



CONSTITUTIONAL MORALITY: AN OVERVIEW

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Abstract

The laws of the Indian constitution demonstrate how the judiciary has shaped the constitution and its impacts through new doctrines and tests. The judiciary has introduced concepts like “basic structure,” “arbitrariness,” and “manifest arbitrariness” by interpreting the meaning and power given by the constitution. Constitutional morality was never formally recognized as a doctrine, but it arose from judicial interpretation. Even though it wasn't formally acknowledged, constitutional morality significantly influenced some of the most important and progressive judgments in recent years.

I. INTRODUCTION

Respect the Constitution and all institutions of authority that derive their power from it. Citizens should have the right to free expression to criticize and hold accountable all officials acting according to their constitutional duties. Public officials and mandated authorities must behave properly within the roles assigned to them by the Constitution. Those seeking political power, as well as their opponents, should respect the Constitution. For Grote, the principles of self-restraint and plurality are essential to constitutional morality. Self-restraint refers to the responsibilities of all stakeholders in a constitutional system, as listed above. Plurality refers to the diverse nature of the society being governed.

Are same-sex weddings morally wrong? What issues arise with racism? Should surrogacy be legalized? Is adultery wrong? Moral questions often challenge our legal, political, and cultural norms. Their persistence is likely a defining trait of a democratic, or at least open, society.

Moral issues impact the legal system at every level. It is highly unlikely that morality and law can be completely separated. In 2018, the Supreme Court of India made landmark rulings, including decisions on the right to privacy, decriminalization of consensual relationships under sections 377 and 497 of the IPC, triple talaq, and the Sabarimala temple case, all based on constitutional morality.

Constitutional morality means being committed to the basic principles of constitutional values. It involves support for an inclusive and democratic political process that serves both individual and social interests. The ideals enshrined in the Indian Constitution include Democracy, Socialism, Equality, and Integrity, among

others. In summary, the preamble outlines these constitutional ideals. Constitutional morality is one of the foundations upon which constitutional laws stand.

It is worth noting that the term was cited in fewer than ten Supreme Court decisions from the Constitution's adoption until 2010. However, the Supreme Court used it in more than ten recorded instances in 2018. The crucial questions now are whether courts should use constitutional morality to interpret the rights granted to individuals by the Constitution, and whether this tool should be applied to limit state interference in individual lives, as it might infringe on the rights guaranteed by the Constitution.

This study explores constitutional morality in India, differentiates between constitutional morality and social morality, and examines their relationship along with landmark judgments on constitutional morality.

II. THE DEFINITION OF CONSTITUTIONAL MORALITY

Being faithful to the principles of constitutional values is called constitutional morality. This means committing to a democratic and inclusive political process that meets individual and societal needs. India's constitutional values include democracy, socialism, equality, and integrity. The preamble defines these fundamental values.

Constitutional morality means following the constitution's rules and not acting in ways that violate the rule of law or appear arbitrary. It serves as a crucial guide for building institutions. Traditions and norms must change to uphold the value of this morality. Democratic values thrive when the public and those in charge of institutions stick to the constitutional guidelines and focus on maintaining institutional integrity and necessary constitutional limits. Commitment to the constitution is an essential part of constitutional morality.

This concept goes beyond simply interpreting the constitution's language; it lies in the spirit of the constitution, addressing both individual and community interests. In India, this idea is still developing, evolving over time. Recently, India's Supreme Court has often used this doctrine to invalidate laws that might reflect popular will morality, giving it new meanings and interpretations.

III. CONSTITUTIONAL MORALITY'S SOURCES

The term "morality," especially constitutional morality, is not clearly defined in the Constitution. However, we can find constitutional morality in four main sources. These include:

- It may come from the Constitution itself. Articles 12 to 35 (Fundamental Rights), Articles 36 to 51 (Directive Principles of State Policy), the Preamble, and the Fundamental Duties all highlight constitutional morality when understood correctly.
- The debates and discussions in the Constitutional Assembly are a key source of constitutional morality. Ambedkar's ideas form the base of our current understanding.
- The circumstances during the drafting of the Constitution and the necessary historical context.
- Case laws and precedents play a significant role today. Many strict laws have been softened by the Hon'ble Supreme Court and various High Courts to uphold the spirit of the Constitution, morality, and strengthen democratic values.

IV. CONSTITUTION MORALITY AND ITS IMPORTANCE

Several supporters have called Constitutional Morality transformational and revolutionary. Here are some implications of constitutional morality:

- While it aims to keep pace with changing times, ideals, and goals of society, constitutional morality also safeguards the nation's rule of law enforcement. It is not one-sided and often challenges both citizens and the government.
- Constitutional morality also helps foster collaboration and coordination among all stakeholders in developing and maintaining the nation's democratic principles. It aims to encourage people to strive for constitutional goals that might seem unattainable otherwise. It promotes better relationships among individuals to achieve constitutional aspirations that require unity and teamwork. This concept relates to building trust in democratic institutions.
- Constitutional morality can help interpret laws or legislation that do not fit the current moment and drive positive change in social or public standards. For instance, the law banning Sati granted Indian widows, who were once seen as bearers of bad luck, the right to life and dignity. After this law was passed, there was a notable shift in how people viewed Sati and widows' rights in India. It also led to granting them additional rights, including the ability to remarry and pursue education after their husband's death.
- Constitutional morality is particularly significant in a vibrant and diverse country like India, which has a varied population with many classifications: caste, religion, color, sexual orientation, languages, and genders. The concept of plurality is central to constitutional morality, as it recognizes differences and diversity, contributing to a more inclusive society.
- Many officers resign or leave their government jobs to express support for certain movements and uphold constitutional integrity. In contrast, constitutional morality encourages individuals to engage actively in the system and fight against inequalities and non-constitutional elements.

V. CRITICAL ANALYSIS

The theory goes beyond specific constitutional passages; it also reflects the spirit of the constitution. It requires basic rights in a democracy, which are essential for everyone in society to thrive. This theory serves as a counterpoint to public morality and is part of the foundation of the constitution. It allows the court to assess the "spirit" and "soul" of the constitution by looking beyond just purposive and literal interpretations. We have seen that doctrine is a progressive approach that changes with time and culture. However, are there drawbacks to it?

Every coin has two sides, and doctrine is no different. Constitutional morality is not explicitly stated in the constitution. This absence is problematic because it opens the door for the idea to be misused in courts, influenced by the personal views of judges without clear guidance or agreement on the theory. The purpose of the doctrine is to uphold the rule of law without contradicting the constitution or becoming arbitrary.

When we examine the judgments that have used this doctrine, each one represents a different interpretation, which can lead to confusion about what the theory truly means. For instance, in the Sabarimala case, Justice Indu Malhotra's dissent is based on the same doctrine but interprets it differently, supporting the ban. In

contrast, Justice Chandrachud uses the same concept to argue against the ban, citing discrimination. This illustrates that the doctrine can be elusive, like mercury slipping through fingers. We need to consider whether this theory is currently being used as a reliable standard by the judiciary.

VI. LANDMARK JUDGMENTS ON CONSTITUTION MORALITY

➤ Navtej Singh Johar v Union of India (2018)

To protect the rights of the LGBTQ community, the Supreme Court made a decision that effectively overturned Section 377 of the Indian Penal Code, which had made "carnal intercourse against the order of nature" (homosexuality) a crime. The court's approach was guided by constitutional morality rather than the views of the majority or what is widely accepted. Justice Chandrachud pointed out the difference between public morality and constitutional morality, emphasizing that the ideal of justice always comes first. This means that constitutional morality is more important than public morality. Three of the five justices agreed that the court's goal is to reform society and to elevate public morality to match constitutional morality. The court took a forward-thinking and active stance, referencing human dignity, freedom, and the right to privacy under Article 21 as the basis for its decision.

➤ Joseph Shine v. Union of India (2019)

The Supreme Court upheld the right to gender equality and the right to equality by striking down Section 497 of the IPC. This section made adultery a crime only for men when they had sexual intercourse with a married woman. The married woman was not punished as an abettor. The court noted that the constitutional validity of criminal laws should not be judged by popular or public morality, especially if they do not align with constitutional ideals. The concept of "Husband as master of women" or "a woman as a possession of her spouse" was found to contradict the spirit of the Constitution. Here, constitutional principles act as a counterbalance to public morality.

➤ Indian Young Lawyers Association v. State of Kerala

Some judgments have caused significant harm to public morals and faced criticism from religious leaders and others. The Supreme Court ruled that excluding people aged 10 to 50 from entering the Sabarimala temple to worship Lord Ayyappan violated four key criteria of constitutional morality:

1. Legality
2. Freedom
3. Equality
4. Brotherhood.

The court applied similar reasoning in the Triple Talaq case to uphold rights under Articles 25 and 26. The Court stated that the term "morality" in these articles should refer to constitutional morality, not popular morality. Justice Indu Malhotra offered a dissenting opinion.

VII. CONCLUSION

The Constitution, reflecting the will of the people, is not an end in itself but a means to achieve justice—social, economic, and political. This commitment is enshrined in the Preamble of our Constitution and hinges on upholding constitutional morality and the rule of law. Judicial values are essential in achieving

this. Heaven may fall, but justice will prevail! If things go wrong under the Constitution, it will not be due to a flawed document but rather a reflection of human shortcomings.

A constitutional ethic rooted in liberal values makes the Constitution possible. This goes beyond narrow ideology and draws from deeper values: the ability to balance individuality with mutual respect, intellect with humor, discussion with decision-making, democratic sensitivity, conviction with an understanding of fallibility, ambition with a commitment to institutions, and hope for the future while acknowledging the past and present.

