
AMBEDKAR'S CONCEPT OF CONSTITUTIONAL MORALITY IN THE CONTEXT OF SUPREME COURT JURISPRUDENCE CONCERNING THE PRINCIPLE OF CONSTITUTIONAL MORALITY

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ABSTRACT

Dr. B. R. Ambedkar introduced the term constitutional morality at the Constituent Assembly¹, the Supreme Court has emphasised the phrase in many of its most recent rulings.² It also evolve with the idea of transformative constitutionalism (the concept first introduced in south Africa) Intriguingly, the court has come under fire for frequently applying constitutional morality, which has been described as very risky'. Therefore, it is imperative that we track the constitutional morality concept over time. This study clarifies the various connotations attached to the term constitutional morality. It makes an effort to comprehend the phrase from the viewpoint of the court. It also offers a thorough understanding of Dr. Ambedkar's idea of constitutional morality.

ABOUT PRINCIPAL OF CONSTITUTIONAL MORALITY.

The constitutional interpreter, the judiciary has successfully overridden long-standing statutes that need to be updated in light of changing times and social trends.³ The Court has used several aspects of this progressive and transformational doctrine, some of which may be regarded as the best and most important rulings. The implementation of this concept, according to many, amounts to judicial overreach and is putting "constitutional morality" against "societal/popular morality," so to speak. Following the Supreme Court's Sabarimala decision, the doctrine received harsh criticism and sparked debate, especially after the Attorney General of India referred to it as a "dangerous weapon" in his remarks. After that, a bench of seven Supreme Court justices was given the duty of defining "Constitutional Morality."⁴ No constitutional case

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¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

² Upendra Baxi, 'Constitutional Morality' (2016) *Seminar Magazine*.

³ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

⁴ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

has yet provided a clear interpretation of the concept of constitutional morality, despite the fact that the concept of basic structure was sympathetically discussed in length in the Keshvanada Bharathi case and the judiciary continues to define its scope and characteristics with new interpretations.

'Basic structure' is a term frequently used to invalidate constitutional modifications that contradict the core principles of the document. On the other side, constitutional morality has arisen as an alternative jurisprudential idea that can be utilised to invalidate common laws in order to prevent undermining the sanctity of the "basic structure" concept. Constitutionalism is the way the institutions of the government behave in a democratic nation like India in order to fulfil the Constitution's primary goal.⁵

Protects and defends the application of the rule of law in the nation: CM essentially means to submit to the dictates of the Constitution and to refrain from acting in a way that would violate the rule of law or show an arbitrary course of action. Promoting and upholding the nation's democratic ideals: The ideology encourages friendly cooperation and coordination of all parties, particularly between citizens and the state, in order to further constitutional goals.

Change people's perceptions of society's or public morality for the better by applying the notion of constitutional morality to laws or statutes that are out of step with the times. For instance, when a legislation banning Sati was implemented, it granted Indian widows who had previously been regarded as signposts of bad fortune and calamity the right to life and dignity. Constitutional morality is particularly important for a vibrant and diverse nation like India, where the population is diversified and is further divided by caste, religion, colours, sexual orientation, languages, genders, and other factors. Since "plurality" is a fundamental ethos of the Constitutional morality principle.

SUPREME COURT'S JURISPRUDENCE CONCERNING THE PRINCIPLE OF CONSTITUTIONAL MORALITY.

The Indian Constitution does not use the term "constitutional morality."⁶ However, there are several places in the constitution when the words "morality" and "public order" are spoken

⁵ Dr B.R. Ambedkar, *Constituent Assembly Debates*, 4 November 1948.

⁶ *S.P. Gupta v Union of India* 1981 Supp SCC 87.

together. For instance, the State may properly impose restrictions on certain fundamental rights under Articles 19(1)(a) and 19(1)(c) in the sake of "public order, decency or morality," while Articles 25(1) and 26's provisions are "subject to public order, morality and health." The idea was in a semi-dormant stage after 1950. However, the Supreme Court did make two fleeting references to it in the *Keshavananda Bharti* and *First Judges* case, also known as *S.P. Gupta v. Union of India*.

In *Naz Foundation v. Government of NCT of Delhi* (2010). The Delhi High Court ruled that a person's basic rights to privacy and dignity cannot be violated just because of a strong moral objection, even in public morals. The court further noted that Part III of the Indian Constitution anticipated a society that was so democratic that every citizen of India was free from restrictions and social pressure, and that the right to liberty should not be reserved for a select few. Therefore, our constitution respects and acknowledges diversity. This is a social revolution, at the very least. It was decided that when a statute was being scrutinised on the basis of "compelling state interest."

The court also ruled that these are the "constitutional values" that form the basis of constitutional morality. However, the judgement offers no definitive insight into which basic ideals comprise the constitutional morality. The *Naz Foundation* case⁷ is crucial to the Indian legal system. Due to this ruling, the LGBT community was considered as falling under the parameters of equality. Although the High Court's aforementioned ruling decriminalised homosexuality, the Supreme Court reversed it in the *SK. Koushal* case, acknowledging that popular morality could not be a sufficient justification for denying an individual's liberty.

In *Navtej Singh Johar v. Union of India*, a five-judge court decided in favour of the *Naz Foundation's* point of view. Speaking in this case on behalf of Justice Khanwilkar, Chief Justice Deepak Misra stated that the courts should be guided by constitutional morality rather than popular morality.

The concept of constitutional morality, which may be found in the "Preamble," according to Justice RF Nariman, is the "essence and soul" of the Indian Constitution. itself. The "ideals and aspirations" of the constitution are stated in the preamble.

⁷ *Naz Foundation v Government of NCT of Delhi* (2009) 160 DLT 277.

Justice D.Y. Chandrachud pointed out that the state's institutions must be devoted to the idea of constitutional morality in order to fulfil the goals of "Justice, Liberty, Equality, and Fraternity" set forth by the Preamble⁸. Social morality should not have an impact on such dedication and fidelity to constitutional morality. The distinction between common morality and constitutional morality was studied by Justice D.Y. Chandrachud.

He noted that in order to provide certain rights that are important and crucial for leading a dignified life equally and freely as a member of society, the constitutional morality needs the state's guarantee. The constitutional morality, not any popular or common morality, must always serve as the law's moral compass. Justice D.Y. Chandrachud asserted that we may realise the aspirations of our constitution's founding fathers provided the fundamental principles of "liberty, equality, and fraternity" are present as a core substance of constitutional morality. Only by using these methods can we ensure that our folks receive proper justice. Therefore, the fundamental principles of equality, liberty, and dignity must be upheld⁹. The court maintained that constitutional morality in this case had to be grounded in the lofty ideals of liberty, equality, and fraternity.

AMBEDKAR'S CONCEPT OF CONSTITUTIONAL MORALITY.

In the context of India, Dr. B.R. Ambedkar first used the phrase "constitutional morality" in a legislative discussion over the administrative provisions included in the draught constitution in November 1948. He asserted that constitutional morality was the solution to the social inequalities currently present, and that the philosophy principally translated into respect among republican stakeholders for constitutional democracy as the recognised system of government and administration. He gave constitutional morality's components additional thought. Therefore, Ambedkar returns to the fundamentals of constitutional morality in his address from November 25, 1949, which is commonly known as "Three Warnings." He poses a crucial query. If we wish to maintain, democracy exists in fact as well as in form? In response to the query, he stated that three actions were necessary. He saw the necessity to "hold fast to constitutional methods of achieving social and economic objectives" as the first and most important item. He implied that by "holding on to constitutional means," We must abandon the bloody methods of

⁸ Justice D.Y. Chandrachud, *Republic of Rhetoric* (Penguin Random House 2024).

⁹ Madhavi Divan, 'The Right to Privacy in the Age of Information and Communication' (2002) 4 SCC J 12.

revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us. His "caution" against hero-worship in politics was the second thing. He emphasised the significance of adhering to the advice given by John Stuart Mill,¹⁰ specifically that people shouldn't "lay their liberties at the feet of even a great man, or trust him with powers that enable him to subvert their institutions." He maintains that expressing gratitude to outstanding individuals who have dedicated their lives to serving the nation is appropriate. But there have to be some constraints. For him, "This warning is even more relevant in the case of India than it is in the case of any other nation because Bhakti, also known as the path of devotion or hero worship, plays an unmatched role in Indian politics. In comparison to the role it has in the politics of any other nation in the world. In terms of religion, bhakti might lead to salvation for the soul. However, Bhakti, or hero worship, in politics is a surefire path to obscurantism and eventually despotism. Last but not least, Ambedkar stressed the importance of pursuing social democracy in addition to political democracy. He emphasised that, "These three ideals—liberty, equality, and fraternity—must not be regarded as distinct parts of a trinity. They come together to form a trinity, and to separate them would be to undermine democracy itself. Libertarians believe that equality and liberty cannot be separated. Fraternity and liberty cannot be separated from one another. Liberty without equality would result in the dominance of the few over the many. Individual initiative would be killed by equality without freedom. Liberty and equality could not develop into a normal stream of events without fraternity.

According to Dr. Ambedkar's opinion, the foundation of constitutional morality. He held that constitutional morality must preserve the fundamental principles of democracy, namely liberty, equality, and fraternity, in order for democracy to succeed. Notably, the Supreme Court's view, which advocates the same principle as Dr. Ambedkar's, is that constitutional morality derives from constitutional values, which are the supreme ideals of liberty, equality, and fraternity. It is also important to remember that the Supreme Court has occasionally employed constitutional morality in a very broad and general sense. In this interpretation, constitutional morality allows

¹⁰ John Stuart Mill, *On Liberty* (1859).

for the judges' individual tastes and choices while evaluating the efficacy of governmental action. To avoid this situation, the Supreme Court assigned a bench of seven judges the responsibility of defining constitutional morality. This case is still pending in the court. The study raises the possibility that the judiciary would define constitutional morality as a form of morality that must adhere to Dr. Ambedkar's social philosophy, which includes liberty, equality, and fraternity. Otherwise, the judiciary should abstain and let the Executive and the Legislature the other constitutional organs determine the future of constitutional morality.