



Constitutional Morality

For Prelims: [Constitutional morality](#), Pillars of Constitutional Morality, Conditional Morality and Indian Constitution, [Directive Principles of State Policy](#), Fundamental Rights, [Amended IT Rules 2023](#), [Appointment Committee for the Election Commission](#)

For Mains: Challenges to Constitutional Morality in India, Judicial Pronouncements Related to Constitutional Morality in India.

Source: [IE](#)

Why in News?

The recent arrest of a serving chief minister on corruption charges raises legal, political, and constitutional concerns and poses questions about its consistency with [constitutional morality](#), especially in a parliamentary democracy like India.

What is Constitutional Morality?

▪ About:

- Constitutional morality (CM) is a concept that refers to the **principles and values underlying a constitution that guide the actions** of both the government and the citizenry.
 - The concept of constitutional morality was propounded by the British Classicist George Grote in the 19th century.
 - He described **CM as a “paramount reverence for the forms of the Constitution” of the land.**
 - In India, the term was first used by [Dr. B.R. Ambedkar](#).

▪ Pillars of Constitutional Morality:

- **Constitutional Values:** Upholding the core values enshrined in the Constitution, such as justice, liberty, equality, fraternity, secularism, and the dignity of the individual.
- **Rule of Law:** Upholding the supremacy of the law where everyone, including government officials, is subject to and accountable under the law.
- **Democratic Principles:** Ensuring the functioning of a **representative democracy** where citizens have the right to participate in decision-making processes and hold their elected representatives accountable.
- **Fundamental Rights:** Respecting and protecting the fundamental rights guaranteed by the constitution, such as the [right to equality](#), [freedom of speech and expression](#), [right to life and personal liberty](#), etc.
- **Separation of Powers:** Maintaining the separation and balance of powers between the **legislative, executive, and judicial branches** of government to prevent any one branch from becoming too powerful.
- **Checks and Balances:** Establishing mechanisms and institutions that provide checks and balances to prevent abuse of power and protect the rights of individuals.
- **Constitutional Interpretation:** Interpreting the constitution in a manner that **promotes**

its underlying principles and values while adapting to changing societal needs and circumstances.

- **Ethical Governance:** Ensuring **ethical conduct in governance**, transparency, accountability, and integrity in public service.

▪ **Conditional Morality and Indian Constitution:**

- The term "constitutional morality" is not explicitly mentioned in the Indian Constitution.
 - However, the concept is inherent in the document's core principles, emphasising values like justice, equality, and liberty.
 - These principles are found throughout the constitution, including the **Preamble, Fundamental Rights, and [Directive Principles of State Policy](#)**.
- Its essence is also reflected in various Supreme Court judgements.

▪ **Judgments Upholding Constitutional Morality:**

- **[Kesavananda Bharati v. State of Kerala, 1973](#):** This case established the "**basic structure doctrine**," which essentially limits Parliament's power to amend the Constitution and ensures its core principles remain intact.
 - This can be seen as an early instance of the court upholding the spirit of the Constitution.
- **SP Gupta Case (First Judges Case), 1982:** The Supreme Court labelled a constitutional breach as a severe violation of constitutional morality.
- **[Naz Foundation v. Government of NCT of Delhi, 2009](#):** This judgment decriminalised consensual same-sex relationships between adults.
 - The court emphasised that "**constitutional morality**" should prevail over **societal perceptions** of morality, upholding individual rights.
- **[Manoj Narula v. Union of India, 2014](#):** SC stated that "**Constitutional Morality means to bow down to the norms of the Constitution** and not act in a manner which would become violative of the rule of law of action in an arbitrary manner.
- **[Indian Young Lawyers Association v. State of Kerala \(Sabarimala Case\), 2018](#):** The court struck down the practice of excluding women of a certain age group from the Sabarimala temple.
 - It emphasised that "constitutional morality" includes principles of justice, equality, liberty, and fraternity, which outweighed religious customs restricting women's entry.
- **[Navtej Singh Johar v. Union of India, 2018](#):** This case read down **Section 377** of the Indian Penal Code, which criminalised homosexuality.

▪ **Challenges to Constitutional Morality in India:**

- **Political Interference:** One of the significant challenges is political interference in the functioning of constitutional bodies and institutions.
 - This interference can **undermine the autonomy and impartiality of these institutions**, affecting their ability to uphold constitutional values.
 - For example, there has been criticism surrounding the recent changes to the **[appointment committee for the Election Commission of India](#)** and the **[amended IT Rules 2023](#)**.
- **Judicial Activism vs. Judicial Restraint:** Balancing judicial activism with judicial restraint is another challenge.
 - While judicial activism can promote the protection of rights and enforcement of constitutional values, **excessive activism can encroach upon the domain of the executive and legislature**.
- **Enforcement and Compliance:** Despite having a robust constitutional framework, ensuring effective enforcement and compliance remains a challenge.
 - **Implementation gaps, delays in justice delivery**, and lack of awareness about constitutional rights among the general populace contribute to this challenge.

Way Forward

- **Strengthening Institutions:** Upholding constitutional morality necessitates strengthening the independence, integrity, and effectiveness of institutions such as the **Election Commission, [National Investigation Agency \(NIA\)](#) and [Central Bureau of Investigation \(CBI\)](#)**.
 - Ensuring **transparent appointments, reducing political interference**, and enhancing accountability mechanisms are critical steps.

- **Promoting Civic Education:** Increasing awareness and understanding of constitutional rights and values among the public, especially youth, is vital.
 - Civic education programs in schools and colleges can instil a sense of **constitutional responsibility** and empower citizens to participate meaningfully in democratic processes.
- **Enhancing Access to Justice:** Improving access to justice, particularly for **marginalised and vulnerable communities**, is essential for upholding constitutional principles.
 - This includes **expanding legal aid services, reducing judicial backlog, simplifying legal procedures**, and promoting alternative dispute resolution mechanisms.
- **Encouraging Ethical Leadership:** Promoting ethical leadership and governance practices at all levels is vital for upholding constitutional values.
 - Leaders and public officials should **demonstrate integrity, accountability, and a commitment** to serving the public interest, thereby setting a positive example for society.
- **Adapting to Evolving Challenges:** Continuously adapting legal and institutional frameworks to address emerging challenges to constitutional morality, such as **technological advancements, globalisation, and environmental concerns**, is necessary for relevance and effectiveness.

Do Chief Ministers in India Lack Immunity from Arrests?

- Constitutionally, only the **President of India and Governors of states** enjoy immunity from civil and criminal proceedings until the conclusion of their terms.
 - **Article 361** of the Constitution stipulates that these officials are not liable to any court for acts performed in the discharge of their official duties.
- However, this **immunity does not extend to Prime Ministers or Chief Ministers**, who are subject to the principle of equality before the law as advocated by the Constitution.
 - Despite this, arrest alone does not warrant disqualification.

Drishti Mains Question:

Q. Assess the contemporary challenges to constitutional morality in India, considering factors such as judicial activism.

UPSC Civil Services Examination Previous Year's Questions (PYQs)

Mains:

Q: What is meant by the term 'constitutional morality'? How does one uphold constitutional morality? (2019)