Constitutional Morality

Why in news?

In the recent past, our constitutional courts have embraced the polysemous concept of "constitutional morality" as a tool to interpret and as a test to adjudicate upon the constitutional validity of statutes.

What is Constitutional Morality?

- Constitutional morality refers to the *adherence to the fundamental principles and values enshrined in a nation's constitution*.
- It ensures that both the government and citizens uphold democratic principles, justice, equality, liberty, and fraternity, rather than merely following the literal text of the constitution.

What are the Key Aspects of Constitutional Morality?

- **Rule of Law** – All individuals and institutions must operate within the framework of the constitution.
- **Democratic Values** – Upholding democracy, secularism, and justice for all.
- **Protection of Rights** – Ensuring fundamental rights, such as equality, freedom of speech, and protection against discrimination.
- **Institutional Integrity** – Strengthening institutions like the judiciary, legislature, and executive to function fairly and independently.
- **Tolerance & Pluralism** – Respecting diverse views, cultures, and beliefs within society.
- **Judicial Interpretation** – Courts often use constitutional morality to interpret laws in a progressive and rights-oriented manner.

What are the Constitutional provisions that upholds the Constitutional Morality?

Fundamental Rights (Part III)

• **The Fundamental Rights (Articles 12-35)** – Ensure individual liberty and equality, preventing Majoritarianism and authoritarianism.
• **Article 14 (Right to Equality)** – *Ensures equality before the law* and equal protection of laws, preventing discrimination.
• **Article 19 (Freedom of Speech and Expression)** – Allows *public reasoning* and critique, essential for constitutional morality.
• **Article 21 (Right to Life and Personal Liberty)** – Guarantees dignity and due process, which courts have expanded to include rights like *privacy, autonomy, and freedom of choice*.
• **Article 25-28 (Freedom of Religion)** – Ensures freedom of religion while maintaining constitutional morality by preventing religious practices that violate individual rights (e.g., **Sabarimala judgment**).

Directive Principles of State Policy (DPSP) (Part IV)

• Though ***not enforceable in courts***, the **DPSPs (Articles 36-51)** provide a framework for **good governance and social justice**, which are essential to constitutional morality.
• **Article 38** – Promotes **justice—social, economic, and political**.
• **Article 39A** – Ensures **equal access to justice** through free legal aid.
• **Article 44 (Uniform Civil Code)** – Promotes *secularism and equality* in personal laws.

Preamble – The Spirit of Constitutional Morality

• The **Preamble** embodies constitutional morality by declaring India to be:
- **Sovereign, Socialist, Secular & Democratic Republic** – Ensures governance based on democratic principles.
- **Justice, Liberty, Equality & Fraternity** – Upholds individual dignity and collective harmony.

Separation of Powers and Judicial Review

• **Article 50** – Ensures separation of the judiciary from the executive, *preventing arbitrary rule*.
• **Article 32 & 226** – Empower the *Supreme Court and High Courts to enforce fundamental rights* through *judicial review*, upholding constitutional morality by striking down unconstitutional laws.

Amendments and Reforms (Article 368)

• **Article 368** – Allows for **constitutional amendments**, ensuring the Constitution evolves while maintaining its core principles.
• **Basic Structure Doctrine (Kesavananda Bharati Case, 1973)** – Prevents arbitrary changes that violate constitutional morality.

Special Provisions for Social Justice

• **Article 15(3) & 15(4)** – Allow *affirmative action* for women, SCs, STs, and socially disadvantaged groups.
• **Article 17** – *Abolishes untouchability*, ensuring equality in society.
• **Article 330 & 332** – Provide *reservations* in legislatures to empower marginalized communities.

What are the aspects that can make Constitutional morality a Dangerous tool?

- Constitutional morality is considered a "dangerous tool" by few because it gives courts and *institutions significant interpretative power*, which can sometimes lead to judicial overreach, moral subjectivity, or the undermining of democratic decision-making.
- **Judicial Overreach** – Critics argue that *constitutional morality allows courts to overstep their boundaries* and act as moral arbiters rather than interpreters of the law.

- Example: In ***Navtej Singh Johar v. Union of India (2018)*** (decriminalization of homosexuality), the Supreme Court overruled legislative inaction, which some saw as the judiciary stepping into policymaking.
- **Subjectivity and Moral Relativism** – *What constitutes the constitutional morality is not clearly defined* and can be interpreted differently by different judges.
- This could lead to *subjective rulings* based on personal views rather than a consistent legal standard.
- **Undermining Democratic Will and Public Morality** – In a democracy, laws are meant to reflect the will of the people, but constitutional morality *can override majoritarian decisions*, leading to accusations of elitism.
- Example: In *Sabarimala Case (2018),* the Supreme Court allowed women's entry into the temple despite strong public opposition, leading to debates on whether courts should interfere in religious traditions.
- **Arbitrary Use in Select Cases** – The concept is not *uniformly applied in courts* that invoke it in *some cases but not others*, making it seem arbitrary.
- Example: Courts have used constitutional morality to *strike down discriminatory laws* but have avoided using it in cases involving political corruption or economic policies.
- **Potential for Misuse by the State** – Governments could *weaponize constitutional morality* to justify *limiting free speech or suppressing dissent* under the guise of protecting constitutional values.
- Example: A government might use the argument of "constitutional morality" to *curtail protests or online expression* if they claim it disrupts social harmony.

What is the Dr. B.R. Ambedkar opinion about Constitutional Morality?

- **Not a natural sentiment** – In his speech, Ambedkar stated that *constitutional morality was not a natural sentiment in India but had to be cultivated.*
- **Respect constitutional** – He emphasized that for democracy to survive, people must *respect constitutional principles over personal or majoritarian interests*.
- **Constitutional limits** – He warned against arbitrary rule and stressed the need for institutions and individuals to function within *constitutional limits.*

What are the Key Supreme Court Cases that Upholds the Constitutional Morality?

- **Kesavananda Bharati v. State of Kerala (1973)** – *Basic structure doctrine* prevents unconstitutional amendments.
- **Navtej Singh Johar v. Union of India (2018)** – *Decriminalized homosexuality* (struck down Section 377).
- **Indian Young Lawyers Association v. State of Kerala (2018) (Sabarimala Case)** – Allowed women entry into Sabarimala temple, rejecting religious patriarchy.
- **Shayara Bano v. Union of India (2017)** – *Struck down triple talaq*, ensuring gender justice.

What is the way forward?

- While constitutional morality is crucial for upholding fundamental rights, its vague nature, judicial overreach, and potential to override democratic will make it a double-edged sword.

- The challenge is to strike a balance between upholding constitutional values and respecting democratic processes.

References

1. The Hindu - Constitutional Morality
2. Supreme Court Observer - Constitutional Morality

