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THE EVOLUTION OF CONSTITUTIONAL MORALITY IN INDIA- Sanskruti Makwana¹**ABSTRACT**

This article explores the concept of constitutional morality, how it has been envisaged, what ideologically constitutes the same, and how it has been taken into consideration to resolve conflicts and achieve the wider goals of the diverse Indian diaspora. It tries to explain the connection between various kinds of precedents that actively affect the notions of the composition of constitutional morality in the Indian context, while briefly focusing on what the term meant for Dr. B. R. Ambedkar, the revered Indian jurist and social reformer who headed the drafting committee of the Indian Constitution. Touching upon some landmark cases that compelled the need to understand what constitutional morality is, the author attempts to create a link between the role of public morality and precedents and the evolution of constitutional morality in India.

INTRODUCTION

Reverence for the constitution, not merely in due respect of its sacredness, but for the ideas and values it imbibes and propagates is a necessary process that must take place in every territory that strives to create and enforce one. An all-inclusive, deliberate process of debating, brainstorming and mutual compromising may aid in ensuring the longevity of the same—especially when it deals with a population as diverse and complicated as the Indian one. This forms the very basis of what we ordinarily understand and call “constitutional morality.”

The emergence and instillation of constitutional morality in Indian society is one of the important and demanding tasks to be supported by the people, in the absence of which chaos and inherent injustice are sure to prevail. Such a movement must not remain a private emotion, but a collective public sentiment that grows into a public morality; just as any constitution created by the elected representatives of the people incorporates the then prevailing public

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morality, the same process must be reinforced to support constitutional morality.

Learning the history and culture(s) existing within a country is necessary to understand why certain laws are quite distinctive and nuanced, for they are suitable only in certain areas and conditions (and for specific time periods in some cases). Precedential reasoning stems from such cognizance of common past morality in judgments and helps in establishing stability and continuity for the future by interlinking them carefully.

The constitution is but an amalgamation of a host of precedents and hopes of its subjects for the future, aiding the formation of a crucial element of constitutional morality that is internally diverse and volatile- yet indispensably held securely for peaceful coexistence in a society. Studying such a process is critical to empathizing with special needs and distinctive laws governing a region anywhere. Here, we shall primarily focus on the Indian developments over years.

AMBEDKAR'S CONSTITUTIONAL MORALITY: HISTORY, DIVERSITY, AND SIGNIFICANCE

Dr. B. R. Ambedkar, revered as the father of the Indian Constitution, was among the most prominent Indian thinkers who attempted to define the concept of constitutional morality, its means of institutionalization, and the importance of its values in society.² Being aware of the difficulties and drawbacks faced by the emerging Indian diaspora then, he was in some sense accurate in gauging the kind of hassles that a common constitution for such a widely heterogeneous population with a common history was to face upon its adoption.

India was going through a series of tragic events even as its constitutional ideals and provisions were being discussed and debated in both the confines of the parliamentary assembly as well as in public gatherings and private spaces. The diversity of ideas of states represented by the parliamentarians of the country made the process tremendously difficult. To top off that, the partition of India and Pakistan made it all the more clear that if India were to survive as a country, the idea of unity in diversity had to be propagated intensely.

² Gupta, S. CONSTITUTIONAL MORALITY: A CRITICAL STUDY.

Seeing constitutional morality as a means of fostering such unity, Ambedkar envisioned its purpose as infusing democratic principles through cooperation to have a harmonious coexistence of various communities. Establishing a common set of laws after vast deliberations involving moral sentiments was a step towards achieving such harmony. It is a legal myth that law is an embodiment of natural moral principles. In fact, what is accepted as a law is the result of social conflict and selection from a contrasting set of possibilities.³

Plurality being one of the basic pillars of constitutional morality accommodates various grounds for classification such as caste, class, religion, gender, and other such identities. Such an arrangement suits and is important to have in a culturally diverse country like India. These distinct identities continue to be grounds for several upliftment and development laws to date (for example, the reservation quota for Scheduled Castes and Scheduled Tribes in governmental institutions). This shows that our constitutional morality involves “treating equals equally”, and making policies to help those reach such equality with the additionally required support.

PRECEDENTS: PAST IN THE PRESENT

When a constitution is considered as a refined synthesis of prevailing public sentiments, it necessarily includes the most powerful precedents based on which people decide how they want to form a pathway to the future. Legal provisions are thus not self-imposing, but need the active involvement of their followers, especially in a common-law country like India. In this sense, both the lawmakers and the citizens make the law workable.⁴ Such precedents play a great role in contributing to the formation of constitutional morality, hence their relevance to the topic.

Several experiences and cases have been precedents in what came to be collectively prescribed as morally correct when it comes to Indian constitutional morality. For instance, the centuries of suppression of freedom by British colonialism led our constitution-making parliament to collectively agree upon and decide that freedom in some sense, though not absolute, is necessary for the welfare of the people. It is with the passage of time that such a realization took place. *Longue durée*, by way of long term, is thus not authoritative because of the maintenance

³ Sajó, András. “FROM EMOTIONS TO CONSTITUTIONAL INSTITUTIONS.” *Constitutional Sentiments*, Yale University Press, 2011, pp. 11–86. *JSTOR*, <http://www.jstor.org/stable/j.ctt5vkwb.7>. Accessed 26 Sep. 2022.

⁴ Mittal, Apurva, and Vishavjeet Chaudhary. *Law and Literature: Interpretation of the Constitution - Bennett Journal of Legal Studies*. www.bennett.edu.in/wp-content/uploads/2022/05/MS.-Apurva-Mittal-Mr.-Vishavjeet-Chaudhary.pdf. Accessed 26 Sep. 2022.

of its connection with the law; but because of the very density of the time that passed.⁵

Another reason why precedents command so much power is that they had been decided upon after a long hustle of conflict between at times overwhelming natural moral sentiments that are competing in nature; what had been subsequently accepted as law were a result of longstanding social conflict and selection. When common laws are formed by such a Herculean process, they become the basis of the identity, stability, and authority of the people. J.G.A. Pocock displayed the same in the context of the Victorian English society; though the commonality of its common laws was seriously challenged when its rapidly expanding legal system combined with a host of social, economic, political, and jurisprudential changes compelled it to reform itself.⁶

Literature too has been intricately involved in forming an important part of judgments, and it is such parts that common people understand and relate with the most. Theories of law, rights, and morality have always been entangled with the messes of political power, sovereignty, capitalism, occupation, and colonialism.⁷ Language plays an important role in how these realities are interpreted, thus making the study of prevalent literature of that time an essential part of the study if one is to make sense of an era.

Important Landmark Cases

*D.K. Basu vs State of West Bengal*⁸

In the judgment of this case, the court laid down certain basic "requirements" to be followed in all cases of arrest or detention till legal provisions are formed to prevent custodial violence. The Indian Constitution does not define "torture" specifically. To define the same, the judges referred to an intense piece on torture written by Adriana P. Bartow:

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and

⁵ Ben-Yishai, Ayelet. *Common Precedents: The Presentness of the Past in Victorian Law and Fiction*. Oxford University Press, 2013.

⁶ Hexter, J. H. "JGA Pocock. *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*. New York: Cambridge University Press, 1957. ix+ 262 pp. \$5.50." *Renaissance News* 12.1 (1959): 33-35.

⁷ Stonebridge, Lyndsey. *Writing and righting: Literature in the age of human rights*. Oxford University Press, 2020.

⁸ D.K. Basu v. State of West Bengal (1997) 1 SCC 416.

fear and rage and hate. It is a desire to kill and destroy including yourself.”⁹

At this point, it is necessary to point out that to make the best use of literature, the judge needs to be well-read to know the context of the words in which the writer had meant them, and if they apply to the context of the case before him. If they do so, he must also see if it helps resolve the problem of the case successfully without creating a novel conflict with the law.

*Aruna Ramchandra Shanbaug vs Union of India*¹⁰

Justice Katju of the Supreme Court of India in this judgment on the issue of the right to death by euthanasia vis-à-vis the right to life referred to one of Mirza Ghalib’s famous lines:

“Marte hain aarzo mein marne ki, Maut aati hai par nahi aati.”

(One dies longing for death but death, despite being around, is elusive)

By incorporating these lines in the delivery of his judgment, Justice Markandey Katju not only displayed his creativity and good readership but also connected it with the masses who would feel connected to the justice system they are bound by, and can empathize with better. Invoking sympathy through these words, he sensitizes the people on the issue of euthanasia, thus contributing to the formation of constitutional morality surrounding the right to life.

*Navtej Singh Johar vs Union of India*¹¹

In this famous case which dealt with homosexuality under Article 377 of the Indian Penal Code, the judges quoted several literary classics to support their arguments. One such quotation that resonates with the case is as follows:

“The love that dare not speak its name”

This quote was given by Lord Alfred Douglas, the lover of Oscar Wilde. It was quite ironic to quote him because Wilde was prosecuted for preaching homosexuality in an era when it was a foreign concept that was deemed unspeakable, much less preachable. By invoking these lines, the Supreme Court in a way participated in slowly, yet saliently changing the long-stagnant constitutional morality on homosexuality through means of widespread literature.

⁹ Kumar, Abhijeet. "Crime Beneath the Rule of Law." Available at SSRN 2374268 (2014).

¹⁰ Aruna Ramchandra Shanbaug v. Union of India, AIR 2011 SC 1290.

¹¹ Navtej Singh Johar v. Union of India, (2018) 1 SCC 791.

CONCLUSION

A series of measures have been taken by the Indian state since its independence in 1947 to institute constitutional morality. The Preamble and Fundamental Rights (importantly article numbers 12 to 35) guaranteed by the Indian Constitution¹² and the Directive Principles of State Policy are perhaps some of the most evident of them. This has been followed by a series of events that shaped legal history including landmark cases and judgments that framed and reframed the constitutional morality of those times as per the prevailing public sentiments and morality.

By tracing the journey of the evolution of constitutional morality, one point is as clear as glass- that law cannot be an independent variable of its own accord in a democratic country that follows a common law system, like that of India. It is as calm and as volatile as the people who influence it and is a reflection of the ideologies and sentiments which these people profess and propagate. Constitutional morality, being a child of this law, adheres to and shapes itself to accommodate the needs of the citizens.

¹² Kumar, R. (2021). Fundamental Rights under the Indian Constitution (Articles 12-35). BRICS JOURNAL OF EDUCATIONAL RESEARCH, 11(04), 142-145.