



Mains Practice Question

Q. Constitutional morality encompasses not just the forms and procedures of the Constitution, but provides an enabling framework that allows a society the possibilities of self-renewal. Discuss (150 words)

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Approach:

- Briefly explain what is constitutional morality. Explain how it is different from prevalent social or cultural morality.
- Explain why it is significant to invoke constitutional morality to provide the framework to incorporate societal reforms.

Introduction

- Constitutional morality largely refers to the conventions and protocols that govern decision-making where the constitution vests discretionary power or is silent. It can be similar to and can differ from the prevalent social morality.
- 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.
- The Constitutional morality here went against social morality that discriminates against women based on biological reasons like menstruation.
- 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.

Body

- 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.

Problems with Constitutional Morality

- 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 the society.

Conclusion

- Constitutional morality can overcome the differences of social morality within the country and can help the society to bring out necessary reforms making it more inclusive. It goes beyond the limited impact of adherence to rules under the fear of punishment. It can provide guidance to establish a more ethical and rules-based society while working on individual morality.

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