



DAILY EDITORIAL ANALYSIS

TOPIC

**CONTOURS OF CONSTITUTIONAL
MORALITY**

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Context

- In recent years, India's constitutional courts have revived the concept of '**constitutional morality**' for constitutional interpretation and judicial reasoning, and has become a **litmus test for the constitutional validity of laws** and a safeguard against the volatility of public morality.

About The 'Constitutional Morality'

- Origins of the Concept:** The idea of **constitutional morality** dates back to **George Grote's *History of Greece (1846)***, where he described it as a 'paramount reverence for the forms of the constitution'.
 - According to Grote, constitutional morality required:
 - Adherence to constitutional forms and procedures;**
 - Respect for offices and institutions;** and
 - Civic self-restraint guided by public reason.**
- Dr. BR Ambedkar**, inspired by Grote, invoked this concept during the **Constituent Assembly debates**, warning that democracy in India was only a '**top-dressing on an undemocratic soil**'.
 - It refers to the **adherence to the core principles** enshrined in the Constitution, even when they conflict with popular sentiment or political expediency. It demands a deeper commitment to:
 - Liberty, equality, and fraternity;
 - Respect for constitutional institutions;
 - Tolerance and pluralism;
 - Public reason and self-restraint;
- AV Dicey** distinguished between the **law of the constitution** (enforceable by courts) and **conventions of the constitution**, or **constitutional morality**, which are not legally enforceable but **politically binding**.
 - Violation of such conventions may not attract judicial action but can lead to **grave political consequences**.

Why Does 'Constitutional Morality' Matters?

- In recent years, constitutional morality has emerged as a powerful interpretive tool in judicial decisions. Courts have invoked it to:
 - Strike down laws that violate fundamental rights;
 - Reinforce the independence of institutions;
 - Protect minority rights against majoritarian impulses;
- Constitutional morality serves as a bulwark against the volatility of public morality, which can be swayed by populism or prejudice.

Challenges to Constitutional Morality

- Historical Dormancy:** Constitutional morality remained dormant for decades, despite being discussed in the Constituent Assembly.
 - Only recently has it gained traction in legal and academic circles.
- Majoritarianism vs. Constitutional Values:** Popular morality often clashes with constitutional principles like equality and liberty.
 - Laws or policies driven by majority sentiment may undermine minority rights or secularism.
- Judicial Inconsistency:** Courts have invoked constitutional morality in landmark cases, but its application remains uneven.
 - Lack of a clear framework leads to subjective interpretations, risking judicial overreach.
- Breach and Accountability:** A breach of constitutional morality may not always be **judicially actionable**, but it has **political or moral consequences**.
 - For example, disregard for constitutional propriety may invite censure in Parliament or disapproval from the electorate.
 - Thus, **constitutional morality operates through both legal and extra-legal accountability**.
- Institutional Weakness:** Constitutional bodies (e.g., Election Commission, judiciary) sometimes face pressure or politicization.
 - Weak institutional independence hampers the enforcement of constitutional morality.

- **Public Apathy and Limited Awareness:** Citizens often lack awareness of constitutional values and rights.
 - ♦ Without civic education, public discourse may drift toward emotional or sectarian narratives.

Law and Morality Debate

- **The Hart–Devlin Controversy (1960s):** It epitomized the clash between legal positivism and moral enforcement.
 - ♦ **Lord Devlin** believed that the law should preserve societal morality to prevent disintegration, while **HLA Hart** warned against imposing moral conformity through legal coercion.
- **Judicial Recognition of Moral Principles:** The **House of Lords** upheld a residual power of courts to preserve the **moral welfare of the state**.
 - ♦ Similarly, in *P. Rathinam v. Union of India (1994) 3 SCC 394*, the **Supreme Court of India** quoted Justice Frankfurter's view that law embodies rights grounded in **moral principles**, reflecting what is '**fair, right, and just**'.
- **Law Leading and Following Morality:** At times, **law leads morality** — as in the abolition of untouchability, where legal change preceded social acceptance.
 - ♦ At other times, **law follows morality**, as seen in the gradual recognition of gender equality.

Contemporary Debate

- To some, constitutional morality is a **bulwark protecting individual rights** from transient majoritarian sentiments.
 - ♦ To others, it represents a **judicial overreach**—a 'dangerous weapon' capable of reshaping societal norms.
- Its influence now extends across debates on **LGBTQ+ rights, women's temple entry, freedom of speech**, and the **tension between national security and civil liberties**.

Judicial Interpretation

- **SP Gupta Case (1981):** Justice Venkataramiah emphasized that violating constitutional conventions breaches constitutional morality, though not necessarily the law.
- **Indian Young Lawyers Association v. State of Kerala (2018, Sabarimala Case):** Chief Justice Dipak Misra equated '**public morality**' under **Article 25** with **constitutional morality**, though this was later contested.
- **Manoj Narula v. Union of India (2014):** The Court held that constitutional morality means **adherence to the norms of the Constitution**, urging ethical restraint among political leaders.
- **State (NCT of Delhi) v. Union of India (2018):** The Court broadened the meaning to include **liberal values and consensual governance**.
- **Justice KS Puttaswamy (Retd.) v. Union of India (2017):** The right to privacy was upheld as an aspect of **constitutional morality and rule of law**.

Way Forward: Promise of a Mature Constitutionalism

- Constitutional morality is not blind devotion—it is **disciplined fidelity**. It teaches that allegiance to the Constitution lies in **how we uphold it**, not merely in what it delivers.
- At a time of deep political polarization, it reminds us that **constitutional commitment need not breed rigidity**, and **constitutional critique need not erode faith**.
- The founding fathers envisioned the Constitution as **a living document of both reverence and reform**—a framework where liberty thrives through restraint and justice through reason.

Source: TH

Daily Mains Practice Question

[Q] How does constitutional morality serve as a guiding principle in contemporary Indian constitutional jurisprudence, and what challenges does it face in practice?

