

4. Judiciary Role of Principle – Polity

The judiciary's fundamental challenge is to uphold the enduring principles of the Constitution, such as minority rights and the rule of law. This duty often conflicts with the immense pressure to yield to transient popular sentiment and majoritarian will.

Judiciary at the Crossroads – Upholding Principles Over Popularity

The recent decision by the Delhi High Court to deny bail to activist Umar Khalid under the Unlawful Activities (Prevention) Act (UAPA) in 2025 has reignited a crucial debate within Indian democracy. The central question is whether the judiciary, as the ultimate guardian of the Constitution, should uphold fundamental principles even when faced with overwhelming popular sentiment. Courts are increasingly navigating a landscape shaped by intense political commentary, viral social media outrage, and a powerful public mood. Their true test, however, lies in their commitment to constitutional morality over transient populism.

The Role of the Judiciary as Envisioned by the Constitution-Makers

The framers of the Indian Constitution designed the judiciary to be a powerful, independent institution with several key responsibilities.

Constitutional Guardian – The primary role of the judiciary is to uphold the supremacy of the Constitution. Through the power of judicial review, it can strike down any law or executive action that violates constitutional provisions. The landmark Kesavananda Bharati case (1973) is the best example, where the Supreme Court introduced the “basic structure doctrine,” establishing that Parliament cannot amend the Constitution in a way that alters its fundamental character.

Protector of Fundamental Rights – The Constitution empowers citizens to directly approach the High Courts (under Article 226) and the Supreme Court (under Article 32) if their fundamental rights are violated. Dr. B.R. Ambedkar famously called Article 32 the very “heart and soul of the Constitution,” underscoring its importance as the ultimate guarantor of individual liberties.

Independent Arbiter – To ensure impartial justice, the judiciary was insulated from political and executive interference. Articles 124 and 217 of the Constitution provide judges with security of tenure and fixed salaries charged to the Consolidated Fund of India, shielding them from external pressures and allowing them to make decisions based solely on law and fact.

Counter-Majoritarian Role – The judiciary was intentionally designed to act as a check on majoritarian impulses. In a democracy, the will of the majority can sometimes threaten the rights and freedoms of minority groups. The judiciary's duty is to protect these vulnerable groups. For example, its decisions to strike down bans on women's entry in the Haji Ali Dargah (2016) and the Sabarimala temple (2018) were based on principles of equality, even though they faced significant popular opposition.

Balancing Power – The judiciary is a crucial component of the system of checks and balances. It prevents the legislative and executive branches from overstepping their constitutional boundaries. A historic instance was the Indira Gandhi v. Raj Narain case (1975), where the Allahabad High Court invalidated the Prime Minister's election, demonstrating that no one is above the law.

The Dichotomy – Principles vs. Popularity

Understanding the tension between these two forces is key to appreciating the judiciary's challenge.

Principles – These are the core, enduring values enshrined in the Constitution, such as liberty, equality, justice, and fraternity. They form the moral and legal compass for the judiciary, guiding decisions beyond short-term pressures. Principles are non-negotiable standards that safeguard individual rights and the democratic fabric, even when the majority will is against them.

Popularity – This refers to the collective public mood or majority opinion at a specific time. It is often fluid and shaped by political narratives, media coverage, and social movements. While aligning with

popular sentiment can lend social legitimacy to judicial decisions, popularity can also be volatile, exclusionary, and sometimes contrary to constitutional fairness.

Case Studies – Popularity vs. Principles in Action

Several landmark judgments highlight this conflict –

Sabarimala Case (2018) –

Principle – The Supreme Court upheld the right to equality and non-discrimination (Articles 14 and 15), allowing women of all ages to enter the temple.

Popularity – The judgment faced widespread and often violent protests in Kerala, as a significant section of the public and religious groups strongly opposed women's entry based on tradition.

Section 66A Struck Down – Shreya Singhal (2015) –

Principle – The Court championed freedom of speech and expression (Article 19(1)(a)), declaring Section 66A of the IT Act unconstitutional for its vague and arbitrary nature, which had a "chilling effect" on free speech.

Popularity – The law had strong backing from law enforcement agencies and some public sections who believed it was necessary to curb "offensive" or "annoying" online content.

Triple Talaq Judgment (2017) –

Principle – The Court struck down the practice of instant triple talaq (talaq-e-biddat) as unconstitutional, affirming the principles of gender justice, equality, and dignity for Muslim women.

Popularity – This was a rare case where principle and popularity converged. The judgment was widely welcomed by women's rights groups and the general public, leading to subsequent parliamentary legislation.

Decriminalisation of Homosexuality – Navtej Johar (2018) –

Principle – The Supreme Court decriminalised consensual same-sex relations by reading down Section 377 of the IPC, upholding the fundamental rights to dignity, privacy, and equality for the LGBTQ+ community.

Popularity – While celebrated in urban and progressive circles, the decision faced significant resistance from conservative and religious groups who viewed it as a threat to traditional values.

Arguments in Favour of Considering Popular Sentiments

While the judiciary's primary duty is to the Constitution, ignoring public opinion entirely has its own risks.

Democratic Responsiveness – In a democracy, institutions of the state, including the judiciary, cannot appear completely aloof from the sovereign will of the people. Responding to deeply held societal values can reinforce the democratic process. The Triple Talaq judgment is an example where the court's decision resonated with a widespread demand for reform.

Social Legitimacy and Acceptance – For laws and judgments to be effective, they must be accepted by society. Rulings that are perceived as being in line with the public conscience are more likely to be followed willingly. The wide celebration of the Navtej Johar judgment helped normalise LGBTQ+ rights in public discourse.

Institutional Trust – If the judiciary is consistently seen as acting against public opinion, it risks alienating citizens and being viewed as an elitist institution. Upholding reservation policies in the Indra Sawhney case (1992), despite complex debates, helped maintain public faith in the judiciary's commitment to social justice.

Pragmatic Implementation – Accommodating public sentiment can lead to smoother, more practical enforcement of judgments. For instance, the expansion of OBC reservations was implemented in phases to mitigate potential backlash and ensure gradual acceptance.

Maintaining Democratic Stability – Judgments that are seen as fair and acceptable to a large majority can reduce the chances of social unrest and conflict. The Ayodhya Verdict (2019), despite its contentiousness, was structured to balance legal principles with deeply held faith, which was crucial in maintaining peace.

Arguments Against Yielding to Popular Sentiments

The core arguments for judicial independence from popular pressure remain powerful and foundational to democracy.

Supremacy of the Constitution – The judiciary's legitimacy and authority flow directly from the Constitution, not from public approval ratings. Its duty is to the law, not to popular opinion. The Kesavananda Bharati judgment upheld constitutional limits on parliamentary power despite immense political pressure.

Safeguarding Minority Rights – This is perhaps the most critical function. The judiciary must act as a shield for vulnerable groups against the will of the majority. The Navtej Johar decision protected the rights of the LGBTQ+ community even in the face of strong conservative resistance.

Preventing the Tyranny of the Majority – Unchecked populism can erode pluralism and democratic values. The judiciary must stand against majoritarian demands that infringe upon fundamental rights. In *Bijoe Emmanuel v. State of Kerala* (1986), the Supreme Court protected the right of Jehovah's Witness students to not sing the national anthem, upholding their freedom of conscience against nationalist fervour.

Rule of Law over Mob Pressure – Judicial decisions must be based on legal reasoning, evidence, and established principles, not on media trials or social media hashtags. The Shreya Singhal judgment striking down Section 66A was a clear affirmation of the rule of law over popular demand for censorship.

Long-term Constitutional Vision – Public sentiment is often fleeting, while constitutional principles are designed to endure for generations. The judiciary must take a long-term view. The recognition of the Right to Privacy in the *Puttaswamy* case (2017) was a forward-looking decision that anticipated the challenges of the digital age.

Challenges in Maintaining the Balance

The judiciary faces several modern challenges in this balancing act.

Media & Social Media Pressure – 24/7 news cycles and viral social media campaigns can create an environment of intense public scrutiny and outrage, indirectly influencing judicial perceptions and creating a "trial by media." The public discourse during the Nirbhaya case (2012) exemplifies this pressure.

Politicisation of Legal Issues – Political parties and interest groups often frame legal battles in partisan terms, portraying judgments that go against them as politically motivated. The Zakia Jafri case (2022), for instance, attracted heavily politicised interpretations from all sides.

Complexity of Special Laws – Security laws like the UAPA and PMLA force the judiciary into a difficult position of balancing individual liberty against claims of national security, often in a climate of heightened public anxiety. The Umar Khalid bail denial (2025) underlines this very dilemma.

Public Distrust in Adverse Outcomes – When judgments defy the popular mood, the judiciary risks public criticism and accusations of bias or corruption. The mass acquittals in the Sohrabuddin encounter case (2018) led to widespread public questioning of the judicial process.

Doctrinal Ambiguity – Inconsistent judicial philosophies or conflicting interpretations on key issues, such as the jurisprudence on reservations in promotions, can create an appearance of arbitrariness, making the judiciary more vulnerable to accusations of being swayed by external factors.

The Way Forward – Strengthening the Judicial Bulwark

To navigate these challenges, a multi-pronged approach is necessary.

Reassert Constitutional Morality – Courts must consistently prioritise constitutional values over majoritarian impulses. As Dr. Ambedkar warned, constitutional morality is not a natural sentiment; it has to be cultivated. The judiciary must lead this cultivation.

Strengthen Judicial Reasoning – Judgments that are clear, transparent, and well-reasoned are the best defence against misinterpretation and public criticism. They serve to educate the public on the constitutional principles at stake, as seen in the detailed reasoning of the Ayodhya verdict.

Promote Legal Literacy – A public that understands basic constitutional values and the role of the judiciary is less likely to be swayed by populist sentiment. Integrating practical civics and constitutional law into educational curricula, such as through NCERT textbooks, is a vital long-term step.

Enhance Institutional Resilience – The judiciary must strengthen its own independence through robust and transparent internal mechanisms, such as a reformed and accountable collegium process for appointments. The Second Judges Case (1993) was a step towards strengthening judicial independence.

Balance with Sensitivity – Upholding principles does not mean being insensitive to social realities. Courts can devise methods to implement their rulings in a phased manner to allow for smoother social acceptance, similar to the phased rollout of **GST** after the Supreme Court upheld its constitutional validity.

Conclusion

Ultimately, the judiciary's authority and legitimacy are derived from constitutional principles, not public popularity. While sensitivity to social realities is important for a judgment's acceptance, surrendering to populism is a perilous path that risks the erosion of minority rights, constitutional morality, and the rule of law itself. As Dr. Ambedkar wisely noted, democracy in India is only a top-dressing on a soil that is essentially undemocratic. It survives on the strength of institutional morality, not transient passions. Therefore, upholding constitutional principles in the face of popular opposition is not just a judicial function; it is the judiciary's greatest responsibility in safeguarding the future of India's constitutional democracy.

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