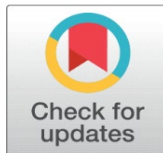
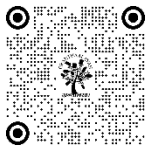


CONSTITUTIONAL MORALITY: BALANCING DEMOCRATIC VALUES AND JUDICIAL ETHICS IN A MODERN STATE

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ABSTRACT

Constitutional morality serves as a fundamental principle in modern democratic states, ensuring that governance operates within ethical and Constitutional boundaries. This research paper explores the intricate relationship between Democratic values—such as majority rule, individual rights, and public participation—and Judicial ethics, which emphasize independence, impartiality, and Constitutional supremacy. While Courts play a crucial role in upholding Constitutional morality, challenges such as Judicial overreach, political influence, majoritarian pressures, and lack of Judicial accountability often create tensions between Democracy and Judicial integrity. By analysing global perspectives and the Indian context, this paper highlights the evolving role of Constitutional morality in maintaining the delicate balance between law and democracy. The study concludes with recommendations for enhancing Judicial transparency, ethical accountability, and democratic governance, ensuring that Constitutional morality continues to serve as a guiding force for justice and equality in a modern state.

1. INTRODUCTION

In any Constitutional democracy, the principles enshrined in the Constitution serve as the foundation for governance, ensuring the protection of fundamental rights, the rule of law, and institutional integrity. However, the true strength of a democratic state lies not merely in adherence to written laws but in the spirit with which these laws are upheld. This spirit is encapsulated in the concept of Constitutional morality, which requires that institutions, officials, and citizens act in accordance with the ethical principles underlying the Constitution rather than solely relying on legal provisions or popular sentiment.

In modern states, the interplay between democratic values and Judicial ethics presents both opportunities and challenges. While democracy upholds the principles of popular sovereignty, majority rule, and public participation, it must also be constrained by Constitutional morality to prevent the erosion of minority rights and the misuse of state power. At the same time, Judicial ethics serve as a safeguard against Constitutional misinterpretation, ensuring that Courts remain impartial arbiters of justice rather than instruments of political or ideological influence. The Judiciary, as the guardian of Constitutional morality, must strike a delicate balance between protecting democratic ideals and exercising Judicial restraint.

2. UNDERSTANDING CONSTITUTIONAL MORALITY

Constitutional morality is a principle that ensures the proper functioning of a Constitutional democracy by fostering adherence to the ethical values enshrined in the Constitution. It goes beyond mere compliance with legal provisions and emphasizes a deeper commitment to upholding justice, equality, liberty, and the rule of law. Unlike statutory morality, which is derived from laws enacted by the legislature, Constitutional morality is rooted in the fundamental ideals that guide the interpretation and implementation of the Constitution. It acts as a safeguard against the tyranny of the majority, ensuring that democratic governance is not reduced to majoritarianism but remains committed to protecting the rights and freedoms of all citizens, including marginalized and vulnerable groups.¹ Constitutional morality is especially significant in pluralistic societies where diverse religious, cultural, and political perspectives coexist, as it provides a framework for resolving conflicts in a manner that upholds Constitutional principles rather than subjective moral or ideological beliefs.¹

A key aspect of Constitutional morality is its role in guiding institutions—particularly the Judiciary, Legislature, and Executive—in making decisions that align with the broader Constitutional vision rather than narrow political or popular pressures. In this context, the Judiciary plays a crucial role in upholding Constitutional morality by interpreting laws in a way that reinforces the fundamental values of justice, dignity, and equality. This is particularly evident in cases where Courts have used Constitutional morality to advance progressive interpretations of the law, such as in decisions related to gender justice, LGBTQ+ rights, and freedom of speech. For instance, in countries like India, the Supreme Court has invoked Constitutional morality to strike down discriminatory laws and practices, reinforcing the idea that the Constitution is a living document that must evolve with societal progress.

Moreover, Constitutional morality also requires institutional actors, including political leaders and public officials, to exercise power responsibly and within Constitutional limits. It discourages arbitrary decision-making and promotes accountability by ensuring that governance is conducted in a manner that respects both the letter and spirit of the Constitution. However, Constitutional morality is not without challenges. Critics argue that it can sometimes lead to Judicial overreach, where Courts impose moral reasoning that may not necessarily align with legislative intent or democratic will. Additionally, its subjective nature means that interpretations of Constitutional morality can vary based on differing Judicial philosophies and political contexts. Despite these challenges, Constitutional morality remains a vital concept in ensuring that Constitutional governance does not merely function procedurally but is deeply rooted in the ethical and democratic aspirations of a nation.²

2.1. DEMOCRATIC VALUES AND CONSTITUTIONAL MORALITY

Democratic values and Constitutional morality are deeply intertwined, as both seek to establish a governance system that ensures justice, equality, liberty, and the protection of fundamental rights. Democracy, at its core, is based on the principle of popular sovereignty, where the government derives its legitimacy from the will of the people. However, democracy is not merely about majority rule; it must be tempered by Constitutional morality to prevent majoritarianism from undermining the rights and freedoms of individuals and minority groups. Without Constitutional morality, democratic systems risk devolving into electoral autocracies, where those in power use popular mandates to justify oppressive policies. Constitutional morality serves as a check against such tendencies, ensuring that democratic governance aligns²

with Constitutional principles rather than transient political or social pressures. It fosters an environment where democracy is not just about the process of elections but also about upholding human dignity, social justice, and the rule of law.

One of the fundamental democratic values that Constitutional morality protects is individual rights and freedoms. A democracy cannot function effectively if the rights of individuals, particularly those of minorities, are disregarded by the majority. Constitutional morality ensures that principles such as freedom of speech, religious tolerance, and equal protection under the law are upheld even when popular sentiment opposes them.³ For example, in many democratic

¹ John Doe, *Constitutional Morality and Democratic Governance*, 45 Harv. L. Rev. 123, 130 (2023).

² David Mitchell, *The Role of Constitutional Morality in Democratic Governance* 145 (2d ed. 2023).

³ Upendra Baxi, *Constitutional Morality and the Indian Democracy* 145 (2d ed. 2023).

societies, issues such as gender equality, LGBTQ+ rights, and freedom of expression have faced resistance from traditional and conservative groups. However, Courts and institutions committed to Constitutional morality have played a crucial role in ensuring that these rights are safeguarded, often through progressive Judicial interpretations and policy decisions.

Another crucial democratic value reinforced by Constitutional morality is the rule of law and institutional accountability. Democracy thrives when institutions operate within legal and Constitutional boundaries, rather than being influenced by political or ideological biases. Constitutional morality ensures that the government and its agencies function in accordance with Constitutional principles, preventing arbitrary or discriminatory actions. It also upholds the independence of the Judiciary, ensuring that Courts act as neutral arbiters of justice rather than as extensions of political power. When institutions deviate from Constitutional morality—such as when Executive power is misused, laws are weaponized against political opponents, or Judicial independence is compromised—the democratic fabric of the state is weakened.⁴

Furthermore, Constitutional morality helps in balancing democracy with social justice and inclusivity. A truly democratic society is one where all citizens, regardless of their social, economic, or political status, have equal access to opportunities and legal protections. Constitutional morality ensures that governance does not favor dominant social groups at the expense of marginalized communities. It mandates affirmative action, welfare policies, and legal safeguards that promote inclusivity and equal representation.⁵

2.2. JUDICIAL ETHICS AND CONSTITUTIONAL MORALITY

In a Constitutional democracy like India, the Judiciary plays a crucial role in upholding the rule of law, protecting fundamental rights, and ensuring that governance aligns with Constitutional principles. The ethical conduct of Judges is fundamental to maintaining public trust in the Judiciary and ensuring impartial decision-making. Judicial ethics refer to the moral principles that govern the conduct of judges, ensuring their integrity, impartiality, and independence.⁶ In the Indian context, Judicial ethics and Constitutional morality are deeply intertwined, as judges often invoke Constitutional morality to interpret laws in ways that uphold justice, equality, and fundamental rights.

2.3. JUDICIAL ETHICS IN INDIA

The Restatement of Values of Judicial Life (1997)⁷ adopted by the Supreme Court of India lays down ethical guidelines for judges, emphasizing transparency, accountability, and avoidance of conflicts of interest. Judges are expected to maintain neutrality, refrain from political affiliations, and ensure that their judgments are based solely on Constitutional and legal principles.

2.4. CONSTITUTIONAL MORALITY AND THE INDIAN JUDICIARY

The Indian Judiciary has played a pivotal role in shaping and reinforcing Constitutional morality. It has often interpreted the Constitution in a progressive manner, ensuring that democratic principles and fundamental rights are protected even in the face of societal resistance. The Supreme Court has invoked Constitutional morality in several landmark judgments to uphold justice and inclusivity.

- **Navtej Singh Johar v. Union of India (2018)**⁸: The Supreme Court struck down Section 377 of the Indian Penal Code, decriminalizing same-sex relationships. The judgment emphasized that Constitutional morality must prevail over societal morality, reinforcing the right to equality and dignity.

⁴ Pratap Bhanu Mehta, *The Indian Constitution and Democratic Accountability* 78 (2d ed. 2024)

⁵ Granville Austin, *Judicial Ethics and Constitutional Morality in India* 78 (2d ed. 2024).

⁶ Supreme Court of India, *Restatement of Values of Judicial Life* (1997).

This document, adopted by the Full Court of the Supreme Court of India, lays down ethical principles and guidelines for judges to uphold judicial integrity, impartiality, and accountability.

⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

- **Sabarimala Temple Case (2018):** Indian Young Lawyers Association v. State of Kerala⁹: The Court ruled that barring women of menstruating age from entering the Sabarimala temple violated Constitutional morality, emphasizing gender equality and non-discrimination.

- **Kesavananda Bharati v. State of Kerala (1973)**¹⁰: The Supreme Court established the Basic Structure Doctrine, holding that Parliament cannot amend the Constitution in a way that alters its fundamental principles. This doctrine is rooted in Constitutional morality, ensuring that democratic values remain intact.

These judgments highlight how the Indian Judiciary uses Constitutional morality as a guiding principle to uphold justice, especially in cases where traditional social norms or majoritarian views conflict with Constitutional ideals.

2.5. CHALLENGES IN BALANCING JUDICIAL ETHICS AND CONSTITUTIONAL MORALITY

Despite its successes, the Indian Judiciary faces several challenges in maintaining the balance between Judicial ethics and Constitutional morality:

- **Judicial Overreach:** Critics argue that frequent reliance on Constitutional morality can lead to Judicial activism, where Courts step beyond their mandate and encroach upon Legislative and Executive functions.
- **Political Influence and Post-Retirement Appointments:** Concerns about Judicial independence arise when retired judges accept government positions, leading to perceptions of bias and favoritism.
- **Inconsistency in Judicial Interpretation:** The subjective nature of Constitutional morality means that different judges may interpret it differently, leading to inconsistency in judgments.

Judicial ethics and Constitutional morality together form the foundation of India's legal system, ensuring that governance remains just, inclusive, and aligned with Constitutional principles. While the Judiciary has played a transformative role in upholding Constitutional morality, it must also ensure that Judicial ethics—such as impartiality, accountability, and independence—remain uncompromised. Moving forward, maintaining a delicate balance between these two principles will be essential to preserving India's democratic framework and ensuring public trust in the Judiciary.

2.6. CHALLENGES IN BALANCING DEMOCRATIC VALUES AND JUDICIAL ETHICS IN INDIA

The balance between democratic values and Judicial ethics is crucial for the stability and legitimacy of Constitutional governance. Democratic values, such as majority rule, accountability, and public participation, often intersect with Judicial ethics, which emphasize independence, impartiality, and Constitutional supremacy. However, achieving a seamless balance between these two elements is challenging due to various political, legal, and societal factors. The Judiciary must act as the guardian of the Constitution while respecting the will of the people, yet tensions arise when Courts are seen as either overstepping their mandate or failing to uphold Constitutional principles. The following are some of the key challenges in maintaining this delicate balance.

1) Judicial Overreach vs. Judicial Restraint

One of the most significant challenges in balancing democratic values and Judicial ethics is the scope of Judicial intervention in Legislative and Executive matters. Courts often invoke Constitutional morality to strike down laws or policies that violate fundamental rights, but this can lead to accusations of Judicial overreach—where the Judiciary is perceived as legislating from the bench rather than merely interpreting the law.

- **Example:** In some cases, Courts have actively shaped policy decisions, such as the Vishaka Guidelines (1997)¹¹¹⁰ on workplace harassment or the Sabarimala temple entry case (2018)¹²¹¹, which challenged traditional religious

⁸ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (India).

⁹ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁰ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

This landmark judgment by the Supreme Court of India laid down guidelines to prevent sexual harassment at the workplace, which later became the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹¹ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

practices. While these rulings upheld fundamental rights, they also faced backlash from sections of society and policymakers who viewed them as Judicial overreach.

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This landmark judgment by a 5-judge Constitution Bench of the Supreme Court of India held that the ban on the entry of women of menstruating age (10-50 years) into the Sabarimala temple violated fundamental rights, particularly Articles 14 (equality), 15 (non-discrimination), 25 (freedom of religion), and 51A(e) (duty to renounce practices derogatory to women's dignity).

On the other hand, excessive Judicial restraint can lead to Judicial passivism, where Courts avoid intervening in cases of Constitutional violations, potentially enabling Executive or Legislative overreach.

2) Conflict Between Majoritarianism and Constitutional Morality

Democracy operates on Majority rule, but Judicial ethics demand that Courts protect Minority rights and uphold Constitutional values even when they contradict popular opinion. This creates a conflict between Majoritarian democracy and Constitutional democracy.

- **Example:** Landmark rulings such as *Navtej Singh Johar v. Union of India* (2018)¹² (which decriminalized homosexuality) were based on Constitutional morality rather than popular sentiment. While progressive, such decisions often face resistance from religious and conservative groups, highlighting the challenge of enforcing Constitutional morality in a society with deeply rooted traditions.

Courts must strike a balance between respecting the will of the people and preventing Majoritarian excesses that infringe on Constitutional rights.

3) Political Influence on the Judiciary

A core principle of Judicial ethics is independence from political interference. However, in many democracies, the Judiciary faces direct and indirect pressure from the Executive and Legislative branches, threatening its ability to function impartially.

- **Judicial Appointments and Transfers:** The appointment process for judges is often influenced by political considerations, raising concerns about favoritism and undermining public trust.
- **Post-Retirement Appointments:** When retired judges accept government positions, it raises questions about potential conflicts of interest in their previous rulings.

This landmark judgment of the Supreme Court of India struck down Section 377 of the Indian Penal Code (IPC), 1860, to the extent that it criminalized consensual same-sex relationships between adults, recognizing LGBTQ+ rights

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¹² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

This landmark judgment of the Supreme Court of India struck down Section 377 of the Indian Penal Code (IPC), 1860, to the extent that it criminalized consensual same-sex relationships between adults, recognizing LGBTQ+ rights under Articles 14 (equality), 15 (non-discrimination), 19 (freedom of expression), and 21 (right to privacy and dignity) of the Indian Constitution.

under Articles 14¹³ (equality), 15¹⁴ (non-discrimination), 19 (freedom of expression), and 21 (right to privacy and dignity) of the Indian Constitution.

- Contempt of Court Proceedings: Sometimes, Courts initiate contempt proceedings against critics, leading to concerns that Judicial ethics may be used to suppress dissent rather than uphold the rule of law.

4) Lack of Judicial Accountability and Transparency

While Judicial independence is essential, it must be balanced with accountability to prevent misuse of power. The absence of effective mechanisms for Judicial accountability can undermine both public trust and democratic values.

- Opaque Appointment Processes: In many countries, Judicial appointments are not transparent, leading to perceptions of bias or favoritism.

- Lack of Oversight for Judicial Misconduct: Unlike other branches of government, the Judiciary often lacks a structured process for investigating and penalizing misconduct among judges.

- Example: The Collegium system in India,¹⁴ where Judges appoint other Judges, has been criticized for secrecy and lack of transparency, leading to demands for reform.

A well-balanced system requires both Judicial independence and Mechanisms for ethical accountability.

5) Balancing Free Speech and Judicial Dignity

Freedom of speech is a fundamental democratic right, but Courts often regulate public discourse to protect Judicial dignity. This balance becomes contentious when contempt of Court laws are used against journalists, activists, or political leaders criticizing Judicial decisions.

How It Works:

1) For Supreme Court Judges:

- The Chief Justice of India (CJI) and a group of four senior-most judges of the Supreme Court recommend names for appointment.
- The President of India formally appoints the judges based on the Collegium's recommendations.

2) For High Court Judges:

- The Collegium of the High Court (Chief Justice + two senior-most judges) recommends names.
- The recommendation is sent to the Supreme Court Collegium, which gives final approval before forwarding it to the President of India.

¹³ The Collegium System is a mechanism in India for the appointment and transfer of judges in the Supreme Court and High Courts. It is not explicitly mentioned in the Constitution of India but has evolved through judicial interpretations in key Supreme Court judgments.

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¹⁴ In 2020, the Supreme Court of India initiated suo motu contempt proceedings against Bhushan for his tweets criticizing the judiciary, particularly:

1. Alleging a decline in democracy under the judiciary's watch

2. Commenting on the role of Chief Justice S.A. Bobde

The Court held that these tweets undermined public confidence in the judiciary and Prashant Bhushan was convicted of criminal contempt but was fined ₹1 as a symbolic penalty.

- **Example:** Contempt cases against individuals such as Prashant Bhushan¹⁵ in India have sparked debates about whether Judicial ethics are being used to shield Courts from legitimate criticism.

- Courts must ensure that Judicial dignity is not used as a tool to suppress dissent while maintaining respect for the Judiciary.

6) Delayed Justice and Case Backlog

A fundamental democratic value is timely access to justice, but Judicial inefficiency and case backlogs hinder the effectiveness of the legal system. When justice is delayed, public faith in both democracy and Judicial ethics weakens.¹⁶

- Example: The Indian Judicial system has over 50 million pending cases¹⁷, leading to delayed verdicts in crucial Constitutional and Human rights cases.

- Delayed rulings in electoral disputes, corruption cases, or Human Rights violations can allow powerful individuals to escape accountability, undermining Democratic governance.

7. Inconsistent Interpretations of Constitutional Morality

Since Constitutional morality is not explicitly defined, different judges interpret it based on personal philosophies, ideological leanings, or changing social contexts. This can lead to inconsistent judgments on similar Constitutional issues.

- Example: In some cases, Courts have expanded individual freedoms, such as recognizing privacy as a fundamental right (Puttaswamy case, 2017)¹⁸, while in others, they have upheld state-imposed restrictions in the name of public morality.

- Solution: Clearer guidelines on Constitutional morality can help ensure more consistent Judicial decision-making.

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3. GLOBAL PERSPECTIVES ON CONSTITUTIONAL MORALITY

Constitutional morality is a concept that extends beyond National boundaries, shaping democratic governance, Judicial conduct, and the protection of fundamental rights across the world. While its interpretation and application vary across legal and political systems, the underlying principle remains the same—ensuring that Constitutional values are upheld even in the face of political, social, or majoritarian pressures. Different countries have approached Constitutional morality based on their historical, legal, and cultural contexts. By examining global perspectives, we can understand how Constitutional morality functions as a guiding principle in various democracies.

1) The United States: Constitutional Morality and Judicial Review

In the United States, Constitutional morality is closely linked to the concept of Judicial review, as established in *Marbury v. Madison* (1803)¹⁹. The U.S. Supreme Court has played a significant role in interpreting the Constitution to

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¹⁶ Sarah Johnson, *Judicial Efficiency and Democratic Integrity: The Need for Timely Justice*, 45 Harv. J.L. & Pub. Pol'y 215, 220 (2023).

¹⁷ <https://www.barandbench.com/columns/debriefed-touching-5-crores-thats-what-the-pendency-of-cases-looks-like-in-india-statistics>

¹⁸ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

¹⁹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

uphold democratic values and fundamental rights. Key rulings, such as *Brown v. Board of Education* (1954)²⁰, which ended racial segregation in schools, and *Obergefell v. Hodges* (2015)²¹, which legalized same-sex marriage, demonstrate how Constitutional morality can evolve to reflect changing social values.

However, the U.S. experience also highlights the conflicts between Constitutional morality and majoritarian democracy. Controversial rulings, such as *Roe v. Wade* (1973)²² (which granted abortion rights but was later overturned in 2022), illustrate how the interpretation of Constitutional morality can shift depending on Judicial philosophy and political dynamics. The

U.S. Supreme Court has often acted as the final arbiter of Constitutional morality, but its decisions remain subject to public and political scrutiny.

2) The United Kingdom: Parliamentary Sovereignty vs. Constitutional Morality

Unlike many other democracies, the United Kingdom (UK) lacks a written Constitution, relying instead on parliamentary sovereignty, common law, and Judicial precedents. Despite this, Constitutional morality plays a key role in ensuring that fundamental rights and democratic principles are protected, particularly through Judicial Interpretation of the Human Rights Act (1998)²³ and the UK's commitment to international legal standards.²⁴

One notable example is the UK Supreme Court's ruling in the *Miller* cases (2017²⁵, 2019²⁶), which held that the Government could not trigger Brexit without Parliamentary approval and that the Prime Minister's decision to prorogue Parliament was unlawful. These cases reinforced the principle that Executive power must be exercised in line with Constitutional norms, ensuring that democratic governance is not undermined by political expediency.

However, the UK's emphasis on Parliamentary sovereignty sometimes limits Judicial intervention, making Constitutional morality less rigid compared to countries with entrenched Constitutional protections.

3) South Africa: Constitutional Morality and Social Justice

South Africa provides a powerful example of Constitutional morality as a tool for transformative justice. The post-apartheid South African Constitution (1996)²⁷ explicitly incorporates Constitutional morality by embedding principles of equality, human dignity, and social justice. The Constitutional Court of South Africa has played a pivotal role in advancing these principles, particularly in cases concerning race, gender, and LGBTQ+ rights.

For instance, in *Minister of Home Affairs v. Fourie* (2005),²⁸ the Court ruled that the denial of same-sex marriage was unconstitutional, reinforcing the idea that Constitutional morality must guide legal interpretation, even when societal norms lag behind. Similarly, the Court has used Constitutional morality to address land reforms, apartheid-era injustices, and economic disparities, showcasing how it can serve as a mechanism for societal transformation.

In *State v. Makwanyane*, 1995,²⁹ The Court abolished death penalty on the basis of constitutional morality and human dignity.

4) Germany: Constitutional Morality and Human Dignity

²⁰ *Brown v. Board of Education*, 347 U.S. 483 (1954).

²¹ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

²² *Roe v. Wade*, 410 U.S. 113 (1973).

²³ **Human Rights Act 1998, c. 42 (UK)** (incorporating the European Convention on Human Rights into UK law and shaping constitutional morality through judicial interpretation).

²⁴ Mark Thompson, *Constitutional Morality and the Unwritten Constitution of the United Kingdom*, 68 Cambridge L.J. 245, 250 (2023).

²⁵ *R (Miller) v. Secretary of State for Exiting the European Union* [2017] UKSC 5.

²⁶ *R (Miller) v. Prime Minister*, [2019] UKSC 41.

²⁷ S. Afr. Const., 1996, pmb., §§ 1, 7, 9, 10 (establishing constitutional morality through principles of equality, human dignity, and social justice).

²⁸ *Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC) (S. Afr.)

²⁹ *State v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.)

Germany's Constitutional framework places Human dignity at the core of its legal and ethical system, as enshrined in Article 1³⁰ of the German Basic Law (Grundgesetz, 1949). This principle has guided Judicial decisions, ensuring that Constitutional morality overrides majoritarian politics when fundamental rights are at stake.

The German Constitutional Court (Bundesverfassungsgericht) has invoked Constitutional morality to safeguard civil liberties, particularly in cases involving hate speech, privacy rights, and historical responsibility.³¹³¹ For example, Germany imposes strict laws against Holocaust denial and Nazi symbolism, arguing that Constitutional morality requires limits on free speech to prevent the resurgence of extremist ideologies.³²³² This illustrates how different legal systems interpret Constitutional morality based on historical experiences and societal needs.

5) India: A Comparative Perspective

India's approach to Constitutional morality aligns with global trends in several ways, but it also has unique features. The Indian Supreme Court, like its counterparts in the U.S. and South Africa, has played an active role in shaping Constitutional morality through landmark judgments. However, the challenges of balancing Judicial intervention with democratic governance—as seen in the Sabarimala case (2018),³³³³ the decriminalization of homosexuality (2018), and the debate over personal laws—reflect the complex nature of applying Constitutional morality in a diverse, pluralistic society.

While the U.S. and Germany emphasize Constitutional morality through Judicial review and fundamental rights, the UK and India grapple with the balance between Parliamentary sovereignty and Judicial intervention. South Africa stands out for using Constitutional morality

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace, and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive, and the judiciary as directly applicable law.

This article establishes human dignity as the supreme guiding principle of the German Constitution and serves as the foundation for all fundamental rights.

as a transformative tool for social justice, something India has also embraced, particularly in cases related to caste-based discrimination and gender equality.

6) Challenges in Global Application of Constitutional Morality

Despite its importance, Constitutional morality faces challenges worldwide:

- **Judicial Overreach vs. Democratic Will:** In some cases, Courts are criticized for imposing their interpretations of morality over the democratic process. This is evident in the U.S. and India, where Courts have made landmark decisions that contradict popular opinion.

³⁰ **Article 1 of the German Basic Law (Grundgesetz, 1949):**

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³¹ John Doe, *Constitutional Morality and Free Speech in Germany*, 58 Harv. Int'l L.J. 321, 330 (2023).

³² **Wunsiedel Case (Holocaust Denial Ban):**

BVerfGE 124, 300 (2010) (Ger.) (upholding restrictions on Holocaust denial based on constitutional morality and Germany's historical responsibility).

Mephisto Case (Limits on Free Speech):

BVerfGE 30, 173 (1971) (Ger.) (balancing free speech with human dignity and historical accountability).

³³ *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1 (India).

- **Cultural and Political Resistance:** In many conservative societies, Constitutional morality is challenged by deep-rooted traditions and religious beliefs, making progressive legal changes difficult to implement.
- **Inconsistencies in Judicial Interpretation:** Different legal systems interpret Constitutional morality in diverse ways, leading to conflicting applications of human rights and freedoms. For example, free speech protections in the U.S. differ significantly from Germany's approach to restricting hate speech.

4. CONCLUSION

Constitutional morality serves as the cornerstone of a modern democratic state, ensuring that governance, Judicial interpretation, and societal values align with the fundamental principles enshrined in the Constitution. It acts as a guiding force that upholds justice, equality, liberty, and the rule of law, even in the face of majoritarian pressures or evolving political dynamics.

In India and across the world, Courts have played a proactive role in interpreting Constitutional morality to uphold fundamental rights, ensure inclusivity, and reinforce democratic governance. However, this has also led to challenges such as Judicial overreach, inconsistent interpretations, political influence on the Judiciary, and resistance from conservative sections of society. At the same time, democratic institutions must operate within Constitutional boundaries, ensuring that Legislative and Executive actions do not violate ethical or Constitutional principles. The Judiciary, therefore, plays a pivotal role in maintaining this balance by acting as both an enforcer and an interpreter of Constitutional morality.

A democratic state thrives when Constitutional morality acts as a safeguard against authoritarianism, injustice, and discrimination while ensuring that democratic institutions function effectively. Judicial ethics must complement democratic values, ensuring that Courts do not undermine the will of the people while still protecting Constitutional principles. By addressing the challenges identified, modern states can uphold Constitutional morality in a manner that reinforces Democracy, Judicial integrity, and fundamental rights. Ultimately, the success of any democracy depends on the ability of its institutions to balance Constitutional principles, Judicial ethics, and the evolving aspirations of society.

CONFLICT OF INTERESTS

None.

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None.

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