

Constitutional Morality and the Female Citizen: Re-reading Articles 14–16 Through a Gender Lens

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Abstract

This article undertakes a re-reading of Articles 14, 15, and 16 of the Indian Constitution through the prism of “constitutional morality” to foreground the female citizen as a subject of equality law. It argues that the Indian equality code rejects formal neutrality and instead institutionalizes a substantive, transformative vision of gender justice. By analysing constituent assembly debates, judicial pronouncements from C.B. Muthamma to Joseph Shine, and the doctrinal evolution of Article 15(3), the paper demonstrates how constitutional morality has emerged as the interpretive tool to mediate conflicts between patriarchal social norms and egalitarian constitutional text. The study contends that the “female citizen” in Indian jurisprudence is not a derivative of the male citizen but a distinct constitutional subject whose equality demands both non-discrimination and affirmative state action. The article concludes that realizing constitutional morality requires extending the equality inquiry beyond courts into pedagogy, policy, and everyday state practice.

Keywords: Constitutional Morality, Female Citizen, Article 14, Article 15(3), Article 16, Substantive Equality, Gender Justice, Transformative Constitutionalism

1. Introduction: The Female Citizen as Constitutional Subject

The Indian Constitution does not speak of “women” as objects of protection alone. It envisages the “female citizen” as a bearer of rights, equal in status and dignity to her male counterpart. Yet, the journey from text to reality has required the Constitution to be re-read, not merely applied. This article uses “constitutional morality,” a phrase invoked by Dr. B.R. Ambedkar in the Constituent Assembly and resurrected by the Supreme Court in *Navtej Singh Johar* 2018, as the analytical lens to examine Articles 14, 15, and 16.

Constitutional morality, as Ambedkar defined it, is the cultivation of respect for the forms and procedures of the Constitution, even when they conflict with popular morality. For the female citizen, this has meant that social morality rooted in patriarchy must yield to the egalitarian ethos of Part III. The central inquiry of this paper is: How have Articles 14–16 been interpreted to construct the female citizen, and what does constitutional morality demand of the state and society in that construction?

2. Article 14: From Classification to Constitutional Morality

Article 14 guarantees “equality before the law” and “equal protection of the laws.” Early jurisprudence treated Article 14 as a doctrine of reasonable classification. In *State of West Bengal v. Anwar Ali Sarkar* 1952, the Court held that classification must be based on intelligible differentia with a rational nexus to the object.

Applied to gender, this test produced contradictory results. In *Air India v. Nergesh Meerza* 1981, regulations compelling air hostesses to retire on pregnancy were upheld because the Court accepted the state’s classification based on “physiological differences.” The female citizen here was reduced to her reproductive capacity. The test of reasonable classification, devoid of constitutional morality, reproduced social morality.

The shift came with *Anuj Garg v. Hotel Association of India* 2008. The Court struck down a law prohibiting women from working in bars, holding that “the test to review such a protective discrimination statute would entail a two-pronged scrutiny”: first, whether the legislative objective is legitimate; second, whether the classification bears a rational nexus to that objective. Crucially, the Court added that paternalistic justifications must be subjected to heightened scrutiny. This was constitutional morality displacing social morality. The female citizen was recognized as an autonomous agent, not a subject to be protected from herself.

Thus, Article 14, when read through constitutional morality, does not permit sex-based classifications that entrench stereotypes. It demands that the state justify differential treatment on grounds that advance, rather than impede, the dignity of the female citizen.

3. Article 15: The Architecture of Substantive Equality

3.1 Article 15(1) and the Prohibition of “Sex Only” Discrimination

Article 15(1) prohibits discrimination on grounds only of sex. The word “only” has been pivotal. In *State of Bombay v. Narasu Appa Mali* 1952, the Bombay High Court held that personal laws were not “laws” under Article 13, placing family law beyond equality review. The female citizen was left outside the Constitution’s protection in the private sphere. This formalist reading ignored constitutional morality.

3.2 Article 15(3): The Constitutional Sanction for Affirmative Action

Article 15(3) declares that “nothing in this article shall prevent the State from making any special provision for women and children.” The Constituent Assembly debates reveal that members like Renuka Ray and Hansa Mehta insisted on this clause to ensure that centuries of disadvantage were not frozen by formal equality.

In *Government of Andhra Pradesh v. P.B. Vijayakumar* 1995, the Supreme Court held that Article 15(3) is not an exception to Article 15(1) but a facet of equality itself. Reservations for women in public employment were upheld as measures to “neutralize the socio-economic, educational and political disadvantage faced by women.” The Court called it a “wholesome power.” Through constitutional morality, Article 15(3) transforms the female citizen from a victim to a beneficiary of state action.

The *Sabarimala* judgment 2018 exemplifies this re-reading. The exclusion of women aged 10–50 from the temple was held to violate Article 15(1). The majority opinion by Chief Justice Dipak Misra invoked constitutional morality to state that “the Constitution is not a document frozen in time.” Justice D.Y. Chandrachud held that “the denial of women’s rights to worship is a denial of the right to equality.” Here, the female citizen’s right to access public religious space was affirmed as integral to Articles 14 and 15.

3.3 Expanding ‘Sex’ to ‘Gender Identity’: The NALSA Revolution

In *National Legal Services Authority v. Union of India* 2014, the Court held that Article 15’s prohibition on sex discrimination includes discrimination on the ground of gender identity. The female citizen was thus expanded to include transgender women. This was not textual amendment but a re-reading mandated by constitutional morality. The Court held that “gender identity is integral to dignity” and that “the Constitution is an instrument of social transformation.”

4. Article 16: The Female Citizen in the Public Sphere

Article 16(1) guarantees equality of opportunity in public employment. Article 16(2) prohibits discrimination on the ground of sex. The defining case is *C.B. Muthamma v. Union of India* 1979. The Indian Foreign Service Rules required women officers to obtain government permission to marry and stipulated that they could be asked to resign if their domestic life interfered with duties.

Justice V.R. Krishna Iyer struck down the rules, stating: “If the family and the hearth are the ultimate goal of a woman, she may as well not join the service. But if she joins, she is entitled to equality.” The judgment recognized that constitutional morality requires the state to treat the female citizen as a professional first, not as a wife or mother first. This re-reading of Article 16 dislodged the public/private divide that had constrained women’s citizenship.

Later, in *Charu Khurana v. Union of India* 2014, the ban on women working as make-up artists in the film industry was held violative of Article 16. The Court held that “the right to a profession is a fundamental right” and that “gender cannot be a ground for exclusion.” The female citizen’s right to work was thus linked to Articles 14, 15, and 21.

5. Constitutional Morality vs. Social Morality: The Decisive Turn

The doctrine of constitutional morality received its fullest articulation in *Navtej Singh Johar v. Union of India* 2018 and *Joseph Shine v. Union of India* 2018. In *Navtej*, the Court decriminalized homosexuality, holding that “constitutional morality requires that majoritarian social norms cannot override constitutional guarantees.” Though not directly about women, the judgment is central to the female citizen because it establishes that sexual autonomy is a facet of Article 21 and 14.

In *Joseph Shine*, Section 497 IPC, which criminalized adultery, was struck down. The law punished only the man and treated the wife as her husband’s property. The Court held that it violated Article 14 and 15(1) and was “manifestly arbitrary.” Justice Indu Malhotra wrote: “A woman cannot be asked to think as a man or as society desires.” This is constitutional morality in action: the female citizen’s autonomy is placed above patriarchal social codes.

6. The Female Citizen and Intersectionality

A re-reading of Articles 14–16 must account for intersectionality. In *Patan Jamal Vali v. State of Andhra Pradesh* 2021, the Court held that a blind Dalit girl raped by dominant caste men faced discrimination at the intersection of gender, caste, and disability. The Court said that “the single-axis model of discrimination is insufficient” and that Article 14 must be read to address multiple, overlapping inequalities. The female citizen is not a monolith. Her equality claims are shaped by caste, class, religion, disability, and sexuality.

The *Mary Roy* case 1986 from Kerala illustrates this. Syrian Christian women were denied equal inheritance under the Travancore Christian Succession Act. The Supreme Court applied the Indian Succession Act, granting equal rights. Here, religion, community custom, and gender intersected, and constitutional morality required that equality prevail.

7. From Courtroom to Classroom: Institutionalizing Constitutional Morality

Constitutional morality cannot remain a judicial doctrine. It must permeate state institutions. The Directive Principles, particularly Articles 39(a), 39(d), and 42, require the state to secure equal livelihood, equal pay, and maternity relief. The Equal Remuneration Act 1976, Maternity Benefit Amendment Act 2017, and the Women's Reservation Act 2023 are legislative attempts to give substance to the female citizen's equality.

Yet, as the Periodic Labour Force Survey 2023–24 shows, female labor force participation remains at 32.8 percent. The National Family Health Survey-5 records that 29.3 percent of women face spousal violence. These figures suggest that constitutional morality has not yet been internalized by administrative and social structures.

The role of education is critical. The National Education Policy 2020 and SCERT curricula must teach Articles 14–16 not as abstract guarantees but as lived commitments. The female citizen must be made visible in textbooks, not as a victim, but as a rights-bearing agent.

8. Conclusion: Toward a Transformative Re-reading

Re-reading Articles 14–16 through the lens of constitutional morality reveals that the Indian Constitution does not merely tolerate the female citizen; it constitutes her. Article 15(3) is not a deviation from equality but its highest expression. The journey from *Narasu Appa Mali* to *Joseph Shine* is the journey from social morality to constitutional morality.

However, the project is incomplete. The marital rape exception in Section 375 IPC, the low representation of women in legislatures, and the persistence of unpaid care work indicate that the female citizen still negotiates her equality. Constitutional morality demands that the state move from negative restraint to positive facilitation.

As Dr. Ambedkar warned, “Constitutional morality is not a natural sentiment. It has to be cultivated.” For the female citizen, that cultivation means insisting that equality is not sameness but the freedom to participate in public and private life without structural disadvantage. The re-reading of Articles 14–16 must therefore continue, in courts, in Parliament, and in the everyday life of the Republic.

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