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# CONSTITUTIONAL MORALITY AND JUDICIAL REVIEW IN A TRANSFORMING REPUBLIC

-Harshit Arora<sup>1</sup>

## ABSTRACT

As India evolves into a digitally-driven society, the Constitution faces novel challenges that transcend traditional jurisprudence. This article explores the intersection of ‘Constitutional Morality’ and ‘Judicial review’ in the context of emerging digital realities. It argues that constitutional morality rooted in dignity, liberty, and equality must guide the judiciary’s approach to issues such as algorithmic governance, surveillance, and the growing influence of private tech entities. Through a critical examination of recent legal developments and philosophical reflections on rights in the digital age, the article proposes a rights-first morally anchored framework for judicial review. By reimagining the role of the judiciary as both interpreter and moral guardian of the Constitution, the article contributes to an evolving discourse on how Indian democracy can preserve its foundational values amid rapid technological transformation.

## INTRODUCTION

The phrase ‘Constitutional morality’ was invoked by Dr. Ambedkar in his famous speech ‘The Draft Constitution’, delivered on 4 November 1948, wherein he extensively quoted the British classicist George Grote to defend the decision of the Constituent Assembly to include the structure of the administration in the Constitution. He believed that Constitutional morality is not a “natural sentiment”<sup>2</sup>, and is rather something that must be cultivated over time and that in the immediate post-independence period, the Indian people lacked the requisite sensibilities; consequently, the minute details of how the administration was to function within the confines of the Constitution had to be included in the Constitution itself. Dr. Ambedkar then went on to quote Grote again as to what he meant by “Constitutional morality”

**Dr. B.R. Ambedkar** envisioned Constitutional morality as the moral compass of democratic conduct going beyond written text to uphold justice, liberty, equality, and fraternity.<sup>3</sup>

It is a concept that demands introspection, courage, and an unwavering commitment to the spirit of the Constitution, particularly when institutions are tested by changing times.<sup>4</sup>

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1. Master of Laws (LL.M.), Soban Singh Jeena University, Almora, Uttarakhand

2. Dr. B.R. Ambedkar, Constituent Assembly Debates, Vol. XI, 25 November 1949

3. B.R. Ambedkar, Constituent Assembly Debates, Vol. VII (4 November 1948), at p.38

4. S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press (2002)

Unlike statutory interpretation, Constitutional morality is not bound by literalism.

It asks: Does the action by the State or otherwise honor the dignity and freedom of the individual?

In a digital society where data replaces identity and algorithms shape behavior, this question becomes urgent.

These challenges are not always created by the State. In a digital economy, private corporations wield quasi-sovereign powers.<sup>5</sup>

They own platforms that shape public discourse, collect personal data at unprecedented scales, and design systems that impact democratic freedoms.

## **THE MORALITY GAP IN A DIGITAL SOCIETY**

Digital technologies, though neutral in theory, often carry embedded biases. They can reinforce inequality, compromise transparency, and undermine accountability.

When facial recognition disproportionately misidentifies minority faces, or social media platforms amplify misinformation, the invisible architecture of the digital world begins to conflict with Constitutional ideals.<sup>6</sup>

In such moments, the Judiciary must act not just as an interpreter of law, but as the guardian of the republic's moral foundation.<sup>7</sup>

It must be willing to test whether the tools and systems of the digital age serve the values enshrined in the Preamble.

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5. Julie Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism*, Oxford University Press (2019)

6. Chinmayi Arun, "Rebalancing Regulation of Speech," *Indian Journal of Law and Technology*, Vol. 14 (2018)

7. Gautam Bhatia, *The Transformative Constitution* (Harper Collins, 2019), Chapter 4

## CASE LAWS: WHERE MORALITY MEETS TECHNOLOGY

### 1. SHREYA SINGHAL v. UNION OF INDIA<sup>8</sup> (2015)

The Supreme Court of India delivered its Judgment, declaring Section 66A unconstitutional.

The Court held that the provision was excessively broad and arbitrary, violating the fundamental right to free speech.

The Judgment emphasized that the right to free speech is essential for a healthy democracy and that Laws restricting this right must be clear and precise to avoid misuse.

### 2. PUTTASWAMY v. UNION OF INDIA<sup>9</sup> (2017)

The right to privacy was declared as a Fundamental right under Article 21 that underscored the need for data protection rooted in dignity and consent, embodying Constitutional morality in a digital context.

### 3. ANURADHA BHASIN v. UNION OF INDIA<sup>10</sup> (2020)

The Hon'ble Supreme Court held that indefinite internet shutdowns violate the freedom of speech and expression highlighting the need for proportionate and reasonable state actions in cyberspace.

### 4. AMAR JAIN v. UNION OF INDIA<sup>11</sup> (2025)

In this Landmark Judgement, The Supreme Court recognized digital access as a fundamental right under Article 21 of the Indian Constitution.

The case addressed the challenges faced by persons with disabilities (PwDs) in completing digital Know Your Customer (KYC) processes, which often require actions like taking selfies or signing on screens tasks that can be inaccessible to individuals with visual impairments or facial disfigurements.

The Court directed the Reserve Bank of India (RBI) and other entities to revise digital KYC norms to accommodate PwDs, ensuring accessibility in compliance with the Rights of Persons with Disabilities Act, 2016.

These cases mark the beginning, not the end, of a jurisprudential journey.

The real test lies in confronting newer issues facial recognition systems, biometric surveillance, and AI-driven predictive policing with the same moral clarity.

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8. AIR 2015 SC 1523

9. (2017) 10 SCC 1

10. (2020) 3 SCC 637

11. WRIT PETITION (CIVIL) No. 49 of 2025

# **CHALLENGES TO JUDICIAL REVIEW IN A DIGITAL REPUBLIC**

## **1. OPACITY OF TECHNOLOGY**

Courts often lack the technical expertise to interrogate complex digital systems, such as algorithmic biases or blockchain governance.

## **2. PRIVATE TECH DOMINANCE**

Much of the digital ecosystem is governed by private entities that lie outside the traditional ambit of Judicial review.

## **3. DELAYED LEGISLATIVE RESPONSE**

The Judiciary may be forced to step into legislative vacuums, risking accusations of Judicial Overreach.

## **4. SURVEILLANCE and NATIONAL SECURITY**

Digital tools enable mass surveillance. These programs are often shielded from Judicial review by invoking national security, which may erode civil liberties without effective legal oversight.

## **5. SLOWNESS of LEGAL REVIEW**

The rapid pace at which digital tools are adopted stands in stark contrast to the often slow and deliberate nature of judicial review.

Courts may take years to resolve complex constitutional questions, by which time the technology in question may have already evolved or become obsolete.

# **REIMAGINING JUDICIAL REVIEW: PROPOSALS FOR A RIGHTS FIRST APPROACH**

## **1. DIGITAL RIGHTS FRAMEWORK**

The Courts should recognize a new branch of fundamental rights- Digital rights integrating privacy, access, and autonomy in online spaces.

## **2. MORAL BENCHMARKS FOR ALGORITHMS**

Any algorithm used in governance or regulation should pass a three-pronged test: Transparency, fairness, and Constitutional compliance.

## **3. ACCOUNTABILITY FOR PRIVATE PLATFORMS**

The Judiciary must creatively expand the reach of Article 226 to bring digital monopolies under the purview of fundamental rights.

## **4. EMPATHY DRIVEN JURISPRUDENCE**

Constitutional morality is not merely legal, it is Humanistic. Every ruling on digital regulation must consider its impact on the most vulnerable.

## **5. DIALOGUE, NOT DOMINATION**

Courts should encourage a deliberative legal culture where law, technology and ethics evolve together through consultative engagement.

## **6. ETHICAL AI FRAMEWORKS**

Encourage the Judiciary to push for state adoption of AI guidelines rooted in transparency, accountability, and fairness.

## **7. JUDICIAL CAPACITY BUILDING**

Institutionalize technical training and expert recruitment for judges to better handle tech-related litigation.

# **CONCLUSION: TOWARDS A JUST DIGITAL REPUBLIC**

India's Constitutional vision was never meant to be static. It must evolve alongside the society it seeks to guide. In a digital republic, where lines between public and private, real and virtual, are increasingly blurred, the Judiciary must expand its interpretive horizons.

Constitutional morality must not only survive but thrive in the digital age guiding Judicial review toward a future where innovation walks hand-in-hand with dignity, justice, and human rights.

As we stand on the threshold of unprecedented technological transformation, it is not just the letter of the law, but the morality of the Constitution, that must be our beacon.

The task before the Indian Judiciary is not easy. It must navigate a complex interplay of innovation, governance, and individual rights.

But the Constitution offers more than a map it offers a moral compass.

Constitutional morality is the language through which the past speaks to the future.

As the digital landscape expands, so must the moral imagination of the law. Judicial review, infused with Constitutional morality, is not merely an institutional safeguard it is a declaration of who we aspire to be as a republic.

In the silence of data and the logic of code, it is the Judiciary's voice that must continue to echo the timeless promise of justice.