

Constitutional Morality - UPSC Notes

Constitutional morality is an important concept that is a part of the polity segment of the UPSC syllabus. In this article, you can read all about the term, its meaning and significance for the [IAS exam](#).

The concept of Constitutional Morality is present in the constitutional scheme, particularly in the Preamble, Part III (fundamental rights) and Part IV ([Directive Principles of State policy](#)). However, as pointed out by various experts, it was not debated at length in the Constituent Assembly except in the instance where Ambedkar quoted and built upon the arguments of George Grote, the British classical historian and political radical.

Constitutional Morality

Constitutional morality in the modern sense means to abide by the substantial moral entailment that the Constitution carries. However, Dr. Ambedkar in the [Constituent Assembly](#) was referring to methods that are adopted in policymaking where the Constitution is either silent or gives discretionary powers. Thus, he was referring to an approach whose essence should be unanimity of approach, a process effective to mediation in case of differences.

- The Constitution was made possible by a constitutional morality that was liberal at its core.
- Not liberal in the eviscerated ideological sense, but in the deeper virtues from which it sprang: an ability to combine individuality with mutual regard, intellectualism with a democratic sensibility, conviction with a sense of fallibility, deliberation with decision, ambition with a commitment to institutions, and hope for a future with due regard for the past and present.

In practice, constitutional morality is evident in various well-established rights that emanate from the Constitution, and include among others:

- Rule of law
- Individual liberty
- Right to equality
- Freedom of choice and expression
- Social justice
- Due process of law
- Procedure established by law

Society doesn't remain static, the changes that occur lead to new scenarios, and thus, the law and the constitutional setup have to keep up with the same. This aspect can be clearly understood through judicial pronouncements like *Navtej Johar & Ors v. Union of India*, where the Supreme Court provided for an elaborate mechanism to affirm the rights of people who do not conform with a particular gender, thus ensuring their life, liberty, dignity and identity.

Read more about other [landmark Supreme Court judgements](#) in the linked article.

- The Supreme Court invoked constitutional morality in *Indian Young Lawyers Association v. State of Kerala* by stating that the fundamental right of an individual or religious denomination to practice their faith according to the tenets of their religion is guaranteed, notwithstanding whether such a practice is rational or logical.
- In *Government of NCT Delhi v. Union of India*, the Supreme Court was called upon to determine the extent of powers of the Lieutenant Governor of Delhi. Therein, inter alia, it was observed by the

Supreme Court that constitutional morality is “not just the forms and procedures of the Constitution, but provides an enabling framework that allows a society the possibilities of self-renewal”.

The central themes of the doctrine of constitutional morality are freedom and self-restraint.

- In the smooth functioning of the constitutional process, self-restraint is a precondition for freedom.
- Part IV of the Constitution in the form of Directive Principles is the reservoir of social welfare in the Constitution of India.
- However, conflicts arise when Part IV is sometimes pitted against [Fundamental Rights](#).
- The Supreme Court while addressing these concerns in the Minerva Mills case, emphasised on the harmonious construction of the two in the true spirit of constitutional morality.

The trend of populism is growing the world over and India is no different in this aspect.

- Laws in the Parliament in the recent past are being passed without the kind of debate and careful treatment they require.
- The abrogation of [Article 370](#) in 2019 was one such instance where the Parliament acted in haste.
- Irrespective of the constitutional validity of the said move, the procedural treatment of such an important and sensitive provision does not bode well as far as the doctrine of constitutional morality is concerned.
- India has a federal polity in place in which the centre and the state both work in consonance with the Constitution and as such a state is in no way subordinate to the Central Government.
- The move on Article 370 is not an isolated move; the CAA has also opened a can of worms as far as the applicability of the test of constitutional morality goes.

Scope of Constitutional Morality

The extent and scope of constitutional morality have not been clearly defined by the Supreme Court, which leaves it open for subjective interpretations by individual judges. Critics also argue that the concept of constitutional morality is another chapter in the adventure that the judiciary has embarked upon to infringe upon the powers of Parliament. This in turn violates the essential [principle of separation of powers](#) by imposing Judicial Supremacy over Parliamentary Supremacy. This overreach by the judges pits constitutional morality against societal morality.

Conclusion

The Constitution which embodies the will of the people is not the end in itself, rather a means to achieve justice; social, economic and political as has been envisaged in the Preamble. The Constitution safeguards all the avenues that are needed to achieve the ends of justice and thus if the Constitution fails in this endeavour, it will be attributable not to the Constitution but to human beings who are tasked with safeguarding and implementing it. The thread of liberal values (not ideologically) runs throughout the Constitution and needs to be safeguarded, preserved, implemented and cherished at every given opportunity. Finally, the concept of constitutional morality need not be determined by the Supreme Court at every given instance, particularly at times of great exigencies like the present one in the face of an unprecedented pandemic. The different branches of government at different levels need to act forthwith without the intervention of Courts so that the duties of a welfare state are fulfilled.

