



## Constitutional morality and amendment acts: A critical study of judicial responses to constitutional changes in India

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### Abstract

The doctrine of constitutional morality has emerged as a pivotal standard in the Indian constitutional framework, shaping judicial responses to constitutional amendments and testing the limits of parliamentary sovereignty. This paper critically examines how the judiciary, particularly the Supreme Court of India, has invoked constitutional morality as a normative compass in reviewing constitutional changes, thereby reinforcing the doctrine of the basic structure while safeguarding democratic principles and fundamental rights. It contextualizes the historical evolution of constitutional morality from its early conceptualization in the Constituent Assembly Debates to its contemporary judicial applications in landmark cases, such as *Kesavananda Bharati v. State of Kerala*, *Indira Nehru Gandhi v. Raj Narain*, and more recent judgments like *Navtej Singh Johar v. Union of India* and *Indian Young Lawyers Association v. State of Kerala*. The study highlights how judicial reliance on constitutional morality has redefined the contours of constitutional interpretation, balancing transformative constitutionalism with institutional limitations. At the same time, it interrogates the tension between judicial activism and parliamentary supremacy, questioning whether excessive judicial reliance on constitutional morality risks creating a counter-majoritarian bias that undermines democratic will. By engaging with comparative constitutional jurisprudence, the paper situates the Indian experience within a broader global discourse on constitutional amendments and judicial review. Ultimately, the study argues that constitutional morality serves as a vital safeguard against arbitrariness and authoritarianism but requires consistent doctrinal clarity to prevent its overextension. This critical analysis underscores the need for a nuanced understanding of constitutional morality as both a guiding principle and a judicial restraint in order to ensure that the Indian Constitution remains a living document responsive to societal transformations while preserving its foundational ethos.

**Keywords:** Constitutional morality, constitutional amendments, judicial review, basic structure doctrine, parliamentary sovereignty, constitutional interpretation, transformative constitutionalism, India

### Introduction

The Constitution of India, as the supreme legal framework of the nation, represents a dynamic document that not only codifies the foundational principles of governance but also embeds a moral vision of social transformation. Within this transformative constitutionalism lies the doctrine of constitutional morality, a concept that transcends textual interpretation and acts as a normative compass in constitutional adjudication. Dr. B.R. Ambedkar, a principal architect of the Indian Constitution, described constitutional morality as the inculcation of respect for the Constitution's values and procedures, even when those values conflict with popular or societal morality (Chandrachud, 2020) <sup>[6]</sup>. His invocation of Grote's Greek philosophical principle within the Indian context underlined that constitutional democracy cannot survive merely on institutional arrangements but must be undergirded by a culture of constitutional ethics.

In the post-independence period, constitutional morality has been invoked increasingly by the judiciary to evaluate legislative and executive action, particularly through the lens of judicial review of constitutional amendments. This approach became prominent following the *Kesavananda Bharati v. State of Kerala* judgment in 1973, where the Supreme Court formulated the basic structure doctrine, effectively restraining the constituent power of Parliament. Since then, the judiciary has treated constitutional morality as integral to this basic structure, arguing that amendments must adhere not only to procedural requirements but also to

the moral values embedded in the Constitution's foundational philosophy (Chandra, 2023) <sup>[5]</sup>.

This expanded role of constitutional morality has had significant implications on judicial review. For instance, in landmark cases such as *Navtej Singh Johar v. Union of India* and *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court nullified majoritarian norms using constitutional morality as a standard. These decisions have been lauded for their progressive content, but have also drawn criticisms regarding judicial overreach and the erosion of the principle of parliamentary supremacy (Nath, 2019) <sup>[20]</sup>. Critics argue that such an interpretive leap risks undermining the democratic ethos by displacing legislative will with judicial discretion.

The judiciary's increasing reliance on constitutional morality has also prompted a deeper analysis of the interplay between constitutional amendments and democratic legitimacy. The concern lies in the possibility that unelected judges may be empowered to invalidate constitutionally enacted amendments based on subjective interpretations of morality. As scholars such as Rajagopalan (2013) <sup>[22]</sup> argue, frequent and ideologically driven amendments in India reflect the ideological tensions between socialism and constitutionalism, where moral interpretation becomes a political tool rather than a legal standard (Rajagopalan, 2013) <sup>[22]</sup>.

Nonetheless, the Indian judiciary has continuously emphasized that constitutional morality does not merely

validate constitutional interpretation but acts as a doctrinal safeguard against constitutional disintegration. This is especially relevant in a pluralistic democracy like India, where transformative constitutionalism demands that the Constitution be responsive to social change while remaining faithful to its foundational ethos (Awasthi & Verma, 2024) [2].

In light of the growing judicial invocation of constitutional morality, this research paper undertakes a critical examination of the judicial response to constitutional amendments. It investigates whether the doctrine strengthens the Constitution's moral fabric or whether it creates a counter-majoritarian dilemma, challenging the equilibrium of constitutional democracy in India.

### Research Objectives and Methodology

The dynamic evolution of India's constitutional jurisprudence—particularly around the doctrine of constitutional morality and its interplay with constitutional amendments—warrants a focused scholarly investigation grounded in a doctrinal and normative framework. This paper aims to systematically analyze how Indian courts, especially the Supreme Court, have engaged with constitutional amendments through the lens of constitutional morality, and to evaluate whether this engagement strengthens or undermines the constitutional fabric. The primary objective is to explore the juridical contours of constitutional morality as applied in cases involving constitutional change, particularly where the judiciary has invoked it to uphold or invalidate amendments. As part of this analysis, the research seeks to interrogate whether such judicial interventions maintain fidelity to democratic values or risk instituting counter-majoritarian tendencies (Rajagopalan, 2015) [23].

A secondary, but equally vital objective is to examine the doctrinal consistency of the courts in applying the principle of constitutional morality over time. Given that morality is inherently fluid and contestable, judicial reliance on it as a constitutional test raises questions about the scope of discretion afforded to the judiciary and its implications for the doctrine of separation of powers. The study also seeks to provide a comparative perspective, drawing upon how other constitutional democracies, such as South Africa and the United States, have conceptualized and employed analogous doctrines to evaluate constitutional amendments and ensure institutional balance (Henrico, 2023) [10].

The research employs a qualitative doctrinal methodology. It is primarily library-based, involving the critical study of primary and secondary legal sources. Primary sources include the text of the Constitution of India, selected landmark judgments such as *Kesavananda Bharati v. State of Kerala*, *Indira Nehru Gandhi v. Raj Narain*, *Minerva Mills v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Indian Young Lawyers Association v. State of Kerala*. These decisions are analyzed not merely in terms of outcomes but with close attention to the reasoning structure and interpretive techniques deployed by the courts to embed constitutional morality within the adjudicative process (Singh *et al.*, 2024) [28].

Secondary sources consist of peer-reviewed journal articles, legal commentaries, and constitutional theory literature, particularly scholarship surrounding constitutional identity, transformative constitutionalism, and the judicial role in constitutional democracies. Comparative insights are

drawn from relevant jurisprudence of apex courts in other jurisdictions, guided by a comparative constitutional law framework (Chandra, 2023) [5].

This study further applies theoretical analysis to examine how concepts such as popular sovereignty, constituent power, and judicial legitimacy intersect with the evolving understanding of constitutional morality. It critically assesses whether courts have overstepped their adjudicative role by becoming the moral guardians of the Constitution, and whether their interpretations align with or diverge from the framers' intent, as gleaned from Constituent Assembly Debates (Nahar & Dadoo, 2009) [8].

To ensure objectivity and reproducibility, judgments and scholarly interpretations are classified and assessed thematically—along axes such as procedural legitimacy, substantive moral reasoning, and democratic responsiveness. The analysis culminates in a normative framework that offers doctrinal clarity on how constitutional morality should operate as a judicial standard in reviewing amendments.

### Conceptual Framework of Constitutional Morality

The doctrine of constitutional morality has emerged as a vital conceptual tool in Indian constitutional jurisprudence, signifying not merely adherence to the text of the Constitution but a deep commitment to its underlying principles. It involves the normative framework that informs constitutional interpretation and governance beyond legal formalism. The phrase was first popularized in India by Dr. B.R. Ambedkar, who borrowed the idea from George Grote's reflections on ancient Greece, suggesting that constitutional morality entails a sense of restraint, responsibility, and respect for constitutional processes and values, even when contrary to popular sentiment (Chandrachud, 2020) [6].

At its core, constitutional morality requires institutions and individuals to act in a manner that preserves the integrity of the constitutional order. It is both an interpretive standard and a guiding ethos for constitutional actors. Judicially, it has been invoked to distinguish constitutional morality from popular morality, especially in cases involving individual rights and minority protections. For instance, in *Navtej Singh Johar v. Union of India*, the Supreme Court famously held that societal disapproval could not justify the criminalization of consensual homosexual conduct, relying on constitutional morality to override majoritarian prejudice (Vashist, 2013) [29]. The concept, thus, plays a key role in preserving the liberal and transformative spirit of the Constitution.

Moreover, constitutional morality is now seen as intertwined with the basic structure doctrine. Courts have asserted that principles such as the rule of law, secularism, equality, and judicial independence constitute inviolable aspects of constitutional morality, forming part of the Constitution's identity. This evolving framework allows courts to assess not only ordinary laws but also constitutional amendments for their fidelity to fundamental constitutional values (Chandra, 2023) [5]. The moral reading of the Constitution has thus moved beyond mere procedural checks to include substantive ethical standards.

However, the open-ended nature of constitutional morality invites debate. Critics argue that the absence of a doctrinal consensus makes it susceptible to subjective judicial

interpretation, undermining democratic legitimacy. As Nath (2019) <sup>[20]</sup> contends, the doctrine risks being deployed inconsistently without adequate reference to the constitutional text or established interpretive methodology (Nath, 2019) <sup>[20]</sup>. In this light, there is an urgent need for the judiciary to articulate a coherent and principled framework for applying constitutional morality, especially in cases involving amendment acts and structural changes to the Constitution.

Furthermore, scholars have explored how constitutional morality functions as a limiting principle against unprincipled criminalization, particularly when the state invokes public morality to justify punitive laws. The Delhi High Court's reasoning in *Naz Foundation* and later its recognition in *Sabarimala* serve as key illustrations of the judiciary invoking constitutional morality to evaluate state power and moral legitimacy of law-making (Awasthi & Verma, 2024) <sup>[2]</sup>. This raises important questions about the scope of judicial review and the moral responsibility of constitutional interpretation in a pluralistic democracy.

Therefore, the conceptual framework of constitutional morality is not static; it evolves with judicial reasoning, constitutional developments, and social transformation. While it provides an essential moral check on legislative and executive power, its application must be grounded in consistent jurisprudential reasoning to avoid arbitrariness and uphold democratic accountability.

### The Doctrine of Constitutional Amendments in India

The Indian Constitution provides for a structured amendment mechanism under Article 368, enabling Parliament to alter constitutional provisions while preserving its sanctity. However, India's amendment procedure is distinctive in that it allows for changes without requiring constituent assembly approval, thereby endowing the legislative organ with constituent power. This convergence has raised profound questions regarding the limits of amendment power, especially when amendments risk altering the core identity or structure of the Constitution. The judicial response to such tensions culminated in the evolution of the basic structure doctrine, effectively restricting Parliament's amending authority (Liu, 2009) <sup>[14]</sup>.

The Constitution's framers initially envisioned flexibility with safeguards, anticipating the need for change but without compromising its democratic character. Over time, the Indian Parliament has enacted over 100 constitutional amendments, some of which have significantly altered fundamental rights, federal arrangements, and the judicial review mechanism. For instance, the First, Fourth, and Forty-second Amendments were instrumental in redefining property rights, curtailing judicial independence, and enhancing executive power. These developments were met with judicial resistance, particularly in *Kesavananda Bharati v. State of Kerala* (1973), which laid down that Parliament cannot alter the "basic structure" of the Constitution, including democracy, secularism, and rule of law (Chandra, 2023) <sup>[5]</sup>.

While the ruling in *Kesavananda Bharati* established a judicial check on constitutional amendments, it did not define an exhaustive list of basic structure elements, leaving considerable discretion with the courts. This has resulted in the judiciary assuming the role of a constitutional

gatekeeper, assessing amendments not only for procedural compliance but for their alignment with India's constitutional ethos. Subsequent cases such as *Minerva Mills v. Union of India* (1980) and *Indira Nehru Gandhi v. Raj Narain* (1975) reaffirmed this doctrine and expanded its contours to include judicial review, balance of power, and free and fair elections as unamendable features (Rajagopalan, 2013) <sup>[22]</sup>.

However, the expansive reading of the basic structure doctrine has led to doctrinal and democratic tensions. Critics argue that the doctrine, while acting as a constitutional safeguard, blurs the line between judicial review and judicial legislation, empowering the judiciary to invalidate duly enacted constitutional amendments based on normative values such as constitutional morality, which are open to varied interpretations (Bhattacharya & Makkar, 2019) <sup>[3]</sup>.

Furthermore, studies suggest that constitutional amendments in India have often been tools for political consolidation, especially during periods of executive dominance. The insertion of laws into the Ninth Schedule post-*Kesavananda* to shield them from judicial review reflects a strategic response to judicial assertions, highlighting the continuing tug-of-war between constituent power and judicial oversight (Rajagopalan, 2015) <sup>[23]</sup>.

Thus, the doctrine of constitutional amendments in India illustrates a unique constitutional balancing act—one that navigates between the necessity of change and the preservation of foundational values. While the judiciary has rightly checked legislative overreach, the future of the amendment process depends on achieving doctrinal clarity, ensuring that constitutional evolution does not come at the cost of democratic legitimacy.

### Judicial Formulation of the Basic Structure Doctrine

The formulation of the basic structure doctrine by the Indian judiciary represents one of the most significant assertions of judicial power in global constitutional jurisprudence. It fundamentally redefined the balance between Parliament's constituent power and the judiciary's role as guardian of the Constitution. The genesis of this doctrine is rooted in the tension between the democratic will to amend the Constitution and the necessity to preserve its essential values. The doctrine was born in the landmark decision of *Kesavananda Bharati v. State of Kerala* (1973), where a 13-judge bench of the Supreme Court held, by a narrow 7:6 majority, that while Parliament has wide powers to amend the Constitution under Article 368, it cannot alter its "basic structure" (Liu, 2009) <sup>[14]</sup>.

The decision was a judicial response to the series of constitutional amendments made during the late 1960s and early 1970s, particularly those targeting property rights and limiting judicial review. These amendments were viewed as a threat to the foundational principles of the Constitution, prompting the judiciary to articulate an implied limitation on the amending power. The Court, without providing an exhaustive list, identified key structural elements that could not be abrogated—such as the rule of law, judicial review, separation of powers, and federalism. The doctrine effectively created a constitutional hierarchy wherein certain principles stood above even the formal amendment procedure (Nahar & Dadoo, 2009) <sup>[8]</sup>.

Subsequent rulings further entrenched and refined this doctrine. In *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court invalidated clause 4 of the 39th Amendment

for violating the principle of free and fair elections, thereby reinforcing the inviolability of democratic governance as part of the basic structure. Similarly, in *Minerva Mills v. Union of India* (1980), the Court held that the balance between fundamental rights and directive principles of state policy was part of the basic structure, and therefore beyond legislative modification (Chandra, 2023) <sup>[5]</sup>.

The formulation of this doctrine was not without criticism. It sparked intense academic and political debates about judicial overreach, especially because the Constitution itself does not mention any express limitations on the amending power. Yet the judiciary justified its position by emphasizing the Constitution's identity—arguing that it must remain structurally intact even in the face of democratic majorities. This reasoning found further support in comparative constitutional jurisprudence, notably in Germany and South Africa, where similar unamendable clauses protect core constitutional principles (Henrico, 2023) <sup>[10]</sup>.

Critics have warned that the undefined scope of the basic structure doctrine has allowed judges to project moral or political preferences into constitutional adjudication, often under the veil of constitutional morality. As Bhattacharya and Makkar (2019) <sup>[3]</sup> suggest, such expansive interpretive authority could lead to democratic paralysis if courts continue to strike down amendments based on abstract ideals without textual anchors (Bhattacharya & Makkar, 2019) <sup>[3]</sup>. Despite this, the basic structure doctrine remains the cornerstone of Indian constitutionalism—a judicial innovation that preserves the spirit of the Constitution against the potential tyranny of constitutional majorities.

### Constitutional Morality in Judicial Reasoning

In recent decades, constitutional morality has become an increasingly central concept in the Indian judiciary's interpretive methodology, especially in cases involving constitutional rights, institutional accountability, and amendment scrutiny. This shift represents a notable departure from strict textual interpretation toward a morally infused constitutionalism, where judges invoke the Constitution's ethos to resolve ambiguities and address democratic deficits. This transformation is visible in several Supreme Court judgments where constitutional morality functions as a normative benchmark to assess not only the legality but the legitimacy of state action (Chandrachud, 2020) <sup>[6]</sup>.

A defining moment for the doctrine's judicial application was *Navtej Singh Johar v. Union of India* (2018), in which the Court struck down Section 377 of the IPC, decriminalizing same-sex relations. The Court differentiated between popular morality, which reflected societal prejudices, and constitutional morality, grounded in liberty, dignity, and equality. In doing so, the judges explicitly rejected majoritarian norms as a valid constitutional basis, asserting that fundamental rights cannot be held hostage to public opinion (Vashist, 2013) <sup>[29]</sup>. This case exemplifies how constitutional morality functions as a shield for minority rights, even when legislation is constitutionally enacted and widely accepted.

Another compelling illustration is *Indian Young Lawyers Association v. State of Kerala* (2018), where the ban on the entry of women into the Sabarimala temple was held unconstitutional. Here, the Court again emphasized that

constitutional morality must trump customary morality, particularly when traditions violate constitutional guarantees of equality and non-discrimination. Critics argue, however, that such reasoning potentially introduces judicial subjectivity into constitutional interpretation, allowing judges to elevate personal convictions as constitutional mandates (Awasthi & Verma, 2024) <sup>[2]</sup>.

In cases involving constitutional amendments, the application of constitutional morality has also been used to reinforce the basic structure doctrine, with courts assessing whether amendments adhere to the Constitution's ethical foundations. While the Constitution does not expressly provide for moral limitations on amendments, judicial reasoning in cases such as *Minerva Mills* and *I.R. Coelho* reflects an attempt to evaluate amendments not solely on procedural grounds but on value-based criteria. As argued by Chandra (2023) <sup>[5]</sup>, this reveals a shift in the Court's self-perception—from a neutral arbiter of law to an active moral custodian of constitutional democracy (Chandra, 2023) <sup>[5]</sup>.

The increasing reliance on constitutional morality in judicial reasoning is, however, double-edged. On one hand, it facilitates transformative constitutionalism, enabling courts to update constitutional meanings in response to evolving societal values. On the other, its lack of clear doctrinal boundaries can render constitutional interpretation vulnerable to inconsistency and ideological bias. Nath (2019) <sup>[20]</sup> warns that in the absence of a defined jurisprudential framework, constitutional morality may become a floating standard, manipulated by different benches to justify contrasting outcomes (Nath, 2019) <sup>[20]</sup>.

Ultimately, while the judicial invocation of constitutional morality adds substantive depth to constitutional interpretation, it simultaneously raises foundational questions about the democratic legitimacy and judicial restraint in constitutional adjudication. Unless grounded in consistent legal reasoning, it risks transforming courts into quasi-legislative bodies, thereby unsettling the delicate separation of powers that underpins Indian democracy.

### Landmark Judicial Responses to Amendment Acts

The Supreme Court of India has played a defining role in shaping constitutional democracy by reviewing constitutional amendments through the lens of basic structure and constitutional morality. Several landmark cases stand out where the Court's decisions have not only clarified the limits of amending power but also established judicial supremacy in defending the Constitution's ethical and structural foundations. These judicial responses have created a constitutional dialogue between Parliament and the judiciary, balancing the need for constitutional adaptability with institutional integrity and democratic accountability.

The seminal case of *Kesavananda Bharati v. State of Kerala* (1973) was the first major confrontation between parliamentary sovereignty and judicial review. The Supreme Court held that while Article 368 confers wide amending powers on Parliament, it does not allow alteration of the Constitution's basic structure. The Court invalidated part of the 24th and 25th Amendments, emphasizing that rule of law, judicial review, and secularism were beyond legislative reach (Liu, 2009) <sup>[14]</sup>. This ruling laid the jurisprudential groundwork for future review of

amendments and reinforced the Supreme Court's role as a constitutional sentinel.

In *Indira Nehru Gandhi v. Raj Narain* (1975), the Court struck down clause (4) of the 39th Constitutional Amendment that attempted to place the Prime Minister's election beyond judicial scrutiny. The majority held that this amendment violated the principle of free and fair elections, a core aspect of the Constitution's democratic structure. The judgment emphasized that constitutional amendments must uphold the ethos of constitutional morality, particularly where they affect institutional impartiality and electoral justice (Chandra, 2023) <sup>[5]</sup>.

The Court reaffirmed its position in *Minerva Mills v. Union of India* (1980), where it reviewed the validity of sections 4 and 55 of the 42nd Amendment, which sought to immunize certain laws from judicial review and gave primacy to Directive Principles over Fundamental Rights. The Supreme Court held these provisions unconstitutional, asserting that judicial review and the harmony between Parts III and IV of the Constitution formed part of the basic structure (Rajagopalan, 2013) <sup>[22]</sup>.

In the landmark *I.R. Coelho v. State of Tamil Nadu* (2007), the Court further consolidated the basic structure doctrine by holding that even laws placed under the Ninth Schedule—intended to shield them from judicial review—are subject to scrutiny if they damage or destroy fundamental rights that form part of the basic structure (Singh *et al.*, 2024) <sup>[28]</sup>. This judgment reaffirmed the idea that constitutional supremacy overrides legislative intent, especially where fundamental rights and constitutional morality are at risk.

While these decisions are praised for protecting constitutional identity, they have also sparked criticism about judicial activism and counter-majoritarian tendencies. Scholars argue that courts have, at times, intruded into the domain of constituent power, especially where the line between interpretation and lawmaking becomes blurred. Nonetheless, these judicial responses have played a pivotal role in maintaining the normative and structural coherence of the Indian Constitution, asserting that constitutional amendments cannot be tools of political expediency.

### **Tension between Parliamentary Sovereignty and Judicial Supremacy**

The Indian constitutional framework operates within a complex interplay between the doctrine of parliamentary sovereignty and judicial supremacy, which has shaped much of its constitutional evolution. While the Constitution grants Parliament wide-ranging powers to enact and amend laws, the judiciary has consistently asserted its role as the guardian of the Constitution through judicial review, leading to a dynamic and sometimes confrontational relationship between these two pillars of democracy. This tension is most palpable in cases where constitutional amendments challenge the basic structure doctrine, with the judiciary stepping in to assert limits on legislative power (Palipati, 2012) <sup>[21]</sup>.

The foundational principle of parliamentary sovereignty presupposes that Parliament is the supreme legislative authority whose enactments cannot be invalidated by any external body. This idea is rooted in British constitutional tradition and was adopted with caution in the Indian context. The Indian Constitution, unlike its British counterpart, is a written and rigid document,

establishing limits on all state organs, including the legislature. The *Kesavananda Bharati* judgment (1973) made it clear that while Parliament has the power to amend the Constitution under Article 368, such power is not absolute and is subject to the inviolable basic structure of the Constitution (Mate, 2017) <sup>[15]</sup>. This assertion of judicial supremacy marked a constitutional departure from the traditional notion of legislative omnipotence.

Judicial decisions in cases like *Minerva Mills v. Union of India* and *Indira Gandhi v. Raj Narain* further illustrate the assertion of the judiciary in reviewing constitutional amendments for their ethical and structural integrity, often invoking constitutional morality. These interventions, while seen as necessary for maintaining constitutional sanctity, have been criticized for disrupting the balance of powers and usurping the legislature's mandate. The judiciary's expansive interpretation of its own powers has sparked debates about counter-majoritarianism—whether unelected judges should override democratically elected legislatures (Jain, 2025) <sup>[11]</sup>.

From a structural perspective, the judiciary justifies its role through constitutional supremacy, arguing that no institution, including Parliament, can violate the fundamental principles enshrined in the Constitution. This position is strengthened by the presence of fundamental rights, which courts are obligated to protect. However, the practical application of this doctrine has raised concerns over judicial overreach, particularly when courts assume a legislative or executive function under the guise of constitutional interpretation (Jayasurya, 2010) <sup>[12]</sup>. This creates ambiguity about the institutional roles and accountability of each organ under the separation of powers. Nevertheless, the Indian model attempts a balance between British parliamentary sovereignty and American judicial supremacy, aligning with a “balanced constitutionalism” approach that fosters institutional dialogue. In practice, this has meant accepting the Supreme Court's authority to strike down unconstitutional amendments, even while respecting Parliament's legislative competence. Yet the lack of clear constitutional provisions demarcating these roles continues to allow judicial and legislative conflicts to persist (Dennett, 2021) <sup>[8]</sup>.

In wholesome, the tension between parliamentary sovereignty and judicial supremacy is not a mere institutional rivalry but a constitutional dialogue reflective of the ongoing negotiation between democracy and constitutionalism. It is this dynamic tension that sustains India's constitutional vibrancy, though greater doctrinal clarity and institutional respect are necessary to preserve this delicate balance.

### **Transformative Constitutionalism and Constitutional Morality**

Transformative constitutionalism in India has evolved as a powerful interpretative framework, allowing the judiciary to redefine the meaning of constitutional provisions in light of societal changes and the aspirations of justice, liberty, and equality. This doctrine, which found vibrant expression in cases such as *Navtej Singh Johar v. Union of India*, represents a shift from traditional constitutionalism to a forward-looking understanding of the Constitution that aspires to engineer structural social change. The Supreme Court, in the *Johar* case, not only struck down Section 377

of the Indian Penal Code but did so by invoking the interdependent principles of transformative constitutionalism and constitutional morality, arguing that mere public morality cannot override constitutional guarantees of dignity and freedom (Choudhry, 2019) <sup>[7]</sup>.

Unlike liberal constitutionalism which often seeks to limit state power, transformative constitutionalism in the Indian context seeks to harness state authority as a means to dismantle historical injustices and social hierarchies. This positive obligation on the state, to not only avoid violations but to actively facilitate equality and human dignity, stems from the Constitution's framing vision. Scholars argue that the Indian Constitution empowers the state to bring about social transformation and reconfigure entrenched power structures, making constitutional morality central to this transformative agenda (Dhingra, 2014) <sup>[9]</sup>.

B.R. Ambedkar's vision of constitutional morality was not merely a technical commitment to rules and institutions but an ethical and civic virtue necessary for a democratic society. His articulation, inspired partly by his understanding of George Grote's conception of morality, emphasized that democracy in India needed to be deeply rooted in respect for constitutional processes, rather than dictated by popular morality or majoritarian impulses. Ambedkar's insights continue to shape judicial understanding today, especially in judgments concerning minority rights and gender justice, where the courts have elevated constitutional morality above transient public sentiments (Chakrabarty, 2016) <sup>[4]</sup>.

The essence of constitutional morality has been progressively reinterpreted by the judiciary to address systemic discrimination and to uphold individual freedoms against collective prejudices. In doing so, courts have not only drawn from Ambedkar's ideals but also embraced global jurisprudential trends such as proportionality and dignity-based reasoning. Constitutional morality is now seen as the soul of the Constitution, guiding the interpretation of its provisions and the limits of State power. However, this elevation of judicial interpretation has not been without criticism. Concerns have emerged over whether such expansive readings lead to judicial overreach and blur the lines between judicial reasoning and legislative intent (Mootha, 2021) <sup>[17]</sup>.

Despite this tension, transformative constitutionalism remains a critical tool in ensuring that the Indian Constitution remains a living document responsive to societal evolution. Constitutional morality, as invoked by the courts, serves as both a restraint on arbitrary authority and a driver for inclusive reforms. It aligns legal interpretation with the evolving moral and social expectations of a constitutional democracy, anchoring the transformative spirit of the Constitution while simultaneously ensuring institutional continuity and accountability (Narain, 2018) <sup>[19]</sup>.

### **Comparative Jurisprudence on Constitutional Morality and Amendments**

Comparative constitutional law has provided a rich terrain to explore the interplay between constitutional amendments and the doctrine of constitutional morality. Across jurisdictions, courts have begun to increasingly invoke principles akin to constitutional morality to assess the legitimacy of constitutional amendments and evaluate the limits of amending power. While the Indian judiciary relies

heavily on the basic structure doctrine and constitutional morality to curb majoritarian excesses, other constitutional systems have responded to this tension through a mix of formal and substantive checks. For instance, the German Basic Law embeds "eternity clauses" in Article 79(3), prohibiting amendments that alter the federal structure or basic human dignity, anchoring morality directly within the text of the Constitution (Roznai, 2018) <sup>[26]</sup>.

The concept of unconstitutional constitutional amendments, prominent in jurisdictions like Colombia, Turkey, and South Korea, has drawn from India's jurisprudence on constitutional morality and the basic structure doctrine. Courts in these countries have invalidated amendments that contradict core constitutional principles, even when such amendments were passed through valid procedures. Scholars have emphasized that such judicial interventions are anchored not just in textual interpretation but also in a deeper moral reasoning about what the constitution represents in a democratic society (Roznai, 2014) <sup>[27]</sup>.

In South Africa, the Constitution explicitly incorporates transformative principles that align with constitutional morality, such as dignity, equality, and non-racialism. The Constitutional Court has used these principles to strike down legislative acts or to guide interpretations of rights provisions. This approach resembles India's reliance on transformative constitutionalism, albeit with greater clarity in statutory grounding. Ackermann's jurisprudence in post-apartheid South Africa has explicitly framed dignity as a foundational value derived from constitutional morality, with courts using it as a guiding compass in rights adjudication (Roux, 2008) <sup>[25]</sup>.

In the United States, although the Constitution does not refer to constitutional morality per se, the judiciary has incorporated moral reasoning—especially under the Eighth and Fourteenth Amendments. For example, in *Roper v. Simmons*, the Supreme Court invoked "evolving standards of decency" as a moral basis for declaring juvenile death penalties unconstitutional. Scholars argue that this practice embeds a kind of informal constitutional morality that judges apply, particularly in matters of punishment and liberty (Moore, 2008) <sup>[16]</sup>.

Australia presents a more restrained model, where courts have used comparative constitutional jurisprudence with caution. Nonetheless, comparative perspectives have helped illuminate the flexible use of constitutional morality in varying contexts of federalism and rights adjudication (Aroney, 2008) <sup>[1]</sup>.

What emerges from this comparative lens is a clear global trend: the judiciary increasingly acts as a guardian of constitutional identity and morality, even at the risk of confronting legislative supremacy. However, the success and legitimacy of this model depend on institutional maturity, cultural context, and constitutional design. While India's experience offers a robust example of morality-infused constitutional review, comparative jurisprudence affirms that such interventions must be grounded in coherent doctrine and democratic accountability to avoid judicial overreach.

### **Critical Appraisal and Challenges**

While the doctrine of constitutional morality has provided the Indian judiciary with a normative lens to interpret the Constitution and protect foundational values, it has also attracted significant scholarly criticism due to its ambiguous

contours and subjective application. The most pertinent concern is the lack of a universally accepted definition of constitutional morality, which has enabled judges to employ the doctrine with varying interpretations, often reflecting personal or ideological leanings. As observed in multiple verdicts, including *Navtej Singh Johar v. Union of India*, the concept has been used to override societal morality and protect minority rights. However, critics argue that such interpretive discretion risks enabling judicial overreach and counter-majoritarianism (Chandrachud, 2020) <sup>[6]</sup>.

Another major challenge lies in the apparent tension between judicial morality and democratic processes. When courts invoke constitutional morality to strike down democratically enacted laws or constitutional amendments, the legitimacy of the democratic will comes under strain. The absence of doctrinal clarity often means that the invocation of constitutional morality lacks grounding in objective parameters. This issue becomes particularly problematic in a pluralistic society like India, where diverse moral worldviews coexist, and courts are expected to balance them without imposing a singular ethical order (Nath, 2019) <sup>[20]</sup>.

Furthermore, the use of constitutional morality in adjudication often blurs the line between legal interpretation and moral adjudication, placing judges in the role of moral arbiters. Such positioning has raised questions about the institutional competence of the judiciary to determine moral questions without a defined democratic mandate. Critics argue that such interventions bypass the established constitutional channels of dialogue and deliberation, such as Parliament and public referenda, which are designed to capture the moral pulse of the nation. The result is an asymmetrical power dynamic between the judiciary and other constitutional organs (Rajput, 2021) <sup>[24]</sup>.

Judicial inconsistency in invoking constitutional morality also undermines its potential as a legal standard. In the *Sabarimala* case, for example, the Supreme Court upheld constitutional morality to ensure gender equality by allowing women entry into the temple. However, this triggered considerable public backlash and raised concerns about judicial insensitivity to cultural and religious autonomy. The backlash highlighted a disconnect between judicial values and societal perceptions, which, if unchecked, can erode public confidence in the judiciary and fuel populist resistance to constitutional principles (Khurshid, 2021) <sup>[13]</sup>.

Moreover, the doctrine's rapid expansion across various legal domains—ranging from criminal law to personal autonomy—without accompanying jurisprudential safeguards, raises fears of its misuse as a judicial weapon rather than a tool of justice. As scholars note, the unchecked interpretive space around constitutional morality allows it to function as a “doctrine without restraint,” lacking the necessary principles to distinguish legitimate judicial intervention from arbitrary judicial activism (Awasthi & Verma, 2024) <sup>[2]</sup>.

To mitigate these concerns, scholars advocate for the development of structured jurisprudence around constitutional morality. This includes defining its components, procedural limitations, and permissible applications through sustained judicial reasoning and academic dialogue. Doing so would ensure that the doctrine remains a principled safeguard of constitutional values rather than an instrument of subjective judicial preferences.

## Conclusion and Suggestions

Constitutional morality in India has emerged as a vital interpretive principle that reinforces the foundational values of the Constitution and guides judicial reasoning in matters of constitutional amendments. It reflects an evolving understanding of justice, equality, liberty, and dignity that extends beyond textual literalism and engages with the ethical aspirations of a democratic society. Through landmark judgments, the Indian judiciary has played a transformative role by invoking constitutional morality to uphold the rights of marginalized groups, ensure institutional accountability, and restrain arbitrary use of power. However, the increasing reliance on this doctrine has brought to light significant challenges, particularly concerning judicial overreach, the subjectivity of moral reasoning, and the potential disruption of the separation of powers. The absence of a clear and consistent framework for applying constitutional morality has raised concerns about transparency, predictability, and judicial accountability. It is therefore imperative that this doctrine be developed with greater conceptual clarity and applied with institutional restraint. Rather than functioning as an open-ended tool for judicial intervention, constitutional morality should operate as a principled framework that aligns with constitutional text, democratic processes, and societal transformation. Moving forward, the judiciary must adopt a more structured and disciplined approach in applying this doctrine, ensuring that its use enhances constitutionalism rather than undermines it. Legal scholarship must also contribute by articulating boundaries, offering critiques, and fostering dialogue on how constitutional morality can be integrated into constitutional interpretation without diluting democratic legitimacy. Ultimately, the enduring relevance of constitutional morality will depend on its ability to function as both a moral compass and a legal restraint—ensuring that the Indian Constitution remains a dynamic, inclusive, and just document in the face of political change and societal evolution.

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