
FROM TEXT TO TRANSFORMATION: CONSTITUTIONAL MORALITY AS THE IDEA OF JUSTICE

Aditri Sagar, Dr. Ram Manohar Lohiya National Law University, Lucknow

ABSTRACT

Constitutional morality has emerged as a foundational principle guiding the interpretation and application of the Indian Constitution beyond its textual provisions. It serves as a moral framework that promotes justice, liberty, equality, fraternity, and democratic governance. This paper examines the philosophical origins of constitutional morality, its incorporation within the Indian constitutional structure, and its evolution through various landmark judicial decisions. It argues that constitutional morality acts as a transformative tool for protecting fundamental rights and challenging discriminatory social practices. The paper also analyses contemporary challenges, including social resistance, political majoritarianism, institutional shortcomings, and the absence of a precise constitutional definition. Finally, it suggests measures to strengthen constitutional morality through constitutional awareness, institutional accountability, judicial independence, and civic participation. The study concludes that constitutional morality remains essential for achieving social transformation and realising the Constitution's vision of substantive justice in India.

INTRODUCTION

In the heart of the moral framework of the India Constitution lies the constitutional Morality. Constitutional Morality serves as a bridge between law and social transformation. It acts as a transformative force that not only challenges the unfair and discriminatory practices but acts as a moral compass which directs nation towards justice, fraternity, and inclusive growth. It serves as the guiding principle that helps to achieve justice and positive transformation in the growing discrimination in the Society. It ensures that the Constitution's vision aligns with its vision not just theoretically but practically too. This essay seeks to examine the philosophical framework of the constitutional morality, how it incorporated into the Indian Constitution through the B.R. Ambedkar's vision, its judicial evolution through landmark decisions, the challenges it faces in the contemporary India and the way forward to achieve its main social goal of achieving the social and judicial transformation.

PHILOSOPHICAL ORIGINS

Constitutional Morality is like a soul beyond a mere text. In 1846, George Grote, a British historian, in his book titled 'A History of Greece'¹, first termed the expression 'Constitutional Morality'. In that book, Grote discussed Cleisthenes of Athens, who reformed the Athenian Constitution and made it democratic.² He referred to them by using the expression 'Constitutional Morality' in the reference that the Constitution is necessary to follow the interests of each individual and the citizens of a nation and prevent the exploitation of powers by those who have. He mentioned that for a free and peaceful government to function effectively, it is not only enough for the majority to respect the Constitution, but the minority must also embrace and follow the core principles and the conventions of the constitutional morality. He simply explained the co-existence of freedom and self-restraint meaning constitutional morality involves a delicate balance between the obedience to authority which is acting within the law and freedom to openly criticise the public acts of those authorities. This will ensure that all sides will respect the Constitution's fundamental procedures. In 1883, two British Jurists expressed Constitutional morality as a rule of law.³

¹ GEORGE GROTE, *A HISTORY OF GREECE* vol. IV (John Murray 1846).

² Id.

³ A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (Macmillan 1885).

On November 4, 1948, Dr BR Ambedkar, in his speech to the Constituent Assembly, explained the reasons behind the need for a lengthy constitution and the incorporation of administrative details borrowed from the Union and the states under the Government of India Act, 1935.⁴ He quoted Grote by explaining that,

“The form of administration and form of Constitution are dovetailed, and it was possible to pervert the Constitution without changing the form by merely changing the form of administration.”⁵

By this he meant that the constitution’s democratic intent cannot be undermined by formally amending its written text but by manipulating its administrative machinery and practices. He actually gave all of us the warning that there is a danger that lies in an executive or legislature that might interpret the text written in constitution in an incorrect manner while using the administrative powers in a manner which is inconsistent with the core principles like liberty, equality, fraternity and accountability. The stronger the presence of constitutional morality the less is the need of written constitution. The same is followed in Britain which has the successful system of parliamentary democracy without a written constitution. The people were not saturated with political wisdom when our country got independence from the colonial rule and there was no presence of constitutional morality and so the drafting committee decided to not to leave too much to the discretion of future legislatures and wrote down the constitution in best possible ways. Ambedkar also quoted,

“Constitutional Morality is not a natural sentiment. It has to be cultivated. We must realise that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.”⁶

His words are considered prophetic in today’s context as they highlight various ongoing challenges in the Indian democracy and administration.⁷ These include several conflicts with social norms for which judiciary invokes constitutional morality to strike down laws or customs that conflict with the fundamental rights. For instance, in cases related to gender justice

⁴B.R. AMBEDKAR, *CONSTITUENT ASSEMBLY DEBATES* vol. VII (Nov. 4, 1948) (Lok Sabha Secretariat 1990).

⁵GEORGE GROTE, *A HISTORY OF GREECE* vol. IV (John Murray 1846), quoted in B.R. AMBEDKAR, *CONSTITUENT ASSEMBLY DEBATES* vol. VII (Nov. 4, 1948) (Lok Sabha Secretariat 1990).

⁶ *Supra* note 4.

⁷ B.R. AMBEDKAR, *CONSTITUENT ASSEMBLY DEBATES* vol. XI (Nov. 25, 1949) (Lok Sabha Secretariat 1990).

LGBTQ+ rights), the judiciary directly addresses the tension between progressive constitutional values and conservative social norms. This calls for a ethical and transparent governance, where leaders will not only adhere to the mere textual interpretation of the constitution but also to the spirit of the constitution.

There are many instances when legislation is enacted to accommodate a particular faction, community or a particular political leader and not in the interest of the public.⁸ Despite various contraries the leaders had at the time of independence, the democracy in India has shown great resilience in the country. This can be seen from the periodic elections and are free and fair; the opposition has powerful legitimacy⁹; the courts enjoy public trust; the executive has to act with them discretion when it violates the rule of law¹⁰; there is freedom of movement and assembly especially with other nations; there is freedom of expression.¹¹ India's growing economic performance that is outgrowing other nations is one of the success stories of democracy.¹² The democracy in India survived not by populist form but my adhering to the interest of public.

The Indian Constitution was born from pain of colonial rule, struggle for independence, constitutional comparison across the world and the individuality of rich intellectual, moral and political traditions that preceded it. The Supreme Court of India has embraced for a dynamic and contextual approach for interpreting the constitution with respect to the changing circumstances and values. This applies that our Indian Constitution is resilient and relevant across generation. The use of constitutional morality in Indian jurisprudence reflects that constitutional interpretation should be guided by the principles of justice, equality, fraternity and secularism that evolves with the contemporary realities.

CONSTITUTIONAL MORALITY IN THE INDIAN CONSTITUTIONAL FRAMEWORK

The Constitutional morality is deeply embedded within the Constitutional framework. The primary source of Constitutional Morality lies in the Preamble to the Constitution, which involves the State to involve justice by social, economic, and political along with liberty,

⁸GRANVILLE AUSTIN, *WORKING A DEMOCRATIC CONSTITUTION: THE INDIAN EXPERIENCE* (Oxford University Press 1999).

⁹ ELECTION COMMISSION OF INDIA, *REPORT ON GENERAL ELECTIONS IN INDIA* (Election Commission of India).

¹⁰ S.P. Gupta v. Union of India, 1981 Supp. SCC 87.

¹¹Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

¹² AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (Oxford University Press 1999).

equality, and fraternity. These resolves conflicts between power and rights. It finds its concrete expression in Fundamental Rights (Articles 12-35) which is Part III of the Constitution. These rights are interpretations to promote human dignity, autonomy, and substantive equality especially for marginalised communities. Part IV of the Constitution which includes Directive Principles of State Policy complements Fundamental Rights by laying down goals with the aim of achieving social justice. The fundamental Duties under Part IVA emphasises civic responsibility by respecting constitutional values. This emphasises that the Constitutional morality is also the responsibility of the citizens. By combining the rights, directive principles and civic duties, the Constitution ensures that constitutional morality remains the guiding principle behind India's social and judicial transformation.

JUDICIAL EVOLUTION IN INDIA

Constitutional morality requires that all citizens must understand and follow the broad values of the Constitution which are based liberty, equality, and fraternity.¹³ Freedom and self-restraint have been regarded as the main elements of this constitutional morality.¹⁴ Constitutional morality is the guiding spirit which seeks to achieve the positive outcome as the Constitution itself. Following are the case laws where Constitutional courts act as the torchbearer to act against the excessive state and democratic concentration of power.

Keshavananda Bharati v. State of Madras (1973):

It is one of the landmark judgements of Supreme Court of India and led to the earliest invocation of the constitutional morality.¹⁵ The case was filed by the Sri Keshavananda Bharati, the head of a Hindu religious mutt in Kerala, challenging the constitutional validity of the 24th, 25th and 29th Amendments to the Indian Constitution, which sought to curtail the powers of the judiciary and fundamental rights of citizens. It was a 7:6 majority decision, propounded the basic structure doctrine of the Constitution, which holds that parliament cannot amend several features of the Constitution such as democracy, secularism, federalism, and rule of law.¹⁶ It was also held that the basic structure of the Constitution cannot be taken away by the the Parliament through constitutional amendments. It was cited as dissent by Justice A.N. Ray and

¹³ INDIA CONST. pmb1.

¹⁴ B.R. AMBEDKAR, *CONSTITUENT ASSEMBLY DEBATES* vol. XI (Nov. 25, 1949) (Lok Sabha Secretariat 1990).

¹⁵ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁶ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* (8th ed. LexisNexis 2018).

as concurring opinions by Justice H.R. Khanna and P. Jagmohan Reddy. The reference they all made was brief and used sparingly. It laid the foundation for using the judiciary to protect the foundational spirit of the Constitution, evolving constitutional morality as a principle for striking down unconstitutional actions, even if legislatively passed. It served as a check that ensured amendments served the Constitution's spirit preventing legislative actions that threaten the democratic nature of the nation.¹⁷

S.P. Gupta v. Union of India (1981):

This is the first judges' case which was decided during the time when executive had exclusive power than the judiciary.¹⁸ One of the legal fraternities, S.P. Gupta, attorney of Allahabad High Court, who questioned the concurrence of the President in the consultation process. The Supreme Court addressed judicial appointments emphasising executive primacy. The Court's focus was on the process and grounds for appointment and transfer as the executive's power. Justice Venkataramiah was persuaded by Dicey's conception of constitutional morality as being coextensive with constitutional conventions. It interpreted the executive power under the constitutional morality by stressing the proper consultation with the judiciary (CJI) as it is a constitutional obligation to ensure judicial independence by considering relevant public interest grounds and adhering to the principles of transparency even within an executive dominated framework.¹⁹

Naz Foundation v. Government of NCT of Delhi: In this case the issue of Public Morality v. Constitutional Morality was taken up.²⁰ The court decriminalised consensual same-sex acts between adults. The homosexuality was linked to fundamental rights like equality (Article 14, 15) and liberty (Article 21) and considered Section 377 as unconstitutional. It prioritised individual dignity over societal prejudice i.e. the constitutional morality over personal morality.

Suresh Kumar Koushal v. Naz Foundation (2013): It temporarily reinstated Section 377. The court was then criticised for ignoring the concept of constitutional morality.²¹

Manoj Narula v. Union of India (2014): The constitutional morality expressed in this case as

¹⁷ *Supra* note 8.

¹⁸ S.P. Gupta v. Union of India, 1981 Supp. SCC 87.

¹⁹ *Supra* note 16.

²⁰ Naz Found. v. Gov't of NCT of Delhi, 160 (2009) DLT 277.

²¹ Suresh Kumar Koushal v. Naz Found., (2014) 1 SCC 1.

“bowing down to constitutional norms.”²² The court emphasised on Constitutional morality to interpret Article 75(1) of the Constitution. The judgement upheld that the Prime Minister would not appoint a person with serious criminal background to the Council of Ministers. The constitutional morality makes a check on the rule of law that become violative in an arbitrary manner.

Shayara Bano v. Union of India (2017): This is the historic case which stated that court can invalidate religious practices when they conflict with constitutional values. The Supreme Court abolished the practice of triple talaq as it was considered as unconstitutional and arbitrary as it violated Article 14. It made that personal laws cannot contradict fundamental rights.²³

Navtej Singh Johar v. Union of India (2018): This case is historic as it made the use of moral grounds like liberty and freedom and used constitutional interpretation to decriminalise the same-sex relations between consenting adults which is making choices about intimate relations is a fundamental right as protected under Article 21. It recognised sexual orientation as core aspect of individual autonomy affirming Fundamental Rights for the LGBTQ+ community against prejudice and societal discrimination. It reaffirmed with constitutional values must guide judicial interpretation even if they conflict with traditional social morality.²⁴

Indian Young Lawyers Association v. State of Kerala (Sabarimala Case) (2018): This case is a landmark example of constitutional morality where the Supreme Court struck down the temple's ban on women entry. The petitioners, all women aged between ten to fifty years old were not allowed to enter Lord Ayyappa Temple at Sabarimala (Kerala) due to reasons of customary practice supported by the rules based on the two enactments of the state of Kerala that denied them entry. It was noticed that Article 25(1) of the constitution which granted freedom of conscience, possess, practice, and propagate religion but is limited to various constitutional provisions like public morality. This public morality is synonymous with constitutional morality as interpreted by Justice Chandrachud in his concurring opinion. The dissenting judge, Justice Indu Malhotra also agreed on the same by considering the religious rights of the devotees of the Lord Ayyappa considering constitutional morality. The court bypassed doctrine of essentiality to uphold constitutional morality meaning upholding justice,

²² Manoj Narula v. Union of India, (2014) 9 SCC 1.

²³ Shayara Bano v. Union of India, (2017) 9 SCC 1.

²⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

equality and liberty overriding traditional customs that clash with constitutional values.²⁵

Government of NCT of Delhi v. Union of India (2018): This case is significant as it defined constitutional morality as a check on arbitrary power by emphasising that the powers of Lieutenant Governor should not undermine the authority and must respect the elected Delhi Government. It was held that Constitutional morality must fill up the constitutional silences to enhance and complete the spirit of the Constitution. It laid down the supremacy of constitutional values like democracy and federalism over political expediency. It expressed the constitutional morality as the “second basic structure doctrine” which is fundamental to the Constitution and protecting national interests.²⁶

Joseph Shine v. Union of India (2018): The Supreme Court of India struck down Section 497 of IPC by decriminalising adultery as it violated fundamental rights (equality, dignity, and privacy) under Article 14, 15, and 21.²⁷ It overruled the victorian morality and emphasised on constitutional morality. The judgement upheld the sexual privacy as a natural right and considered them under civil law (like divorce) and not criminal law. It protected personal right of spouses by considering adultery as not a crime against society requiring minimal state interference.

State of Tamil Nadu v. Governor of Tamil Nadu (2025): The Supreme Court by supporting Constitutional morality stated that governors cannot indefinitely delay, or pocket-veto bills passed by the state legislatures under Article 200. It emphasised their duty to act within constitutional morality and preventing them from obstructing democratically elected governments. It extended judicial review allowing states to approach courts for intervention when Governors breach their limits outside of constitutional morality. The case did not directly invoked Constitutional Morality but was followed that the high authorities must be guided by the “values of the Constitution”.²⁸

CHALLENGES TO CONSTITUTIONAL MORALITY

As the Constitution of India is always transforming, the constitutional morality in practice remains deeply challenging due to historical, social, political, and institutional factors. Though

²⁵Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1.

²⁶ Gov't of NCT of Delhi v. Union of India, (2018) 8 SCC 501.

²⁷ Joseph Shine v. Union of India, (2019) 3 SCC 39.

²⁸ State of Tamil Nadu v. Governor of Tamil Nadu, 2024 SCC OnLine SC.

the religious, cultural and linguistic diversity of India is a strength but till this date, societies in India face various discrimination based on caste hierarchies, patriarchy, religious orthodoxy, and community customs. These practices conflict with the constitutional values such as equality, dignity, liberty, and fraternity. The majority of the society are against the judgements like Navtej Singh Johar and Sabarimala Case as non-acceptance and backlash to constitutional values. The electoral politics often prioritises majority sentiment over constitutional values as seen in Suresh Kumar Kaushal Case. This undermines the right of minorities. There seems to be rise in selective constitutionalism by demanding only rights and ignoring duties, tolerance, and constitutional discipline. Executives delay the constitutional obligations and legislatures pass laws serving political interests due to which the constitutional authorities act arbitrarily. One of the major challenges is that the constitution does not explicitly describe the constitutional morality and it depends on judicial interpretation. This leads to lack of clear framework for the effective framework resulting in judicial overreach. Constitutional morality is more theoretical as its values are not reflected in the society up to the mark as it should. There still exists gender inequality, freedom of speech is suppressed, religious polarisation undermines secularism and many more. The citizens of India often lack awareness of their constitutional values and right which leads to the sentimental narratives of the constitutional morality. Until the constitutional values will be seen as internal way of life, the constitutional morality will not be able to achieve the reality of life, and it will always remain an aspiration.

STRENGTHENING CONSTITUTIONAL MORALITY

Constitutional Morality should be deeply embedded in every organ of the State and should transform the constitutional values which are embedded in governance, institutions, and civic culture. One of the most important ways to look forward Constitutional Morality is by promoting awareness of constitutional rights so that each citizen can have sense of constitutional responsibility and participate in effective democratic processes. The institutions like Election Commission, Central Bureau of Investigation and many more should work independently, with transparency and effectively without much of executive and legislative interference to uphold the values of constitutional morality. The various minorities and the vulnerable section of societies should be provided with access to legal aid services and involving them in greater access to justice by clearing judicial backlogs. In today's world with the growing advancement of technology and globalisation, the current legal and institutional framework should adapt accordingly to transform constitutional morality more effectively. The

citizens should know how to criticise and raise voice against the non-constitutional actions. It is followed that Constitutional morality is never-ending process which includes the judiciary system, government and the people to build up their actions with constitutional values. Constitutional morality is neither boon or bane if there is a balance between upholding constitutional values and respecting democratic processes.