanks to a purposive (progressive) approach to judicial interpretation, the framework of Constitutional Morality has allowed the Indian judiciary to break patriarchal barriers and enhance the protection of substantive equality of the Constitution.

Gender Justice, as envisioned in the Constitution, goes beyond substantive equality and aims to include dignity, autonomy, and egalitarian engagement across all genders. As a transformative instrument,



constitutional morality interprets Fundamental Rights not in line with prevailing conservative views of society, but in line with constitutional values. In recent years, the Supreme Court of India has increasingly used this doctrine in cases pertaining to women's rights, sexual autonomy, rights of the LGBTQ+ community, and rights against discriminatory practices of religion.

“Constitutional Morality > Social Morality”

One case that highlights this is *Shayara Bano v. Union of India*. In this case, the Supreme Court banned the use of instant triple talaq (talaq-e-biddat). The Court determined that such divorce practices violate the rights of Muslim women to equality and dignity under Articles 14 and 21 of the Constitution. The Court prioritized constitutional morality over the Court's discretion on keeping religious patriarchy in balance. The Court also emphasized that personal laws cannot be exempt from constitutional scrutiny if they infringe upon fundamental rights.

In a similar case, the Supreme “Court of India in *Joseph Shine v. Union of India* struck down Section 497 of the Indian Penal Code, which made adultery a criminal offense. This IPC provision regarded women as property of their husbands and as such, denied their agency and sexual autonomy. The Court stated that such patriarchal provisions would be in violation of the Constitution and the principle of equality of all genders. The Court recognized women as self-governing persons and as citizens with dignity and social equality.

The doctrine of constitutional morality was also instrumental in the landmark case of *Navtej Singh Johar v. Union of India*, in which the Supreme Court, in a historic judgment, decriminalized consensual same sex relationships by partially striking down Section 377 of the Indian Penal Code. The Court noted that constitutional morality, regardless of societal judgment, safeguards individual identity, dignity, privacy, and sexual autonomy. The judgment also expanded the horizon of gender justice by acknowledging the constitutional rights of LGBTQ+ persons.

Another important case is the *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)*. In this case, the Supreme Court struck down the ban on women of menstruating age from entering the Sabarimala temple. The Court held that religious practices that discriminate against women and rely on the concepts of pureness and impureness harm the equality and dignity of people, which the Constitution seeks to protect. While the Court recognized the importance of Constitutional protections, it was not going to allow the Court's protection of religious practices to allow competing Constitutional protections to discriminate against women.



In spite of the positive changes, there is still difficulty in the practical achievement of gender justice. Social opposition, institutional patriarchy, and uneven application remain the hurdles in negating the potential of constitutional morality. Some critics also believe that a heavy-handed use of constitutional morality by the courts runs the risk of judicial activism and the courts usurping the democratic parliament. However, in a society where social morality is largely influenced by a patriarchal and conservative structure, the doctrine is still of vital importance.

Thus, constitutional morality is an essential tool of transformative constitutionalism in India. By putting an end to oppressive traditions, and upholding the principles of the Constitution, it focused on the rights of women, bodily autonomy, and equality of the right to an” inclusive, substantive democracy, and the Constitution.

### **5. Transformative Constitutionalism and Gender Justice**

Transformative constitutionalism observes that a “constitution, in addition to being a system of governance, is also a tool for social transformation and for the attainment of substantive justice. It attempts to eradicate past social injustices and transform the social order to the extent that the ideals of constitutional democracy, including equality, human dignity, liberty, social justice, and the like, are realized. In the Indian situation, transformative constitutionalism tries to eradicate the most deeply entrenched social injustices of discrimination based on caste, gender, religion, sexuality, and class. It is the representation of the spirit of the Constitution, which is dynamic and flexible enough to adapt to the changing social order. The Indian Constitution, through the Preamble, Fundamental Rights, and Directive Principles of State Policy, encapsulates the spirit of transformation. The essence of Articles 14, 15, 19, and 21 is the realization of social justice and meaningful gender justice. The judiciary has progressively increasingly interpreted these provisions to extend women’s rights, autonomy over their bodies, and substantive equality. Transformative constitutionalism shifts the interpretation of the constitution from a formalistic and formal narrow approach to a broad, rights-based and socially responsive approach.

Transformative constitutionalism includes gender justice because of the significance of gender inequality in the context of the patriarchal social order and the manner in which gender inequality is embedded in structures, institutions, and practices in India. Feminist scholars assert that formal equality cannot erase discrimination, and structural barriers will always be complemented by relations of unequal power. Therefore, transformative constitutionalism is regarded as the recognition of women and marginalized genders lived experiences, and as such, ensures substantive equality.



The Supreme Court of India has reinforced the ideology of transformative constitutionalism in several landmark judgments. *Vishaka v. State of Rajasthan* was one such case. The Court held that sexual harassment at the workplace violates a woman's right to equality and dignity as well as her right to life under Articles 14, 15, and 21. The Court, showing its dedication to constitutional transformation in the absence of "legislature activity, provided the first binding guidelines to ensure the protection of women in the workplace.

Likewise, in *Navtej Singh Johar v. Union of India*, the Supreme Court decriminalized two consenting men having a same-sex relationship and stated that someone's identity, dignity, and autonomy is protected by the Constitution. The Court said that the Constitution is a transforming document that aims to enhance social inclusiveness and safeguard social minorities from social discrimination. The decision extended the scope of gender justice and moved away from the traditional binary of gender and sexuality.

In *Joseph Shine v. Union of India*, the Supreme Court ruled that India's adultery law under Section 497 of the Indian Penal Code violates the dignity and equality of women and therefore is unconstitutional. The Court discarded the patriarchal view of women as their husband's property and upheld the values of autonomy and equal citizenship contained in the Constitution. Similarly, in *Shayara Bano v. Union of India*, the Court struck down the instant triple talaq and upheld the dignity and equality of Muslim women.

These developments notwithstanding, transformative constitutionalism encounters a host of challenges. Implementation of gender justice is restricted by social opposition, institutional patriarchy, insufficient legal awareness, and poor implementation mechanisms. Additionally, intersectional discrimination continues to be a reality for most women of marginalized groups such as Dalit, Adivasi and Muslim women, queer women and women from economically disadvantaged groups. This is beyond the scope of what court rulings can address.

Consequently, transformative constitutionalism continues to be an developing constitutional project in India. It aims at legal reforms and social reforms, including the promotion of constitutional values in various social structures and institutions. Transformative constitutionalism is critical to realizing inclusive and substantive gender justice in India through the extension of equality, dignity, and freedom.

## **6. Intersectionality and Feminist Constitutional Morality**

Intersectionality is a key component of feminist jurisprudence and is utilized to demonstrate the distinct experiences of women, given that the multiple facets of oppression do not impact all women in the same



way. Legal scholar Kimberlé Crenshaw coined” the term 'Intersectionality' to articulate the confluence of different elements of identity, be it gender, caste, class, religion, sexuality, disability, or ethnicity, and how they combine to formulate specific experiences of social injustice. In the Indian context, the importance of Intersectionality is underscored by the overlapping social inequalities with the caste system, patriarchy, religion and economic injustices. Consequently, feminist constitutional morality advocates for an interpretation of the Constitution that recognizes the plurality of social injustices and achieves substantive equality for all the socially disadvantaged. Fraternity, justice, dignity, equality, and liberty help establish and protect the interests of most minority communities from oppressive social customs and discrimination. On the other hand, feminist scholars maintain that without recognizing an intersectional perspective, gender justice cannot be achieved via constitutional morality. Certainly, there are substantial differences among women of different castes and communities, and the upper-class urban women experience distinctly different realities from those of Dalit women, Adivasi women, Muslim women, queer women, and poor women. Thus, constitutional interpretation needs to understand a reality that incorporates multiple dimensions of oppression rather than a singular and universal focus on women’s rights.

“Gender+Caste+Class+Religion= Intersection Discrimination”

The Indian Constitution lays a robust foundation for intersectional justice through Articles 14, 15, 17 and 21. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 17 abolishes untouchability and caste-based exclusion. These constitutional provisions express the transformative vision of the Constitution in dealing with the problem of structural inequalities confronting marginalized sections of society.

Indian courts have started incorporating intersectionality in constitutional adjudications. For instance, in *Navtej Singh Johar v. Union of India*, the court elaborated that dignity, identity, and autonomy are rights flowing from the Constitution and are crucial to the rights of LGBTQ+ persons. The expansion of constitutional morality beyond the conventional interpretations of gender incorporates the plight of sexual minorities. In the same vein, in *National Legal Services Authority v. Union of India (NALSA)*, the Supreme Court of India acknowledged transgender persons as a ‘third gender’ and defined their constitutional right to equality, dignity, and the right to not be discriminated against. The Court reiterated that the intersection of gender identity, social, and economic marginalization is the reality as well.

Intersectionality can be seen in instances of both caste and gender violence. Women of the Dalit caste have to deal with both caste and patriarchal oppression. Some feminist scholars claim that within feminist



theory and discourse as a whole, oppression of caste-based systems is often ignored, and the specific vulnerabilities of women who are marginalized are often absent from constitutional jurisprudence. The gender discrimination faced by Muslim women also provides further insight on the intersection of gender oppression, religious identity narratives, and socio-political marginalization.

Even with specific protections in place to defend the rights of marginalized women, the inequalities due to institutionally embedded social prejudices still remain as a big barrier for women. The lack of access for marginalized women to justice, education, health care, and work is immediate and obvious. The feminist constitutional morality, therefore, aims to attain social justice and institutional equity and also addresses the need of the judicial system to acknowledge the structural corrections.

Therefore, intersectionality enhances feminist constitutional morality by advocating for the interpretation of constitutional rights within the framework of various lived experiences. It fortifies transformative constitutionalism by asserting that real gender justice lacks definition in the absence of the resolution of caste, class, religion, sexuality, and other intersected forms of oppression. An intersectional constitutional framework is therefore important for a more inclusive, democratic, and egalitarian society in India.

## **7. Challenges and Criticisms**

Even with India's Constitution encouraging social equity and justice, there are problems and critiques that limit Gender Justice. Even though some laws have been established giving the Judiciary the power to enforce equality, dignity, and personal autonomy to the highest extent, the social, institutional, and legal barriers severely restrict the implementation of these constitutional ideals.

Judicial overreach is one of the criticisms of constitutional morality. Courts disguise their imposition of personal moral or ideological views on the public as imposition of constitutional interpretation. Because constitutional morality is an indeterminate concept and is not explicitly stated in the Constitution, its interpretation becomes a matter of judicial discretion. This is especially concerning for the democracy and separation of powers, especially for courts striking down established social and religious orders. Excessive judicial activism is likely to undervalue parliamentary supremacy and citizen's role in social order making.

A further complication is that traditional patriarchy is embedded in Indian society. While some legal protection may be assured by constitutional morality, some social attitudes may still be backwards and discriminatory. Resistance to religious, community, and conservative social organizations is often appreciated in the more protective progressive judgments pertaining to women, LGBTQ+ rights, and



judgments regarding religion. Consequently, there is a disparity between progress in the law and progress in society. Structural discrimination, violence, and exclusion of women appears to be predominantly unaffected by the progress in the law and the protection of women's constitutional rights to equality and dignity.

The implementation gap continues to be problematic. While major rights such as bodily autonomy, workplace equality, reproductive rights, and non-discrimination have been recognized and predicated by courts, the enforcement mechanisms in place are weak. Factors such as economic dependence and institutional bias, coupled with slow judicial processes and a lack of legal awareness, result in many women and marginalized groups being unable to access justice. The challenges faced by rural women and poor and marginalized communities are even more pronounced in the context of accessing constitutional provisions.

Some other critics argue that when it comes to intersectionality, constitutional morality engages rather marginally. Take for example many forms of gender discrimination; they often occur by way of simultaneous discrimination across caste, class, religion, disability, and sexuality. In some of these instances of constitutional discourse, women are treated as a homogenous category, therefore failing to appreciate the particular vulnerabilities of Dalit women, Adivasi women, Muslim women, and trans people. Without addressing intersectionality, constitutional morality becomes obsolescent rather than impactful.

Additionally, some argue that there is an overreliance on the judiciary to mitigate the gaps in constitutional morality, in the absence of broad, systematic reforms. There is insufficient representation of women and marginalized genders in the judiciary, legislature and police. Systemic inequalities within institutions curtail the transformative power of constitutional values.

Thus, although constitutional morality has played an important role in furthering India's gender justice, its achievement relies on social acceptance, institutional changes, effective implementation, and sustained commitment to constitutional values within society and governing systems.

## **8. Suggestions and Recommendations**

First, we must improve citizens' knowledge regarding the constitution. The majority of constitutionally vague individuals are women from rural and low-income areas; public awareness campaigns, legal assistance programs, and incorporating constitutional values into educational curricula will help with the gradual creation of a culture that centers on equality, dignity, and non-discrimination. Constitutional



justice cannot be left within the walls of a courtroom. It must be part of the public's consciousness and democratic way of life.

Second, judicial and institutional reforms are important to gender justice. It should be mandatory for judges and police and legal professionals to undergo gender sensitization. Decision-making influenced by institutional patriarchy and gender biases creates additional barriers to women's access to justice. Promoting gender equity and inclusion within the legal system, will not only increase accessibility to justice, but will also bolster confidence in the system of constitutional governance.

Third, women's representation, among other marginalized genders, in constitutional institutions is needed. Women are still mostly absent in the judiciary, the legislature, law enforcement, and agencies that make policy. Bringing more people to the table will ensure that inequalities in law and politics are addressed. Representation completes democracy and is necessary for progress.

Another significant suggestion is to implement an intersectional framework for gender justice. Women face different forms of discrimination based on their caste, class, religion, disability, sexuality, and economic standing. Thus, policies and constitutional interpretations should account for the various types and degrees of intersecting oppression. It is vital to focus on the needs and issues of Dalit, Adivasi, and Muslim women, along with the needs and issues of all transgender persons and the economically marginalized.

In addition, discriminatory personal laws and social practices that transgress the principles of the constitution need to be reformed through a democratic and rights-based approach. The State has the obligation to ensure that the cultural or religious practices do not violate the constitution's guarantees of equality and dignity. Legal reforms need to be supplemented by social reforms that seek to address patriarchal attitudes and stereotypes in families, workplaces, and communities.

Finally, we must recognize that constitutional morality should be a living culture in our Constitution rather than a doctrine that is merely manifested in our judiciary. Transformational gender justice will only be attained when the values enshrined in the Constitution of equality, liberty, dignity, and fraternity are visible in the day-to-day social and institutional interactions. A constant interplay of law, society, and constitutional principles will be crucial in creating an inclusive, democratic and gender-just India.



## 9. Conclusion

One significant development in contemporary Indian Constitutional law is the defense of gender justice through the doctrine of constitutional morality. This upholds the constitutional values of equality, dignity, liberty, and fraternity in the face of social oppressive and discriminatory practices. Constitutional morality becomes especially relevant in a context of a society characterized by patriarchy, caste hierarchy, religious conservatism, and social inequality. Constitutional morality is viewed as a transformative principle of the constitution which takes precedence over the values and dictates of the majority of the society and traditional prejudices.

The Indian judiciary has been pivotal in defining the dimensions of constitutional morality in India through the expansive interpretation of Fundamental Rights. Trailblazing decisions concerning women's rights, rights of the LGBTQ+ community, rights to reproductive autonomy, rights to dignity at the workplace, and rights concerning customs have all demonstrated the power of progressive interpretation of the constitution. The cases of *Shayara Bano vs. Union of India*, *Joseph Shine vs. Union of India*, *Navtej Singh Johar vs. Union of India*, and the *Sabarimala Case*, among others, demonstrate the Indian judiciary's deepening conviction in the value of equality and autonomy. These decisions affirm that constitutional rights cannot be denied simply because society subscribes to a system of beliefs and practices that are of a patriarchal and/or conservative nature.

From a feminist legal perspective, the concept of constitutional morality unveils a powerful tool for contesting structural inequalities manifested through the legal, social, and institutional systems. Feminist jurisprudence insists that the law is not always neutral and that it can and does reflect the dominant social power structures. Thus, Constitutional Morality becomes a necessity in the re-interpretation of constitutional rights that consider the realities of lived experiences, the right to one's bodily autonomy, and the dignity of all persons. It allows courts and institutions to go beyond formal equality and the pursuit of substantive and transformational justice.

Simultaneously, the study indicates that wider social and institutional reforms must complement the role of constitutional morality in eradicating gender inequality. The effective exercise of constitutional rights remains limited by factors such as deeply entrenched patriarchy, social and institutional discrimination, economic dependency, legal illiteracy, and social resistance. Intersectional, inclusive justice approaches are required for marginalized groups, including Dalit women, Adivasi women, Muslim women, and also queer and transgender persons, who experience multiple intersecting systems of discrimination.



For India's future in achieving gender justice, evolving the concept of constitutional morality from a judicial doctrine to a wider constitutional culture, is key. The integration of constitutional values in education, governance, public institutions, and socio-cultural interactions is imperative. Genuine social transformation requires more women and marginalized genders in decision-making positions, better enforcement of constitutional protection, and ongoing dialogue concerning the constitution.

Thus, transformative constitutionalism in India cannot ignore constitutional morality. It protects the rights of individuals while bolstering the spirit of democracy. It helps keep the Constitution a dynamic document aligned toward upholding justice, equality, dignity, and inclusive citizenship of persons regardless of their gender, caste, religion, or sexuality.

## Bibliography

### Books

- Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).
- Agnes, Flavia, *Law, Justice and Gender: Family Law and Constitutional Claims in India* (Oxford University Press 2011).
- Austin, Granville, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).
- Baxi, Upendra, *The Future of Human Rights* (Oxford University Press 2002).
- Bhatia, Gautam, *The Transformative Constitution* (HarperCollins Publishers India 2019).
- Fredman, Sandra, *Discrimination Law* (2nd edn, Oxford University Press 2011).
- Fredman, Sandra, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008).
- MacKinnon, Catharine A, *Toward a Feminist Theory of the State* (Harvard University Press 1989).
- Menon, Nivedita, *Seeing Like a Feminist* (Zubaan 2012).



- Smith, Patricia, *Feminist Jurisprudence* (Oxford University Press 1993).
- Atrey, Shreya, *Intersectional Discrimination* (Oxford University Press 2019).

### Journal Articles

- Atrey, Shreya, “Feminist Constitutionalism: Mapping a Discourse in Contestation” (2022) 20(2) *International Journal of Constitutional Law*.
- Crenshaw, Kimberlé, “Demarginalizing the Intersection of Race and Sex” (1989) 1989(1) *University of Chicago Legal Forum* 139.
- Indira Jaising, “Gender Justice and the Constitution” (2014) 49(17) *Economic and Political Weekly* 35.
- Klare, Karl, “Legal Culture and Transformative Constitutionalism” (1998) 14 *South African Journal on Human Rights* 146.
- Manoj Mate, “Constitutional Morality and Its Limits” (2016) 3(2) *Indian Law Review* 145.
- Manoj Mate, “Constitutional Morality and Transformative Constitutionalism” (2016) 3(2) *Indian Law Review* 146.

### Cases

- *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.
- *Joseph Shine v Union of India* (2019) 3 SCC 39.
- *National Legal Services Authority v Union of India* (2014) 5 SCC 438.
- *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
- *Naz Foundation v Government of NCT of Delhi* (2009) 160 DLT 277.
- *Shayara Bano v Union of India* (2017) 9 SCC 1.
- *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.
- *Vishaka v State of Rajasthan* (1997) 6 SCC 241.



### **Legislations and Constitutional Provisions**

- Constitution of India, 1950.
- Indian Penal Code, 1860.
- Protection of Women from Domestic Violence Act, 2005.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Transgender Persons (Protection of Rights) Act, 2019.
- Muslim Women (Protection of Rights on Marriage) Act, 2019.
- Reports and Constituent Assembly Debates
- Constituent Assembly Debates, Vol VII, 4 November 1948.
- Law Commission of India, Consultation Paper on Reform of Family Law (2018).
- National Commission for Women, Annual Report on Gender Justice in India (various years).

### **Reports and Constituent Assembly Debates**

- Constituent Assembly Debates, Vol VII, 4 November 1948.
- Law Commission of India, Consultation Paper on Reform of Family Law (2018).
- National Commission for Women, Annual Report on Gender Justice in India (various years).

### **References:**

- <sup>1</sup>Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 50.
- <sup>1</sup>Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019) 112.
- <sup>1</sup>Constituent Assembly Debates, Vol VII, 4 November 1948, speech of Dr. B.R. Ambedkar.
- <sup>1</sup>Navtej Singh Johar v Union of India (2018) 10 SCC 1.
- <sup>1</sup>Nivedita Menon, *Seeing Like a Feminist* (Zubaan 2012) 38.
- <sup>1</sup>Joseph Shine v Union of India (2019) 3 SCC 39; Shayara Bano v Union of India (2017) 9 SCC 1; Indian Young Lawyers Association v State of Kerala (2019) 11 SCC 1.



- <sup>1</sup>Manoj Mate, “Constitutional Morality and Its Limits” (2016) 3(2) Indian Law Review 145.
- <sup>1</sup>Constituent Assembly Debates, Vol VII, 4 November 1948, speech of Dr. B.R. Ambedkar.
- <sup>1</sup>Naz Foundation v Government of NCT of Delhi (2009) 160 DLT 277.
- <sup>1</sup>Indian Young Lawyers Association v State of Kerala (2019) 11 SCC 1.
- <sup>1</sup>Upendra Baxi, The Indian Supreme Court and Politics (Eastern Book Company 1980) 214.
- <sup>1</sup>Catharine A MacKinnon, Toward a Feminist Theory of the State (Harvard University Press 1989) 161.
- <sup>1</sup>Patricia Smith, Feminist Jurisprudence (Oxford University Press 1993) 5.
- <sup>1</sup>Indira Jaising, “Gender Justice and the Constitution” (2014) 49(17) Economic and Political Weekly 35.
- <sup>1</sup>Sandra Fredman, Discrimination Law (2nd edn, Oxford University Press 2011) 23.
- <sup>1</sup>Vishaka v State of Rajasthan (1997) 6 SCC 241.
- <sup>1</sup>Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1.
- <sup>1</sup>Shayara Bano v Union of India (2017) 9 SCC 1.
- <sup>1</sup>Flavia Agnes, Law and Gender Inequality: The Politics of Women’s Rights in India (Oxford University Press 1999) 72.
- <sup>1</sup>Manoj Mate, “Constitutional Morality and Transformative Constitutionalism” (2016) 3(2) Indian Law Review 146.
- <sup>1</sup>Indian Young Lawyers Association v State of Kerala (2019) 11 SCC 1.
- <sup>1</sup>Karl Klare, “Legal Culture and Transformative Constitutionalism” (1998) 14 South African Journal on Human Rights 146.
- <sup>1</sup>The Constitution of India, arts 14, 15, 19 and 21.
- <sup>1</sup>Sandra Fredman, Human Rights Transformed: Positive Rights and Positive Duties (Oxford University Press 2008) 87.
- <sup>1</sup>Flavia Agnes, Law and Gender Inequality: The Politics of Women’s Rights in India (Oxford University Press 1999) 102.
- <sup>1</sup>Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex” (1989) 1989(1) University of Chicago Legal Forum 139.
- <sup>1</sup>Shreya Atrey, Intersectional Discrimination (Oxford University Press 2019) 42.
- <sup>1</sup>Nivedita Menon, Seeing Like a Feminist (Zubaan 2012) 67.