**Constitutional morality as a challenge**

**Abstract-**

The phrase ‘Constitutional morality’ has, currently begun to be considerably used. It’s a long way sizeable for constitutional legal guidelines to be effective, without constitutional morality the operation of constitution has a tendency to turn out to be arbitrary, erratic and capricious. The energy or susceptible point of constitutional morality in cutting edge India possesses to be understood within the sunshine of a cycle of escalating desires from the people and for that reasons the callous response of successive governments to the others desires. In democracy, the duties of these are expected to be equally binding on the government., and consequently the opposition. Traditionally, the fine was insisted upon in looking for behaviour in line with the longstanding suited norms restricting the exercising of sovereign power through its agents at some points of a society. Morality has usually been taken into consideration as a vital aspect while deciphering the charter. It is generally predicted from those at the top positions which their operations and choices are going to be supported which are appropriate and relevant to a given situation. Constitutional morality as a fundamental part of democratic authorities is actually justified, it gives an ethical understanding of the government and different work of the governance.

Keywords: constitutional morality, democracy, government.

**Introduction-**

There are nine elements of Constitutional Morality. These are Rule of law, Right to Equality, Freedom of Expression, Preamble, Due to process of regulation, Procedure established by way of law, Social Justice, Freedom of choice and Individual Liberty. Inside the case of Navtej Singh Johar vs. Union of India[[1]](#footnote-2), the Apex Court provided a basis order that the rights of LGBTQ can be asserted as in addition they have the right to dignity, life, liberty and identification. These days, the utility of the concept of Constitutional Morality has widened its scope and grow to be extra good to interpret the Constitution of India via the Judges. The most infamous application this doctrine become inside the case of Keshavananda Bharti, in which clarification of the basic structure of the Constitution become provided. Additionally, they were more instances within the future which show that the idea of Constitutional Morality is of dynamic nature and has transformed with the years.

What did Grote mean with the aid of ‘Constitutional Morality’?

Ambedkar prices Grote once more[[2]](#footnote-3):

After Grote meant, a foremost reverence for the formation of the Constitution, enforcing the obedience to authority and acting inside those bureaucracy, yet it mixed with the addition of open speech, and of motion for problem not only to specific criminal manage over the International locations, and unrestrained censure of these to any or all their public acts mixed, too with a really perfect self assurance inside the bosom of each citizen amidst the bitterness of party contest that the formation of constitution will no longer be much less scared some of the eyes of his warning parties than his own.

**Issues of Constitutional Morality-**

1. The Constitution of India made it easier for the citizens to live a safe and peaceful life in the Nation by providing security of their life, health, personal liberty, property, rights, and their freedom. But somewhere the Morality of our Constitution is getting challenged by the people of our country. And it is clearly mentioned in the case of Maneka Gandhi vs. Union of India AIR 1978 SC 597[[3]](#footnote-4). In this case the Apex court highlighted the importance of Article 14, 19 and specially 21 of the Constitution of India.
2. If the point will raise about ‘Equality’ which is mentioned under Article 14 of the Constitution of India, that is, ‘Equality before law’ and ‘Equal Protection of Law’ of and to the citizens of India. But the meaning of the term ‘Equality’ is getting violated in our society very widely nowadays. In the name of the equality people has started the discrimination among the genders, colours, caste, and race. Casteism has been criticized as an opposite meaning. It is a breach of Constitutional Morality as it’s mentioned under S.P. Gupta Vs. Government of India.
3. Thereafter, it was only recently in 2010, that justice Ajit Prakash Shah in Naz Foundation vs. Government of NCT of Delhi, first used it in an antithetical manner to popular acceptance and standard of morality. In this form, a precedent was set for the courts to disregard social norms, stigmas, and limitations while assessing the actions of the State. For instance, in this case, while deliberating upon the issues of discriminalisation of homosexuality, then a criminal offence under section 377 of the Indian Penal Code, 1860, the Court took into cognizance the ideal of upholding the constitutional principles rather than the society’s perception with regards to the legitimacy of same sex relationships.
4. The trend continued, as judges started giving the rational of constitutional morality in their judgment thereafter. The Ex-Chief Justice of India, Justice Deepak Misra, in the Government of NCT of Delhi vs. Union of India[[4]](#footnote-5) equated constitutional morality to a ‘second basic structure doctrine’. The fact of the principle being respected and adhere to by both the citizens as well as officials was reinstated and it acting as a check on both of these classes alike, was reinforced by the justice. Almost all the revolutionary judgments in the recent past, whether it be the Navtej Singh Johar Judgment[[5]](#footnote-6) on homosexuality or the Joseph Shine Judgment on Adultery, had constitutional morality as one of their crucial fundamentals. In fact, in the Indian Young Lawyer’s Association vs. Union of India[[6]](#footnote-7), commonly known as the Sabarimala Judgment, The Supreme Court also by passed the doctrine of essentiality (the principle protecting the ‘integral’ religious practices of a community) to uphold the supremacy of constitutional morality.

**Supreme Court’s Judgments-**

Constitutional Morality is not restrained most effective to the following the constitutional provisions literally but it based on values like individual autonomy and liberty, equality without discrimination, reputation of identification with dignity, the right to privacy. Constitutional morality way adherence to the centre standards of constitutional democracy.

* In Supreme Court’s Sabarimala verdict[[7]](#footnote-8), non secular freedom, gender equality and the right of women to worship assured below Article 14, 21 and 25 of the Constitution was reinstated which struck down the practice of banning access of women of a certain age to the Sabarimala Temple in Kerala as unconstitutional. The historic Sabarimala verdict 2018, which dominated that the discriminatory exercise of prohibiting women of menstrual age from gaining access to Lord Ayyapa’s Temple for darshan became unlawful, sparked both elation and displeasure. There have been smooth grounds for the joy and jubilation; women were freed from an age-old discriminatory dependency.
* In Kesavananda Bharti case[[8]](#footnote-9), the preferred court confined the power of the Parliament to violate the Basic Structure of the Charter.
* In the Naz Foundation case, the Supreme Court opined that simplest Constitutional Morality and no longer Public Morality have to succeed.
* In Lt Governor of Delhi case, Supreme Court proclaimed constitutional morality as a governing thoughts that ‘spotlight the need to hold the accept as true with of humans in the institution of democracy.
* In Sabarimala case, the Supreme Court bypassed the ‘Doctrine of Essentiality’ to uphold the constitutional morality. A total of seven issues relating to religious freedom in India about individual and group rights have to be decided by the Court and it also has to come up with a uniform policy and precedent with which the matter concerning religious freedom vis-à-vis individual freedom can be decided in the future.

**Significance of Constitutional Morality-**

Laws can be used to change and influence the never ending social morality. For example, abolition of untouchability to pass on the right to dignity and life to the lower caste people. The same has now positively affected how others view them. Constitutional Morality focuses on performing one’s fundamental rights so that commitment to aspirations of the Constitution is sustained. It also aims to create awareness among the people whose rights are protected by the Constitution.

Freedom and self-restraint has been regarded as the main elements of this Constitutional Morality. The latter is a mandatory condition to support freedom without violating the other’s right to the same.

Constitutional Morality ensures the establishment of rule of law in the land while integrating the changing aspirations and ideals of the society. It is a governing ideal that highlights the need to preserve the trust of the people in the institutions of democracy. As such an ideal, it allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved single headedly. It also recognises plurality and diversity in society and tries to make individuals and communities in the society more inclusive in their functioning by constantly providing the scope for improvement and reforms.

The term has not been clearly defined by the Supreme Court, which leaves the scope of its subjective interpretation by the individual judges. This top-down approach to morality can affect the possibility of organic emergence of the solutions to the presenting ethical problem in the society. It is claimed that the applications of this ‘Constitutional Morality’ amounts to judicial overreach and are thereby pitting constitutional morality against ‘society or popular morality’.

Constitutional Morality is specifically substantially significant for a vibrant and diverse country like India which has got a heterogeneous population with so many further sub classifications which are: caste, religion, colours, sexual orientation, languages, genders, etc. since, plurality is one of the crucial ethos of the principle of constitutional morality it recognises this distinction and non-homogeneity and promotes diversity helping to make the society more inclusive.

Furthermore, the most remarkable aspect of Constitutional Morality has been its inherent transformational character. The Supreme Court has assured that no individual regulated by the Constitution is deprived of the fruits of its provisions as a result of this. In this regard, Justice Chandrachud stated in the Sabarimala decision in 2018, that the Indian Constitution ‘has a transformational aspect so that formerly underprivileged and disadvantaged persons might enjoy their citizenship rights’.

**Legal issues-**

1. There is an interesting fact of Constitutional Morality is not a sentiment in nature. Which is clearly mentioned by Dr. B. R. Ambedkar[[9]](#footnote-10). Dr. Ambedkar was very familiar with the 19th Century provenance. In this view, Constitutional Morality refers to the conventions and protocol that govern decision making process and the constitution vest discretionary power. But Grote’s use this term in a different way which was more important for Dr. Ambedkar’s purposes. He was making a series of historical claims about constitutionalism. Like Grote had a little doubt that Constitutional Morality was rare and it was not a natural sentiment.[[10]](#footnote-11)
2. There are two other possible instances of Constitutional Morality have been realized, that is, the aristocratic combination of liberty and self-restraint in Constitutionalism. All the attempts for enshrining a constitutional morality had grievously foundered. These two instances of historical caution has simply lead Dr. Ambedkar in worries about India because he only put Democracy in it, which was top dressing on Indian soil and that is essentially undemocratic in nature. Our people of India yet to learn the ‘Constitutional Morality’.
3. If a talk will raise about ‘Human Rights’ which has been mentioned in Part three of our Constitution under the Fundamental Rights from Article 14 to 21 and also the Part four which is Directive Principle of State Policy from Article 36 to 51. Human Rights have been divided into three generations-
4. First generation is civil and political rights which contains right to life, liberty, security, freedom of speech and expression and worship, etc. from Article 3 to 21.
5. The second generation is socio-economic and cultural rights which include right to work, education, freedom of association and right to insurance for sickness and old age. These rights are incorporated from Article 22 to 28.[[11]](#footnote-12)
6. The third generation of human rights is collective rights (self-determination) and also include environmental rights such as right to air, water, food, natural resources, etc.

These are the generations discussed above somewhere nowadays it is getting infringed by the other people of our country. If the consideration will made upon all the rights under each generation is violated by some of the authority or by the political persons which is causal in-equality with the huge loss to the interest of the citizens.

1. As being a human being, above mentioned rights are given to each and every citizen of the Nation by birth. If any person is retrained from enjoying their rights or being stopped from performing their duties isn’t that an injustice to that person. If any one dares to raise their voice against wrong actions and a wrongdoer, they have been obstructed. If any wrong happens to one person, all the authorities require ample amount of details to take action. After demonetization and change is tax collecting system, there is a huge unemployment in India, brilliant candidates with good degrees are searching for a good job but there is no vacancies. As a person security is one of the basic need but it’s not fulfilled girls and children are still insecure/ unsafe. The freedom of worship has awarded to all the citizens but still the political crooks create a chaos in the name of the religion. We are free to give opinion and to put our thoughts in any conversation either formal or informal, at this the term defamation added by those persons whom are habitually defaming others. Where is the Morality or the Constitutional Morality.[[12]](#footnote-13) Morality is dying day by day. Yes this is a bitter truth that peoples of India are yet to learn the Constitutional Morality. We should be a pride of our Nation not the ashamed one.

In Kantaru Rajeevaruu vs. Indian Young Lawyer’s Association, (2020) 3 SCC 52[[13]](#footnote-14), The Supreme Court decided to relate to a larger bench on defining indigenous morality. The Court observed that the expression isn’t defined anywhere in the constitution. And silhouettes of this expression need to be delineated to help it from getting private.

Different Magistrate have also tried to define this term, Justice Nariman, in the same case, asserted that the spirit of the constitution forms indigenous morality. According to him, it correspond of nothing but the values inculcated in the constitution, contained in the preamble read along with part three and four of the Constitution.

**Review and Concern on Constitutional Morality-**

1. Attorney Journal of India, K. K. Venugopal said,“ Use of indigenous morality can be veritably, veritably dangerous and we cannot be sure where it will lead us to. I hope constitutional morality dies. Else, our first PM Pandit Jawaharlal Nehru’s fear that Supreme Court will come the third chamber might come true.[[14]](#footnote-15)”
2. The law minister also took a critical view of the Supreme Court’s operation of the Principle of Constitutional Morality. He said, “we hear about Indigenous Morality, we appreciate inventions but nuances of constitutional morality should be outlined with clarity and should not differ from judge to judge and there must be a agreement.”
3. At some points, these apprehensions are well plant. As of now, there is no clear agreement regarding the content and the figure of this principle. However, it could amount to judicial overreach, if this doctrine will be used without any limitations or restrictions. In the rearmost book ‘From The Trench’, of Elderly Advocate Abhishek Manu Singh reflected on the operation of constitutional morality in the Sabarimala case. He said that, the expression is full of subjectivity and maintained that the judicial approach to Constitutional morality could vary from judge like the proverbial Chancellor’s Foot. Hence, this divagation and capricious use could make the Judiciary ignorant. Thus, a standard needs to be set to avoid legal inconsistencies and arbitrariness.
4. In the 1970s, numerous sceptics criticised the Basic Structure Doctrine, claiming that it will lead to judicial lawlessness and check the superintendent’s power. Still, this doctrine has served our country well. Also, we need some time to see how our Courts apply constitutional morality and how it will help us break our times pressing socio- artistic problems.

**Conclusion-**

Constitutional Morality is like a sentiment which need to be cultivated in the minds of each and every citizens of India. It is not the duty of our judiciary or executive member to uphold the constitutional morality in the nation but it rely upon each and every individual citizen of India too. It is very sad to see the scenario of disobedience towards the duties of individual either it’s a lay person or any authorized one, they have badly forgot that they are the citizens of India and they bound to perform their duties otherwise it will cause a huge to our own country and its peoples. Due to this non-performance the interest of an individual or Rights are badly violated and this violation process is continued and it is going on.

The significance of this verdict would be far-reaching and pervasive since it would touch on other religious concerns such as Mosque Entry, Parsi women’s fire temple entry case, Female Genital Mutilation in the Bohra community and other incidental religious topics. Coupled with this is the progressive and tremendous trend or precedent that this court has established in the recent years. Constitutional morality as a result, is classified as a second basic structural concept. It is the definition is understandably, a little hazy, as are the definitions of the most other constitutional principles which are primarily relied on the interpretation of judges when giving verdicts in the various situations[[15]](#footnote-16).

The Preamble of the Constitution explicitly mentions the types of society we wish to establish, but it is only through constitutional morality it can become reality. The progressive and monumental precedents have been set up by the Judiciary in the past few years, where this Doctrine has been applied especially in relation to the cases of gender-justice, institutional propriety, social uplift, checking majoritarianism and other such evils. Unless the people of India will learn the Constitutional Morality, it will remain in challenge condition.

1. Navtej Singh Johar vs. Union of India Ministry of Law, 2018. [↑](#footnote-ref-2)
2. Ambedkar ‘Speech Delivered on 25 November 1949’ in The Constitution and Constituent Assembly Debates, p. 174. [↑](#footnote-ref-3)
3. Maneka Gandhi vs. Union of India and Anr. AIR 1978 SC 597; (1978) 1 SCC 248. [↑](#footnote-ref-4)
4. Government of NCT of Delhi v. Union of India (2018) 8SCC 501 C.A.No. 2357 OF 2017. [↑](#footnote-ref-5)
5. <https://indiankanoon,org/doc/168671544> [↑](#footnote-ref-6)
6. Indian Young Lawyers Association v. The State of Kerala, 2018. [↑](#footnote-ref-7)
7. Kerala High Court (5 April 1991) Bench: K Paripoornan, K B Marar. [↑](#footnote-ref-8)
8. Kesavananda Bharti V. State of Kerala, AIR 1973 SC 1461. [↑](#footnote-ref-9)
9. The Constituent Assembly Debates. Lok Sabha Secretariat, Delhi, 1990, pp. 107-131 and pp. 171-183. [↑](#footnote-ref-10)
10. The quotation from Grote that Ambedkar uses can be found in a reissue of George Grote, A History of Greece. Routledge, London, 2000,p.93. [↑](#footnote-ref-11)
11. INDIA CONST. art 26. [↑](#footnote-ref-12)
12. Ibid., p. 174. [↑](#footnote-ref-13)
13. Kantaru Rajeevaruu V. Indian Young Lawyer’s Association, (2020) 3 SCC 52. [↑](#footnote-ref-14)
14. INDIA CONST. art 26. [↑](#footnote-ref-15)
15. <https://blog.ipleaders.in/constituional-morality-in-india/> [↑](#footnote-ref-16)