

# ● AN APPROACH TO RECONCILIATION BETWEEN MAJORITARIAN MORALITY AND CONSTITUTIONAL MORALITY: THE STRUGGLE FOR ESTABLISHING THE DEMOCRATIC BALANCE



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## Abstract

*This research paper mainly investigates the tension between the two major concepts in democratic societies that is majoritarian morality and constitutional morality. Majoritarian morality refers to the belief that decisions, particularly political decisions in the society should be made based on the will of the majority, whereas constitutionality morality refers to the idea that decisions should be made in accordance with the constitutional principles. This research will delve into the historical context and developments of the two concepts and also highlights how these principles have been implemented in the political systems of various countries. This research paper also focuses on case studies and examples of moral and constitutional disagreements, such as controversial judicial decisions, legislative initiatives, or social movements. A study will also look at the ramifications of this tension for democratic administration and the safeguarding of individual rights and liberties. Finally, the study suggests viable answers as well as recommendations for conciliatory or conflict resolution in democratic countries between a majoritarian morality and a constitutional Morality.*

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## Key words

*Constitutional Morality, Majoritarian Morality, Interests, Minority, Freedom.*

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## 1. Introduction: Understanding the tension between Constitutional Morality and majoritarian morality in democratic societies.

Constitutional morality<sup>1</sup> and majoritarian morality<sup>2</sup> or majoritarianism<sup>3</sup> from long ago has been considered two distinct concepts and ideologies. Constitutional morality<sup>4</sup> highlights those values and principles which are incorporated into the constitution of any country. It includes the basic and fundamental rights of the citizens, the rule of law, and separation of power principles. Constitutional morality is considered to be based on

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<sup>1</sup>G.V. Mahesh, Constitutional Morality- A Need for Consensus on the Concept, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3353874](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353874) (last visited on August 28, 2023).

<sup>2</sup>State of Maharashtra v. Indian Hotel and Restaurants Association, Civil Appeal No.2704 of 2000.

<sup>3</sup>Robert Longley, What is Majoritarianism? Definition and Examples, available at: <https://www.thoughtco.com/majoritarianism-definition-and-examples-5272219> (last visited on August 25, 2023).

<sup>4</sup>Manoj Narula v. Union of India, (2014) 9 SCC 1.

the idea that constitution is the highest law of the nation and every individual and institution in the country should act according to the provisions of the constitution<sup>5</sup>.

On the other hand, majoritarian morality believes that the rights of the majority are superior to the rights of the minority. This concept believes that the majority has all the right to make decisions in the political system even if it is not according to constitutional principles<sup>6</sup>.

There is always a conflict between these two concepts because one always suppresses the fundamental freedom of the individual and the other tries to protect the fundamental rights of the minority. As we know in political democracy, it is an ardent belief that the majority has the power to take decisions but these decisions should according to the constitutional principles and they should protect the rights of the minority peoples<sup>7</sup>.

When majoritarian morality is given priority over constitutional morality then the fundamental rights of the individual and the authority of constitutional institution starts getting less priority. Therefore, citizens and institutions should have strived to protect constitutional morality and ensure that constitutional principles should be followed and respected at every point in time<sup>8</sup>.

## 2. Understanding Morality

Morality refers to the set of rules and principles that ensure individuals and society distinguish between what is right and wrong and also justice and injustice<sup>9</sup>. It is a system of beliefs and conducts which enables individuals and society to take decisions based on the predetermined rule which is accepted by society and also helps in acting in a way that is considered ethical and virtuous<sup>10</sup>. Morality always sprouts from cultural, societal, and religious influences, and at the same time morality has not been the same and static, it could be different for the society and based on the societal background<sup>11</sup>. However, many of the moral and ethical principles are universal like the value of Human life, the importance of Honesty, and the need to treat others with respect and compassion. The study of Philosophy includes various principles of morals and ethics like utilitarianism, deontological ethics, and virtue ethics. The aim of these principles is to provide the basis for decision-making and also provide rules for excelling good life in society. After all, Morality is a very complex and multidimensional aspect that have

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<sup>5</sup>Michel Rosenfield; "The rule of law and the legitimacy of constitutional democracy" 74S. Cal. L. Rev. 1307 (2000).

<sup>6</sup>Brest Paul, "The fundamental rights controversy: the essential contradictions of normative constitutional scholarship" 90.5 The Yale Law Journal 1063-1109 (1981).

<sup>7</sup>Samuel Freeman, "Constitutional democracy and the legitimacy of judicial review" 9.4 Law and Philosophy 327-370 (1990).

<sup>8</sup>B.P. Frohen and GW Carey, *Constitutionality Morality and the Rise of Quasi-Law* (Harvard University Press, London, 2016).

<sup>9</sup>T. Campbell, *Justice 2* (Palgrave Mcmillan London, 1988).

<sup>10</sup>Id. at 3.

<sup>11</sup>P. Sororkin, "Social and Cultural Dynamics: A Study of Change in Major Systems of Art, Truth" *Ethics Law and Social Relationships*, 259 (2017).



significant part to play in society in order to shape the attitude of individual and the society as a whole<sup>12</sup>.

Utilitarianism has been considered as an ethical principle which holds the best action is the one that maximizes overall happiness or pleasure for the greatest number of people. Utilitarianism believes in consequentialism, meaning that the morality of an action is defined by its outcome or consequences<sup>13</sup>. Utilitarianism principles could be summarized as follows:

The greatest happiness principle: Actions of individual or the state could only be said morally right if they promote the greatest happiness or pleasure of the maximum number of the people.

Consequentialist thinking: consequences of an action is determining factor of morality, not the intention of the doer.

Hedonistic calculus: The value of an action is judged by the capability of generating amount of pleasure or happiness it generates, minus whatever discomfort or suffering it results in.

Impartiality: The happiness or pleasure of all individuals should be given equal consideration.

Utility: An action's overall usefulness or benefit should be considered when determining its moral value. Utilitarianism has been controversial, as it can sometimes conflict with other moral principles, such as individual rights and justice. Critics argue that it can justify actions that are morally problematic, such as denying the well-being of sacrificing the well-being of a few for the benefit of many. Nonetheless, supporters of utilitarianism said it offers a practical and effective means promote the well-being of society as a whole.

Emmanuel Kant has immensely contributed in the study of the morality. He is of opinion that the supreme principle of morality is based on the principle of rationality which he called categorical imperative. Kant has placed the principle of the categorical imperative on the premise of the objectivity and rationality. So according to him all the value judgment must be based on the rationality and it should be universal in nature. Kant has given the instrument of practical reason through which the rationality has been discovered. The fundamental principle of morality according to the Kant is Categorical Imperative which is none other than autonomous will of the individual. He proceeds by saying that morality includes the idea of a "good will" and "duty". These moral concepts of duty and will led Kant to believe that the individual is free and autonomous as long as it appears not as illusion. The moral philosophy of Kant is addressed to the first person a deliberate question "what a person can do in certain circumstances" and answer to this question is based on the universal Categorical Imperative which is applicable to every person. In contrast to the Kant's moral philosophy David Hume's moral philosophy rejects the rational basis. David Hume said

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<sup>12</sup>A. Bandura, "Social Cognitive Theory of Moral Thought and Action" 3 Handbook of Moral Behavior and Development 45-103 (1991).

<sup>13</sup>William H. Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* 7 (Wiley-Blackwell, New Jersey, 1998).

reason cannot be the basis of morals. He said moral distinctions are derived from moral sentiments like esteem, praise, or blame etc<sup>14</sup>.

### **3. Constitutional Morality: The importance of Constitutional Morality in protecting individual rights and ensuring the smooth functioning of democracy.**

Constitutional morality ensures that the values of the Constitution should be protected and the administration of law should be based more on the ethos of the Constitution<sup>15</sup>. The law should not be enforced very strictly rather it should be in accordance with the liberal principles of the constitution. As we know there is no concrete definition of constitutional morality instead it is having a flowing meaning which is changing according to the change in society and always tries to further the betterment of society<sup>16</sup>.

To understand the meaning and importance of Constitutional morality, we must go through the ideals of constitutional makers and adhere to the ethos of the various factions of society. Apart from this it also includes the democratic principles and ideals enshrined in our Constitution by the founding fathers. It is very difficult to define Constitutional morality and on the basis of the context it has a different meanings depending upon the circumstances where it has been used. But in a broader context, Constitutional morality tries to maintain an effective judicial system with constitutional values<sup>17</sup>.

It is true that the Constitution and law guide society but in return, it is an obligation of society to act according to the Constitution and law. When a society behaves in tune with the Constitution then it can be said that the society is preserving and protecting the Constitutional morality<sup>18</sup>.

This term Constitutional morality had been used for the first time by great legal luminary Dr. Bhim Rao Ambedkar while defending the decision to include the structure of the administration in the Constitution by quoting George Grote, "*The diffusion of 'constitutional morality', not merely among the majority of any community, but throughout the whole is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendance for themselves*".

Explaining the Concept of Constitutional Morality again Dr. Ambedkar quotes Grote:

*"By constitutional morality, Grote meant... a paramount reverence for the forms of the constitution, enforcing obedience to authority and acting under and within these forms, yet combined with the habit of open speech, of action subject only to definite legal*

<sup>14</sup>David Hume, A Treatise of Human Nature, Book 3 (Dover Publications Inc., New York, 1888).

<sup>15</sup>Nandita Narayan, "Constitutional Morality as Tool in Interpretation of the Constitution- A Critical Analysis" Indian Journals 1-23 (2021).

<sup>16</sup>Frank I Michelman "Socioeconomic rights in constitutional law: explaining America away" 6.3 International Journal of Constitutional Law 663-686 (2008).

<sup>17</sup>A Kumar "Two Different but same perspectives on Constitutional Morality" ILI Law Review 258-275 (2022).

<sup>18</sup>I Oernice, "Multilevel constitutionalism and the Treaty of Amsterdam: European constitution-making revisited" Common Market Law Review (1999).



*control, and unrestrained censure of those very authorities as to all their public acts combined, too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than his own*<sup>19</sup>."

Dr. Ambedkar spoke in the constituent assembly with great insight and eloquence regarding Constitutional Morality. He has become an icon for the backward class and with great pressure spoke about our social and political life, not only of the backward class but for all Indians. The Constituent Assembly discussed the role of the judiciary to protect constitutional morality. It has been entrusted with the duty to protect and preserve Constitutional morality<sup>20</sup>. For this, the Apex Court of India has been made as a guardian, protector and interpreter of the Constitution. Very devotedly constituent assembly has made that the Constitution and Constitutional Morality reject personal laws, traditions and Customs<sup>21</sup>.

Constitutionality Morality is not only a recommendation rather it is obligatory, and considered as a tool for transformation and reforms depending upon the changing scenario in the nation. The definition of constitutional morality encompasses more than simply adhering to the letter of the law; it also ensures that the Constitution's ultimate goal a socio-judicial situation that allows each citizen to express their full human potential and for whom and by whom the Constitution was created which has been realized<sup>22</sup>.

A democratic society based regime, the idea of constitutional morality and judicial principles assumes great importance and also attaches meaning to an individual's independence and dignity. Following the fundamental tenets of constitutional democracy is what is meant by constitutional morality<sup>23</sup>. Dr. Ambedkar has viewed constitutional morality as it maintaining the effective balance between the various group's competing interests and the administrative collaboration to resolve them amicably and without any confrontation to reach their goals at any cost.

The independent and fearless judiciary is accountable for safeguarding and upholding the constitutional principles, values, and protection of individual rights in a parliamentary system of democracy<sup>24</sup>. Both removing judicial values from the constitution and the constitution not having judicial values are absurd. The idea of constitutional morality should be entrenched in each person's thinking, and it should also be acknowledged by the independent judiciary that upholds it<sup>25</sup>. Where judicial integrity is questioned and there is a lack of judicial vigilance, constitutional morality

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<sup>19</sup>Goswami, "On the Emergence of Constitutional Morality' as a Double Edged Sword in India" Jus Corpus LJ (2022).

<sup>20</sup>Nakul Nayak, "Constitutional Morality: An Indian Framework" American Journal of Comparative Law 13 (2021).

<sup>21</sup>Id. at 15.

<sup>22</sup>R Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Harvard University Press, London, 2009).

<sup>23</sup>Neomi Rao, "On the Use and Abuse of Dignity in Constitutional Law" 14 Colum. J. Eur.L.201-205 (2008).

<sup>24</sup>Owen M. Fiss "The Forms of Justice" 93 Harvard Law Review 1-58 (1979).

<sup>25</sup>Yaniv Roznai "Unconstitutional Constitutional Amendments: The Limits Of Amendment Powers" 124 (2017).

cannot be safeguarded<sup>26</sup>. People can approach the judiciary to obtain justice, which demonstrates the morality of the Constitution. It is stressed that people understand that justice has been done and that they actually receive it. There would be a relationship between judicial principles and constitutional morality in order to establish the sovereign mandate. The Constitution's emphasis on morals must be prudently preserved for the good of the people if it is to have any worth<sup>27</sup>.

#### **4. Majoritarian Morality: Discussing the dangers of Majoritarian Morality**

Majoritarian morality<sup>28</sup> is a social and political phenomenon; it is different from the majority rule in the democratic system prevailing in the country. This socio-political incident occurs in society when the majority section of society tries to impose its values and ideals on the minority section of society. In other words, people are forced to live according to the values and ideals set by the majority, leaving the individual thoughts and values<sup>29</sup>.

Majoritarian Morality has started a discussion in the history of democracy that it would result in prejudice towards the minority and would also marginalize the minority section of society. For example, people belonging to the religious minority who do not share religious and cultural beliefs and values shall harm themselves by not getting a fair chance at political, educational, and employment opportunities in the democratic system<sup>30</sup>.

Majoritarian morality can be defined as the belief that the majority of people should have the right to decide what is right and wrong. This means that moral decisions are made by the majority of the population and not by a few individuals<sup>31</sup>. This type of morality is often used in democracies, as it allows the majority of the population to determine the collective moral standards in society. In contrast to other forms of morality, majoritarian morality does not take into account the individual rights of individuals or minorities, but instead focuses solely on the wishes of the majority

Political systems where the dominant party is able to control the decision making which is based on the aspirations of the majority section of the society, may lead to the detrimental to the minority section of the society. This may result in less participation of minority groups in the political system of the country and also lead to a reduction of diversity in the democracy, which may leave some groups unrepresented in the politics of the country.

When the minority disagrees with the ideals and values of the majority then it would result in the violation of the individual freedom and rights of the minority people

<sup>26</sup>Id. at 124.

<sup>27</sup>Inter Parliamentary Union, *Democracy: Its Principles and Achievement*, 4 (The Inter-Parliamentary Union, Geneva 1998).

<sup>28</sup>Supra note 24 at 2

<sup>29</sup>A.P. Chatterji, Tb Hansen, et.al. (eds.) *Majoritarian State: How Hindu Nationalism Is Changing India* 12 (Oxford University Press, 2019).

<sup>30</sup>Id. at 12.

<sup>31</sup>Bruno Amble, "Morals and Politics in the Ideology of Neo Liberalism" 9(1) *Socio-Economic Review* 3-30 (2011).



particularly freedom of speech, freedom of association including all other fundamental freedoms.

When majoritarian morality has been practiced in the democracy then minority groups have suffered a great amount of loss, particularly in their constitutional rights. Firstly in a democracy, the government is decided by the majority votes; moreover, the policy is framed in tune with the majority values and ideals which always affects the interests of the minority groups. These are the important key points that affect the interests of the minority in the majoritarian democracy.

**Marginalization and Discrimination:**-In a democracy based on majoritarian morality, minority groups are pushed toward the threshold of society and also subject to prejudice as a result of majoritarian morality. Minority groups are also not given equal opportunities and rights when the majority tries to impose their ideals and values on them. There are several examples such as political participation; employment, health, and education were made limited access to the minority in majority-based democracy.

**Restricted Political Participation:** In a democracy, the majority always has a huge influence on political decisions due to their numerical advantages. As a result, the majority may be able to enact laws and policies that support their own interests and beliefs while ignoring the apprehensions and necessities of the minority groups. Due to less political representation and their unheard opinion in the legislative bodies may not be taken while making the decisions.

**Cultural Disintegration:** In majoritarian democracy, minority groups always feel pressure to accept the cultural norms and practices of the majority. As a result of accepting cultural norms and practices lead to the destruction of their cultural identities and cultural norms. Additionally this lead to the repression of the minority culture, languages, and usages of the minority, and by this, they could be marginalized by the majority.

**Inequality and Injustice:** it is very easy to maintain sustained inequality and injustice by the majoritarian morality. It could happen that laws and policies based on morality may unintentionally result in inequality and unequal behavior against minority groups. By placing minority groups at a disadvantage and impeding their socioeconomic advancement, can exacerbate social and economic inequality.

**Risk to Individual Rights:** Individual rights and freedoms are very vulnerable to majoritarian morality. The individual rights, freedoms, and autonomy of members of the minority groups would be violated by applying the moral standards of the majority groups. This may involve the restriction to exercise the people's right to speech, expression, beliefs, and freedom of religion.

However, majoritarian morality is not bad all the time but it is dependent upon the circumstances in which it is used. Majoritarian morality is used in the development of society for example regulations could be put in order to protect the environment when it is supported by the majority of the people. Majoritarian morality is not always against the minority, it could be used to exploit the advancement of the society.

## 5. The Conflict between Constitutional Morality and Majoritarian Morality: Limiting the Power of the Majority.

Conflicts between constitutional morality and majoritarian morality arise when constitutional ideals and principles conflict with the preeminent beliefs and preferences of the majority. Constitutional morality refers to the values and precepts that promote individual liberties, advance equality, and ensure justice for all. Alternatively, majoritarian morality, which may or may not be consistent with constitutionalist values, is the collective moral perspective of the majority<sup>32</sup>.

The judiciary has to strike a balance between constitutional morality and majoritarian morality and uphold and protect individual freedoms and also the rights of minority groups. The judiciary could do this while upholding the fundamental rights and values enshrined in the Constitution. It is the duty of the judiciary to protect the minority from the atrocities of the majority<sup>33</sup>.

The Court can play an active role in protecting the rights of minority groups and promoting constitutional morality. It can also inform the citizens about their rights through their judgments and constitutional interpretations. The judiciary shapes public opinion and promotes constitutionalism by setting precedents and establishing legal principles<sup>34</sup>.

The judiciary plays a vital role in resolving the conflict between constitutional morality and majoritarian morality. Some of the key features are how the judiciary can uphold constitutional morality.

**Interpretation of the Constitution:** Constitutional interpretation is the primary duty of the judiciary. If majoritarian morality and constitutional standards conflict, the judiciary must interpret the Constitution in a way that preserves its fundamental principles and protects individual liberties. While interpreting the constitutional provision judge's responsibility is to make sure that the constitutional provisions are not broken by majoritarian preferences.

**Protecting Fundamental Rights:** It is the duty of the judiciary to safeguard the constitutionally recognized fundamental rights particularly defend minority rights when there is strong apprehension that majority morality poses a threat to those rights for an individual or a group of people.

**Judicial Review:** The judiciary's ability to conduct judicial reviews is crucial in many democratic regimes. As a result, the judiciary can determine whether laws and policies passed by the legislature or government are constitutional. A judicial review can overturn a majority morality law even when it reflects majoritarian principles in order to uphold constitutional principles and protect minority rights. It is essential for many democratic regimes that their judiciaries can conduct judicial reviews. As a result, the

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<sup>32</sup>Andras Sajo, *Limiting Government: An Introduction To Constitutionalism* (Central European University Press, Budapest, 1999).

<sup>33</sup>Wojciech Sadurski, "Judicial Review and the protection of constitutional rights" 22(2) *Oxford Journal of Legal Studies* 276 (2002).

<sup>34</sup>M.W. McConnell, "Active Liberty: A Progressive Alternative to Textualism and Originalism" 119 *Harvard Law Review* (2006).





judiciary is able to assess the constitutionality of laws and policies passed by the legislature and government. Even laws reflecting majoritarian morality can be overturned through judicial review to maintain constitutionality<sup>35</sup>.

**Maintaining a balance between Majority rule and Individual Rights:** The judiciary always tries to maintain the balance between the individual rights of the citizen and the majoritarian rule. In a democracy, the majority is a necessary evil, but the judiciary has been an important organ of the government that checks the tyranny of the majority and protects the rights of minority groups. It checks the majoritarian influence and ensures that the rights of the very individual are protected and preserved.

**Legal Principles and Precedents:** The judiciary established precedents through its judgments given, that is converted into legal precedents and supported by every authority established in the country as a law. The judiciary established legal precedents that enrich constitutional values when there is a conflict between majoritarian and constitutional morality. The set of principles could be used as a precedent and torchbearer for future disputes.

## 6. Challenges Faced by Democratic Societies: Judicial View

Before the start of the twenty-first century, Constitutional morality has not been gained a place in the judicial discussion. Till recently, only a handful of judgments of the Supreme Court highlighted the principle of Constitutional morality. For the purpose of highlighting the role of the Apex Judiciary in establishing Constitutional Morality, we have to rely on some recent judgments delivered by the Court. Some of the judgments are which signify Constitutional Morality is Triple Talaq, Sexual Orientation, Abortion, Adultery, and the entry of women into a temple. These judgments of the Supreme Court help in understanding the tension between the two principles of democracy.

In *Navtej Singh Johar v. Union of India*<sup>36</sup> in this particular case, the Supreme Court accepted the arguments of the petitioners that Homosexuality, Bisexuality, and other sexual orientations are not forms of any disease. Criminalizing it, certainly, is a violation of the person's dignity and invades the right to privacy protected under Art. 21 of the Constitution. It also restricts the growth of the personality and hindered the exercise of freedom provided under the Constitution. The Supreme Court opined that the rights of the LGBT cannot be dependent upon the majority's beliefs. As history shows persons belonging to LGBT communities are discriminated against and vehemently abused on the basis of their identities and therefore they need protection and assurance that their rights always be protected, as the Constitution of India has provided equal protection of rights enshrined under the Constitution. Everyone irrespective of sex has been given full protection under the Constitution. Therefore, Section 377 IPC violates several fundamental rights, particularly the right to dignity, right to equality and liberty, freedom of choice, freedom of expression, and freedom of privacy. While upholding the sexual activities of the two consenting adults observed that "the overreaching ideals of individual autonomy and liberty, equality for all sans discrimination of any kind,

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<sup>35</sup>L.B. Tremblay, "The legitimacy of judicial review: The limits of dialogue between courts and legislatures" 3(4) *International Journal of Constitutional Law* 618 (2005).

<sup>36</sup>*Navtej Singh Johar v. Union of India*, Writ Petition (Criminal) No.76 of 2016.

recognition of identity with dignity and privacy of human beings constitute the cardinal four corners of our monumental Constitution forming the concrete substratum of our fundamental rights that have eluded certain sections of our society". The Judgment of Navtej reinforced the jurisprudence of constitutional morality and forbade the majoritarian morality that supports the belief and aspirations of the majority section of the society.

Similarly, the Supreme Court has reaffirmed Constitutional morality over majoritarian morality while delivering the judgment in the case of Joseph Shine v. Union of India<sup>37</sup>. The Supreme Court made Section 497 unconstitutional on the grounds of the dignity of women and equality enshrined under the Constitution. This judgment made it clear that the idea of "a woman as a possession of her spouse" is completely contrary to constitutional principles.

The Supreme Court again gave effect to the personal choice of adult women to marry a person of the same or different religion<sup>38</sup>. The Apex Court overruled the judgment of the Kerala High Court which ordered the young girl to be sent to the custody of her parents until she married properly under the Indian tradition. Another vital example of personal autonomy was the case of Common Cause v. Union of India, wherein the Supreme Court of India has given permission for the execution of a living will of persons suffering from chronic terminal diseases and likely to go into a permanent vegetative state. In this case, the court has recognized the right to have a dignified death which is protected under Art.21 of the Constitution of India.

The biggest blow to majoritarian morality has been given by the Court in the case of Young Lawyers Association v. State of Kerala<sup>39</sup>, which recognized the right of Hindu women to freely observe their religion irrespective of their age. The Apex court disallowed the societal practice of not allowing women of a certain age who are subject to mensuration to enter the temple considered to be an exclusionary and discriminatory practice and therefore, held to be a violation of Art.14, 15, 21, and 25 of the Indian Constitution.

Recently, a case has been filed before the Supreme Court of India to lift the ban on the screening of the movie Padmavat in the four states, the Supreme Court lift the ban stating that banning a film, or expression of creative content, from being exhibited is a great shock to the constitutional conscience<sup>40</sup>.

The Supreme Court of India in its various judgments highlighted the Constitutional morality in following "Constitutional morality in its strictest sense implies a strict and complete adherence to the Constitutional principles as enshrined in the various segments of the document. It is required that all constitutional functionaries to "cultivate and develop a spirit of constitutionalism" where every action taken by them is governed by and is in strict conformity with the basic tenets of the Constitution"<sup>41</sup>.

<sup>37</sup>Joseph Shine v. Union of India, Writ Petition (Criminal) No. 194 of 2017.

<sup>38</sup>Shaffin Jahan v. K.M. Ashokan, Criminal Appeal No. 366 of 2018.

<sup>39</sup>Young Lawyers Association v. State of Kerala, Writ Petition (Civil) No. 373 of 2006.

<sup>40</sup>Viacom 18 India Pvt. Ltd v. Union of India, WPC (No.) 3402/2013

<sup>41</sup>Suribhi Jindal, "Social Morality vs Constitutional Morality with special reference to Navtej Singh Johar v Union of India" available at:<https://articles.manupatra.com/article-details/Social-Morality-vs-Constitutional-Morality-with-special-reference-to-Navtej-Singh-Johar-V-Union-of-India> (last visited on June 9, 2023).



## **7. Conclusion: Emphasizing the importance of Constitutional Morality in democratic societies.**

Justice Dipak Misra has said "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. It along with the commitment to the Constitution is a facet of Constitutional Morality"<sup>42</sup>.

Constitutional Morality cannot be dependent upon societal morality, as Societal Morality is very subjective connotation. There can be no compromise between constitutional morality and social morality when it comes to establishing the rule of law. Under the guise of societal morality, individuals' fundamental rights cannot be violated, since

Constitutional morality is based on an appreciation of the diversity within society. Our Constitution is a living, organic document that may change as the needs and desires of society change. In order to confront injustice and evils that have been prevalent in society could only be addressed the court when they have been equipped with the progressive and practical interpretation.

There are many instances where the section of society does not want to accept the constitutional change but the Courts in India very enthusiastically propounded the constitutional principles which have been considered as the expression of the Constitutional Morality. With reference to Part III, IV, and V constitutional morality and judicial values have been examined very minutely to further individual, social, political, and judicial justice. Part III of the Constitution of India has been considered transcendental and plays a vital role in securing justice in civilized societies which are based on constitutional morality.

The preamble of the Constitution of India embodies the pledge to provide justice which should be in the nature of social, economic, and political. That pledge could only be used as means to achieve constitutional morality and judicial values. It has been accepted that constitutional morality and judicial values are inalienable in achieving the goals of the democratic setup.

In the end, we can say that in a democratic society, there has been no place for majoritarian morality. It leads to injustice to the minority people living in the society and hinders the growth of the society as well as the individual of the society. Constitutional Morality backs and supports the transparency and credibility of the judiciary. It also respects individual autonomy rather than societal commonness. So for the strengthening of the democratic setup, Judiciary should respect the Constitutional principles and values which form the core values of constitutional morality.

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<sup>42</sup>Manoj Narula v. Union of India, Writ Petition (civil) No. 289 of 2005.