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CONSTITUTIONAL MORALITY AND ROLE OF SUPREME COURT IN INDIA

-Mercy Mukhim¹

-Aadarsh Kumar²

ABSTRACT

Constitutional Morality is a general term used to describe thought & ethics behind the making of provisions related to life, freedom, and the concept of justice enshrined in the Constitution. In contested situations, Constitutional Morality serves as an interpretive tool to assist courts in determining the meaning of the Constitution's text. In this note, we will be discussing the concept of Constitutional Morality and its basic features, on what it depend. Further, we will see the function of the Supreme Court in preserving constitutional morality. The paper then examines the aspects by which those morals can be upheld and improved.

Keywords- Indian Constitution, Constitutional Interpretation, Public Morality vs. Constitutional Morality, Separation of Powers, Social Justice, Constitutional Values.

INTRODUCTION

Constitutional morality can be defined as acting in accordance with the principles enshrined in the Constitution to maintain public harmony among citizens and to attain a welfare society. However, it is to be noted that the term “constitutional morality” has not been expressly used in the Constitution.

According to our Constitution, there exist laws and rights, and we respect these rights not simply because they are laws, but also because they are morally correct. Thus, Constitutional Morality refers to upholding the law for both moral and legal reasons. The term constitution refers to a set

¹ B.A LL.B., LL.M., UGC NET QUALIFIED and Working as a criminal lawyer in Shillong District and High Court, Meghalaya.

² B.A.(Hons.), LL.B.,LL.M., UGC NET Qualified and Currently Working as a Legal Advisor at Panchayati Raj Department, Govt. Of Bihar.

of principles or regulations that govern a country or state. It refers to upholding all the moral standards enshrined in our Constitution.³

THE HISTORY OF CONSTITUTIONAL MORALITY

The British historian Grote of the nineteenth century provided one of the earliest definitions of constitutional morality. He understood it to mean complete adherence and respect to the Constitution's guiding ideas. In his speech on the proposed Constitution, Dr. Ambedkar presented the concept of constitutional morality for the first time in India. He claimed that the Constitution's provisions for managing administration were added to it rather than written by the legislature because India lacked constitutional morality.

Ambedkar believed that in order to handle any conflicts of interest amicably, effective partnership between the people and the government was necessary for constitutional morality.

Constitutional morality is described as acting in conformity with the principles of the Constitution to uphold the rule of law in a democracy.

Yet, the concept of constitutional morality was rarely ever used after 1950. In the case of *Kesavananda Bharati v. State of Kerala*,⁴ the Supreme Court's perspective on the Basic Structure of the Constitution was cited in passing. The phrase was later re-used in *SP Gupta v. Union of India*,⁵ widely known as the first judge's case.

In this instance, it was contended that any violation of constitutional morality should be treated as such even if it is not covered by legislation or even amendable to judicial enforcement.

The Constitution guarantees that both citizens and the state must abide by its fundamental ideals.⁶

³“Constitutional Morality - Meaning, Significance and Scope” (GeeksforGeeks July 22, 2025) <<https://www.geeksforgeeks.org/constitutional-morality-meaning-significance-and-scope>> accessed February 20, 2025

⁴(1973) 4 SCC 225; AIR 1973 SC 1461

⁵AIR 1982 SC 149

⁶“Constitutional Morality: Critical Analysis | Lexpeeps” <<https://lexpeeps.in/constitutional-morality-critical-analysis/>> accessed 23 February 2025.

LITERATURE REVIEW

This article examines how constitutional morality plays a vital role in the Indian Constitution and how it handles the lacunae that the constitution fails to uphold and maintain. Using a content analysis of the non-empirical research such as the different kinds of online sources, which provide many journals, articles, and books written by the scholars and authors. It is demonstrated that constitutional morality has a deep connection with the citizens and the government and deserves more sustained attention. It is also shown that different authors and scholars have their own views and opinions on constitutional morality in their articles and journals. A brief review of the article written by Archit Shukla shows that the paper concentrates on the value of constitutional morality, the history, and the scope of constitutional morality, which is almost similar to my article, but the difference is that his article contains the judicial empathy and the principle of non-retrogression, which I did not include in this article. Coming to the other Article made by Shelal Lodhi Rajput on Constitutional Morality really inspired the making of my article in broadening the view of Constitutional Morality. Apart from the same concepts, her article covers the major lacunae that exist in the present form of the doctrine of constitutional morality and how constitutional morality is a counterpoise to public morality.

Discovering these two articles, I realise that there is more that I need to know and have to add, and by that, I have come up with a solution of mentioning and focusing on the key features on which constitutional morality is based, the significance of constitutional morality according to the Indian Constitution, and lastly, how constitutional morality can be upheld.

Key features on which Constitutional morality is based upon;

- The Rule of Law –The idea of the Rule of Law is one of the English Constitution's most fundamental tenants. In all the world's legal systems, the idea is well-established.

MEANING & SCOPE

The following three definitions of the theory are provided by Dicey in his work, which claims that it is vital to the English legal system:

1. Supremacy of Law

2. Equality before the Law

3. Judges made Law⁷.

- Preamble: Concept of Social Justice-Social justice is the acceptance of a larger group's interests as being more important than anybody else's while maintaining or even expanding everyone's legal rights. If so, any technical laws must be superseded in favor of social justice. If a settlement with one party can be achieved without seriously harming the other when there are two parties involved, the court will tend to favor that group in society.⁸

Providing facilities and opportunities to remove the disabilities and impairments that the poor, etc., suffer from while preserving their human dignity is the constitutional concern of social justice as an elastic, ongoing process.⁹

- Right to Equality

“As long as poverty, injustice, and gross inequality persist in the world, none of us can truly rest”
– Nelson Mandela

RIGHT TO EQUALITY

Positive Right \Leftrightarrow Negative Right

(demands to be treated equally
treatment)

(prohibits unequal
treatment)

⁷Admin, “Rule of Law Explained - Meaning, Scope, Exemptions. UPSC Polity Notes.” (BYJUS December 18, 2025) <<https://byjus.com/free-ias-prep/rule-of-law-upsc-notes/>> accessed March 10, 2025

⁸“The Preamble of India” (Legal Service India - Law, Lawyers and Legal Resources) <<https://legalserviceindia.com/legal/article-7679-the-preamble-of-india.html>> accessed March 14, 2025

⁹ibid.

The following subheadings are used to categorize the right to equality under the Indian Constitution:

1. Equality before law (Article 14)
2. Prohibition of discrimination on grounds of religion, caste, race, sex or place of birth (Article 15)
3. Equality of opportunity in matters of public employment (Article 16)
4. Abolition of untouchability (Article 17)
5. Abolition of titles (Article 18)

EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW

EQUALITY BEFORE THE LAW

- It is based on English Common Law.
- This indicates that no one has any unique privileges.
- Suggests that there is no legal discrimination based on erroneous factors like status, office, etc.
- It means that “the law should be equal and should be equally administered, that like should be treated alike.” (JENNINGS)
- Declares that everyone, regardless of rank or position, is subject to the jurisdiction of ordinary courts.

EQUAL PROTECTION OF LAWS

- It follows naturally from equality before the law.
- It is based on the last clause of the first part of the 14th Amendment to the US Constitution.
- It mandates equal protection for all residents of the territorial authority.
- This suggests that no preference or discrimination should be taken into account when offering such protection.

- Equal treatment under comparable conditions is required, both in terms of legal rights and obligations.
- The state has a responsibility to provide such fair protection, which it should uphold by implementing critical social and economic reforms.

FREEDOM OF EXPRESSION

A democratic society is defined by its commitment to freedom of expression.¹⁰

Freedom of speech is frequently seen as a limitation. So, no one is forced to listen to, agree with, or acknowledge the speaker or the speaker's beliefs, even though the government is legally obligated to refrain from acting against the speaker because of the speaker's opinions.¹¹

PROTECTION OF LIFE & INDIVIDUAL LIBERTY

Procedure established by law According to Article 21:

“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

This fundamental right is available to every person, citizens and foreigners alike.

Article 21 provides two rights:

- Right to life
- Right to personal liberty.

The Supreme Court of India has described this right as the ‘heart of fundamental rights’.

¹⁰Singh DYP, “Freedom of Dissent and Constitutional Morality” (Live Law March 7, 2025) <<https://www.livelaw.in/freedom-dissent-constitutional-morality/>> accessed February 24, 2025

¹¹“Freedom of Speech” (Wikipedia February 23, 2025) <https://en.wikipedia.org/w/index.php?title=Freedom_of_speech&oldid=1141080185> accessed March 18, 2025

For instance, equality, fairness, and liberty are among the principles of constitutional morality in India. Every citizen has a responsibility to uphold these principles. As an illustration, everyone upholds constitutional morality when they vote in elections or support particular laws.¹²

The Significance of Constitutional Morality According to the Indian Constitution

The Indian Constitution uses the term "constitutional morality" to describe the need for everyone to uphold the Constitution's values. This includes making sure that everyone is treated equally, respectfully, and with decency. We must constantly be mindful of and strive to uphold the principles of our Constitution if we are to maintain constitutional morality. We can achieve this by combating injustice and intolerance. We must also be ready to stand up for both our rights and those of others. Voting in elections is also vital if you want to have a say in who governs us and what laws are passed. Finally, it is imperative that we look after our bodily, mental, and emotional well-being.¹³

SUPREME COURT AS A CUSTODIAN OF THE INDIAN CONSTITUTION¹⁴

The Supreme Court has been assigned a crucial role in the Indian political system as the interpreter of the Indian Constitution. The Indian constitution grants the Supreme Court the authority to conduct judicial reviews. The Supreme Court can defend fundamental rights and strike down legislation that transgresses the Constitution courtesy of the judicial review procedure. A statute may be subject to examination by the Supreme Court in accordance with Articles 13, 32, 131–136, 143, 226, and 246.

- Constitutional values: The Supreme Court may evaluate the legality of laws and the executive orders passed by the federal and state governments as part of judicial review. The Supreme Court can rule them unconstitutional and void if it finds that they violate constitutional principles. In *AK.Gopalan v/s State of Madras*,¹⁵ the court came to the

¹²'Constitutional Morality - Meaning, Significance and Scope' (n 1).

¹³*ibid.*

¹⁴“[Answered]Examine the Role of the Supreme Court as the Final Interpreter and Guardian of the Indian Constitution.” (ForumIAS BlogMay 3, 2025) <<https://blog.forumias.com/answeredexamine-the-role-of-the-supreme-court-as-the-final-interpreter-and-guardian-of-the-indian-constitution/>> accessed March 20, 2025

¹⁵AIR 1950 SC 27

conclusion that the constitution is supreme and that a statute law must always adhere to the constitutional requirements in order to be valid.

- **Fundamental Rights Protection:** According to Article 13, any law that violates or interferes with a person's fundamental rights is void and unenforceable. The right to petition the Supreme Court for the enforcement of Basic Rights is protected by Article 32, and the Supreme Court is given the power to issue orders, writs, or directions in that regard. The Supreme Court declared Section 377 of the IPC to be unconstitutional in the Navtej Singh Johar case, for instance.
- **Check on executive action:** The rule of law must be applied to every state action. The Supreme Court has a constitutional obligation to interpret the Indian Constitution because it is federal in essence. The Supreme Court employs judicial interpretations within the scope of its original jurisdiction to maintain the government within its legal restrictions.
- **Check on tyranny:** The Supreme Court defends citizens against the executive and parliamentary abuses of power. Via judicial scrutiny, it safeguards our nation from parliamentary and presidential tyranny. In the absence of judicial activity and examination, certain laws or government actions could endanger democracy itself.
- **Accessing own decisions:** The Supreme Court of India has the authority to examine its own order or decision under Article 137 of the constitution. Because of its ability to heal damage, the judiciary must fix its own mistakes. The Supreme Court and High Court overturn and set aside their own judgments and rulings as circumstances and conditions change and new facts and laws are discovered. The Supreme Court has done this numerous times, including in the Kesavananda Bharati case. By rejecting the Golaknath Decision of 1967, this case affirmed the changes made to Articles 368 and 13 of the Indian Constitution in the 24th Amendment.

SCOPE OF CONSTITUTIONAL MORALITY

The Supreme Court has not entirely clarified the breadth and reach of constitutional morality, leaving it up to the whims of individual judges. Some who disagree further claim that the idea of constitutional morality is just one more step in the judiciary's campaign to seize the power of

Parliament. It is against the fundamental principle of the separation of powers to place judicial supremacy above parliamentary supremacy. Constitutional Morality is pitted against societal Morality as a result of the justices' overreach.¹⁶

INDIAN YOUNG LAWYERS ASSOCIATION & ORS. V. THE STATE OF KERALA & ORS. (SABARIMALA), 2018¹⁷

In this case we will analyze the Court's contentious Sabarimala ruling. The dispute centered on women's constitutionally protected right to enter a well-known shrine in Kerala. Women between the ages of 10 and 50 were prohibited from entering the temple according to tradition that had grown up over many years. The freedom to exercise one's religion is guaranteed by Article 25 of the Constitution, subject to "morality" and other Bill of Rights clauses. Contrarily, Article 26 safeguards each "religious denomination's" right to conduct its own religious affairs, subject to "morality." Article 26 is not subject to other articles in the Fundamental Rights chapter, in contrast to Article 25, which is. The Court was requested to rule on the question of whether Article 26 applies to the temple and, consequently, its exclusive custom. In contrast, the Court also had to decide whether the custom's outright ban on women attending temples violated Article 25, or the women's right to freely practice their religion. If so, if the practice fit within the parameters of "morality" or any other clause in the Basic Rights chapter, and if it did, whether the practice could be justified as a restriction. The Court decided that the custom was unlawful on a 4-1 vote because it discriminated against Constitutional Morality, among other things. For our purposes, we will look at Judge Malhotra's dissent as well as the concurring and dissenting opinions of Justices Chandrachud and Nariman.

Justice Chandrachud contends, as did Judge Johar, that "morality" as defined by Articles 25 and 26 "must include that which is guided by the essential constitutional values," which are "based in law, "on the four values of "justice, liberty, equality, and fraternity" that are revealed in the Preamble. Since essential issues of "individual dignity" and "human rights" cannot be susceptible to "passing fancies or to the aberrations of a morality of popular opinion," morality cannot be "public morality." In contrast to his description of Constitutional Morality in Johar, where he

¹⁶'Constitutional Morality - Meaning, Significance and Scope' (n 1).

¹⁷SCC Online SC 1690

stressed the importance of inter-personal "fraternity" in building Constitutional Morality, this definition of Constitutional Morality - as a construction of "morality" when "morality" is a restriction to a fundamental right - is substantially different. He continues to write about how the practice stigmatizes menstrual women. Interesting concurring reasoning is presented by Judge Nariman. He declined to define the term "morality" in Articles 25 and 26 using Constitutional Morality. He claimed that doing so "would bring in [the Fundamental Rights chapter's] other provisions, which, in contrast to Article 25(1), Article 26 is not subject to. Although he doesn't say so directly, his earlier ruling in *Johar*, where he took the position that the Preamble and the Fundamental Rights chapter combined constitute Constitutional Morality, is likely where the concept that Constitutional Morality will import other parts of the Fundamental Rights chapter comes from. He demonstrates consistency in his beliefs, a dedication to the Constitution's text, and a sense of morality by refusing to read Constitutional Morality to "morality" as defined by Article 26.

Now let's discuss Justice Malhotra's disagreement. This is the first time that judges have disagreed on how to interpret and apply Constitutional Morality. According to Justice Malhotra Constitutional Morality refers to "the moral principles underlying the Constitution's text, which are useful in determining the text's real meaning and achieving the purposes envisioned,"therein." She contends that the right of "the adherents of diverse sects... to profess their faith in line with the precepts of their religion" has the same moral standing as freedom of religion and non-discrimination, the two pillars on which the petitioners base their claim. She contends that courts lack the authority to judge a faith's practice based on its adherence to principles of logic or reason. Judge Malhotra advises that courts participate in harmonious construction in such a situation, where two values with conflicting objectives tug at Constitutional Morality in separate directions. This would help to guarantee that neither value is compromised. Yet, she makes no observations about Constitutional Morality and doesn't engage in any of her own harmonious construction.

The implications of Justice Malhotra's dissent are significant. Prior to *Sabarimala*, courts felt confident applying Constitutional Morality because they assumed that the values it upheld were internally coherent. Yet, *Sabarimala* made these internal conflicts between these beliefs clear. By

harmonious architecture, Judge Malhotra provides a means to ease these tensions, but he does not follow through. The majority and concurring opinions did not even attempt to address Justice Malhotra's opposing viewpoint, much less offer any solutions to ease Constitutional Morality's internal conflicts.¹⁸

HOW CAN CONSTITUTIONAL MORALITY BE UPHOLD?

- The Court should allow constitutional morality to guide its interpretation of the constitution rather than popular morality.
- By identifying the scope and meaning of constitutional morality in order to prevent its improper and hazardous application in courts.
- By committing to upholding ideas like the parliamentary rule, the supremacy of the constitution, the rule of law, equality, freedom, and a pro-anti-corruption attitude, among others.
- By employing it as a tool for decision-making in situations where the constitutional meaning of the word in the constitution can be interpreted in a number of different ways since it can provide a wide range of signals.
- By adhering to the constitution's guidelines, upholding the rule of law, and displaying the utmost respect for its formalities.
- Although this idea is only mentioned four times in the constitution (twice in Article 19 and twice under the Right to Religious Freedom in Articles 25 and 26), it has long been ignored and understudied by the general public. It needs to be changed so that we can understand the constitution from a different angle and consider the concept's potential applications.¹⁹

CONCLUSION

The Constitution was being created with a liberal moral philosophy at its foundation. Not in the eviscerated ideological sense, but in the more fundamental virtues that gave rise to it: the capacity to combine individualism with mutual respect, intellectualism with a democratic sensibility,

¹⁸https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3888031_code23%E2%80%A6%20%C2%B7%20PDF%20file/>accessed 23 February 2025.

¹⁹<https://universalinstitutions.com/what-is-meant-by-the-term-constitutional-morality-how-does-one-uphold-constitutional-morality/>accessed February 20 2025>

conviction with a sense of fallibility, deliberation with the decision, ambition with a commitment to institutions, and hope for the future while respecting the past and present. A responsible citizen ought to make an effort to develop a sense of constitutional morality. Everyone, not just the government or the judicial system, must uphold constitutional morality. Although the constitution's preamble makes clear the kind of society we hope to establish, it can only be accomplished through constitutional morality.