



Contemporary relevance of Dr. B.R. Ambedkar's concept of constitutional morality

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Abstract

According to Dr. B.R. Ambedkar, 'Constitutional Morality' entails the effective co-ordination of conflicting interests among individuals as well as the administration collaboration required to overcome conflicts peacefully without any clash between the various factions pursuing their aims at whatever expenditures. Constitutional Morality is a concept that is hardly novel. It is mainly enshrined within Constitution themselves, including in the part on Fundamental Rights (Articles 12-35), the Directive Principles of State Policy (Articles 36-51, the Preamble and Fundamental Duties (Article 51-A). The Supreme Court has not defined the phrase clearly, leaving it up to subjective interpretation through individual judges. Such highest level perspective to morality may jeopardise the organic formation of solutions to society's persistent ethical challenges infringes on the principle of Independence of Judiciary. It establishes the dominance of the judiciary over the legislative branch against the fundamental tenets of democratic government. The application of this concept, it is said, constitutes judicial over-reach, pitting 'Constitutional Morality' against "societal/popular morality."

Constitutional Morality is founded on the principles of liberty and self-restraint. Self-control was a necessary condition for preserving liberty under a properly constituted government. To maintain constitutional morality, constitutional techniques must be employed to accomplish societal and economical goals commitment to the Constitution's values and ambitions. The courts have established progressive as well as monumental precedents in recent years by applying this theory to situations involving gender fairness, organizational legitimacy, better peer and restraining authoritarianism and other evils.

Keywords: constitutional morality, self-restraint, contemporary relevance

Introduction

According to Dr. B.R. Ambedkar, 'Constitutional Morality' would mean effective co-ordination between conflicting interests of different people and the administrative co-operation to resolve them amicably without any confrontation amongst the various groups working for the realization of their ends at any cost. Constitutional Morality has been regarded as a paramount reverence for the Constitution. It provides a principled understanding for unfolding the work of governance. It specifies norms for institutions to survive and an expectation of behaviour, that will meet not just the text but the soul of the Constitution. It also makes the governing institutions and representatives accountable. Constitutional Morality is scarcely a new concept. It is written largely in the Constitution itself, like in the section of Fundamental Rights (Articles 12 to 35), Directive Principles of State Policy (Articles 36 to 51), the Preamble and the Fundamental Duties (Article 51-A). Democracy cannot function in the absence of basic civil liberties- which enables the community to vindicate itself against the State. Furthermore, the right to criticize, if it is to be effective, must include the right to organize opposition through political parties. Representative Democracy is essentially procedural. It is characterized by free expression, free parties and free election.

Concept of constitutional morality

One of the earliest definitions of constitutional morality was given by George Grote, which he described as a form of supreme obedience to the various aspects of the Constitution of the land. According to him, constitutional morality implied certain obligations for both the citizens as well as the authority, which have been enlisted below:

1. Respecting the Constitution and all forms of authorities deriving their command from it.
2. Availability of right to free speech for the citizens, to criticize and hold accountable all those officials acting in pursuance of their constitutional duties.
3. The obligation of the mandated authority and public officials to act well within the sanctioned charge given to them by the Constitution.
4. People contesting for political power and their opposition should have reverence for the Constitution.

Therefore, for Grote, the principles of 'self-restraint' and 'plurality' formed the fundamental elements of constitutional morality, where the former implied the responsibilities of all the stakeholders in a constitutional regime (as enlisted above in points) and the latter referred to the diverse nature of the society getting governed.

Importance of constitutional morality

Constitutional Morality has been described as one of the transformative and revolutionary nature by several of its proponents. The significance of constitutional morality has been enlisted below:

1. While it aims to keep pace with the changing times, principles and ambitions of the society, the doctrine of constitutional morality also safeguards and upholds the enforcement of Rule of Law in the country. Thus, it is in no way, one-sided and tends to question both the citizens as well as the government.
2. The doctrine of constitutional morality is also helpful for the congenial cooperation and coordination of all the stakeholders in promoting and reinforcing the

democratic ideals of the nation. It strives for a better amiability amongst people to pursue constitutional ambitions which are not possible to be won without unity and team spirit. Thus, it points to the idea of propagating the trust of the people on democratic institutions.

3. The principle of constitutional morality can be used for reading down laws or statutes, which are inconsistent with the incumbent time and can be used to bring about a positive transformation in the perception of societal or public morality.

For instance, in passing a law prohibiting sati, right to life and dignity was passed on to the Indian widows who were earlier considered to be harbingers of misfortune and ill-buck. However, after the passage of this law, there has been a clear change in the public mindset with regards to Sati and the rights of widows in India. It also led to the promulgation of more rights to them, such as those of remarrying and getting educated after their husband's demise.

1. Constitutional Morality is specifically substantially significant for a vibrant and diverse country like India which has got a heterogenous population with so many further sub-classifications, such as caste, religion, colours, sexual orientation, languages, gender etc.

Since 'plurality' is one of the crucial ethos of the principle of constitutional morality, it recognizes this distinction and non-homogeneity and promotes diversity, helping to make the society more inclusive.

2. It is observed that a lot of officers resign or leave their government jobs, in order to show solidarity to some movements and for upholding constitutional morality.

However, the principle of constitutional morality is contrary to this; it promotes people to be an active participant of the system, fight the inequalities and non-constitutional elements.

DR. Ambedkar's perspective on constitutional morality

According to Dr. Ambedkar, the concept of constitutional morality implied the harmonious interaction between the governing and governed, including the peaceful settlement of dissent faced from the latter and conflict of interests arising between them without indulging in any major confrontations or resorting to violent revolutions. He pinned the onus of resolving the then (and still) existing disparity and inequity in the society not merely on the government or the Constitution, but also on this belief system or principle of constitutional morality. He believed that, this principle can help get rid of the bridge and gap between the form of administration and that of the Constitution in the country.

Bhimrao Ambedkar had this belief that the Indian society was largely undemocratic in nature and Constitutional Morality holds significance in this nation, where democracy is merely a 'top-dressing' on the soil.

The contemporary interpretation of constitutional morality

In the context of the present era, constitutional morality can be primarily defined to be constituted of two sub-classifications:

1. As a spirit or force of the Constitution and
2. As the antonym of popular morality.

Ever since the advancement of years, after the introduction

of the constitutional rule in India, constitutional morality has scarcely been used by the courts. It was subtly indicated in the very famous case of *Keshavananda Bharti vs State of Kerala* ^[1], by the Apex Court, when it propounded the conception of the 'basic structure' of the Constitution. Another famous case, when a mention of "breach of constitutional morality" of having been committed was the *First Judges Case* i.e. *S.P. Gupta vs Union of India and Others* ^[2].

Thereafter, it was only in 2010 that Justice Ajit Prakash Shah in *Naz Foundation vs Government of NCT Of Delhi* ^[3], first used it in an antithetical manner to popular acceptance and standards of morality. In this form, a precedent was set for the courts to disregard societal norms, stigmas and limitations, while assessing the actions of the State. For instance, in this case, while deliberating upon the issue of decriminalization 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 society's perception with regards to the legitimacy of same sex relationships.

The trend continued, as judges started giving the rationale of constitutional morality in their judgements thereafter. The Ex-Chief Justice of India, Justice Deepak Misra, in the case of *Government of NCT of Delhi vs Union of India* ^[4], equated constitutional morality to a 'second basic structure doctrine'. The fact of the principle being respected and adhered to by both the citizens as well as officials were reinstated and it acting as a check on both of these classes alike, were reinforced by the justices.

Almost all the revolutionary judgements in the recent past, whether it be the *Navtej Singh vs Union of India* ^[5] (*Navtej Singh Johar Judgement*), on homosexuality or the *Joseph Shine vs Union of India* ^[6] (*Joseph Shine Judgement*), on the adultery, had constitutional morality, as one of their crucial fundamentals.

In fact, in the *Indian Young Lawyers' Association and Others vs State of Kerala and Others* ^[7], commonly known as the *Sabarimala Judgement*, the Supreme Court also bypassed the doctrine of essentiality (the principle protecting the 'integral' religious practices of a community) to uphold the supremacy of constitutional morality.

Sources of constitutional morality

The term 'morality' is not excessively stated in the Constitution. However, there can be four sources, from which the term 'constitutional morality' derives itself. These are as follows:

1. Constitutional Morality can be originated from within the Constitution itself. If read and interpreted properly, Preamble, Fundamental Rights (Article 12-35), Directive Principles of State Policy (Article 36-51), and Fundamental Duties (Article 51-A), tend to have the pervasive essence emphasizing upon constitutional morality.
2. The debates and discussions that happened in the Constitutional Assembly have been one of the most important sources of constitutional morality as Ambedkar's views have been taken as the basis of modern day understanding of the same.
3. The events that unfolded during the framing of the Constitution and the requisite constitutional history associated with it.

4. The case laws and precedents, specifically in the modern day era with so many draconian laws read down by the Hon'ble Supreme Court and various High Courts in upholding the spirit of the Constitution, morality and strengthening democratic ideals.

Criticisms of constitutional morality

Besides the pros and importance attached to constitutional morality, there are also certain concerns, which needs to be addressed by legal experts, legislators, jurists and the courts. These have been discussed below:

1. There is no explicit mention of the term 'constitutional morality' in the Constitution of India. Moreover, despite the presence of several precedents or judgments based on the principle, there is no fixed definition that has been attributed to constitutional morality. Thus, it has an open-ended meaning and is privity to subjective interpretations by different perception holders. Moreover, it has been left on the discretion of the individual judges to interpret its essence and apply in requisite situations.
2. Another viewpoint presented by those in opposition to the doctrine of constitutional morality is that it hinders the organic and natural development of liberalism or rectification of the wrongs or ethical ills of the society as it vests powers in the hands of the courts to implement a 'top-down approach' of the ideal on the morality front. Some have supplemented this proposition with the corollary premise that it indirectly reflects a lack of faith on the true ideals of democracy which is based on the wisdom of the populace that is to be governed.
3. One strong argument against the existence of constitutional morality as a judicial principle is that it is in clear violation of a very basic tenet of democracy, that is, of separation of power between the three wings of the State governance framework: judiciary, legislature and the executive. Dissenters keep pushing forth the idea that the projected objective of upholding and promoting democracy by using constitutional morality is merely a shame as it establishes judicial supremacy and excess activism by the courts, leading to the intervention in those functions which are primarily sanctioned to be undertaken by the legislature. Some also interpret this as a fraud on the constitution in a veil of promoting constitutionalism.
4. Another corollary criticism to the previous point is the promotion of judicial overreach done by constitutional morality by putting it against societal morality.
5. In the recent past, the Attorney General of India, Mr K.K. Venugopal described Constitutional Morality as "dangerous" to the country. He expressed that the Supreme Court is slowly transforming into a "third Parliament Chamber". Coming from a senior legal officer like the AG himself, this can spark the growth of a negative perception amongst the masses regarding this principle.

Supreme court's judgement and constitutional morality

Constitutional Morality is not limited only to following the constitutional provisions literally, but is based on values like individual autonomy and liberty; equality without discrimination; recognition of identity with dignity; the Right to Privacy. Constitutional Morality means adherence

to the core principles of constitutional democracy.

E.g. in the Supreme Court's Sabarimala verdict, religious freedom, gender equality and the right of women to worship guaranteed under Article 14, 21, and 25 of the Constitution was reinstated which struck down the practice of banning entry of women of a certain age to the Sabarimala temple in Kerala as unconstitutional. Constitutional morality here went against social morality that discriminates against women based on biological reasons like menstruation.

Other judgements by the Supreme Court defining Constitutional Morality are as follows:

1. In Keshavananda Bharti Case, the Supreme Court restricted the power of the Parliament to violate the Basic Structure of the Constitution.
2. In the Naz Foundation Case, the Supreme Court opined that only Constitutional Morality and not Public Morality should prevail.
3. In Lt Governor of Delhi Case, the Supreme Court proclaimed Constitutional Morality as a governing idea that highlight the need to preserve the trust of people in the institution of democracy.
4. In Sabarimala Case, the Supreme Court bypassed the "Doctrine of Essentiality" to uphold the Constitutional Morality.

Conclusion

Dr. B.R. Ambedkar, the chief draftsman of the Indian Constitution, played a significant part in the process of constitution-making. He raised the voices of those, who had been long remained unheard, and had an intense commitment for the social cause and upliftment of deprived and down-trodden sections of society. He explicitly mentioned about swear which he took for the elimination of unjust and inhuman practices from the Hindu society in the context of untouchables. The Indian Constitution does incorporate the social and political philosophy of Dr. B.R. Ambedkar, which is most noticeably evident in the various provisions of the Constitution.

It can be concluded that both Ambedkar and Grote did not perceive Constitutional Morality as an instrument for combating or resolving government action; rather, they equated it with a self-imposed restraint by the people to uphold the constitutional ideals. However, with the passage of time and almost seventy decades after Dr Ambedkar delivered his Constituent Assembly speech in 1948, a lot of different interpretations of the principle have been affixed by different scholars and judges. For now, the two-pronged definition of constitutional morality encompasses:

1. firstly, a legal mechanism of fighting popular morality and a reminder that Courts should keep themselves free from, sometimes rigid, societal beliefs and opinions that need a revamp for the betterment and comprehensive advancement of the country.
2. Secondly, it helps in holding the government accountable by facilitating the courts to examine the spirit and conscience of the Indian Constitution.

Thus, it is rightly categorized as a second basic structure doctrine. It is rightly a bit vague and unclear with regards to its definition, like most of the other constitutional doctrines which are heavily dependent and reliant on the interpretation of the judges while delivering judgments in different cases. However, the kind of judicial system that exists in the country makes it a necessity, and also mandates

it for the judges to fill in the “hollow vessels of these doctrines” with words of legal expertise and experience garnered over the years of practice.

Constitutional Morality is a sentiment to be cultivated in the minds of a responsible citizen. Upholding Constitutional Morality, is not just the duty of the judiciary or state but also of individuals. The Preamble of the Constitution explicitly mentions the type of society, we wish to establish; 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 specified especially in relation to the cases of gender-justice, institutional propriety, social uplift, checking majoritarianism and other such evils.

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