



## Constitutional Morality

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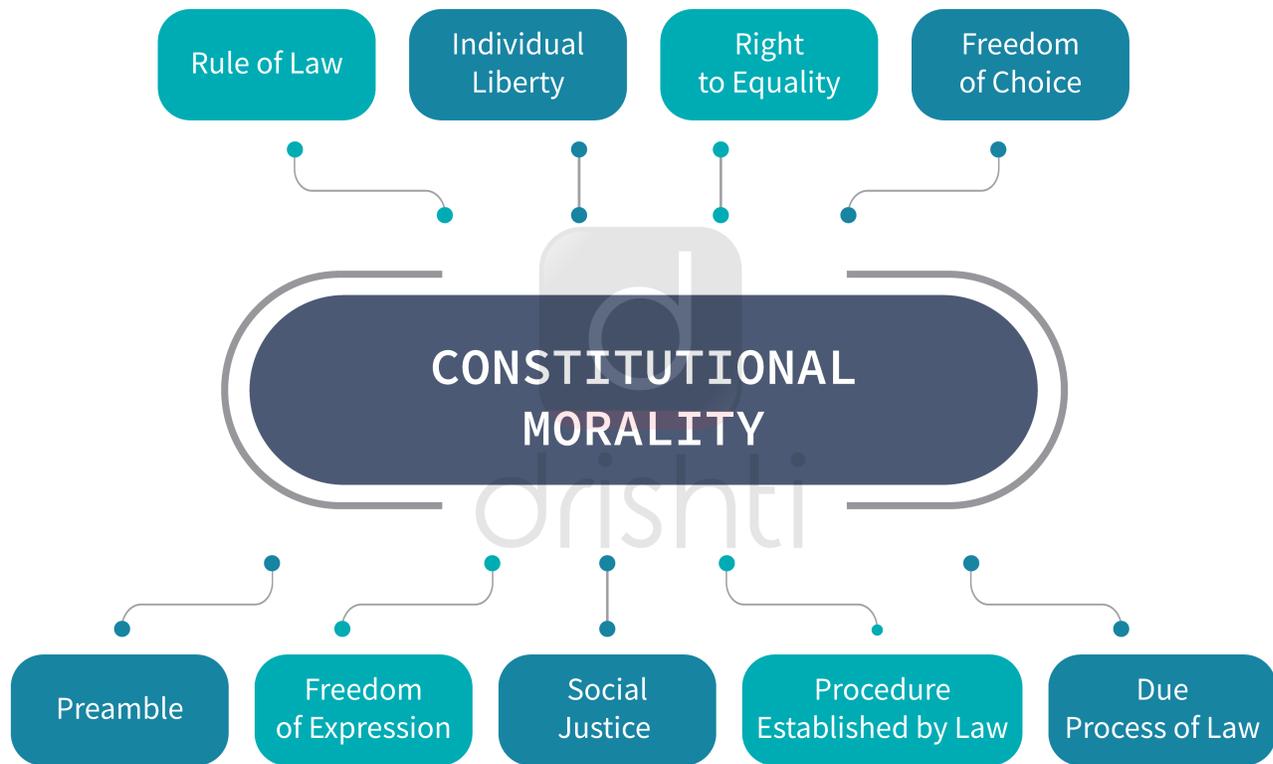
### Introduction

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- According to Dr. Ambedkar, Constitutional morality would mean effective coordination between conflicting interests of different people and the administrative cooperation 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.
- Constitutional morality 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** (Article 12 to 35), **Directive Principle of State Policy** (Article 36 to 51), **Preamble** and **Fundamental duties**.

### Elements of constitutional morality

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## Supreme Court's Judgements 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.

For Example: In **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 Judgments by the Supreme Court defining Constitutional Morality:
  - In **Kesavananda Bharati Case**, the Supreme Court restricted the power of the Parliament to violate the Basic Structure of the Constitution.
  - In the **Naz Foundation case**, the Supreme Court opined that only Constitutional Morality and not Public Morality should prevail.
  - In **Lt Governor of Delhi case**, SC proclaimed constitutional morality as a governing ideas that "highlight the need to preserve the trust of people in the institution of democracy.
  - In Sabarimala case, the Supreme Court bypassed the **“doctrine of essentiality”** to uphold the Constitutional morality

## Significance

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- Constitutional morality **ensures the establishment of rule of law in the land** while integrating the changing aspirations and ideals of the society.
- Constitutional morality as a governing ideal that **highlights the need to preserve the trust of the people in institutions of democracy**. As such an ideal, it allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved single-handedly.
- Constitutional morality **can use laws and forms to impact and change the persisting social morality**. For example, by abolishing the practice of Sati by legislation, the right to dignity and life was passed on to the widows which later on affected the perception of the practice in the society.
- Constitutional morality **recognises plurality and diversity in society and tries to make individuals and communities in the society more inclusive** in their functioning by constantly providing the scope for improvement and reforms. For example in Navtej Singh Johar v. Union of India, the SC provided a framework to reaffirm the rights of LGBTQ and all gender non-conforming people to their dignity, life, liberty, and identity.

## Concerns

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- The term has not been clearly defined by the SC, which leaves the scope of its subjective interpretation by the individual judges.
- This top-down approach to morality can affect the possibility of organic emergence of the solutions to the persisting ethical problems in society.
- Violates the principle of separation of powers: It establishes judicial supremacy over parliamentary supremacy. Against the very principle of democratic government.
- It is claimed that the application of this doctrine amounts to judicial overreach and are thereby pitting **“constitutional morality”** against **“societal/popular morality”**

## Need to Uphold Constitutional Morality

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- The central elements of constitutional morality are **freedom and self-restraint**. Self-restraint was a precondition for maintaining freedom under a proper constitutional government.
  - To uphold constitutional morality, the constitutional methods must be used for achieving social and economic objectives.
- Commitment to the **ideals and aspirations of the Constitution**.
  - **Awareness creation** among the common public regarding their rights which are protected by the Constitution.
  - Following the Fundamental Duties while exercising Fundamental Rights.

## Conclusion

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- Constitutional Morality is a sentiment to be cultivated in the minds of a responsible citizen. Upholding constitutional morality is not just the duty of 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 applied especially in relation to the cases of gender-justice, institutional propriety, social uplift, checking majoritarianism and other such evils.