

# LEGISLATION AND CASE LAW REVIEWS

Article



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## The Many Interpretations of Constitutional Morality

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**Abstract:** The concept of Constitutional Morality that is rooted in Dr. B.R. Ambedkar's vision has emerged to be an often contested and pivotal doctrine in the jurisprudence of the Indian Constitution. The concept broadly emphasizes adhering to the core Constitutional principles like liberty, fraternity, equality and justice over populist sentiments or majoritarianism. The judicial interpretation of the concept has evolved with considerable diversity that has at times led to contradictory or contrasting applications by the various benches of High Courts and the Supreme Court. In cases like *Indian Young Lawyers Association vs State of Kerala* and *Navtej Singh Johar v. Union of India* the concept was invoked to challenge the populist sentiments and expand individual rights. Conversely, in a few cases a restrained or deferential stance was adopted by the courts. This diversity in the interpretation of the concept raises critical questions about subjectivity of the concept and judicial over-reach. Some critics are of the opinion that an expansive and undefined use of the concept may blur the lines between moral policing and judicial reasoning. On the other hand, the proponents assert that it is necessary to enable social transformation and to uphold the constitutional ethos. The legal implications of the divergent interpretations are profound because it has a direct bearing on the civil liberties, policy and the balance between the three organs,

legislative, executive and judiciary. This commentary addresses how the concept of Constitutional Morality, though a powerful interpretative tool, requires consistent jurisprudential clarity to prevent arbitrariness and to ensure that it remains anchored in the constitutional values, text and democratic accountability.

**Keywords:** constitutional morality; India; judiciary; individual rights; constitution

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We are under a constitution,  
but the Constitution is what the judges say it is,  
and the judiciary is the safeguard of our property and  
our liberty and our property under the Constitution.

*Charles Evans Hughes*

## I. Introduction

In India, the legal and social structure of the country has been greatly influenced by judicial interpretation of the Constitution. The rule of law and democracy have been protected by landmark rulings that have expanded fundamental rights, affirmed the basic structural doctrine, and ensured checks and balances. This flexible interpretation guarantees the Constitution's applicability in changing social environments. Judicial interpretation of the concept of Constitutional Morality in India is one such example that has been crucial in advancing progressive values and social justice.

Constitutional Morality is now a fairly common term used by the Courts, being more often used in India for the past few years. But what is *Constitutional Morality*? The Constitution of India does not use the expression “Constitutional Morality” but uses the expression “morality” as a restriction on the fundamental rights guaranteed to the people of India. However, on the other hand the term “Constitutional Morality” has been interpreted by the court as a restriction on the government in exercise of its powers.

Is “Constitutional Morality” the one as defined by the Court in *Manoj Narula vs Union of India*<sup>1</sup> or by Justice Indu Malhotra in *Sabrimala case*<sup>2</sup> or by Justice D Y Chandrachud in the very same case or by Justice Chandrachud himself in *NCT of Delhi vs Union of India*?<sup>3</sup> The dichotomy is starkly visible by the different interpretation of the term offered by Justice D Y Chandrachud in two different cases or by the fact a dissenting judgement was given by Justice Indu Malhotra in the same case of *Sabrimala temple* based on the different interpretation of the same term.

A commonly accepted interpretation of the term means adherence to the values of the Constitution as noted by Justice Dipak Mishra in *Manoj Narula vs Union of India*<sup>4</sup> and *Govt of NCT of Delhi vs Union of India*.<sup>5</sup> The first instance when the Indian judiciary used the term “Constitutional Morality” in any judgment was in the landmark case of *Keshvanad Bharti*,<sup>6</sup> also called *the basic structure doctrine case*.

## II. Methodology

The methodology used is analytical and doctrinal supported by case law analysis.<sup>7</sup> The paper examines the theoretical underpinnings of the

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<sup>1</sup> *Manoj Narula v. Union of India* (2014) 9 SCC 1sa.

<sup>2</sup> *Indian Young Lawyers Association v. State of Kerala* 2019 (11) SCC 1.

<sup>3</sup> *NCT of Delhi v. Union of India* C. A. No. 2357 of 2017.

<sup>4</sup> *Manoj Narula v. Union of India* AIR 2013 SC 168.

<sup>5</sup> *Manoj Narula v. Union of India* 2018 (8) SCC 50.

<sup>6</sup> *Keshvanand Bharti v. State of Kerala* AIR 1973 SC 146.

<sup>7</sup> The 4th Dr. Ambedkar Memorial Lecture on “Some Questions on Elections, Representation and Democracy”. 17 December 2012. Release ID: 90853. Available at: <https://pib.gov.in/newsite/erecontent.aspx?reid=90853> [Accessed 5 May 2025].

concept of Constitutional Morality in the Indian context studying the constitutional provisions and landmark cases held before the Supreme Court of India and the High Courts. It gives an evaluation of how the concept has been invoked in different judgments and how it aligns with the democratic principles and the Constitutional values.

### **III. Constitutional Morality Definitions**

In India, the term *Constitutional Morality* was first used by Dr. Ambedkar in the Constituent Assembly debate on 4 November 1948 Part II. Dr. Ambedkar referred to Grote's description of Constitutional Morality from his book *History of Greece* and the importance of having Constitutional Morality for any democratic Constitution's working.

Grote defined Constitutional Morality as "a paramount reverence for the forms of the constitution, enforcing obedience to the authorities acting under and within those forms, yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts".<sup>8</sup>

In his speech "*Conditions Precedent for the successful working of democracy*" (Narain, 2017), Dr. Ambedkar stated that seven requirements must be met for a democracy to be successful, one of which was the observance of Constitutional Morality. In his opinion, "The constitution only contains legal provisions, only a skeleton. The flesh of the skeleton is to be found in what we call Constitutional Morality".<sup>9</sup>

### **IV. Constitutional Morality Interpretations**

#### ***Constitutional Morality, a pillar stone for good governance***

The Supreme Court had<sup>10</sup> observed that democracy expects constant affirmance of Constitutional Morality.<sup>11</sup> Justice Dipak Mishra opined that Constitutional Morality is a "pillar stone for good governance". The

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<sup>8</sup> Keshvanand Bharti v. State of Kerala AIR 1973 SC 146.

<sup>9</sup> Narendra Jadhav, Ambedkar Speaks Vol. I 186 (2013).

<sup>10</sup> Manoj Narula v. Union of India AIR 2013 SC 168.

<sup>11</sup> Manoj Narula v. Union of India, AIR 2013 SC 168.

Court observed that Constitutional Morality essentially refers to abiding by the rules of the Constitution and refraining from acting in a way that would be considered a violation of the law or an arbitrary course of action. It functions like a laser beam that guides at the fulcrum.

To maintain the significance of Constitutional Morality, customs and traditions must develop. When the general public and the institution's leaders strictly adhere to the constitutional guidelines, avoiding deviation from the norm, and demonstrate in their actions the paramount concern of upholding institutional integrity and the necessary constitutional restraints, democratic values endure and flourish. One aspect of Constitutional Morality is adherence to the Constitution.

***Constitutional Morality,  
a means to achieve preambular goals***

The Supreme Court in *Navtej Singh Johar's case*<sup>12</sup> held that the goal of Constitutional Morality is to achieve responsive involvement. The Supreme Court cannot afford to lose its standing as the preeminent authority on constitutional principles. Democracy itself will be imperilled if it loses any power.<sup>13</sup> According to Constitutional Morality, every member of the society must be guaranteed a basic set of rights in order for them to live freely. In the Preamble to the Constitution, these rights are recognised as "Equality of status and of opportunity" and "Liberty of thought, expression, belief, faith, and worship". The goal of Constitutional Morality is to ensure that all forms of inequality are eradicated from the society and that every person has access to the tools necessary to assert their given rights. Constitutional Morality tends to foster a spirit of fraternity among a diverse population that includes people from many classes, races, faiths, cultures, castes, and sections in order to make Indian democracy vibrant.<sup>14</sup>

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<sup>12</sup> *Navtej Singh Johar & Ors v. Union of India* Writ Petition (Criminal) No. 76 of 2016.

<sup>13</sup> *Navtej Singh Johar & Ors v. Union of India* Writ Petition (Criminal) No. 76 of 2016, Para. 144.

<sup>14</sup> *Navtej Singh Johar & Ors v. Union of India* Writ Petition (Criminal) No. 76 of 2016, Para. 143.

The Court further stated that “the Preambular goals of our Constitution which contain the noble objectives of Justice, Liberty, Equality and Fraternity can only be achieved through the commitment and loyalty of the organs of the State to the principle of Constitutional Morality”.<sup>15</sup> These objectives of “justice, liberty, equality and fraternity” are the basic values and ideals of a democracy that can be achieved through Constitutional Morality.

Indian democracy can be made livelier by fostering a sense of fraternity among the diverse population that comes from various classes, races, faiths, cultures, castes, and social groups, according to Constitutional Morality.<sup>16</sup>

***Constitutional Morality  
as a Fulcrum for Peaceful Democracy***

The Court in *Navtej Singh Johar’s case*<sup>17</sup> explained Constitutional Morality as a check upon both the citizens and the high functionaries of the State preventing tyranny and despotism that is likely to emerge if there are no checks and balances upon the functionaries and citizens.<sup>18</sup>

The Court opined that Constitutional Morality is the “fulcrum” that acts as a check to ensure that the free and peaceful democracy can thrive as was envisioned by Dr. Ambedkar when he quotes Grote in the constituent assembly. Further, it was remarked that, “Constitutional Morality acts as a check against lapses on the part of the governmental agencies and colourable activities aimed at affecting the democratic nature of polity”.<sup>19</sup>

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<sup>15</sup> Navtej Singh Johar & Ors v. Union of India Writ Petition (Criminal) No. 76 of 2016 Para. 115.

<sup>16</sup> Navtej Singh Johar & Ors v. Union of India Writ Petition (Criminal) No. 76 of 2016, Para. 143.

<sup>17</sup> Navtej Singh Johar & Ors v. Union of India Writ Petition (Criminal) No. 76 of 2016.

<sup>18</sup> Govt. of NCT of Delhi v. Union of India 2018 (8) SCC 50.

<sup>19</sup> Govt. of NCT of Delhi v. Union of India 2018 (8) SCC 50, Para. 61.

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***Constitutional Morality,  
constitutional culture to be absorbed***

While making observations on Constitutional Morality, Justice DY Chandrachud in *Govt of NCT of Delhi vs Union of India* referred to several works which explained what Constitutional Morality is, one of which was Rajiv Bhagava's book titled "Politics and Ethics of the Indian Constitution" wherein the necessity of identifying constitution's moral values was emphasised and he remarked that allegiance to the substantive clauses and tenets of the Constitution is not the exclusive definition of Constitutional Morality. Constitutional Morality represents a constitutional culture that every citizen of a democracy needs to absorb.<sup>20</sup>

***Strict adherence to the constitutional principles***

Justice Dipak Mishra (then CJI) in the same case defined Constitutional Morality in the following words, "Constitutional Morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document".<sup>21</sup> It can safely be inferred that this would imply adherence to all the democratic principles of the Constitution, which in turn would preserve the democracy.

***Political morality and Constitutional Morality,  
distinct paradigms; Constitutional Morality,  
rooted in the principles enshrined within the Constitution***

While hearing the matter of *Arvind Kejriwal's arrest*,<sup>22</sup> it was held that the courts are not concerned with political morality but only with Constitutional Morality. Since the parties' political morality is their problem and the Court is unable to make any judgements regarding

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<sup>20</sup> Govt. of NCT of Delhi v. Union of India 2018 (8) SCC 50, Para. 11.

<sup>21</sup> Govt. of NCT of Delhi v. Union of India 2018 (8) SCC 50, Para. 57.

<sup>22</sup> Arvind Kejriwal vs Directorate of Enforcement, W.P. (Crl.) 985/2024 and Crl. M.A. 9427/2024.

it, courts, as the guardians of justice, are concerned with protecting Constitutional Morality rather than getting involved in that matter. Political morality and Constitutional Morality are two different concepts that inform decisions in their respective fields. While political morality is frequently influenced by partisan interests, ideological agendas, or populist sentiments, Constitutional Morality “is rooted in the principles enshrined within the Constitution, emphasising the protection of individual rights, adherence to the rule of law, and the promotion of justice for all” (Para. 178).

Regardless of political factors, courts have a duty to interpret the law and evaluate the conduct of investigative agencies in accordance with constitutional and legal standards when resolving legal issues. Courts preserve the integrity of legal institutions and guarantee that justice is administered impartially and free from the influence of political expediency by adhering to Constitutional Morality.

### ***Political compulsion cannot outweigh Constitutional Morality***

The Court held that political coercion could not take precedence over public morals, clean/good governance standards and Constitutional Morality. It was held in a matter where the question was whether to retain a member of legislative assembly as a minister without assigning him a portfolio, if the chief minister believes that a specific elected representative cannot be given the responsibilities of a Minister. The Court held<sup>23</sup> retaining such member would be against Constitutional Morality, good governance and ethos.

### ***Rule of law and Constitutional Morality***

The Court discussed the interplay of rule of law and Constitutional Morality.<sup>24</sup> It opined that the unique synergy between administrative accountability and active court engagement is the foundation of the

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<sup>23</sup> S. Ramachandran vs The State of Tamil Nadu and Ors and J. Jayavardhan vs Principal Secretary Governor of Tamil Nadu and Ors. and M.L. Ravi vs Principal Secretary to Governor Government of Tamil Nadu and Ors MANU/TN/5131/2023.

<sup>24</sup> Manish Kumar Singh vs State of U.P. and Ors and Pushpa Nishad and Ors. vs State of U.P. and Ors. and Vinod Kumar Saroj vs State of U.P. and Ors MANU/UP/3880/2023.



vitality of the rule of law. The judiciary's exploration of the complex legal landscape that accompanies the administration of justice reveals that strong accountability frameworks and active court participation are essential to the development of a rule of law that is consistent with Constitutional Morality.

The courts are essential to promoting the rule of law because they provide the general public faith in the establishment of an open and responsible government. However, it is imperative to recognise that all departments of government bear an equally great duty for fostering and defending democratic values. The way these state agencies interact is crucial in fostering the general public's belief in the values of sound government. "Therefore, the vitality of the rule of law is contingent upon the collaborative efforts and commitment of all government branches to uphold accountability, transparency and Constitutional Morality, making the foundation for just and accountable administration".<sup>25</sup>

***Constitutional Morality to have  
an overriding impact upon societal morality***

The Court while disposing off a petition filed for protecting the lives of the petitioners in *Arti and Ors. vs State of Rajasthan and Ors*<sup>26</sup> relied upon the observation<sup>27</sup> that the Court is entirely committed to the idea that Constitutional Morality must always take precedence over societal morality. This Court cannot turn a blind eye to violations or neglects of fundamental rights, which are fundamental human rights. In particular, when the legal viability of the right to protection is vital, public morality cannot take precedence over Constitutional Morality.

In similar cases<sup>28</sup> where petitions under Art. 226<sup>29</sup> of the Indian Constitution were filed to ensure the protection of the lives and personal

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<sup>25</sup> Manish Kumar Singh vs State of U.P. and Ors, MANU/UP/3880/2023, p. 5, Para. 21.

<sup>26</sup> S.B. Criminal Writ Petition No. 1005/2023.

<sup>27</sup> Leela & Anr. vs State of Rajasthan & Ors.

<sup>28</sup> Suman Kumari and Ors. vs State of Rajasthan and Ors S.B. Criminal Writ Petition No. 206/2023 & Jyoti Chelani and Ors. vs State of Rajasthan and Ors 2023/RJJP/001735.

<sup>29</sup> Power of High Courts to issue certain writs.

liberties of the petitioners, the courts while deciding the matter referred to *Navtej Singh Johar vs Union of India*,<sup>30</sup> where the Apex Court held that the concept of Constitutional Morality, must serve as the Court's guide, not public morality. The rule of law must not be allowed to be subverted in a constitutional democracy like ours by enigmatic social moralities that lack any basis in the law. The idea of Constitutional Morality would help the Court reach a just ruling that would be in accordance with the citizens' constitutional rights, no matter how tiny that portion of the population may be. In this perspective, the concept of a number is worthless, much like the zero to the left of any integer.

In this sense, we must telescopically examine the relationship between social and Constitutional Morality. It does not need to be emphasised that whenever the constitutional courts encounter a situation of violation or dereliction in the area of fundamental rights, which are also the basic human rights of a section, however small part of the society, it is their responsibility to ensure that Constitutional Morality prevails over social morality through judicial engagement and creativity.

In a few similar cases<sup>31</sup> heard in the Rajasthan High Court where writ petitions were filed for the protection of the petitioners', reference had been made to *Leela & Anr. vs State of Rajasthan & Ors*<sup>32</sup> and the judgments were given in light of this reference. "This Court fully values the principle that at all junctures Constitutional Morality has to have an overriding impact upon societal morality. This Court cannot sit back and watch the transgression or dereliction in the sphere of fundamental

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<sup>30</sup> MANU/SC/0947/2018.

<sup>31</sup> Chitra Kanwar and Ors. vs State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 50/2023 and Manju and Ors. vs State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 49/2023 and Monika and Ors. vs State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 54/2023, Raju Kumari and Ors. vs State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 11/2023, Supriya Aanjana and Ors. vs State of Rajasthan and Ors. S.B. Civil Writ Petition No. 14902/2021, Taruna and Ors. vs Respondent: State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 71/2023, Kajal and Ors. vs State of Rajasthan and Ors. S.B. Criminal Writ Petition No. 1887/2023 and S.B. Criminal Writ Petition No. 1908/2023, Monika and Ors. vs State of Rajasthan and Ors. MANU/RH/0945/2023, Radha Prajapat and Ors. vs State of Rajasthan and Ors. MANU/RH/0800/2023.

<sup>32</sup> S.B. Criminal Misc. Petition No. 5045/2021.

rights, which are basic human rights. The public morality cannot be allowed to overshadow the Constitutional Morality, particularly when the legal tenability of the right to protection is paramount”.

### ***Constitutional Morality prevails over social morality***

In similar<sup>33</sup> criminal writ petitions filed for seeking protection of the petitioner’s life and liberty, the Court relied upon *Navtej Singh Johar’s case*<sup>34</sup> according to which the court should be guided by Constitutional Morality and not social morality and that there is no need to emphasise that whenever there is a violation of the fundamental rights of any section of the society no matter how small the courts have to ensure that “Constitutional Morality prevails over social morality”.

The Court held that it is also important to note that in the present case,<sup>35</sup> the social morality that condemns adultery conflicts with the Constitutional Morality that partially accepts it as a partnership that has the characteristics of marriage. When social morality and Constitutional Morality clash in such a situation, Constitutional Morality prevails.

### ***Constitutional Morality and social morality regarding marital institutions must be balanced***

The Court<sup>36</sup> held that in order to achieve social coherence and the goal of achieving peace and tranquillity in society, the Constitutional Morality and social morality regarding marital institutions must be balanced. The Court emphasized the importance of both, Constitutional Morality and social morality in this case and how a balance between the two is important for maintaining peace and tranquillity in the society.

### ***Social morality has to succumb to Constitutional Morality***

While deciding upon the constitutionality of the Telangana Eunuchs Act,<sup>37</sup> the Court stated that any law that denies LGBT people’s right to

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<sup>33</sup> Rekha Devi and Ors. vs State of Rajasthan and Ors MANU/RH/1109/2023, Shivani Meena and Ors. vs State of Rajasthan and Ors MANU/RH/1022/2023.

<sup>34</sup> Navtej Singh Johar vs Union of India MANU/SC/0947/2018.

<sup>35</sup> Rhea Laila Pillai vs Leander Adrian Paes and Ors C.C. No. 25 DV 2014.

<sup>36</sup> Sneha Devi and Ors. vs State of U.P. and Ors MANU/UP/1389/2024.

<sup>37</sup> V. Vasanta Mogli vs The State of Telangana and Ors MANU/TL/0911/2023.

full and equal citizenship would be affected by Constitutional Morality. LGBT people have been denied the necessities of life, living under the danger of culturally moralised compliance. Prejudice and stereotypes have been applied to them. Such discrimination is prohibited under Constitutional Morality, which takes precedence over social morality. The Court while deciding upon the matter placed reliance upon *Navtej Singh Johar*<sup>38</sup> where it was stated that “Social morality has to succumb or give way to the higher concept of Constitutional Morality” and that “the morality that is conceived of under the Constitution is Constitutional Morality”.

***Public morality cannot be allowed  
to overshadow the Constitutional Morality***

The Court while deciding a petition<sup>39</sup> for the protection of the life and liberty of the petitioners held that, the Apex Court has made it clear that the importance of public morality should be minimal when it conflicts with Constitutional Morality and that courts should uphold Constitutional Morality rather than relying on nebulous ideas of societal morality that lack legal validity. The courts have a duty to defend Constitutional Morality, but they also have a duty not to interfere with the intimate connection between two free-willed individuals.

This Court was fully committed to the idea that personal freedom cannot be constrained by social norms in a healthy democracy. The State must uphold a high standard of respect for people’s freedom of choice. Since the legal viability of the right to protection is of the utmost importance, it cannot be permitted that public morality overrides Constitutional Morality.

***Substantive equality in consonance  
with Constitutional Morality***

The Court<sup>40</sup> was confronted with the question whether having a child means giving up dreams of working in public service, and whether

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<sup>38</sup> *Navtej Singh Johar v. Union of India* AIR 2018 SC 4321.

<sup>39</sup> *Sunita and Ors. vs State of Haryana and Ors* 2022(2) HLR 593.

<sup>40</sup> *Athira P. vs State of Kerala and Ors and Arya G. Krishnan vs State of Kerala and Ors* ILR2024(1)Kerala185.

or not women should have to choose between having a job and having children. The Court answered the questions discussing substantive equality in relation to constitutional principles. It relied upon *Joseph Shine vs Union of India*<sup>41</sup> where it was noted that: “In consonance with Constitutional Morality, substantive equality is directed at eliminating individual, institutional and systemic discrimination against disadvantaged groups which effectively undermines their full and equal social, economic, political and cultural participation in society”.

The Court held that motherhood has numerous more complicated drawbacks. This could lead to a gender disparity. Discrimination will occur if the negative aspects of motherhood are ignored. Being a mother is not a sin, and pregnancy and parenthood should not be viewed as obstacles to women’s ambitions in public service. The goal is to remove obstacles and give women the opportunity to compete with men on an equal footing, considering the situational realities of a woman.

### ***Evolving Jurisprudence and philosophy must confine within Constitutional Morality***

The Court while adjudicating<sup>42</sup> over the concept of “*pardanashin women*” and protection of the right of those who observe *pardah* under Art. 21 of the Constitution held that when the jurisprudence and philosophy on any subject evolves, it must confine itself within “Constitutional Morality”.<sup>43</sup>

The Court gave much significance to Constitutional Morality in this matter as it defined the contours of evolving philosophy and developing jurisprudence within the confines of Constitutional Morality.

### ***Articles 25 and 26 rights to be tested on the touchstone of the Constitutional Morality***

The Allahabad High Court while deliberating upon a matter<sup>44</sup> regarding the right to worship made the observation with respect

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<sup>41</sup> Joseph Shine v. Union of India (2019)3 SCC 39.

<sup>42</sup> Reshma vs The Commissioner of Police MANU/DE/1565/2024.

<sup>43</sup> Reshma vs The Commissioner of Police, MANU/DE/1565/2024, p. 3, Para. 4.

<sup>44</sup> Bhagwan Shrikrishna Virajman and Ors. vs U.P. Sunni Central Waqf Board and Ors 2023(6) ADJ 506.

to the exercise of the rights provided under Art. 25 and 26 in light of Constitutional Morality, “the rights under Art. 25 and 26 can be exercised when they are tested on the touchstone of the Constitutional Morality and the public order”. Here, the court’s observation provided another way of looking at Constitutional Morality, as a restriction on the exercise of fundamental rights. The Court held that the abovementioned rights can be exercised after they pass the test of public order and Constitutional Morality and thus kept both the restrictions *at par*.

### ***Morality naturally implies Constitutional Morality***

An elaborate discussion on the concept of Constitutional Morality<sup>45</sup> was made where the issue at hand was whether the practice of ex-communication in the Dawoodi Bohra community violates Art. 17, 19(1) (a), 19(1)(c) and 19(1)(g), 21 and 25 and, thus, cannot be said to be protected under Art. 26.

The person being ex-communicated suffers a civil death and thus the practise is contrary to Constitutional Morality. The Apex Court’s judgment in *Sabrimala Temple case*<sup>46</sup> was relied upon to decide what morality under Art. 26 implies,

“The term ‘morality’ cannot be viewed with a narrow lens so as to confine the definition of morality to what an individual or a religious sect may perceive to mean. Morality naturally implies Constitutional Morality and any view that is ultimately taken by the Constitutional Courts must be in conformity with the basic tenets of Constitutional Morality. “Morality” for the purposes of Art. 25 and 26 must mean that *‘which is governed by fundamental Constitutional principles’*”.

The Court held that one could argue that the idea of Constitutional Morality, which supersedes the freedom granted by Clause (b) of Art. 26, will not allow the civil rights of those who have been excommunicated to be revoked because they stem from human dignity and liberty. Our Constitutional Morality undoubtedly includes the ideas of equality, liberty, and fraternity. Constitutional Morality is based on fundamental

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<sup>45</sup> Central Board of Dawoodi Bohra Community and Ors. vs The State of Maharashtra and Ors. AIR 2023 SC 974.

<sup>46</sup> Young Indian Lawyers Association v. State of Kerala 2019 (11) SCC 1.

principles that are written in our Constitution. Constitutional Morality is the conscience of our Constitution.

Therefore, it is argued that the ideas of liberty and equality are incompatible with excommunication or ostracism. It is against the values outlined in the Constitution, which is anti-discriminatory. Since the idea of Constitutional Morality forbids the Court from doing so, the Constitutional Court should not allow anything that denies someone the right or privilege to live in dignity.

From the Court's perspective, the safeguarding of the right to excommunicate a member of the Dawoodi Bohra community under Art. 26(b) needed to be re-evaluated because it is contingent upon morality, which is understood to be Constitutional Morality. Thus, the Court ordered the present petition to be tagged with a review petition<sup>47</sup> being heard by nine judges' bench.

### ***Article 38, good example of the Constitutional Morality***

The Court while delivering a judgment<sup>48</sup> stated that Art. 38<sup>49</sup> of the Indian Constitution that calls for the abolition of inequality, is a good example of the Constitutional Morality as it relates to the guiding principles of the State. This Article serves as the cornerstone of public policy and provides enough direction to the executive and all other State organs to streamline the good judgements that serve the goal and object of social and economic justice equitably. This interpretation of the court indicated the view that Constitutional Morality acts as a guiding principle for the State, it guides the State actions and its policies.

### ***Using standards of Constitutional Morality***

The High Court of Rajasthan while deciding a matter<sup>50</sup> regarding maintenance and welfare of parents and senior citizens held that the suffering of old age and the uncertainty of life experienced by senior

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<sup>47</sup> Review petition (civil) No. 3358 of 2018.

<sup>48</sup> Kusum Lata Yadav and Ors. vs State of U.P. and Ors 2022(5) ALJ 756.

<sup>49</sup> State to secure a social order for the promotion of welfare of the people.

<sup>50</sup> Nahid Parvej vs District Magistrate Pali and Ors. 2023(2) RLW 1270(Raj.).

individuals and parents frequently move the authorities discharging their duties or exercising their rights under the Act of 2007, including the Tribunals. The moral standards of society, including those of children, are falling with each passing day, which is a really bad situation. However, courts are supposed to decide cases on the rights and obligations of litigants using the standards of statutes and Constitutional Morality rather than solely following public or popular morality. Unless the law clearly provides for it, societal expectations and responsibilities cannot be enforced or ordered by courts of law. In the words of Dr. B.R. Ambedkar, “Constitutional Morality is not a natural sentiment. It has to be cultivated. We must realise our people have yet to learn it”.

### ***Advocate is a guardian of Constitutional Morality***

The Court in one of the cases went on to state that as much as a judge is the guardian of justice and Constitutional Morality, so is the advocate. This was held in the case where the key issue was whether the District Magistrate or Chief Metropolitan Magistrate has the authority to designate an advocate and give him or her the go-ahead to seize the secured property and any related documents and give them to the secured creditor in accordance with Section 14(1A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Court while hearing the case<sup>51</sup> held, “It is well established that an advocate is a guardian of constitutional morality and justice equally with the Judge”.

### ***Protection for essential religious practices in line with Constitutional Morality***

The Court<sup>52</sup> while dwelling on the question of essential religious practices held that the same must associate with the Constitutional

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<sup>51</sup> NKGSB Cooperative Bank Limited vs Subir Chakravarty and Ors. AIR 2022 SC 1325.

<sup>52</sup> Resham and Ors. vs State of Karnataka and Ors AIR 2022 Kant 81.



values and referred to *the Indian Young Lawyers Association case*<sup>53</sup> wherein it was held that the courts have a responsibility to make sure that what is protected is in line with essential constitutional principles, protections, and Constitutional Morality. While the Constitution is careful to protect both denominational rights and religious freedom, it must be remembered that the trinity that characterises the Constitution's creed is dignity, liberty, and equality.

***Constitutional Morality binds  
the might of the State***

The Court very categorically stated that the "The might of the State is bound by the Constitutional Morality"<sup>54</sup> while deciding upon a matter of bail to the appellant detained under preventive detention. The Court's observation denoted that the State's actions are bound by Constitutional Morality, and it acts as a deterrent against the misuse of the authority against the rights of the people.

***Constitutional Morality binds  
constitutional functionary***

Another example of how Constitutional Morality acts as a check against the governmental functionaries is *Kishore Kumar vs P.K. Sekar Babu and Ors*<sup>55</sup> wherein the Court's observation was that a constitutional functionary is bound by Constitutional Morality and that is well settled. This morality requires the functionaries to be fair and neutral in their dealings with the people. The Court also made the observation that the Legislature should create a voluntary model code of conduct for those in public office that aligns with and reflects good governance and Constitutional Morality.

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<sup>53</sup> Young Indian Lawyers Association vs Union of India (2019) 11 SCC 1.

<sup>54</sup> Atikur Rahman vs State of U.P. and Ors Criminal Appeal No. 2674 of 2022.

<sup>55</sup> And V.P. Jayakumar vs A. Raja and Ors. and T. Manohar vs Udhayanidhi Stalin and Ors MANU/TN/0988/2024.

***Manipulation of information,  
breach of Constitutional Morality***

In a matter<sup>56</sup> before the Court, the petitioners challenged the constitutional validity of a rule<sup>57</sup> because it violated Part III of the Indian Constitution; the challenged Rule had a “chilling effect” on the petitioners’ right to free speech and expression. The petitioners had claimed that the government is the only entity that may determine the truth about any matter pertaining to itself, and they are upset about the contested Rule that gives the Fact Check Unit the right to determine whether or not “information” is true.

The Court held that the contested rule passed the proportionality test. The government’s actions were in line with the goals of the legislation, and the harm of violating fundamental rights was not outweighed by the anticipated benefits. It was of the opinion that the ever-evolving information landscape facilitates the unparalleled speed and scale at which disinformation can propagate. In this “infodemic” era, the necessity of a nuanced regulation highlights the price of absolute free speech. Thus, there is a logical connection between the goal of the contested Rule and itself.

The court observed that “manipulation of information” if results in breach of Constitutional Morality needs deterrence but at the same time the state-imposed rule should not result in breach of Constitutional Morality as a measure to combat the situation. Thus, the Court once again used Constitutional Morality as a restraint on the actions of the State and expressly laid down that no State imposed rule can breach the Constitutional Morality.

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<sup>56</sup> Kunal Kamra vs Union of India and Editors Guild of India vs Union of India and Ors. and News Broadcasters & Digital Association and Ors. vs Union of India and Ors. and Association of India Magazines vs Union of India MANU/MH/0569/2024.

<sup>57</sup> Rule 3(i)(II)(A) and (C) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 which amend Rule 3(1)(b)(v) of the IT Rules 2021.

***Constitutional interpretation must flow  
from Constitutional Morality***

The Court in a matter<sup>58</sup> revolving around the constitutionality of “The Haryana State Employment of Local Candidates Act, 2020” placed reliance upon *Manoj Narula vs Union of India*<sup>59</sup> where Justice Dipak Mishra had stated that Constitutional Morality being the pivot is to serve as a crucial check on both citizens and top bureaucrats. As a result, it has been suggested that unchecked power without any checks and balances would lead to authoritarian and autocratic conditions and be incompatible with the basic concept of democracy. The Court held that “a sense of Constitutional Morality, drawn from the values of that document, enables us to hold to account our institutions and those who preside over their destinies. Constitutional interpretation, therefore, must flow from Constitutional Morality”.<sup>60</sup>

This observation substantiated the claim that Constitutional Morality serves as a check on the government in contrast to morality, which is a restriction on the rights of the people.

The Court opined that under the Act, by giving a group of individuals who do not belong to the State of Haryana a secondary position and restricting their ability to pursue their livelihood, the idea of Constitutional Morality has been flagrantly disregarded. The Court decided that the Haryana State Employment of Local Candidates Act, 2020 violated Part III of the Indian Constitution and was unconstitutional.

***Constitutional Morality  
and not social morality must guide the courts***

The Court<sup>61</sup> relied upon *Shafin Jahan vs Asokan K.M.*<sup>62</sup> while deciding a writ for protecting the petitioners’ life and liberty who

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<sup>58</sup> IMT Industrial Association and Ors. vs State of Haryana and Ors MANU/PH/2939/2023.

<sup>59</sup> *Manoj Narula vs Union of India* (2014) 9 SCC 1.

<sup>60</sup> IMT Industrial Association and Ors. vs State of Haryana and Ors, MANU/PH/2939/2023, p. 35.

<sup>61</sup> *Manisha Kumari and Ors. vs State of Rajasthan and Ors* MANU/RH/o860/2023.

<sup>62</sup> *Shafin Jahan vs Asokan K.M* 2018 (16) SCC 368.

married each other, holding that morality and social norms have a place, but they do not supersede the freedoms protected by the Constitution. This freedom is guaranteed by the Constitution and by human rights. It is unacceptable to deny someone their inherent right to freedom of choice on the basis of their religious beliefs. The Court then referred to *Navtej Singh Johar v. Union of India*<sup>63</sup> wherein it was held that it is Constitutional Morality that must guide the courts and not social morality and held that in light of the petitioners' constitutional rights, the State must guarantee the petitioners' right to privacy and freedom.

***Idea of transformative constitutionalism rests  
on the pillar of Constitutional Morality***

The Court once observed that Constitutional Morality is the cornerstone around which the entire concept of transformative constitutionalism is built.<sup>64</sup> In order to achieve transformative goals that is, embedding the ideals of equality, dignity, liberty, and fraternity within society in order to bring about a social change it is intended to uphold the moral standards of the Constitution.

## **V. Conclusion**

To conclude, while the concept of Constitutional Morality serves as an important instrument in the promotion of the transformative vision of the Constitution of India, the variant interpretations by the Courts accentuate the need for consistent and principled framework. The application of the concept must be with judicial discipline in order to ensure that it does not turn into a vehicle for moral policing and to ensure that it avoids arbitrariness. An approach in applying the concept that is balanced in a way that it respects the constitutional ethos and text while also acknowledging the societal complexities is required and essential to maintain the legitimacy of judicial decisions. Constitutional Morality will remain an influential and dynamic force in constitutional

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<sup>63</sup> *Navtej Singh Johar vs Union of India* MANU/SC/0947/2018.

<sup>64</sup> *Singham vs Directorate of Education, Govt. of NCT of Delhi and Ors* MANU/DE/8085/2023.

adjudication as India continues to grapple with the evolving social norms and rights-based claims. The continued relevance will depend on how transparently and coherently the courts articulate its contours ensuring strengthening of democratic governance instead of unsettling it.

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