

CONSTITUTIONAL MORALITY AS A CHALLENGE

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ABSTRACT: *The topic 'Constitutional morality has currently initiated to be considered used. It's a long way sizeable for constitutional legal guidelines to be effective, without constitutional morality the operation of the constitution tends 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 reason the callous response of successive governments to the others desires. In a democracy, the duties of these are expected to be equally binding on the government., and consequently the opposition. Traditionally, the fine was occupied upon in looking for behavior in line with the norms restricting the exercising of sovereign power through its agents at some points of 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 justified, it gives an ethical understanding of the government and different work of the governance.*

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 India¹, 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 grown to be extra good to interpret the Constitution of India via the Judges. The most infamous application of 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 more²:

After Grote meant, a step upheld towards the formation of the constitution, enforcing the obedience to authority and acting inside those bureaucracies, yet it mixed with the addition of open speech, and of motion for the 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 perfect self-assurance inside the bosom of each citizen amidst the bitterness of party contest

¹ Navtej Singh Johar vs. Union of India Ministry of Law, 2018.

² Ambedkar ‘Speech Delivered on 25 November 1949’ in The Constitution and Constituent Assembly Debates, p. 174.

that the formation of the 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 freedom. But the citizens of India started challenging the Morality of the Constitution which can be verified from the case of Maneka Gandhi vs. Union of India AIR 1978 SC 597³. In this case, the Apex court highlighted the importance of Articles 14, 19, and especially 21 of the Constitution of India.
2. If the point will be raised 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 equality, people have started discrimination among the genders, colors, caste, and race. Casteism has been criticized as having an opposite meaning. It is a breach of Constitutional Morality as it's mentioned under S.P. Gupta Vs. Government of India.
3. After that, it wasn't until Justice Ajit Prakash Shah utilized it in Naz Foundation vs. Government of NCT of Delhi in 2010 that it was first employed in a way that was contrary to common acceptance and morals. In this fashion, a precedent was established for courts to overlook social norms, stigmas, and constraints while evaluating the State's activities. For example, in this case, the Court considered the ideal of upholding constitutional principles rather than society's perception of the legitimacy of same-sex relationships while deliberating on the issues of discrimination of

³ Maneka Gandhi vs. Union of India and Anr. AIR 1978 SC 597; (1978) 1 SCC 248.

homosexuality, which was then a criminal offense under section 377 of the Indian Penal Code, 1860.

4. The trend continued, as judges started giving the rationale of constitutional morality in their judgment thereafter. In the case of the Government of NCT of Delhi vs. Union of India, Justice Deepak Misra, the former Chief Justice of India, linked constitutional morality to a "second basic structure doctrine.". The fact that the principle was acknowledged and adhered to by both citizens and officials, and that it acted as a check on both of these classes, was reaffirmed by the justice. Almost all of the recent revolutionary rulings, such as the Navtej Singh Johar Judgment on Homosexuality and the Joseph Shine Judgment on Adultery, featured constitutional morality as one of their key tenets. In fact, in the Indian Young Lawyer's Association vs. Union of India⁴, commonly known as the Sabarimala Judgment, The Supreme Court also 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 founded on values such as individual autonomy and independence, equality without discrimination, the reputation of identification with dignity, and the right to privacy, rather than on strict adherence to constitutional laws. Constitutional morality is the practice of adhering to the fundamental principles of constitutional democracy.

- In the Sabarimala verdict, the Supreme Court upheld non-sectarian freedom, gender equality, and the right of women to worship as guaranteed by Articles 14, 21, and 25 of the Constitution, which declared the practice of barring

⁴ Indian Young Lawyers Association v. The State of Kerala, 2018.

women of a certain age from entering 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 the Kesavananda Bharti case⁵, 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 the simplest Constitutional Morality and no longer Public Morality have to succeed.
- In the Lt Governor of Delhi case, Supreme Court proclaimed constitutional morality as a governing thought that 'spotlight the need to hold the accept as true with of humans in the institution of democracy.
- In the Sabarimala case, the Supreme Court bypassed the 'Doctrine of Essentiality' to uphold 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 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 emphasizes exercising one's fundamental rights to

⁵ Kesavananda Bharti V. State of Kerala, AIR 1973 SC 1461.

maintain one's adherence to the Constitution's goals. It also tries to raise awareness among those whose constitutional rights are protected.

Freedom and self-restraint have 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 that the rule of law is established in the land while also incorporating society's changing goals and ideals. It is a governing philosophy that emphasizes the importance of maintaining people's faith in democratic institutions. As such an ideal, it allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved single-headedly. It also recognizes society's plurality and diversity and strives to make individuals and communities more inclusive in their functioning by allowing for continuous improvement and change.

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 especially important for a vibrant and diverse country like India, which has a heterogeneous population with numerous sub-categories such as caste, religion, colors, sexual orientation, languages, genders, and so on. Since pluralism is one of the principles of constitutional morality, it recognizes this difference and non-homogeneity and fosters diversity, so making 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 mentioned by Dr. B. R. Ambedkar⁶. Dr. Ambedkar was very familiar with the 19th Century provenance. In this view, Constitutional Morality refers to the conventions and protocols that govern the decision-making process, and the constitution vest discretionary power. But Grote 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.⁷
2. There are two other possible instances of Constitutional Morality that 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 have simply led 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. Our people of India have 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

⁶ The Constituent Assembly Debates. Lok Sabha Secretariat, Delhi, 1990, pp. 107-131 and pp. 171-183.

⁷ 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.

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-

- a. The first generation is civil and political rights which contains the right to life, liberty, security, freedom of speech and expression and worship, etc. from Articles 3 to 21.
- b. The second generation is socio-economic and cultural rights which include the right to work, education, freedom of association, and right to insurance for sickness and old age. These rights are incorporated from Articles 22 to 28.⁸
- c. The third generation of human rights is collective rights (self-determination) and also includes environmental rights such as the 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 all of the rights of each generation are violated by some authority or political figures, there will be a causal inequity that will result in a significant loss of people's interests. As being human beings, the above-mentioned rights are given to each 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 anyone 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 an ample amount of details to take action. After demonetization and change in the tax collecting system, there is huge unemployment in India, brilliant candidates with good degrees are searching for a good job but there are no vacancies. As a person security is one of the basic needs but it's not fulfilled girls and children are still insecure/ unsafe. The freedom of worship has been awarded to all the citizens but still the political crooks create chaos in the name of the religion. We

⁸ INDIA CONST. art 26.

are free to give an opinion and to put our thoughts in any conversation either formal or informal, at the term defamation added by those persons who are habitually defaming others. Where is the Morality or the Constitutional Morality?⁹ Morality is dying day by day. Yes, this is a bitter truth that the peoples of India are yet to learn 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 52¹⁰, 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.

Various magistrates have attempted to define this phrase, with Justice Nariman asserting in the same case that indigenous morality is formed by the spirit of the constitution. According to him, it is nothing more than the ideals instilled in the constitution, which can be found in the preamble as well as parts 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 to the third chamber might come true."¹¹
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

⁹ Ibid., p. 174.

¹⁰ *Kantaru Rajeevaruu V. Indian Young Lawyer's Association*, (2020) 3 SCC 52.

¹¹ INDIA CONST. art 26.

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 an 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’, 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 a 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 skeptics criticized 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 that needs to be cultivated in the minds of each citizen of India. It is not the duty of our judiciary or executive member to uphold the constitutional morality in the nation but it relies upon each citizen of India too. It is very sad to see the scenario of disobedience towards the duties of an individual either it’s a layperson or any authorized one, they have badly forgotten that they are the citizens of India and they are 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 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 recent years. Constitutional morality, as a result, is classified as a second basic structural concept. It is the definition is understandable, a little hazy, as are the definitions of most other constitutional principles which are primarily relied on the interpretation of judges when giving verdicts in various situations¹².

The Judiciary has set progressive and monumental precedents in recent years, especially in areas of gender-justice, institutional property, social uplift, checking big rationalism, and other such problems, where this Doctrine has been applied. The Constitution's Preamble specifically outlines the types of society we want to build, but it can only be realized via constitutional morality. Unless the people of India will learn the Constitutional Morality, it will remain in a challenging condition.

¹² <https://blog.ipleaders.in/constitutional-morality-in-india/>

