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## Research Article

# CONSTITUTIONAL MORALITY: A PILLAR OF DEMOCRATIC GOVERNANCE

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### ABSTRACT

Indian democracy is built on constitutional morality which forms part of its constitution and is sustained by its judiciary. The history behind the origination, legal background and modern aspects of this idea are summarized in this abstract. It discusses its crucial function in defending basic freedoms, ensuring proper accountability structures, and fostering dignity for minorities. Some of these are subjective interpretations, judicial activism, majority will and minority rights and so on. While dealing with issues such as, LGBTQ+ rights and privacy, constitutional morality has become more relevant rather than becoming extinct considering that societal norms keep on changing. This leads to recommendations that should be put in place to reinforce the effectiveness of this idea such as ensuring a strong independent judiciary, provision of public education, as well as a uniform and fair constitutional interpretation. Legislative reforms as well as active involvement by NGO'S are necessary in striking a balance of safeguarding minority rights, while respecting majority decision. These recommendations will ensure India's constitutional morality continues being a compass of the country's democratic growth.

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### INTRODUCTION

Constitutional morality is a concept that deeply ingrained in the fabric of democratic governance, serving as a cornerstone of legal and political frameworks around the world. It holds particular significance in a diverse and pluralistic democracy like India. The complex tapestry of India's society and polity necessitates a strong adherence to constitutional morality to maintain the democratic ideals enshrined in its Constitution. This introductory section aims to shed light on the essence and importance of constitutional morality in the context of Indian democracy.

At its core, constitutional morality refers to the fidelity to the principles, values, and norms articulated in a nation's constitution. It embodies the collective commitment of a society to uphold the constitutional framework and to honor the foundational principles that underpin it. In the context of India, the Constitution is not merely a legal document but a living, breathing covenant that governs the relationships between the state, its institutions, and its citizens. It stands for the dreams of a free nation whose soul had been nurtured by the principles which advocated for justice, liberty, equality, brotherhood and sisterhood<sup>3</sup>. It was therefore, understood to be the greatest value for the framers of the Indian constitution with Dr B. R. Ambedkar in the lead. It was a concept of a democratic country, in which behavior of persons and organizations would be guided by observance of legal order and respecting state

constitution values. Constitutional morality encompasses the provisions of the Constitution as well as the wills and thoughts of individuals. This creates a culture of constitutionalism whereby the content of the constitution is not merely a written word but a living reality<sup>5</sup>. Constitutional morality in the context of India's democracy emphasizes its inclination towards constitutional norms. India's political arena stands out in particular because it hosts the largest number of democracies worldwide alongside numerous different religions, language groups, cultures, and traditions that exist among its inhabitants. This is where the Constitution comes in to provide the necessary framework that ensures the country can be stable even when it deals with diverse issues while maintaining the freedoms of individuals, and also the collective aspiration of all people. As a result, constitutional morality is very important for the state, as it helps people understand how these opposing forces can be reconciled and live together in harmony.

#### Statement of Problem

The concept of constitutional morality in the context of democratic governance in India is facing a multifaceted challenge. In recent years, India has witnessed a shift in its political landscape, characterized by rising populism and majoritarianism that seem to erode the principles of constitutional morality. The primary problem at hand is the potential weakening of this critical pillar of democracy.

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One significant concern arises from the increasing disregard for the principles of justice, liberty, equality, and fraternity, which are enshrined in the Indian Constitution. The rise of authoritarian tendencies and an inclination towards exclusionary policies challenge the very essence of constitutional morality. Furthermore, there is a growing polarization in the society, fueled by identity politics and divisive ideologies, which hampers the inclusive and pluralistic spirit envisioned by the framers of the Constitution.

### Research Questions

1. How has the concept of constitutional morality evolved over time in the Indian context, and what are the key historical milestones that have shaped its understanding?
2. To what extent does the judiciary play a role in upholding constitutional morality in India, and what are the challenges and limitations it faces in doing so?
3. The emerging issues of constitutional morality in modern day India, especially with reference to populist politics, majoritarianism and minority identities
4. What can be done to enhance and consolidate constitutional politics in India, as well as address its weaknesses and deficits.

### Research Objectives

1. An analysis of the historic growth and evolution of constitutional morality in India should be explored by tracing back to the major legal and political incidences that have shaped our understanding thus far.
2. The task is to explore the nature of judiciary in preserving Constitutional morality and evaluate the outcomes of judicial actions for sustaining constitutional morality.
3. The problem – identifying and critiquing the current challenges to constitutional morality in India as it relates to populism, majoritarianism, and identity politics.
4. Suggestive of actionable reforms, measures or recommendations that may enhance constitutional morality within the Indian democracy in view of their current crisis

### Research Methodology

The main approach employed in this paper is based on the use of doctrinal research methodology which involves thorough examination of a myriad of legal materials including constitutions, statutes, regulations, academic journals and judgments within the context of constitutional moralities in India. The approach has been a deep analysis of constitutions, laws and judicial precedents about tracing back the history and meaning of the notion.

It is particularly suitable for the research objective as it covers a wide range of sources on which constitution morality is built and the corresponding jurisprudence.

### Review of Literature

1. Austin, Granville (1999)<sup>2</sup>. In this book, Granville Austin makes a detailed study of the “Constitution” that forms the main foundation of the country. Explain how the history of the constitution, its principles, and

foundations for democracy within India have emerged. Austin’s contribution serves a great deal in giving an account of the meaning behind the Indian constitution and its influence on the fate of the country.

2. Choudhry, Sujit, Khosla, Madhav, & Mehta, Pratap Bhanu (Eds.) (2016)<sup>3</sup>. Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta edit this Handbook under The Indian Constitution. The book covers an elaborate look at the constitutional framework. The discussion on constitution morality of constitutional morality is one of them, followed by the fundamental rights and also of judicial review. The book is suitable reference material for academics and researchers studying the constitution of India.
3. Bhargava, Rajeev (2007)<sup>4</sup>. An examination of secularism and what this means for India by Rajeev bhargava, is a study on what constitutes the Indian constitution. As a prelude to discussing the place of an “enemy”—i.e., secularism—in India’s Constitution, this brief remark outlines why secularism is necessary for protecting Constitutional morality and religious liberty in general terms.
4. Singh, Raghvendra (2013)<sup>5</sup>. Basic structure doctrine and its evolution in Indian jurisprudence by Raghavendra singh. It examines the doctrinal peculiarity of Constitutional Morality which seeks to bar amendments on the Constitution’s fundamental principles.

### Hypothesis

**Hypothesis 1:** Constitutional morality in India has developed over time, and its historic development is marked through a series of legal and political milestones which have shaped its understanding and importance.

**Hypothesis 2:** The judiciary plays a critical position in upholding constitutional morality in India. however, it faces demanding situations in maintaining its independence and effectiveness, especially within the face of political pressures.

**Hypothesis 3:** current challenges to constitutional morality in India, along with rising populism, majoritarianism, and identification-primarily based divisions, threaten the core concepts of the Indian charter.

**Hypothesis 4:** Strengthening constitutional morality within the Indian democratic machine calls for a aggregate of criminal, institutional, and societal reforms that address the existing challenges and make sure the protection of constitutional values and principles.

### UNDERSTANDING CONSTITUTIONAL MORALITY

In the Indian context, understanding constitutional morality necessitates a comprehensive exploration of the concept’s historical evolution, its foundations in the Constitution, and its interpretation by the judiciary. This section delves into these aspects, shedding light on the essence of constitutional morality and its significance in a diverse democratic nation like India.

### Historical Evolution

The evolution of constitutional morality in India is intertwined with the country’s historical journey towards independence and the framing of its Constitution. It emerged as a response to the complex challenges of nation-building and the need to reconcile the diverse interests and identities within the Indian subcontinent .

The foundational document, the Indian Constitution, was adopted in 1950 and represented a visionary blueprint for a democratic, pluralistic, and just society. The framers of the Constitution, led by Dr. B.R. Ambedkar, envisioned a nation that would adhere to constitutional values and principles. The Constitution explicitly stated its commitment to justice, liberty, equality, and fraternity in the Preamble, which serves as a guiding light for constitutional morality.

### **Constitutional Foundations**

Constitutional morality is inherent in the most important provisions of a constitution. The Preamble to the Indian Constitution is built around the moral and intellectual constructs upon which the inhabitants of India have chosen to give rights to fairness, freedom, equality and brotherhood for everyone. These principles are more than just words; they are the bedrock of the Constitution<sup>7</sup>. Furthermore, constitutional morality is reinforced by the Fundamental Rights set out in part III of the Constitution. Such rights as the right to equality, freedom of speech, and protection against discrimination guarantee personal freedoms and the ethical values of justice and equality.

Another layer with regard to constitutional morality is presented by the Directive Principles of State Policy (Part IV). The state is therefore guided on how to achieve social justice and ensure that vulnerable groups are taken care of including the poor and disadvantaged members of society.

### **CONSTITUTIONAL MORALITY IN THE INDIAN CONTEXT**

Constitutional morality is integral to the functioning of democratic governance in India. It finds its roots in the Indian Constitution and is exemplified in various constitutional provisions and legal principles. This section delves into the specific aspects of constitutional morality in the Indian context, examining key constitutional provisions and their implications<sup>8</sup>.

### **Constitutional Foundations**

The Indian Constitution lays a robust foundation for constitutional morality, primarily through its Preamble, which serves as a guiding light for the nation. The Preamble explicitly articulates the objectives of justice, liberty, equality, and fraternity. These are not mere abstract principles but the moral imperatives upon which the Indian democracy is built.

- Preamble: The Preamble of the Indian Constitution enshrines the commitment to securing justice, liberty, equality, and fraternity for all citizens. It serves as the moral compass guiding the nation's governance<sup>12</sup>.

### **Key Constitutional Provisions**

Several provisions in the Indian Constitution underline the importance of constitutional morality.

- Fundamental Rights (Part III, Articles 12-35): These rights, such as the right to equality (Article 14), freedom of speech and expression (Article 19), and protection against discrimination (Article 15), are fundamental to upholding individual liberties and rights, aligning with the moral principles of justice, equality, and liberty.
- Directive Principles of State Policy (Part IV, Articles 36-51): These principles may not be enforced by courts but they help the state towards social and

economic justice as required in line with the moral commitment on ensuring the welfare of the marginalised.

- Secularism (Article 25-28): It is indeed a display of Indian constitutional morality in ensuring the values of religious liberty and non-discrimination.
- Rule of Law: Although it is silent, the principle of the rule of law lies within the Constitution. It guarantees that no single person or state can be above the law by emphasizing the need for equality through equity.

Finally, the idea of constitutional morality as an Indian concept is ingrained in the fundamentals and clauses enshrined in the Constitution. It mirrors the dictates of justice, liberty, equal opportunities, and fraternity which informs the country's democratic government operations and judicial performance on these values. The Indian democracy is a practice of constitutional morality and it is in which India's road map has been shaped.

### **CONSTITUTIONAL MORALITY AND DEMOCRACY**

Democratic and constitutionally moral are mutually dependent or complementary in Indian context. Indian democracy rests on a constitutional morality that embodies its ethic and norm of functioning.

### **Role in Sustaining Democracy**

Constitutional morality is vital and democracy in India cannot endure without it. However it serves as an important control on the utilization and execution of power which must include principles involving justice, liberty, equality, and fraternity. These are not mere theories but pillars of active and meaningful democracy<sup>9</sup>.

- Justice: According to constitutional morality, justice should be available for every citizen. This guarantees justice in the legal system by giving a chance to those who have been harmed for them not to get what they did not deserve according to the dictate of morality, which demands fairness.
- Liberty: Constitutional morality entails protecting fundamental freedoms. This ensures that people are free to speak, they can exercise whichever religion of their choice as well as do whatever they want without injustices.
- Equality: Democracy thrives on the principle of equality, and constitutional morality reinforces the need to treat all citizens with parity, regardless of their backgrounds or beliefs.
- Fraternity: Promoting fraternity and a sense of common purpose among citizens is crucial in a diverse and pluralistic democracy like India. Constitutional morality fosters a culture of unity and social cohesion<sup>10</sup>.

### **Checks and Balances**

Constitutional morality ensures the separation of powers among the executive, legislature, and judiciary. This separation is a fundamental democratic principle that prevents any one branch from accumulating excessive power.

- Legislature: The legislature is bound by constitutional morality to enact laws that align with the moral principles of justice, liberty, equality, and fraternity. It

serves as the voice of the people, representing their moral aspirations.

- Executive: The executive, responsible for implementing laws, must adhere to constitutional morality by ensuring fairness, impartiality, and the protection of individual rights.
- Judiciary: The judiciary as a custodian of the Constitution, interprets and maintains its morals. As a key check and balance mechanism, it guarantees that these other branches conduct their operations aligned to the constitutional principles serving as a vital check and balance<sup>11</sup>.

## CONTEMPORARY RELEVANCE

Constitutional morality bears great significance today in India due to the current and continuous transformations in the country's political and moral environment. Constitutional morality and its role to address current questions and concerns especially as far as preservation of democratic rule is concerned, for minority rights, socioeconomic equality/justice, and personal liberty is discussed hereunder.

### *Political and Social Context*

Populism and majoritarianism have resulted in changing Indian politics in recent times. Though this reflects the "will of the people," it has raised questions regarding the possible corruption of constitutional morality." Constitutional morality remains relevant today because it offers checks on this kind of trend. It should ensure that there is no sacrifice of the principles of justice, liberty, equality, and fraternity at the expense of popular politics<sup>12</sup>.

### *Current Issues and Debates*

The importance of constitutional morality is evident in present discussions concerning liberty of expression, freedom of religion, and the concerns of the minority among many others. They illustrate the importance of constitutional morality for balancing between individual rights and societal virtues, as manifested by disputes surrounding free speech against the state, conversion problems and such as UCC values<sup>13</sup>.

### *Protecting Minority Rights*

The protection of minority rights remains a critical aspect of constitutional morality. In a pluralistic society like India, where diversity in religion, language, and culture is the norm, constitutional morality ensures that the rights of minorities are safeguarded. This contemporary relevance becomes evident in cases where the courts are called upon to interpret and apply constitutional principles to protect the rights of minority communities.

### *Social Justice and Inclusion*

Constitutional morality continues to be of great importance in the context of social justice and inclusion. As the nation grapples with issues of caste-based discrimination, reservations, and the socio-economic upliftment of marginalized communities, the Constitution's commitment to equality and fraternity becomes all the more significant. Constitutional morality guides the state in its endeavors to address historical injustices and inequalities.

### *Individual Freedoms*

The protection of individual freedoms in the face of evolving societal norms is another area where constitutional morality

remains relevant. Issues such as LGBTQ+ rights, reproductive rights, and privacy have been at the center of contemporary debates. Constitutional morality provides a framework for the courts to uphold these individual freedoms while navigating the complexities of societal change.

### *Case laws*

*Kesavananda Bharati v. State of Kerala (1973)*<sup>14</sup>: This was a landmark case that laid down what is known today as the doctrine of the basic structure. According to it, even though the parliament is allowed to amend the constitution, there are certain things it can't change such as fundamental nature of the constitution. This helped strengthen the idea that the Constitutional morals are constant and provide the basis for the Constitution. That changed views on constitutional morals in India.

*Maneka Gandhi v. Union of India (1978)*<sup>15</sup>: The judgement of this case widened the ambit of Article of 21 of the constitution highlighting the concept of respecting the human dignity which is the moral fiber of the constitution. This stressed on importance of personal freedom and that of independent court system.

*Minerva Mills Ltd. v. Union of India (1980)*<sup>16</sup>: The Supreme Court highlighted judicial review as a significant characteristic of the Constitution for government's actions to adhere to moral principles. It highlighted, among other things, the importance of the judiciary attaches to constitutional values.

*Navtej Singh Johar v. Union of India (2018)*<sup>17</sup>: The decision in this case overturned Section 377 of the Indian Penal code, making consensual homosexual acts legal, while upholding the principle of freedom, dignity, and equality for all individuals. It was an important step towards enforcing constitutional morality to safeguard queer people's rights. This case protect the right of the LGBTQ+ community.

*Naz Foundation v. Government of NCT of Delhi (2009)*<sup>18</sup>: This was when the Delhi High Court outlawed homosexuality by holding section 377 unconstitutional thereby furthering the idea of freedom and equality. It stressed upon the role of constitutional morality in dealing with socio-legal changes.

*S.R. Bommai v. Union of India (1994)*<sup>19</sup>: This case reaffirmed the concept of secularism as part of the basic structure of the Constitution, underscoring the moral commitment to religious freedom and non-discrimination. It emphasized the protection of minority rights and upholding the principles of justice and equality.

*Shayara Bano v. Union of India (2017)*<sup>20</sup>: The Supreme court proclaimed that it was unfair for a man to instantly give his wife three different divorce demands. It provided for constitutional morality and the way it is used in fighting gender discrimination.

*Vishaka v. State of Rajasthan (1997)*<sup>21</sup>: In this case, the Supreme Court laid down guidelines to protect women from sexual harassment at workplaces, reflecting the moral imperative of gender equality and dignity. It highlighted the significance of constitutional morality in shaping workplace environments and ensuring individual rights.

## CRITICAL ANALYSIS

The concept of constitutional morality in India has its pros and cons in relation to the democracy. In this section, a full account

of the concept is provided, showing what are the advantages and shortcomings.

### **Strengths of Constitutional Morality**

- *Protection of Fundamental Rights:* A strong protective framework is provided by constitutional morality. It strengthens the judiciary to protect personal freedoms and maintain values such as justice, equality, liberty and brotherhood amongst the people hence guaranteeing rights of individuals.
- *Checks and Balances:* It is important for upholding democracy's checks and balances. It makes it impossible for a single branch of government to become "too strong"; hence democratic traditions are upheld, and authoritarian rule avoided.
- *Adaptability:* The inherent subjectivity of constitutional morality gives it the flexibility to shift with the ever-changing social values and needs. It makes sure that the constitution remains contemporary with the country's changing concerns and challenges.
- *Social Justice:* Constitutional morality is embodied by their commitment to social justice. The framework leads towards policies and programs that address historical injustices and narrow socio-economic gaps for a fair nation.
- *Minority Rights:* Constitutional morality would be fundamental for safeguarding the interests of minority groups in a rich state like that would be fundamental for safeguarding the interests of minority groups in that would be fundamental for safeguarding the interests of minority groups in a rich state like India. This ensures that these group rights and interests are not overlooked in a democratic process<sup>22</sup>.

### **Limitations and Challenges**

- *Subjectivity:* However, it should be noted that constitutional morality has a subjective character and thus a number of contradictions are possible in its realization. Given that the matter is subjective, it presents room for biased decisions such as the judiciary's view could influence the practicality of the concept.
- *Judicial Activism:* While judicial activism can be strength, it can also be a limitation when it leads to the judiciary making policy decisions that should be within the purview of elected representatives. Striking the right balance between judicial intervention and legislative authority remains a challenge<sup>23</sup>.
- *Majoritarian Pressures:* The tension between constitutional morality and the will of the majority presents a significant challenge. Protecting minority rights and ensuring that the principles of justice and equality are not sacrificed in favor of majoritarian interests requires careful navigation.
- *Enforcement and Implementation:* There is an ongoing debate about the effectiveness of constitutional morality in practical terms. The implementation of constitutional principles, particularly in cases of social justice and minority rights, remains a challenge.
- *Selective Application:* Critics contend that constitutional morality is not applied consistently, raising questions about impartiality. The perception

that it is selectively employed in certain cases or for particular groups can undermine its credibility<sup>24</sup>.

### **CONCLUSION AND SUGGESTIONS**

Constitutional morality in India proves to be an important and vital doctrine which ensures upholding justice, liberty, equality and fraternity. It forms the path of the journey towards democracies and provides an assurance that what is printed on the Indian constitution will have some reality as morals and ethics for the country.

Populism, majoritarianism and partial application of constitutional morality in the modern political setting pose a serious challenge to the main elements of democracy. To ensure that constitutional morality continues to serve as a robust foundation for democratic governance, several suggestions are worth considering:

1. *Strengthening Judicial Independence:* It is difficult to talk about constitutional morality without mentioning the necessity of an independent court. The protection of the judiciary against outsiders is essential to avoid interfering with the Constitution.
2. *Public Awareness and Education:* It is important to promote public awareness and educate people about the importance of constitutional principles. Educated citizens will understand and demand adherence to, constitutional values.
3. *Addressing Selective Application:* This means that the judiciary should try making decisions consistently as well as fairly to address fears of the selective application of constitutional morality. It has to guarantee that constitutional principles are equally applied on all cases.
4. *Balancing Majority Will and Minority Rights:* It is important to make a fine line between the rule of the democracy and minority rights. This delicately balancing act must be informed by constitutional morality with an eye to preserving the basic rights of individuals against popularly elected authorities.
5. *Legislative Reforms:* Legislature should act first and pass laws which conform to constitutional morality. In this regard, policy makers should consider measures such as social justice promotion, minority right protection, as well as establishment of clear roles for every actor.

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