

Constitutional Morality

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Constitutional Morality: A Pillar of Justice or a Threat to Majoritarian Will?

Context

In recent years, India's courts have increasingly used the concept of **constitutional morality** to interpret laws and determine their validity. This principle ensures that governance aligns with **constitutional values like justice, equality, liberty, and fraternity** rather than just following the **literal text of the law**.

However, **this has sparked debates**—while some believe it helps promote progressive judgments, others argue it leads to **judicial overreach**, where courts interfere in policymaking.

What is Constitutional Morality?

Constitutional morality means **adhering to the core principles of the Constitution** while interpreting laws and governance. It is not just about following rules but ensuring that laws promote **justice and fairness**.

Why is it Important?

- **Protects democracy** from authoritarianism or majoritarian rule.
- **Safeguards individual rights** and freedoms.
- **Ensures fair governance** and prevents misuse of power.

Key Aspects of Constitutional Morality

1. **Rule of Law** - Everyone, including the government, must follow the Constitution.
 2. **Democratic Values** - Promotes justice, secularism, and fairness for all.
 3. **Protection of Rights** - Ensures equality, free speech, and protection from discrimination.
 4. **Institutional Integrity** - Strengthens independent institutions like the judiciary and legislature.
 5. **Tolerance & Pluralism** - Encourages respect for different cultures and viewpoints.
 6. **Judicial Interpretation** - Courts use this principle to **interpret laws in a progressive way**.
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Constitutional Provisions Supporting Constitutional Morality

1. Fundamental Rights (Part III)

- **Article 14** - Ensures equality before the law.
- **Article 19** - Protects free speech and expression.
- **Article 21** - Expands the right to life to include dignity, privacy, and autonomy.
- **Articles 25-28** - Ensures religious freedom while preventing unfair practices.

2. Directive Principles of State Policy (DPSP) (Part IV)

- **Article 38** - Promotes social, economic, and political justice.
- **Article 39A** - Ensures equal access to justice.
- **Article 44** - Advocates for a Uniform Civil Code for equality in personal laws.

3. Preamble - Spirit of Constitutional Morality

The **Preamble** ensures that India remains a:

- **Sovereign, Socialist, Secular, and Democratic Republic.**
- Nation committed to **Justice, Liberty, Equality, and Fraternity.**

4. Separation of Powers & Judicial Review

- **Article 50** - Keeps the judiciary independent from the executive.
- **Articles 32 & 226** - Give courts the power to strike down unconstitutional laws.

5. Constitutional Amendments and Basic Structure Doctrine

- **Article 368** - Allows changes in the Constitution, but not against its core principles.
- **Kesavananda Bharati Case (1973)** - Prevents unconstitutional amendments.

6. Special Provisions for Social Justice

- **Article 15(3) & 15(4)** - Allows affirmative action for women, SCs, and STs.
- **Article 17** - Abolishes untouchability.
- **Articles 330 & 332** - Reserves legislative seats for marginalized communities.

Concerns: Can Constitutional Morality Be Misused?

Some critics argue that **constitutional morality can become a dangerous tool** if misused.

1. Judicial Overreach

- Courts may act as **lawmakers instead of interpreters.**
- **Example: Navtej Singh Johar v. Union of India (2018)** - Decriminalized homosexuality by overruling legislative inaction.

2. Subjectivity and Inconsistency

- The term lacks a **fixed definition**, leading to **varying judicial opinions.**

3. Undermining Democracy

- Courts may **override the will of the people** and elected representatives.
- *Example: Sabarimala Case (2018)* - Allowed women to enter the temple despite strong public opposition.

4. Selective Application

- Used in some cases but ignored in others, raising questions about **fairness**.

5. Potential for State Misuse

- Governments might misuse it to **suppress dissent** under the pretext of maintaining constitutional values.

Dr. B.R. Ambedkar's Views on Constitutional Morality

- **Not a Natural Sentiment** - Must be **cultivated over time**.
- **Respect for the Constitution** - Democracy requires **constitutional principles over personal or majoritarian interests**.
- **Preventing Arbitrary Rule** - Institutions must function **within their limits**.

Key Supreme Court Cases Upholding Constitutional Morality

1. **Kesavananda Bharati v. State of Kerala (1973)** - Established the **Basic Structure Doctrine**.
2. **Navtej Singh Johar v. Union of India (2018)** - Decriminalized **homosexuality**.
3. **Indian Young Lawyers Association v. State of Kerala (2018)** - Allowed **women's entry into Sabarimala temple**.
4. **Shayara Bano v. Union of India (2017)** - Struck down **triple talaq**, ensuring **gender justice**.

Conclusion

Constitutional morality plays a crucial role in **protecting rights and ensuring fair governance**. However, its **vague definition** and **potential misuse** raise concerns about **judicial overreach** and **undermining democracy**. The challenge is to **find a balance**—ensuring that courts uphold **constitutional values while respecting democratic decision-making**.