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CONSTITUTIONAL MORALITY: A CHALLENGING FRAMEWORK

Abstract:

In any country laws are important and essential to uphold the social harmony and do common good around all over its area. In some circumstances, the concept morality assists as a defining object along with the rule of law. Any Constitution of a country creates the principles thorough which the people of that country are to be produced at the national level. This framed the three branches of the government such as legislative, executive and judiciary and simplified their respective functions, duties and acquaintances with the simple citizens. Basically, the concept Constitutional morality states that every person should be treated equally regardless of their sex, custom, religion etc. Like this concept demands that men and women should be treated equally and the women should not be objectified as a property of their husband and also it does not want any conflict between the citizens. So, overall, the concept Constitutional morality is a very crucial and important for achieving a socially, culturally, traditionally and politically moral society.

Keywords: The Constitution, Morality, Law, Judicial system, Equality, Fundamental rights, Rule of law, Supreme Court of India.

INTRODUCTION:

Constitutional morality states to context to the fundamental principles of the Constitution, that comprise justice, liberty, equality, fraternity, secularity and the rule of law. This is a leading principle which assures that the works of the government and public line up with the standards and subject of the Constitution, rather than normally its written words. Constitutional morality is more discrete than statutory laws, that are static and can be unswervingly administered. It mandates esteem for the values of the Constitution although they combat with particular social norms, beliefs or practices. This intends to keep the integrity of democracy and assure the protection of fundamental rights.

Constitutional morality is precisely enduring and acting in accordance with the principles of the Constitution in its genuine nature. It adds a liability to a comprehensive and independent political procedure which pleases both individual and social interests. The term ‘Constitutional Morality’ is not defined anywhere of our Indian Constitution but the term ‘morality’ is used some places in our Constitution such as two times in Article 19 and in Article 25 and Article 26.

MEANING AND HISTORICAL ORIGINS:

The perception of Constitutional Morality was at first familiarized by British Historian George Grote. This British historian applauded Cleisthenes’ democratic reforms in primeval Greece. In India, Dr. B.R. Ambedkar accentuated the value of the constitutional morality in the Constituent Assembly debates in 1948. He also refers that constitutional morality must be sophisticated to endure democracy. Dr. B.R. Ambedkar observed The Constitution of India as not just an important legal article but an instrument to administer democratic values in the societal norms.

According to Dr. B.R. Ambedkar, “Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic.”¹ He even said that Constitutional morality is inherently put together with The Constitution of India and also added that without morality the procedure would even cause irregularity.

The judiciary system of India by its operation has been put forward a lot of principles and concepts determining the welfare and safekeeping of the citizens. Constitutional morality is one of those concepts introduced by the Indian Judiciary system which increasingly advanced over the last 10 years. It makes this term into a life-changing and continuing principle.

In *Kesavananda Bharti vs. State of Kerala*², The Apex Court stated to the Greek Historian Grote on the term Constitutional morality at the time of determining the power of the parliament to amend the basic structure of The Constitution of India.

The concept of Constitutional morality has also propounded by the American legal philosopher Ronald Myles Dworkin whose assumption is based on the notion that the law is not only required to depend on formal rules, but also moral doctrines fundamentally.

IMPORTANCE OF CONSTITUTIONAL MORALITY:

¹ A quote from Annihilation of Caste Goodreads, <https://www.goodreads.com/quotes/692976-constitutional-morality-is-not-a-natural-sentiment-it-has-to> (last visited Sept. 18, 2025)

² *Kesavananda Bharti vs. State of Kerala*, AIR (1973) 4 SCC 225

The concept Constitutional morality is essential for lot of reasons which are following....

- Preserving Democracy- The concept Constitutional morality intensifies the democratic framework of the nation by assuring that governance is established in justice, equality and respect for fundamental rights.
- Promoting and encouraging social justice- This concept safeguards minority rights and clashes with discriminatory practices, although they have social or religious acceptance.
- Intercepting Majoritarianism- The concept Constitutional morality restrains the perils of majority superiority in society, assuring that laws and policies are made to safeguard every person, not just those in power or the preponderance.
- Guiding Judicial Interpretation- It assists the judiciary system in comprehending the Constitution of India in a manner which keeps up its essential doctrines and values particularly when statutory laws fall short of transporting justice.

- Esteems Indian's Diversity- This assures a fair analysis of all groups. The National Education Policy (NEP), 2020 stimulates mother-tongue education, promoting cultural comprehensiveness.
- Fosters progressive reforms- The term Constitutional morality promotes affirmative social variations, like the permanent authority for women officers in The Indian Army in 2020.

SOURCES OF CONSTITUTIONAL MORALITY:

The sources of the concept Constitutional morality are following....

- The Constitution- The essence of the concept Constitutional morality lies in Fundamental Rights of The Constitution of India (Articles 12-35), Directive Principles of State Policy of The Constitution of India (Articles 36-51) and Fundamental Duties under The Constitution of India.
- Constituent Assembly Debates- The conversations by Dr. B.R. Ambedkar and others endure to affect the enforcement of Constitutional morality.
- Ancient Frameworks- India fights against the colonial rule and actions for getting justice to build democratic Government.

THE FUNCTIONS OF THE CONCEPT OF CONSTITUTIONAL MORALITY IN SAFEGUARDING INDIA'S DIVERSITY:

In a divergent country like India, the concept of Constitutional morality performs as a preservative defence for underprivileged societies, assuring equal rights and social congruence.

The functions of the term Constitutional morality are following....

- Promotes inclusion- The Constitutional morality endorses etymological, sacred and social diversity, as perceived in the State Reorganization Act, 1956.
- Protects minority rights- The Honourable Supreme Court's decision on Navtej Singh Johar vs. union of India Ministry of Law and ors.³ safeguarded the rights of the LGBTQ+ against the society.
- Restricts Governmental Overreach- Juristic evaluation in cases like Mohd. Ahmed Khan vs.

Shah Bano Begum and ors.⁴ kept up the fundamental rights against dogmatic compressions.

CHALLENGES TO CONSTITUTIONAL MORALITY:

The concept Constitutional morality states to the responsibility to keep up the respect, doctrines and spirit of The Constitution of India, although they struggle with widespread estimation, tradition or political benefits. This needs the organizations, leaders and public to act consistent with the standards of justice, equality, liberty and fraternity. Overall, the way to maintain the concept of Constitutional morality is very hard. Notwithstanding its importance, the term Constitutional morality faces several challenges in India, which are being followed....

- a. Struggles with social morality- One of the largest hindrances to the concept Constitutional morality is the struggle, this frequently has with the active social and sacred principles. The Indian society is framed by a lot of traditions, customs and sacred practices. Some of the mentioned practices are thoroughly entrenched in the social outlook and also are accepted

³ Navtej Singh Johar vs. Union of India Ministry of Law and ors. AIR 2018 SC 4321

⁴ Mohd. Ahmed Khan vs. Shah Bano Begum and ors. 1985 AIR 945

without any further questionnaires, although the above-mentioned practices go beyond the constitutional values of equality or individual independence.

So, overall, the concept Constitutional morality states that everybody should treat each other or every citizen irrespective of their gender, caste, religion or background. It recurrently challenges the status quo. For illustration, the practices which distinguish against women or lower castes may be culturally accepted in some of the areas, but they visibly infringe constitutional principles. When the Government or the Judiciary system tries to reform such practices, this is naturally faced with the confrontation. A lot of people see these changes as an occurrence on their trust, culture or individuality.

This situation makes a complex atmosphere for imposing constitutional values. So, firstly, there is requirement to safeguard individual rights, and secondly, there is hard social

compression to uphold traditions. Building this space stays a large challenge.

- b. Majoritarian effects in a Democratic Circumstance- In the era of a democratic Government, the Government is supposed to act in accordance with the consent of the majority people. Although this is one of the important characteristics of democracy, sometimes this makes a difficulty when the majority will of the public goes beyond the rights or dignity of minorities and helpless groups.

The concept Constitutional Morality states that the rights every person, specifically the downgraded persons' rights are safeguarded although such protection is ostracized. For example; if a bulk group supports a strategy which discriminates against a minority, then the Government or the Judiciary system is ethically and constitutionally needed to support stand with the minority people.

Public estimation can be authoritative and powerful, political leaders may vacillate to support unpopular opinions if these risk trailing electoral support. So, as a result, the requirement and feebler sections' rights can be disregarded on the side of majority measures. Consequently, the challenge stays in assuring that the democratic principle of majority policy does not suppress the constitutional principle of fundamental rights and equality.

- c. Political and Judicial Freedom- One more important challenge to the concept Constitutional morality is the latent for political intervention in institutions which are expected to act freely and independently, specially the judicial and constitutional bodies. These institutions are supposed to work as impartial supervisor of The Constitution of India. So, overall, when political influence enters into their working area, this can prejudice their statement-making.

The political leaders may try to put on pressure over the judicial system to declare the verdicts which give party benefits. Likewise, the administrative officials may be intimidated to work in ways which advantage those in power in lieu of keeping up the neutrality and justice. It determines the whole basis of the constitutional democracy.

The concept Constitutional morality stipulates that public servants, judges and legislators lay down the Constitution of India over political benefits. Even now, in reality, preserving this criterion is very hard in a politically charged atmosphere. Reinforcing institutional

freedom is required to uphold the essence of The Constitution flourishing. d. Deficiency of Public Awareness and Understanding- Conceivably, the most elementary challenge is the deficiency of awareness among the general public about what The Constitution basically represents for. A lot of people are not aware about their individual rights or the values and respect rooted in the Constitution. The principles like equality before the law, secularism, freedom of speech or dignity of every person are not always fully comprehended or appreciated.

Without a comprehensive understanding of the constitutional principles, this becomes difficult to bridge upon social co-operation for reform which are entrenched in constitutional morality. Advanced declarations may be misapprehended or not accepted by the public who see those portions as foreign to their culture or values. Misconception or tattles can blowout effortlessly in such an atmosphere, turning into public conflict beyond declarations created in the benefits of justice and equality.

Communal education and perception are very important for bridging up a societal organization which values the concept of Constitutional morality. When the public understand about the values of the Constitution, even they support the institutions which keeps up those values, although these state challenging social and traditional norms and beliefs.

IMPORTANT JUDICIAL IMPLICATIONS IN RESPECT WITH THE CONCEPT OF CONSTITUTIONAL MORALITY:

The Indian Judicial System has performed a crucial function in explaining about the concept of Constitutional morality by a lot of landmark judgements. There are some cases which emphasize the development and significance of Constitutional morality in the Indian legal context, that are discussed below....

- i. Namit Sharma vs. Union of India ⁵In this mentioned case, The Honourable Supreme Court of India scrutinized the basic construction and role of the Central Information Commission (CIC) under the Right to Information Act, 2005. The Honourable Supreme Court accentuated the requirement of lucidity, liability and fairness in public organizations that are radical to constitutional governance. This detected that the concept Constitutional morality needs the transparent and neutral role of the institutions, that is required for keeping up the rule of law. Even if the judgement was partially revised later, the

importance on institutional transparency and ethical governance stays as a crucial benefaction to constitutional law.

- ii. Navtej Singh Johar vs. Union of India⁶- This landmark case law assigned with the sanction of consensual homosexual acts under Section 377 of IPC⁷. The Honourable Supreme Court of India invalidated the foreign-era provision to the context that it penalized consensual sex between adults of the same sex. The Honourable Supreme Court held that constitutional morality must take superiority over social morality. This further referred that constitutional morality is a guiding soul of the Constitution of India, entrenched in the values of justice, liberty, equality and fraternity. The verdict by the Honourable Supreme Court extended the prospects of personal independence and confirmed the rights of LGBTQ+ persons as equal and same citizens of India.
- iii. Joseph Shine vs. union of India⁸- In this cutting-edge verdict, The Honourable Supreme Court annulled Section 497 of IPC⁹, that penalized adultery for males only and conferred women as a shield of their husbands. The Honourable Supreme Court held the law unconstitutional for being discretionary and inequitable. The verdict accentuated that constitutional morality, dignity and substantive equality demand that all women should be treated as an individual person with autonomy and not a subordinate or alternative to men. The Honourable Supreme Court recognized sexual autonomy and fundamental dignity as required things of a person's identity and declared that the law preserved gender stereotypes discordant with the constitutional sight.

CONCLUSION:

⁵ Namit Sharma vs. Union of India, (2013) 1 SCC 745

⁶ Navtej Singh Johar vs. Union of India Ministry of Law and ors. AIR 2018 SC 4321

⁷ The Indian Penal Code, 1860, & 377, No. 45, Act of Parliament, 1860 (India).

⁸ Joseph Shine vs. Union of India, AIR 2018 SC 4898

⁹ The Indian Penal Code, 1860, & 497, No. 45, Act of Parliament, 1860 (India).

The concept Constitutional morality is the spine of a vibrant and just democracy. This assures that rule of law overcomes the social problems and that fundamental rights are safeguarded beyond the social forces or state overreach. For a diverse country like India, the concept Constitutional morality is required for maintaining the cultural norms with progress, fundamental rights with social harmony and personal independence with the benefit for the public.

Keeping the concept Constitutional morality is a never-ending procedure which needs the judiciary system, the government and the people to build up their actions with constitutional values. By promoting a culture for the constitution and its rules, India can develop towards a more just, equal and humanitarian society where everybody, irrespective of formal history, relishes their rights and independence to the fullest.