



CONSTITUTIONAL MORALITY IN INDIAN CONSTITUTIONAL JURISPRUDENCE

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ABSTRACT

Constitutional morality has emerged as one of the most significant interpretive principles in contemporary Indian constitutional jurisprudence. Although the expression is not expressly defined in the Constitution of India, it has acquired considerable importance through judicial interpretation, particularly in cases involving fundamental rights, equality, dignity, individual autonomy, religious freedom, institutional integrity, and the limits of state power. The concept is closely associated with the constitutional vision of justice, liberty, equality and fraternity and seeks to ensure that constitutional governance is not reduced merely to formal compliance with enacted provisions. Instead, it requires constitutional institutions and public authorities to act consistently with the deeper values, limitations and democratic commitments embodied in the Constitution. The expression "constitutional morality" is historically associated with Dr B.R. Ambedkar, who used the concept while discussing the functioning of constitutional democracy. In modern Indian jurisprudence, the Supreme Court has developed the doctrine in cases such as Manoj Narula v. Union of India, Government of NCT of Delhi v. Union of India, Navtej Singh Johar v. Union of India, Joseph Shine v. Union of India, and Indian Young Lawyers Association v. State of Kerala. These decisions demonstrate that constitutional morality may operate both as a restraint upon governmental power and as an interpretive principle for protecting individual rights against majoritarian or socially dominant notions of morality. At the same time, constitutional morality raises important questions concerning judicial discretion, separation of powers, democratic legitimacy and the possibility of judges transforming constitutional values into subjective preferences. The doctrine therefore requires careful application within the text, structure, history and basic values of the Constitution. This article examines the historical foundations, conceptual meaning, evolution, judicial

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application, relationship with constitutional morality and social morality, significance for fundamental rights and democratic governance, criticisms and prospects of constitutional morality in Indian constitutional jurisprudence.

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INTRODUCTION

The Constitution of India is not merely a legal document establishing governmental institutions. It is also a transformative document intended to restructure the relationship between the State and the individual and to establish a democratic order based upon justice, liberty, equality and fraternity. The Constitution seeks to protect individuals not only from arbitrary state action but also from forms of social domination that may prevent the realisation of equal citizenship. In this context, the idea of constitutional morality has acquired considerable significance. Constitutional morality represents fidelity to the values, principles, limitations and institutional arrangements established by the Constitution. It requires constitutional actors to respect the constitutional scheme even when political, social, religious or majoritarian preferences point in another direction.

The importance of the doctrine becomes particularly visible when there is a conflict between individual rights and social practices. A practice may be traditionally accepted, socially popular or religiously justified, but constitutional adjudication asks a different question: whether the practice is compatible with constitutional rights and constitutional values.

This distinction is central to the contemporary understanding of constitutionalism. Democracy cannot simply mean the rule of the numerical majority. A constitutional democracy also requires protection of minorities, individual dignity, equality before law, institutional accountability and limitations upon governmental power. Constitutional morality therefore performs the function of ensuring that democratic power remains constitutional power.

The Supreme Court has described constitutional morality as a principle that requires constitutional actors to "bow down to the norms of the Constitution" and to avoid arbitrary action. In *Manoj Narula v. Union of India*, (2014) 9 SCC 1, the Court associated constitutional morality with institutional integrity, rule of law and responsible democratic governance.

The doctrine subsequently became prominent in cases concerning sexual orientation, gender equality, adultery, religious practices, federalism and institutional functioning. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the Supreme Court expressly distinguished constitutional morality from prevailing social morality and held that constitutional adjudication must remain faithful to constitutional principles. Constitutional morality therefore represents an important shift from a purely formal understanding of constitutional law toward a substantive understanding of constitutionalism.

MEANING AND CONCEPT OF CONSTITUTIONAL MORALITY

The Constitution does not provide a specific definition of constitutional morality. Consequently, its meaning has developed primarily through constitutional theory and judicial interpretation. At its broadest level, constitutional morality means fidelity to the Constitution and its foundational values. It requires constitutional actors to respect:

Constitutional supremacy, Rule of law, Separation of powers, Fundamental rights, Equality and non-discrimination, Individual dignity, Liberty and autonomy, Democratic accountability, Institutional integrity, Federalism, Secularism, Fraternity, Constitutional limitations on governmental power, and the transformative objectives of the Constitution.

Constitutional morality therefore differs from ordinary morality. Ordinary morality may be derived from religion, social customs, community practices, family traditions or prevailing public opinion. Constitutional morality, on the other hand, derives its legitimacy from the Constitution.

This distinction is crucial because constitutional democracy exists precisely to ensure that fundamental rights are not dependent entirely upon changing social preferences. For example, a social majority may oppose a particular minority practice. However, if the Constitution protects the minority's rights, the majority's social preference cannot automatically override constitutional guarantees.

Similarly, a traditional practice may have existed for centuries, but duration alone cannot establish constitutional validity. Constitutional morality consequently asks: What does the Constitution require, even when society may demand something different? This is one of the central questions of transformative constitutionalism.

HISTORICAL FOUNDATIONS: DR. B.R. AMBEDKAR AND CONSTITUTIONAL MORALITY

The intellectual roots of constitutional morality in India can be traced significantly to Dr B.R. Ambedkar. Ambedkar discussed constitutional morality during the Constituent Assembly debates, drawing attention to the fact that constitutional democracy cannot survive merely through the existence of constitutional institutions. It requires constitutional habits, discipline and respect for institutional limitations.

Ambedkar famously observed that constitutional morality is not a naturally occurring sentiment. It has to be cultivated. His concern was particularly relevant to India because constitutional democracy was being introduced into a society characterised by deep social inequalities, caste divisions, religious diversity and hierarchical social structures.

The Constitution therefore required not merely constitutional institutions but a constitutional culture. For Ambedkar, constitutional morality involved respect for constitutional methods and institutional limitations. Political actors were required to pursue political objectives through constitutional means rather than through arbitrary or extra-constitutional methods.

This historical understanding is important because it demonstrates that constitutional morality was initially concerned significantly with institutional behaviour. Modern jurisprudence has expanded the concept to include individual rights, dignity, equality and autonomy, but the original institutional dimension remains important. Constitutional morality should therefore not be reduced to a judicial tool for expanding fundamental rights. It also requires constitutional institutions to exercise power responsibly.

CONSTITUTIONAL MORALITY AND CONSTITUTIONALISM

Constitutionalism means that governmental power is limited by law. A Constitution may establish institutions of government, but constitutionalism ensures that those institutions cannot exercise unlimited power. Constitutional morality strengthens this principle by requiring institutions to internalise constitutional limitations.

For instance, Parliament possesses extensive legislative authority, but Parliament cannot enact laws violating fundamental rights or the basic structure of the Constitution. Similarly, the executive possesses significant administrative powers, but executive action must comply with

constitutional limitations. Judicial power is also constitutionally constrained. Courts must interpret the Constitution, but they cannot simply replace constitutional text with personal preferences.

Constitutional morality therefore applies to all constitutional actors: Legislature, Executive, Judiciary, Constitutional authorities, Public institutions, and citizens in their constitutional relationships. It is consequently incorrect to understand constitutional morality as a doctrine applicable only to judges.

CONSTITUTIONAL MORALITY AND THE PREAMBLE

The Preamble provides an important normative foundation for constitutional morality. It declares India's commitment to: Justice, Liberty, Equality, and Fraternity. These principles provide an interpretive framework for understanding constitutional morality.

Justice: Constitutional morality requires social, economic and political justice. Laws and governmental policies should therefore be examined not merely for formal legality but also for their compatibility with constitutional commitments to substantive justice.

Liberty: Individual liberty protects citizens against excessive state control. Constitutional morality therefore supports freedom of thought, expression, belief, conscience and personal autonomy.

Equality: Equality is not limited to identical treatment. Constitutional morality requires the dismantling of arbitrary discrimination and social hierarchies inconsistent with equal citizenship.

Fraternity: Fraternity is particularly important because constitutional democracy requires citizens to recognise each other as equal members of the constitutional community.

The Supreme Court's modern jurisprudence on dignity, privacy, sexual orientation, gender equality and religious freedom reflects these values.

Constitutional Morality and Fundamental Rights: The doctrine has become especially significant in the interpretation of Fundamental Rights. Fundamental Rights represent constitutional limitations upon state power. However, many rights contain open-textured

concepts such as "equality", "reasonableness", "life", "personal liberty", "freedom", "morality" and "public order".

Constitutional morality assists courts in interpreting these concepts in a manner consistent with the constitutional structure. For example, Article 14 prohibits arbitrary state action and guarantees equality before the law. Article 19 protects several forms of freedom. Article 21 protects life and personal liberty. Through constitutional interpretation, these provisions have developed into powerful guarantees of dignity, autonomy and substantive equality. Constitutional morality provides a normative foundation for such interpretation.

CONSTITUTIONAL MORALITY AND SOCIAL MORALITY

One of the most important contributions of the Supreme Court's recent jurisprudence is the distinction between constitutional morality and social morality. Social morality reflects prevailing societal attitudes. Constitutional morality reflects constitutional values.

The two may coincide, but they may also conflict. A democratic Constitution becomes particularly important when such a conflict occurs. If constitutional rights were always determined by social majority preferences, minorities would remain vulnerable to majoritarianism.

The constitutional system therefore establishes rights that cannot simply be removed because a majority disapproves of their exercise. This principle became particularly visible in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

The Supreme Court held that constitutional morality must prevail over social morality when determining the validity of state action affecting fundamental rights. The Court's reasoning was grounded in dignity, equality, liberty and individual autonomy. The significance of *Navtej Singh Johar* lies not merely in the particular issue before the Court but in its broader constitutional philosophy: the Constitution protects individuals even when society may not fully accept them.

CONSTITUTIONAL MORALITY IN MANOJ NARULA V. UNION OF INDIA

The Supreme Court's decision in *Manoj Narula v. Union of India*, (2014) 9 SCC 1, is an important early modern authority on constitutional morality. The case concerned the question of whether persons accused of serious criminal offences should be appointed ministers.

The Court examined constitutional morality in the context of democratic governance and institutional integrity. The Court emphasised that constitutional morality requires constitutional actors to remain faithful to constitutional norms and prevents arbitrary or constitutionally improper exercise of power.

An important dimension of the judgment was its emphasis on the quality of democratic governance. Democracy is not merely about elections. It also requires responsible institutions. Constitutional morality therefore requires: Integrity, Accountability, Institutional restraint, Rule of law, and Respect for constitutional limitations. The case demonstrates that constitutional morality has an institutional dimension independent of individual rights.

CONSTITUTIONAL MORALITY IN THE DELHI GOVERNMENT CASE

The doctrine was further developed in the context of Indian federalism. In *Government of NCT of Delhi v. Union of India*, (2018) 8 SCC 501, the Supreme Court examined the constitutional relationship between the elected government of Delhi and the Lieutenant Governor.

The Constitution creates a complex federal arrangement for the National Capital Territory. The Court emphasised constitutional governance, representative democracy, institutional balance and constitutional morality. The decision recognised that constitutional morality requires constitutional authorities to work within the constitutional structure rather than using institutional power in a manner that defeats democratic accountability.

The judgment is important because it illustrates that constitutional morality can operate as a principle of institutional comity and constitutional trust. Constitutional offices should not be interpreted in isolation. Their powers must be understood within the larger constitutional architecture. The case therefore demonstrates that constitutional morality is closely connected with: Federalism, Representative government, Institutional cooperation, Separation of powers, and Democratic accountability.

CONSTITUTIONAL MORALITY AND THE RIGHT TO PRIVACY

The Supreme Court's decision in *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, transformed the constitutional understanding of privacy. The Court recognised privacy as a constitutionally protected right connected with dignity, liberty and autonomy. Although

privacy is not expressly enumerated as a separate fundamental right in the original constitutional text, the Court located it within the broader guarantees of Part III.

The constitutional morality approach supports this interpretation because constitutional rights must be understood in light of the Constitution's protection of human dignity and individual freedom. Privacy protects the individual's ability to make intimate personal choices without unjustified state interference. This became particularly important in later cases involving sexual orientation, marriage, family and personal autonomy.

CONSTITUTIONAL MORALITY IN NAVTEJ SINGH JOHAR

Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, represents one of the clearest examples of constitutional morality in Indian jurisprudence.

The Supreme Court reconsidered the constitutional validity of Section 377 of the Indian Penal Code insofar as it criminalised consensual sexual relations between adults.

The Court relied heavily upon dignity, equality, privacy, autonomy, liberty, individual identity, and constitutional morality. The Court rejected the argument that popular morality should determine the constitutional validity of rights. This approach reflects the transformative character of the Constitution.

The Constitution is not simply an instrument for preserving existing social practices. It also functions as a mechanism for transforming social relationships inconsistent with constitutional equality. The judgment consequently recognised that constitutional rights belong to individuals irrespective of whether their identity or choices are socially popular.

The significance of Navtej extends beyond sexual orientation. It establishes a broader proposition: The constitutional validity of state action cannot be determined solely by prevailing majoritarian morality.

CONSTITUTIONAL MORALITY AND ADULTERY: JOSEPH SHINE

In Joseph Shine v. Union of India, (2019) 3 SCC 39, the Supreme Court invalidated Section 497 of the Indian Penal Code, which criminalised adultery in a discriminatory manner. The Court examined the provision through the constitutional guarantees of equality, dignity, autonomy, privacy, and individual liberty.

The Court rejected paternalistic assumptions that treated women as subordinate to men within marriage. Constitutional morality required the Court to examine the provision against constitutional equality rather than merely relying on historical social morality. The case illustrates how constitutional morality can challenge laws based upon outdated social assumptions. Marriage may be socially important, but constitutional law cannot automatically justify state control over every aspect of marital relationships.

CONSTITUTIONAL MORALITY AND SABARIMALA

The decision in *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, commonly known as the Sabarimala case, brought constitutional morality into the difficult relationship between religious freedom and equality.

The case involved restrictions concerning the entry of women of a particular age group into the Sabarimala temple. The majority considered the issue through constitutional guarantees of equality, non-discrimination, religious freedom, dignity, individual autonomy, and constitutional morality.

The judgment generated significant academic and public debate. Supporters of the decision argued that constitutional morality protects equality and individual dignity against discriminatory practices.

Critics argued that courts should exercise greater caution when adjudicating religious practices and that constitutional morality should not become a mechanism for imposing judicially constructed moral values upon religious communities. This debate demonstrates both the power and the difficulty of the doctrine.

CONSTITUTIONAL MORALITY AND RELIGIOUS FREEDOM

Articles 25 and 26 protect religious freedom, but those freedoms are subject to constitutional limitations. The Constitution therefore requires courts to balance: individual religious freedom, group religious autonomy, equality, public order, health, morality, and other fundamental rights. The concept of morality in Articles 25 and 26 has generated considerable judicial debate. Modern judgments have distinguished constitutional morality from ordinary social morality. However, constitutional morality should not automatically mean that every judicial preference becomes constitutionally binding.

The proper approach requires courts to derive constitutional standards from the constitutional text, structure, precedent and foundational principles. This is particularly important in religious freedom cases because constitutional adjudication must maintain institutional humility while protecting fundamental rights.

CONSTITUTIONAL MORALITY AND EQUALITY

Article 14 lies at the heart of constitutional morality. The traditional approach to equality focused primarily upon reasonable classification. Modern constitutional jurisprudence has increasingly emphasised substantive equality and the prohibition of arbitrariness.

Constitutional morality supports this development because formal equality may coexist with deeply unequal social structures. For example, treating historically disadvantaged individuals identically to socially dominant groups may reproduce existing inequalities.

Constitutional morality therefore requires constitutional interpretation to take social realities into account. The constitutional commitment to equality is transformative because the Constitution seeks not merely to prevent the State from creating discrimination but also to dismantle structures that deny equal citizenship.

CONSTITUTIONAL MORALITY AND DIGNITY

Dignity has become one of the central principles of Indian constitutional jurisprudence. The Supreme Court has repeatedly linked dignity with Article 21. Dignity means that an individual must be treated as an autonomous constitutional person rather than merely as an object of state policy or social control. Constitutional morality therefore protects: bodily autonomy, personal choices, privacy, identity, freedom of conscience, equality, and individual self-determination.

This approach is particularly important in cases involving marginalised communities. A constitutional democracy must ensure that the dignity of an unpopular individual is not dependent upon majority approval.

CONSTITUTIONAL MORALITY AND MINORITY RIGHTS

Constitutional morality has a special role in protecting minorities. Democratic majorities possess political power, but constitutional minorities possess constitutional rights.

The distinction is essential. A parliamentary majority can ordinarily make laws, but it cannot exercise unlimited power. Fundamental rights establish areas of individual and minority protection that majoritarian preferences cannot simply eliminate.

Constitutional morality therefore acts as a safeguard against majoritarian constitutionalism. The protection of minorities is not anti-democratic. It is an essential component of constitutional democracy.

CONSTITUTIONAL MORALITY AND TRANSFORMATIVE CONSTITUTIONALISM

The idea of transformative constitutionalism is closely related to constitutional morality. Transformative constitutionalism understands the Constitution as an instrument for transforming unjust social structures. The Indian Constitution seeks to transform caste-based inequality, untouchability, gender discrimination, social exclusion, economic inequality, arbitrary governmental authority, and hierarchical notions of citizenship.

Constitutional morality provides an interpretive bridge between constitutional text and this transformative objective. The Constitution is therefore both a legal framework and a social transformation project. However, transformation must remain constitutionally grounded. Courts cannot use transformation as a justification for disregarding constitutional limitations.

CONSTITUTIONAL MORALITY AND BASIC STRUCTURE

The basic structure doctrine established in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, is another important context for understanding constitutional morality. The Supreme Court held that Parliament's power to amend the Constitution under Article 368 is subject to limitations because the basic structure of the Constitution cannot be destroyed.

Elements recognised as part of the basic structure include: supremacy of the Constitution, rule of law, judicial review, separation of powers, democracy, secularism, federalism, fundamental rights, and constitutional identity.

Constitutional morality complements this doctrine by requiring constitutional institutions to preserve these foundational commitments. The basic structure doctrine establishes limits on constitutional amendment, while constitutional morality can guide the exercise of constitutional powers within those limits.

CONSTITUTIONAL MORALITY AND SEPARATION OF POWERS

Constitutional morality also demands respect for separation of powers. The legislature makes laws. The executive implements laws. The judiciary interprets laws and adjudicates disputes. Although the Indian Constitution does not establish an absolutely rigid separation of powers, institutional boundaries remain constitutionally significant. If courts excessively enter the legislative domain, they risk undermining democratic accountability. If legislatures disregard judicial review, constitutional supremacy is weakened. If executives disregard legislative or judicial limitations, the rule of law suffers. Constitutional morality therefore requires each institution to recognise both its powers and its limitations.

CONSTITUTIONAL MORALITY AND JUDICIAL REVIEW

Judicial review is an important mechanism for enforcing constitutional morality. Through judicial review, courts examine whether governmental action complies with constitutional requirements. However, judicial review also raises a democratic legitimacy question.

Judges are generally unelected, whereas legislatures derive democratic legitimacy from elections. The challenge is therefore to ensure that constitutional morality does not become a vague doctrine through which courts invalidate legislation merely because judges consider it undesirable.

The legitimacy of constitutional adjudication depends upon principled reasoning. Courts should therefore connect constitutional morality to: constitutional text, constitutional structure, precedent, fundamental rights, established constitutional principles, legislative competence, and institutional limitations. Constitutional morality is strongest when it is demonstrably derived from the Constitution rather than from personal moral preferences.

CONSTITUTIONAL MORALITY AND THE RULE OF LAW

Rule of law is a central component of constitutional morality. It means that government must operate according to law and that public power cannot be exercised arbitrarily.

Constitutional morality requires: government according to law, equality before the law, judicial independence, accountability of public authorities, reasoned decision-making, procedural fairness, and protection against arbitrary state action.

The principle therefore operates as an antidote to governmental arbitrariness. A government may possess legal power, but constitutional morality requires that such power be exercised for constitutionally legitimate purposes.

CONSTITUTIONAL MORALITY AND INSTITUTIONAL INTEGRITY

Institutional integrity is another significant component. Constitutional institutions cannot function effectively if public authorities use their offices for personal, partisan or arbitrary purposes. The doctrine therefore requires: independence, impartiality, accountability, transparency, institutional restraint, and commitment to constitutional purposes.

The principle is especially important for constitutional offices such as: President, Governors, Speakers, election commission, higher judiciary, public authorities, and other constitutional bodies. Constitutional morality thus promotes constitutional trust.

CONSTITUTIONAL MORALITY AND DEMOCRACY

There is sometimes an assumption that democracy means majority rule. Constitutional democracy is more complex. Democracy involves: popular participation, elections, representative government, political equality, freedom of expression, accountability, and protection of constitutional rights.

Constitutional morality ensures that the majority cannot use democratic power to destroy the conditions necessary for democracy itself. For example, a legislative majority cannot legitimately abolish free elections and claim democratic legitimacy. Similarly, a majority cannot eliminate fundamental freedoms simply because it has electoral support. Constitutional morality therefore protects the constitutional foundations of democratic government.

CONSTITUTIONAL MORALITY AND FRATERNITY

Fraternity is often considered the least discussed constitutional value, yet it is fundamental to constitutional morality. A Constitution can guarantee formal equality, but democracy cannot survive if citizens regard each other as inherently superior or inferior. Fraternity requires recognition of equal membership in the constitutional community. This principle becomes especially significant in a diverse country such as India.

Constitutional morality therefore demands respect for: religious diversity, linguistic diversity, cultural diversity, gender diversity, individual identity, and minority rights. Fraternity transforms constitutional citizenship from a legal status into a social relationship based on mutual respect.

CONSTITUTIONAL MORALITY AND GENDER JUSTICE

Gender justice provides a significant field for the application of constitutional morality. Traditional social morality has historically justified different treatment of men and women in areas such as marriage, property, sexual autonomy, employment, religious participation, and family relationships.

Constitutional morality requires these practices to be tested against equality and dignity. Cases such as *Joseph Shine*, *Indian Young Lawyers Association*, and other gender equality decisions demonstrate the judiciary's increasing emphasis upon constitutional equality rather than patriarchal social assumptions. However, gender justice also requires attention to legislative policy, social reform and institutional implementation. Judicial decisions alone cannot achieve substantive equality.

CONSTITUTIONAL MORALITY AND LGBTQ+ RIGHTS

The jurisprudence concerning LGBTQ+ rights represents perhaps the clearest illustration of constitutional morality prevailing over social morality. In *Navtej Singh Johar*, the Court recognised that constitutional rights cannot depend upon whether a person's identity is accepted by the majority.

The judgment connected sexual orientation with dignity, privacy, equality and autonomy. This reflects the constitutional principle that an individual does not lose constitutional protection merely because the individual's identity is unpopular. The decision is therefore significant not only for LGBTQ+ rights but also for the broader theory of constitutional citizenship.

CONSTITUTIONAL MORALITY AND FREEDOM OF CONSCIENCE

Freedom of conscience occupies an important place in Articles 25 and 26. Constitutional morality protects the individual's ability to form and maintain beliefs without unjustified state interference. However, freedom of conscience is not absolute. The Constitution itself provides limitations, including public order, morality, health and other fundamental rights. The

constitutional challenge is therefore to maintain a balance between: individual conscience + religious autonomy + equality + constitutional rights. Constitutional morality provides a framework for this balancing exercise.

CONSTITUTIONAL MORALITY AND SECULARISM

Indian secularism is distinct from strict separation between religion and State. The Indian constitutional model seeks principled engagement with religion while maintaining equal respect for different faiths.

Constitutional morality therefore requires the State to remain constitutionally neutral and not discriminate merely because of religious identity. The principle is particularly important where religious majoritarianism threatens equal citizenship.

Secularism has been recognised as part of the basic structure of the Constitution. Constitutional morality therefore requires public authorities to preserve religious freedom while also respecting equality and other fundamental rights.

CRITICISM OF CONSTITUTIONAL MORALITY

Despite its importance, constitutional morality is not free from criticism.

Vagueness: The concept is not expressly defined in the Constitution. Different judges may understand constitutional morality differently. This raises concerns about uncertainty.

Judicial Subjectivity: Critics argue that constitutional morality can permit judges to substitute personal moral preferences for constitutional interpretation. If the concept is applied without textual and structural limitations, judicial review may become excessively subjective.

Democratic Legitimacy: Courts are not directly elected. When courts invalidate legislation based upon constitutional morality, questions arise concerning democratic accountability.

Excessive Judicialisation: Every social controversy cannot be transformed into a constitutional dispute. Courts must recognise that some policy choices are appropriately left to elected institutions.

Tension with Religious Autonomy: In religious freedom cases, constitutional morality may come into conflict with community autonomy and religious self-governance.

Risk of Constitutional Overreach: If constitutional morality becomes an independent source of power rather than an interpretive principle, courts may inadvertently create constitutional rules beyond their legitimate institutional role.

These criticisms demonstrate the need for disciplined application.

HOW SHOULD CONSTITUTIONAL MORALITY BE APPLIED?

Constitutional morality should not be treated as an unlimited judicial licence. A principled methodology should include the following stages.

First: Identify the constitutional provision. The Court should begin with the relevant constitutional text.

Second: Identify the constitutional value: The Court should determine whether the dispute involves equality, liberty, dignity, secularism, democracy, federalism or another constitutional principle.

Third: Examine constitutional structure: The interpretation should be consistent with the broader institutional design.

Fourth: Consider precedent: Existing constitutional jurisprudence should guide the analysis.

Fifth: Identify the rights and interests involved: The Court should clearly identify both individual rights and competing constitutional interests.

Sixth: Apply proportionality where appropriate: Restrictions on fundamental rights should be examined through appropriate standards of legality, legitimate purpose, necessity and proportionality.

Seventh: Respect institutional boundaries: Courts should avoid replacing legitimate policy choices with judicial preferences.

Eighth: Provide reasoned justification: A constitutional morality decision should explain why the constitutional value requires a particular outcome.

This methodology can reduce the risk of subjectivity.

CONSTITUTIONAL MORALITY AS A RESTRAINT AND AN ENABLER

Constitutional morality performs two apparently opposite functions. It is a restraint because it prevents governmental institutions from exercising power arbitrarily. It is also an enabler because it permits the Constitution to respond to changing social conditions without requiring formal amendment for every development. For example, the Constitution does not expressly mention concepts such as digital privacy, informational autonomy, sexual orientation, modern reproductive autonomy, or several contemporary dimensions of dignity. Yet constitutional interpretation has developed these rights from existing constitutional principles. Constitutional morality assists this process while maintaining fidelity to the constitutional framework.

CONSTITUTIONAL MORALITY AND CONSTITUTIONAL INTERPRETATION

Constitutional interpretation involves more than a literal reading. The Indian Constitution is a living constitutional document. The Supreme Court has frequently recognised that constitutional provisions must be interpreted in light of changing social realities while preserving constitutional identity. Constitutional morality supports this evolutionary interpretation. However, constitutional evolution does not mean constitutional replacement. The Constitution may evolve through interpretation, but interpretation must remain connected to the constitutional text and structure. This distinction is essential for maintaining legitimacy.

CONSTITUTIONAL MORALITY AND THE IDEA OF CONSTITUTIONAL CITIZENSHIP

Constitutional morality ultimately concerns the meaning of citizenship. A constitutional citizen is not merely a person possessing formal legal nationality. Constitutional citizenship involves recognition as an equal participant in the constitutional order. This includes: equal legal status, equal dignity, equal protection, freedom of conscience, political participation, personal autonomy, and protection against discrimination. Constitutional morality therefore transforms the relationship between the individual and the State. The citizen is not merely governed by the State; the citizen is also protected against the State.

CONSTITUTIONAL MORALITY AND MARGINALISED COMMUNITIES

The doctrine has particular significance for communities historically subjected to exclusion. Constitutional democracy becomes meaningful only when constitutional guarantees extend to

those who lack political power. This includes persons experiencing discrimination based upon: Caste, Gender, Disability, sexual orientation, religion, language, social status, or other constitutionally relevant grounds. The Constitution provides a framework for ensuring that political power does not become a mechanism of social exclusion. Constitutional morality thus has an emancipatory dimension.

CONSTITUTIONAL MORALITY AND CONSTITUTIONAL REMEDIES

Article 32 and Article 226 provide important mechanisms for enforcing constitutional rights. Judicial remedies transform constitutional morality from an abstract principle into an enforceable legal commitment. Without remedies, constitutional rights would remain largely declaratory. The Supreme Court's constitutional jurisdiction enables individuals to challenge unconstitutional state action. High Courts similarly play a crucial role under Article 226. Constitutional morality therefore depends not only upon constitutional principles but also upon institutional mechanisms capable of enforcing those principles.

CONSTITUTIONAL MORALITY AND PUBLIC ADMINISTRATION

Constitutional morality is not confined to constitutional courts. Public administration is one of its most important fields. Civil servants and public authorities exercise substantial power over citizens. Constitutional morality requires administrative decisions to comply with legality, fairness, non-arbitrariness, equality, transparency, accountability, reasoned decision-making, and respect for individual dignity. Administrative discretion must therefore be exercised constitutionally. The principle is particularly important in welfare administration, policing, licensing, taxation, public employment and regulatory governance.

CONSTITUTIONAL MORALITY AND POLICE POWER

Police authorities possess coercive powers that directly affect liberty. Constitutional morality requires policing to remain subject to constitutional safeguards. Arbitrary arrest, custodial violence, discriminatory investigation or misuse of criminal law are inconsistent with constitutional morality. The criminal justice system must therefore respect: personal liberty, presumption of innocence, due process, equality, fair investigation, fair trial, and judicial oversight. Constitutional morality reinforces the principle that state coercion must always remain legally and constitutionally controlled.

CONSTITUTIONAL MORALITY IN THE DIGITAL AGE

The concept is increasingly relevant in the digital age. Constitutional rights must now be protected in circumstances involving: digital surveillance, artificial intelligence, data processing, online speech, algorithmic decision-making, facial recognition, digital identity, and platform governance. The Constitution did not expressly anticipate these technologies. Nevertheless, principles such as privacy, dignity, equality and freedom of expression remain applicable. Constitutional morality therefore requires technological governance to remain human-centred and rights-compatible. The challenge for future constitutional jurisprudence will be to prevent technological power from becoming a new form of arbitrary power.

CONSTITUTIONAL MORALITY AND ARTIFICIAL INTELLIGENCE

Artificial intelligence creates new constitutional questions. Algorithmic systems may produce discriminatory outcomes without transparent reasoning. If public authorities use AI for welfare allocation, policing, recruitment or public decision-making, constitutional morality requires: transparency, accountability, non-discrimination, human oversight, procedural fairness, and effective remedies. An algorithm cannot become a substitute for constitutional responsibility. The fact that a decision is generated by technology does not remove constitutional accountability. This illustrates the continuing relevance of constitutional morality to new forms of governmental power.

CONSTITUTIONAL MORALITY AND MAJORITARIANISM

Majoritarianism represents one of the principal dangers against which constitutional morality operates. Democracy gives citizens equal political power, but constitutionalism places substantive limitations upon the majority. The majority cannot: abolish fundamental rights, destroy judicial independence, eliminate elections, establish arbitrary government, or remove constitutional equality. The constitutional system therefore distinguishes between majority rule and constitutional majority rule. The former may be purely numerical. The latter remains subject to constitutional limitations.

CONSTITUTIONAL MORALITY AND CONSTITUTIONAL TRUST

Constitutional governance depends upon trust among institutions. The legislature must trust constitutional adjudication. The executive must respect judicial decisions. Constitutional

authorities must respect institutional boundaries. Citizens must have confidence that constitutional institutions will protect their rights. Constitutional morality promotes this trust by requiring public actors to behave according to constitutional norms even when strict legal compulsion may not immediately arise. This is particularly important for constitutional conventions and institutional practices.

CONSTITUTIONAL MORALITY AND CONSTITUTIONAL CONVENTIONS

Not every constitutional rule is contained in a single textual provision. Constitutional conventions and institutional practices may also influence constitutional functioning. However, conventions cannot override express constitutional provisions. Constitutional morality requires conventions to support rather than undermine constitutional democracy. For example, conventions concerning responsible government, institutional restraint and federal cooperation may strengthen constitutional functioning. Thus, constitutional morality operates at both the legal and institutional levels.

THE FUTURE OF CONSTITUTIONAL MORALITY

The future development of constitutional morality in India will likely involve increasingly complex questions. These may include: digital privacy, artificial intelligence, genetic technologies, reproductive autonomy, environmental rights, climate justice, platform regulation, algorithmic discrimination, data protection, religious freedom, gender identity, minority rights, and institutional accountability. The challenge will be to balance constitutional evolution with constitutional restraint. Courts must protect constitutional values without transforming constitutional morality into an unlimited source of judicial authority.

CONSTITUTIONAL MORALITY: A BALANCED CONSTITUTIONAL THEORY

A balanced understanding of constitutional morality should recognise three dimensions.

First Dimension: Fidelity: Constitutional morality requires fidelity to the constitutional text and structure.

Second Dimension: Protection: It protects individuals and minorities against arbitrary governmental or majoritarian power.

Third Dimension: Transformation: It permits the Constitution to respond to social inequalities and evolving understandings of dignity and equality.

These three dimensions should operate together. Fidelity without transformation may preserve unjust conditions. Transformation without fidelity may produce judicial overreach. Protection without institutional restraint may create imbalance. The ideal constitutional approach therefore requires all three.

CONCLUSION

Constitutional morality has become a foundational principle in contemporary Indian constitutional jurisprudence. Although the Constitution does not expressly define the term, its principles can be derived from the constitutional text, structure, Preamble, Fundamental Rights, Directive Principles, democratic institutions and the broader constitutional commitment to justice, liberty, equality and fraternity.

The historical foundations of the concept can be traced to Dr B.R. Ambedkar's understanding that constitutional democracy requires not only constitutional institutions but also constitutional habits and institutional discipline. Modern jurisprudence has expanded the concept considerably. The Supreme Court has used constitutional morality to address questions involving political accountability, federalism, institutional integrity, privacy, sexual orientation, gender justice, adultery, religious freedom and individual dignity.

The jurisprudence of Manoj Narula demonstrates the institutional dimension of constitutional morality. Government of NCT of Delhi demonstrates its relevance to federalism and democratic accountability. Puttaswamy strengthened the constitutional foundations of privacy and autonomy. Navtej Singh Johar established the importance of constitutional morality over majoritarian social morality in the protection of individual rights. Joseph Shine demonstrated how constitutional equality and dignity can challenge paternalistic legal assumptions. The Sabarimala litigation demonstrated both the transformative potential of constitutional morality and the difficult questions that arise when constitutional rights intersect with religious autonomy.

The greatest contribution of constitutional morality is that it prevents the Constitution from becoming merely a document of governmental organisation. It makes the Constitution a normative framework governing the exercise of public power and protecting individual dignity.

At the same time, constitutional morality must be applied cautiously. Its very flexibility creates the possibility of judicial subjectivity. If constitutional morality becomes disconnected from constitutional text, structure and precedent, it may permit judges to substitute personal values for constitutional principles. Such an approach could undermine separation of powers and democratic legitimacy. Therefore, constitutional morality should neither be understood as simple judicial morality nor as an unlimited power of constitutional courts. It should be understood as principled fidelity to the constitutional order.

The ultimate purpose of constitutional morality is to ensure that power remains constitutional, democracy remains substantive, equality remains meaningful and individual dignity remains protected.

The Constitution does not merely ask who has power. It asks how that power may be exercised, for what purpose, and within what limits. Constitutional morality provides one of the most important normative answers to these questions.

In a plural and diverse constitutional democracy such as India, social morality will inevitably differ across communities, generations and individuals. Constitutional morality provides a common constitutional language through which these differences can coexist without allowing the rights of vulnerable individuals to become dependent upon the approval of the majority.

Its deepest significance therefore lies in the transformation of the relationship between power and rights, majority and minority, State and individual, tradition and constitutionalism.

Constitutional morality ultimately represents the idea that the Constitution must not merely govern India; its values must also govern the exercise of power in India.

In this sense, constitutional morality is not an alternative to democracy. It is a condition for constitutional democracy.

REFERENCES

1. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
2. Manoj Narula v. Union of India, (2014) 9 SCC 1.
3. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
4. Government of NCT of Delhi v. Union of India, (2018) 8 SCC 501.
5. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

6. Joseph Shine v. Union of India, (2019) 3 SCC 39.
7. Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.
8. Shayara Bano v. Union of India, (2017) 9 SCC 1.
9. National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
10. Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.
11. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2019) 1 SCC 1.
12. Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368.
13. Shakti Vahini v. Union of India, (2018) 7 SCC 192.
14. Common Cause v. Union of India, (2018) 5 SCC 1.
15. Indian Hotel & Restaurants Association v. State of Maharashtra, (2013) 8 SCC 519.
16. Constitution of India, 1950.
17. Constituent Assembly Debates.
18. Supreme Court of India constitutional bench judgments.
19. B.R. Ambedkar, speeches and Constituent Assembly interventions concerning constitutional morality and constitutional government.
20. Indian constitutional jurisprudence concerning fundamental rights, basic structure, dignity, equality, privacy and transformative constitutionalism.