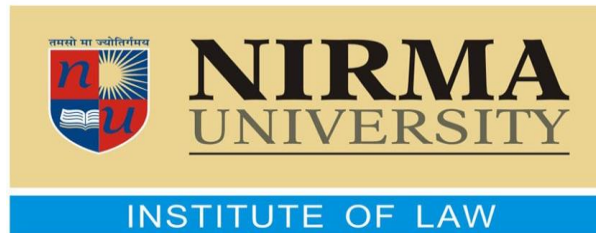


A DISSERTATION ON

The Judicial Armament of Constitutional Morality in India: The Harbinger of Morality or Religious Fanaticism.



Submitted to

***Institute of Law, Nirma University, Ahmedabad
As Partial Fulfilment of the requirement of the LL.M Degree***

Under the guidance of

Prof: Dr. Tarkesh Molia

Submitted By-

Ginny Rajvanshi

(20ML006)

DECLARATION

I hereby declare that, I Ms. **Ginny Rajvanshi (20ML006)** has prepared this thesis entitled **“The Judicial Armament of Constitutional Morality in India: The Harbinger of Morality or Religious Fanaticism.”** under the guidance of Prof. Dr. Tarkesh Molia for the grant of LL.M degree in the subject of Constitutional law. The submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published and written by another person nor material which has been accepted for the award of any other degree or diploma of the University or other institute of higher learning, except with due acknowledgment has been made in the text.

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CERTIFICATE

This is to certify that the thesis work titled, “**The Judicial Armament of Constitutional morality in India: The Harbinger of Morality or Religious Fanaticism**” submitted to Institute of Law, Nirma University, Ahmedabad by Ms. Ginny Rajvanshi (20MI006) towards the fulfilment of the requirement for the award of the LL.M degree for the subject of constitutional law is a bonafied record of work carried out by her under my supervision and guidance. To the best of my knowledge and belief, it contains no material previously published or written by another person nor material which has been accepted for the award of any degree or diploma of the university or other institute of higher learning, except where due acknowledgment has been made in the text.

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Date:

Ginny Rajvanshi

LIST OF ABBREVIATIONS

1.	AIR	ALL INDIA REPORTER
2.	CR. LJ	CRIMINAL LAW JOURNAL
3.	H.C	HIGH COURT
4.	JSTOR	JOURNAL STORAGE
5.	NCT	NATIONAL CAPITAL TERRITORY
6.	NYL.J	NEW YORK LAW JOURNAL
7.	ORS.	OTHERS
8.	OUP	OXFORD UNIVERSITY PRESS
9.	R/W	READ WITH
10.	S.L. P	SPECIAL LEAVE PETITION
11.	SC	SUPREME COURT
12.	SCC	SUPREME COURT CASES
13.	VOL.	VOLUME
14.	WRP	WRIT PETITION

LIST OF CASES

Sr No.	Case Name and Citation	Page Number
1.	Indian Young Lawyers Association ...Petitioner(s) & Or's. v The State of Kerala (2018) SCC 1690.	62
2.	Kantaru Rajeev Aru v. Indian Young Lawyers Association, REVIEW PETITION (CIVIL) NO. 3358/2018	62
3.	Manoj Narula v. Union of India (2014) 9 SCC 1	1
4.	Navtej Singh Johar & Or's. v. Union of India AIR 2018 SC 4321	58
5.	Navtej Singh Johar & Ors.v Union of India the. Secretary ministry of law and justice Writ Petition (criminal) no. 76 of 2016	18
6.	Naz Foundation vs Government of NCT of Delhi and another 160 Delhi Law Times 277(2009)	61
7.	Suresh Kumar Kaushal & Anr vs Naz Foundation & Or's CIVIL APPEAL NO.10972 OF 2013	60

TABLE OF CONTENTS

Sr. No.	CHAPTERS AND PARTICULARS	Pg.no.
	Declaration	I
	Certificate	II
	Acknowledgment	III
	List of abbreviations	IV
	List of cases	V
	Table of contents	VI
1.	CHAPTER I- INTRODUCTION	12-26
	RELIGION V. MORALITY	12
	LITERATURE REVIEW	14
	STATEMENT OF PROBLEM	19
	OBJECTIVES OF STUDY	20
	SIGNIFICANCE OF STUDY	21

	RESEARCH QUESTION/HYPOTHESIS	22
	SCOPE AND LIMITATION OF STUDY	23
	RESEARCH METHODOLOGY	24
	SCHEME OF CHAPETARISATION	24
2.	CHAPTER II- RELIGION VIS-À-VIS CONCEPTUAL FRAMEWORK	27-36
	RELIGION V. RELIGIONISM	27
	QUINTESSENTIAL MORALITY AND RELIGIOUS DIMENSION	29
	COGNITIVE SCIENCE OF RELIGION AND MORALITY	31
	THEORY OF MIND	33
3.	CHAPTER III- THE ARMAMENT OF CONSTITUTIONAL MORALITY WITH RELIGION AND MORALITY	37-51
	DR. B.R AMBEDKAR AND CONSTITUTIONAL MORALITY	37

	UNDERSTANDING THE CONCEPT OF CONSTITUTIONAL MORALITY	40
	CONSTITUTIONAL MORALITY THROUGH PRISM OF AMBEDKAR AND GROTE	45
	LIBERALISTIC APPROACH OF CONSTITUTION AND MORALITY	49
4.	JUDICIAL ROLE IN ESTABLISHING DOCTRINE OF CONSTITUTIONAL MORALITY	52-61
	USE OF CONSTITUTIONAL MORALITY BY THE COURTS	52
	CRITICAL APPROACH BY THE COURTS ON CONSTITUTIONAL MORALITY	55
5.	CONCLUSION AND SUGGESTIONS	62
6.	BIBLIOGRAPHY	69

CHAPTER-I

1. Introduction

According to Emile Durkheim “**Religion** seemed to be a sacred thing and system of beliefs and practices uniting the entire moral community as the origin for the same seemed to be immortal and not the recent one. The belief in the growth of religion relating the fear of death and after life of death seemed to be a topic of inquisitiveness for anthropologists.¹

Religion is the universal system and the basic institution which is found in every part of the society as it is the social system with common faith, rituals, customs, traditions and rituals. The concept of morality has bided the religious customs and traditions with time. As the principles for awarding maintenance are now made as rule in Hindu Marriage Act,1955.

Wherein Morality prepares the way for the perpetuation of religious with its supernatural sanctions. Morality has long been used by human being as a basis for their actions. Believers of God think that doing good deeds is being moral and thus these actions will save them from their sins.

1. Emile Durkheim, *The elementary forms of the religious life*, Vol 1, O U P, Pg.181-183 (2008)

1.1 Religion v/s Morality

The debate between morality and religion is ongoing as the relationship of both varies with people to be a believer or a non-believer. The pertinent question ultimately pops up whether morality is quintessential to religion or not is considered to be both topical and ancient. The conceptual limitations can be hampered academically by highlighting the discourse between religion and morality with ethnocentric conceptions. This develops the tendency to cluster the religion and morality cognitively or through features evolved culturally.

However, even with the multi-cultural diversities of India, the keen understanding and possessing the spirit, the framers of the Indian constitution refrained from interfering with the religious beliefs of people at the time of the country's independence. Dr. B.R. Ambedkar in his Constituent Assembly speech² of November 4, 1948 said, "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it." And now 72 years later, the meaning of constitutional morality still remains an enigma in the legal sphere let alone cultivating it as a culture amongst the population that has come into the quintessential existence the active role of the Indian Judiciary.

In its recent judgments, particularly from 2017 onwards, the Supreme Court has brought into the mainstream, the concept of constitutional morality explicitly instead of using it as a 'fleeting catchphrase'. At a time when constitutional morality is being applied to almost all spheres of life, be it rights, duties, privacy and religion, it becomes increasingly important to assess whether it is being modelled to become a Harbinger of Morality or Religious Fanaticism.

2. The constituent assembly debates, Lok Sabha Secretariat, Delhi, 1990, (July20,2021,6:30PM) <http://parliamentofindia.nic.in/ls/debates/vol11p11.htm>

The legal framework for addressing such issues will be addressed across various arena with relevant case studies. Ultimately the aim is to identify how well equipped our Indian law with such insightful legal framework and judiciary in order to attempt to bring Indian law in synchronization with the religion along with morality and uplift the cultural diversity of a country like India.

Literature review

1. Religion and morality in the philosophy of David Hume. Terry Walker Myers

In this Article the author has tend to highlight the core of in systemizing Hume's thought on religion and morality. The thoughts by Hume can be consolidated in three aspects to bind religion and morality.

- a) Morality is termed to be secular
- b) The religion cannot be the only basis for morality
- c) That religion seems to be pernicious to morality.

This article sims to contribute to the understanding of Hume's thought on religion and morality by a systematic categorization of his parts and a careful analysis on how these parts fits together as a whole.

This article for me was helpful in understanding the philosophical origin of Religion and Morality and how they both differ and still are inter connected in the contextual arena. But what it lacked was that the relationship between the two varies with people. While a firm believer of religion will associate religion with morality and a non-believer on the other hand will make it independent.

It can therefore be deduced that morality is not only for the God but also for the people and this study certainly provides a separate way for the same.

2. “What is constitutional Morality” by Pratap Bhanu Mehta

In the contemporary times, constitutional morality referred to mostly the substantive content of the constitution wherein moral principles and entailment were practised. Whereas the non-discrimination is an element and part of the tactic constitutional morality in modern times but at the same time it is the morality for the people and law of the land.

This article focused on the views of both Ambedkar and Grote in order to understand the philosophical contraventions of their thought on constitutional morality. Ambedkar’s theory can be related to Grote’s invocation of constitutional morality more of that as criticism as the threat to the freedom and individuality. The claims and decisions by the authorities can be interrogated and subject to the unrestrained criticism representing the popular sovereignty and the practice of pacific cannot be despair by the arbitrary claim of the people.

The concept of morality may have the formal elements like inclusion for plurality, self-restraint, adjudicating process, concern for an open culture, claims to popular sovereignty and other constitutional forms. Ambedkar always had his doubt regarding these elements as they were not only difficult to achieve in toto in Indian democracy set up but also their implementation in the constitutional revolution. It has always been a political organization set up and sustainment of achieving the objectives through the conditions.

3. Constitutional Morality, Democracy and its institutions by Andre Beteille

There is extreme diffusion towards the recognition of the constitutional morality in the democratic constitution wherein two things constantly seem to be interconnected but unfortunately not recognised. This article not helped us to understand that the form of administration is closely linked with the constitution so it must be appropriate and the other is

to prevent the constitution from being changed and amended merely by the change in the policies and to make it vulnerable to the law of the land

It is only through the values of constitutional morality that the values of constitutionalism flows and trickle down into the percolating system of the policy development system for the policies for all. Therefore, constitutional morality is found incarcerated into the spirit of the preamble of the constitution and is the soul of the constitution but constitutional morality in a democracy needs some essential and minimum assurance for the existence of the right of each individual. Author has not only tried to inculcate the handful provisions in the preamble of the constitution that recognises the rights such as equality, liberty and freedom, constitutional morality but also on the other hand is the guarantee seeker that all forms of inequalities are removed from the social structure and all the guaranteed rights are enforced by infusing the spirit of brotherhood in this heterogeneous population for the Indian democracy. The constitutional principles and morality is the extension of social reform and transformation in the constitutional set up by Ambedkar highlighting the importance of the individual rights in the social set up and welfare state.

“The assertion by the individual of his own opinions and beliefs, his own independence and interest—over and against group standards, group authority, and group interests—is the beginning of all reform. But whether the reform will continue depends upon what scope the group affords for such individual assertion.”

Author discusses that the most important goal of constitutional morality was to believe the corollary pursuit of the pluralistic Indian society and not to go against the popular sovereignty. The prime aim was to prevent the government or the state to declare any law that could have gone against the imbibed principles of the constitution and the representative cosmopolitan Indian Constitution on the realm of represent sovereignty.

The configuration of constitutional morality is not merely for the majority of the community but it is the condition on the government to have a powerful and unbiased institutions and the power to conquer the obstinate minority among themselves with the virtue of constitutional values.

4. Religion terror and the future of reason by Sam Harris

Harris asserted that the moral claims are the facts that are deemed to be non-anthropocentric. He is claiming the intelligent principles by the aliens on Earth are the moral worth of the human brains and actual measures and accurate beings of the learned society.

The derivation of the emotion derived from the morality and hopeless reason and the subjective glare that can be filled with confidence in the efficacy of the source that can demonstrate the ultimate reality of the cause in the non-cognitive and orderly beauty of the universe. This is the argument given by Hume in the greatness of the ultimate reality and senses.

This article helped in understanding the morality in lieu of emotional sentiments attached to the religion but lacked the concept of practical arena related to the people and how the laws are tending to interpret the same without any emotional biasness.

Some argue that the two are inseparable while others claim that one, morality, can exist without religion. Statistics reveal that these suppositions base on nothing else but the peoples' understanding of morality and religion.

5. “Constitutional morality in India- The new kid on the block” by K Balakrishnan

This Article focuses on the transformative differences in the culture and the theories which exist in the interests of the literature that could be of extreme help of the judiciary in constructing a strong fold that tends to focus on the amendment part or even the interpretation, that can be sensitized to resort the concept of constitutional morality. In India we need to have the consistent prefixes for tendering the religion and morality principles.

The constant and ardent fluctuating tussle between the three organs of the government and the interpretation of the constitution needs to be a little debate and the inherent relativeness for the term morality and religion in the pretext of societal and public morality. The standardized test to be employed in the societal morality can make wonders in the usage of the term “constitutional” to be more inconclusiveness and the contradictions of the usage terms make it too less problematic.

For the better understanding in context of the judgments given by the Supreme court can be intertwined with faith and professing of the religion in the lieu of morality. Triple Talaq, Adultery, sexual Orientation and Privacy can be based on the practical based approach but the judgment of Sabrimala changed the entire theory of intermingling of faith and religion.

This article fails to interpret the practical and realistic approaches that has not been explicitly mention in the hidden term of the constitutional morality in the pretext of Preamble or the Constitution.

The several judgments or the precedents in the attribution of the constitutional morality have been based on certain principles and holders that are not meant to be in the subjective situations of the requisite conditions and moreover left to the discretion in the applied format to be interpreted not according to the fixed situation but the open-ended meaning to the term.

1.2 Statement of problem

The concept and the relationship between religion and morality appears to be the same and reverse in the variations following the concept of constitutional position and study the broad perspective in understanding the study and tend to achieve the limitations amounting o the infringement in toto.

The moot question exists whether the interpretations of the rights should be deployed in the constitutional morality or as the rights that needs to be interpreted in the infringing rights of

the citizens. The usage of this concept has been used in the landmark judgments which either was justiciable and non-justiciable and can be put into the limitations of the rights guaranteed by the constitution. The piece that can be forged into the state for the individuals conferred into the baggage of rights and interests.

The moral conceptions or the worthiness yet cannot be blamed to be declared as a crime in order to legislate the standards and wrongs of public morality and not the societal morality. Public crime cannot be a standard for the commission of the morality.

The substantial principle of constitutional morality in a diverse country like India can be placed in the society of heterogeneous classifications and populations and the plurality is one of the crucial aspects be it religion, caste, gender, orientation or the distinction of the non-homogeneity and to promote the diversity helping the people to be more inclusive. The courts in the world have been thrifty enough to interpret the constitution in more diligent manner to distinct classifications whereas Indian courts seems to have taken up the purview of constitutional morality seriously in interpreting various scenarios like the obsession but it still involves the invasions of privacy and matter of faith intertwined with the religious hyper notions.

1.3 OBJECTIVES OF STUDY

1. To study the relationship between religion and morality and establishing their philosophical and independent relation.
2. To understand the doctrine of constitutional morality and its engagement with the preview of religion and morality in the intertwined restrictions of fundamental rights in India.
3. To understand the role of judiciary in implementing the constitutional morality and balancing it with societal morality.

1.4 SIGNIFICANCE/ JUSTIFICATION OF STUDY

The present study aims to do a detailed examination on the concept of religion and morality with both philosophical and logical intricacies which has been incorporated in the Indian constitution via the doctrine of Constitutional Morality by the Indian Judiciary. This research of mine is going to help the academia in better understanding of the doctrine both from the legal and philosophical perspectives and the impact it has on the constitutional scheme of our country.

The purpose of this research is to study the interconnection between the religion and morality and how the former in due course of time is overpowering the latter leading to the end of faith and logical reasons. And how the concept of Constitutional Morality came into this debate for seeking the opportunities and interpretations by the Indian Judiciary so far and some recent landmark judgments.

During this thesis and the research methodology there was a common arena collected by the reasons for the failure of the several important legislations, landmark judgments & most importantly to change the traditional and the hypocritical approach of the society. This study will not only encroach upon this untouched subject matter to be resolved by the Apex court but at the same time try to balance out the approaches from the neutral ground that can be a helping hand in the academia.

If the government seems to reform the transitions and look forward the past mistake's correction measures by the actions and not by mere words. What we need is the action more than the words. Because we need not need the bunch of the paper legislations what we need is some reforms in the philosophical approach and mindsets of the people.

1.5 RESEARCH QUESTION

1. How religion can be a threat to morality and how to deal with both of them and reconcile their approach in the society?
2. How in a country like India the Judiciary has diffused the integrated approach of religion with morality and implementing the same?
3. What approach should the judiciary adopt with constitutional morality while respecting the religious beliefs and the rights of people in the name of private or societal morality?
4. When exactly the reading down of the statutes and laws can be about the positive transformation in the principle of constitutional morality into the perception of societal morality?

1.6 RESEARCH METHODOLOGY

This research will be doctrinal and qualitative and will be based on articles, case studies, philosophies, journals. The data analysis tends to be both qualitative as well as quantitative. There are various secondary sources of law that can be used to understand the inconspicuous lacunas of current legal regime and the problem addressed by this article. Also, findings and observations from various works of the philosophers and national and international bodies were utilized to ensure the clear understanding of the problem existing in the society regarding the religion and morality. There is extreme diffusion towards the recognition of the constitutional morality in the democratic constitution wherein two things constantly seem to be interconnected but unfortunately not recognized so it will be understood from the deviceful opinions and works of many philosophers and constitution framers.

The judicial conception of Constitutional Morality was also studied along with the Landmark judgments made in lieu of Constitutional Morality by the Supreme Court of India.

SCHEME OF CHAPTERISATION

1. INTRODUCTION TO RESEARCH

The debate between morality and religion is ongoing as the relationship of both varies with people to be a believer or a non-believer. The pertinent question ultimately pops up whether morality is quintessential to religion or not is considered to be both topical and ancient. The purpose of this research is to study the interconnection between the religion and morality and how the former in due course of time is overpowering the latter leading to the end of faith and logical reasons.

2. RELIGION VIS-À-VIS MORALITY: CONCEPTUAL FRAMEWORK

There have been many attempts by various authors for establishing a detailed psychological and fundamental model on the illuminating taxonomy of the religion and morality. The sociological formulations have also led to the transcendent entities and beliefs for the emotionally rough and deeper reality rituals that not only connects the core components of the religion and morality but also transforms the expansiveness for the God. This theory brings out the psychological notions of supernatural beliefs and beings likely to infer and predict the mental state of other humans.

3. THE ARMAMENT OF CONSTITUTIONAL MORALITY WITH RELIGION AND MORALITY

There is extreme diffusion towards the recognition of the constitutional morality in the democratic constitution wherein two things constantly seem to be interconnected but

unfortunately not recognized. Therefore, the values imbibed in the spirit of Preamble can be inherited from the shackles of past and be liquidated into the present concept of constitutional morality.

4. JUDICIAL ROLE IN ESTABLISHING DOCTRINE OF CONSTITUTIONAL MORALITY

From the preview of Ambedkar on the usage of this term even the Supreme Court has used it in latest decade and times to interpret the fundamental rights of the individuals as a broaden horizon and also for the interpretation of the statutes in a constitutional mode. In the domain of religion and morality it is the constitutional morality that has to prevail in all the overreaching possibilities. The constitutional morality in the content is being infused into the fundamental principles of the preamble and the importance has been far reaching into the constitutional ethos.

5. CONCLUSION

The Constitutional Morality seems to have a realistic approach in the context of religion and morality that is determined by the complex adjudication system which needs to have a distinct mechanism for the insulation and safeguard by the superior courts in the realm of justifying the societal morality. This doctrine seems to be more of the class bringing positive transformation in the societal and public morality but at the same time the balance between the same has to be maintained in the safeguarding of the rule of the law of the nation and enforcing the arena that seemed to be liberal and constructive in the same manner.

Chapter II- Religion vis-à-vis Morality: Conceptual Framework

2.1 RELIGION V/S RELIGIONISM

Morality, not religion, is at odds with religionism. “True religion is spiritual religion,” Sri Aurobindo writes, “which seeks to live in spirit, in what is beyond the intellect, beyond man's aesthetic, ethical, and practical being, and to inform and govern these members of our being by the higher light and law of the spirit.”³ Religionism, on the other hand, is defined by its narrow and pietistic definition exaltation of lower dogmas, rituals, and forms based on a fixed and rigid moral code or political or social system

There is a constant question on whether morality is directly related to religion. whether morality completely relies on religion or vice-versa? It depends upon the relativity and varied approaches of the people.

1. It is up to the culture, philosophy, or religion to decide whether or not to incorporate some religious morals into their own. This paper will demonstrate that morality can stand on its own, even in the absence of religion.

2. Plato seemed to have come up with this theory ‘The Divine Command Theory’. This theory triggered the question of existence about the God or is it something good because it means to be derived from the God. The moral interpretation and interdependence drive the independent of the religion.

3. McKay, R., & Whitehouse, H, *Religion and morality*, Psychological Bulletin, 141(2), 447-473. (2015)

4. John Danaher, *In Defence of the Epistemological Objection to Divine Command Theory*, Sophia 58 (3):381-400 (2019)

But with these views the real conceptions of Hume's thoughts on Religionism cannot be streamlined as it depicts God's nature as discordant and tyrannical. However, what Hume tries to argue is that the morality cannot be based on the conception of God as he is primarily concerned to establish God's authority in regards to morals either by priori or by posteriori means. By this the very aspect of Hume's philosophy was ignored wherein he supported the obvious anti-religious sentiments.⁵

The question which comes into arena after this concept about the Religion and Religionism necessity is that whether a society can even subsist without a religion dictates who is invariably related to the almighty concerning the human affairs who punishes the wrongdoer and rewards the righteous person. **This led to the question whether an Atheist can be moral?** ⁶

By the writings and evidences until 18th century it was into account that an atheist will have the liberty to act in any manner, he wants without the commandments of any deity so the actions can neither be bad or good. And thus, according to Bentley⁷ without the existence of any supreme being to assist the sins and goods no person will feel obliged to be moral and that will lead to the undermining of the basic foundations of the society.

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5. Myers, Terry Walker., "*Religion and morality in the philosophy of David Hume.*" Electronic Theses and Dissertations. 3314 (1996).<https://scholar.uwindsor.ca/etd/3314>
 6. Haidt, J., & Graham, J, *when morality opposes justice: Conservatives have moral intuitions that liberals may not recognize*, Vol 20, Soc Just Res, 98–116. (2007)
 7. Richard Bentley, *The folly of Atheism*. Vol I, Boyle lectures 1641-1700 (1692)

2.2 QUINTESSENTIAL MORALITY AND RELIGIOUS DIMENSION

“If moral psychology is to contribute to the psychology of religion, it will have to describe a moral domain as expansive as that of the Gods.” —Graham and Haidt⁸

There have been many attempts by various authors for establishing a detailed psychological and fundamental model on the illuminating taxonomy of the religion and morality. The sociological formulations have also led to the transcendent entities and beliefs for the emotionally rough and deeper reality rituals that not only connects the core components of the religion and morality but also transforms the expansiveness for the God.

Sarglou gave the model on “Big Four religious dimensions,”⁹ that majorly provided the 4 beliefs.

1. Believing: The karmic and impersonal beliefs and entities.
2. Bonding: Having the self-emotional connection to the deeper reality.
3. Behaving: Attainment of the moral norms in order to practice self-control.
4. Belonging: Affiliating with the specific traditions and community.

Our major concern in establishing a philosophical relation between religion and morality should be more descriptive rather than being prescriptive that not only effects the ethnocentrism but also controls the paramount morality pressing moral concerns in the society.

8. J. Graham, J. Haidt, *beyond beliefs, religions bring people together to form moral communities*. 14 Personality and Social Psychology Review, 140–150 (2010).

9. V. Saroglou, *The Big Four religious' dimensions*, Vol 14 Cross-Cultural Psychology journal. 140–150 (2011)

The limitation for the researchers in establishing the connection between the religion and morality arises from the comparison of the cognitive and cultural levels where both the traits' bundles are conceptualized to infant the behaviour in humans and other primates rather than the mortal behaviour using the limited cognition of the religion. As the religion is assumed as the cluster of features that must be commanded and learned culturally rather than being operationalizing in a more evolved and rooted manner.

One way of avoiding this problem was stated by Bloom¹⁰ wherein we can disambiguate the cognitive, social, historical and epigenetic formations of the religious and moral traits of the human primates in order to create a neutral network and morphology in the history of human existence.

The paper by Gerhard Streminger dealt with Hume's claim that the religion can be a threat to morality by establishing 3 influences¹¹-

- a) That the bounds of human knowledge are set by clergy with an interest in it.
- b) That the God of any false religion cannot be a moral authority
- c) That the false religion per se corrupts the moral sentiments and leads to the promotion of the artificial life.

10. Bloom, Paul & Cifci, Osman Zahid, *Religious belief as an evolutionary accident*, Vol 5, NY Journal (Eds.), pp. 118–127 (2015)

11. Joseph Ellen, "*Streamliner: Religion a threat to morality*" Vol 15, Hume studies Pg. 87-126(1989)

2.3 COGNITIVE SCIENCE OF RELIGION AND MORALITY

The debate about religion and morality with the new perceptions and approaches fractionates into the whole circumvent but also determine the comprehensive explanation in the evolutionary terms of any relationship and the psychological mechanisms that would produce a functional way as the succession of the preceding terms.¹² The proximate explanation for the ultimate and phylogenetic process and relation between Religion and Morality is the final and superior mechanisms that are not only physiological and psychological in nature but also sustain the forces for the development of the forefront in the legal arena to establish the conjugation of following of the religion in such a manner as it would be induced to be moral in the society.¹³

The fundamental foundations, in contrast to Locke's treatment, rely on the role of faith. believes that faith is the epistemological tool whose proposition is above and beyond the reason's deliverance, and this revelation tends to hamper the 'mathematical surety' of God's existence. We can also deduce the reasonableness in the God's existence that would lead us to believe and accept the revealed reason beyond our senses.

12. Baumard, N., & Boyer, P. *Explaining moral religions. Trends in Cognitive Sciences*, Vol 17(6), Pg172–180. (2013).

13. Cohen, A. B. *Religion, likelihood of action, and the morality of mentality*, Vol 13, *International Journal for the Psychology of Religion*, 273–285. (2003)

By the investigation into the reasoning of the scriptures in the guidance of the holy waves and emphasized on the reasoning, Locke then provides two ways to check claims of immediate guidance from the Holy Spirit, or innate authority. "Locke resolves to uphold the authority of Scripture as a revelation from God against all false authoritarian claims," Sell concludes."¹⁴

The next questions that pop up about the religious fanaticism is that whether it can be fragmented in to the cognitive underpinnings or the components that are devised to define the “cognitive science of religion”¹⁵ with the notions of the punitive deities, creators, sacrifices, ancestral labelling, blessings, rites and rituals in the same manner as it is to decompose the “morality” in the name of some theoretical elements that are said to be just practised in the name of societal hypogamy. The religious foundations and the predispositions are the religious foundations or the foundations that either merely comprise of the insight into the primitive humans or the natural cohabitate of the human beings.

Saroglou¹⁶ provides a valuable insight into the taxonomies of the actual and core religious beliefs and dimensions that not only evolved the cognitive systems and beliefs with it but also introduced the supernatural concept that is not only proportional and mediated but also bestow upon the folding of the cosmic world related to the religion that encompasses the foundation of morality to be associated with this very core concept of religious fanaticism.

14. Nuovo, Victor. *The Journal of Theological Studies*, vol. 49, pp.469–473. (1998) *JSTOR*, www.jstor.org/stable/23968331. Accessed 25 July 2021.

15. Baumard, N., & Boyer, P. *Religious beliefs as reflective elaborations on intuitions: A modified dual-process model*. Vol 22, *Current Directions in Psychological Science*, 295–300. (2013)

16. Saroglou, V. *Religion's role in prosocial behaviour: Myth or reality?* Vol.31, *Psychology of Religion Newsletter* 1–8. (2006).

The religion-morality relationship is the key approach even in the biological evolution with the evolutionary histories. Some designated religion and inherited concepts of morality work as the matrix in the basic evolution of the cognitive and biological development.¹⁷

The detection mechanisms between the relation of the two can only be infused and interpreted by the involvement of the detection agencies and this is how the law comes into the force between the establishment of the religion-morality debate in toto.

2.4 THEORY OF MIND

This theory brings out the psychological notions of supernatural beliefs and beings likely to infer and predict the mental state of other humans. Recent researches and studies show an effective and robust relation between the religious cognition and the mental capacity of the of the conscience. The predicted lower belief in the religion was directly associated with the mental wellbeing of the person and the incorporation of the understanding in the moral believes and principles.¹⁸

17. McCauley, R. N., *Why religion is natural and science is not*. New York L.J pg., 211-230 NY: (2011).

18. Gervais, W. M. *Perceiving minds and gods: How mind perception enables*, Vol 8, Perspectives on Psychological Science. 380–394. (2013).

The next step is to potentially recognise and endowed the concept and structures of the religion and morality in both the form of genetically and inherited psychology¹⁹ as the connection between them is not meant or designated to be mere biologically evolved as in most of the plausible cases the connection between the religion and morality not only involves the primitive ancestral approach but at the same time the perceived mechanism that needs to be more logical and intercepted in the practical implementation for the better adaptation in the predators.

The survey by agents with high moral intuitions and Morality suggests that the people who have higher score in the religious indices are seemed to be moral and helpful in nature and they are more motivated to do more moral acts that does not amount in any non-religious activity as both of them seem to be cognitively connected on the basis of social desirability.²⁰ However, this relationship remains non-affected for the self-reported religious people as they do things for the self-enhancement stems that are not more moral in nature for the actual society but still it eliminates all forms of bias in the acts which are self-introspect in nature both for the religious and social means.

19. Dennett, D. C, *Breaking the spell: Religion as a natural phenomenon*, Vol 8, NY.L. J 320-327 (2006).

20. Eriksson, K., & Funke, A *Humble self-enhancement: Religiosity and the better-than-average effect*, Vol 5 Social Psychological and Personality Science,76–83. (2014)

Further studying the cultural relationship and evolvement of the religion-morality approach contours on the prospective concern as the basis of the religious foundations and the cultural representations influence the moral constraints or the activation of the moral institutions as both in their own variety of ways tends to bring the immersion in the cultural system by the adaptationist and epidemiological approach.²¹

A case study of The Pomio Kivung²² in understanding the evolved connections between the foundations of religion and morality strongly suggests that how the culturally evolved principles affect the fractioned pieces and elements of religion and morality. This case study provides an insight into the religious movement to follow the standardised rituals and doctrines that are not only intuitive religious but also authorised morally in the cultural adaptation of the sect.

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21. Judah, G., Aunger, R., Schmidt, W.-P., Michie, S., Granger, S., & Curtis, V. *Experimental pretesting of hand-washing interventions in a natural setting*, 99, A.J Public Health, (Suppl. 2), S405– S411. (2009)
 22. Whitehouse, H. *Inside the cult: Religious innovation and transmission in Papua New Guinea*, 2, Journal of the Royal Anthropological Institute, Pg.703–715. (1995).

This Kivung idea about the awakening of the ancestors is not only linked to the moral foundations but also weaves the religious foundations that seems to be one of the rituals of the community practised by the followers and great heed is paid to it. The same stories and examples can be found in India for the religious practices to be linked with the moral consequences that are practised among the cultural sects in the particular community area.

Their idea is that someday the ancestor will come back to life and reunite with the 5 moral principles (carefulness, fairness, loyalty, respectfulness, and purity) and if people fail to observe the rules of the King, then there are supposed to be the moral implications inflicted on the people of the sect and that will lead to the delay in bringing the ancestors back. This is how in a particular culture the religion is supposed to be connected with the result in the moral implications that will further result in the implementation of the religion following.

CHAPTER III- THE ARMAMENT OF CONSTITUTIONAL MORALITY WITH RELIGION AND MORALITY

3.1 DR. B.R AMBEDKAR AND CONSTITUTIONAL MORALITY

“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a topdressing on an Indian soil which is essentially undemocratic”²³ Dr. B.R. Ambedkar

This statement by Dr. B.R Ambedkar was not only meant for the Indians but also the British rule that influenced the rule of law in India for quite a long time and the operations with regard to the Constitution were tend to be arbitrary and succumbed for the absence of constitutional morality that were both capricious and erratic from the consulate of the democratic order and rule of law that not only guided the personal laws but also influenced the strong politics and the political leaders and it is here that the importance of constitutional morality comes into existence among the law makers, intellectuals, writers, adjudicatory authorities, lawyers, civil personnel’s and the public intellectuals. This is why the length of our constitution was in more mature form than the American or French constitutions because more the idea of constitutional morality is embedded in the constitution the less it turns out to be noted in the black and white manner.²⁴

23. Constituent Assembly Debates 1989: VII, 38

24. Andre Béteille, *Constitutional Morality*,43, Economic and Political Weekly. Pg35–42 (2008)
<https://www.legalbites.in/unveiling-constitutional-morality-in-india/> (accessed on July 26, 7:20pm)

But the drafting committee could not lead the void to interpret the level of constitutional morality in India as the political sagacity could not be taken for granted on the discretion of the future legislators as the risk of omitting any details from the Constitution but still despite all the best efforts from the drafting committee there were some vengeances and vagaries that were left to insulate the legislative pressures as there cannot be any democratic constitution with a edged and full proof provisions, as the scope of amendment holds good but it should free from the cavalier use as the amendment has been made in the constitutions close to hundred till the present date.

The constitution was past almost seven decades back, it has been amended many times and yet there are people who term it as defiled and drawn. This raises the question not only for the judiciary and the legislators but also influence the ordinary citizens and their outlook. Ambedkar thought that the lessons for the imbibing constitutional morality in the facets of life of people would somehow be engaged with time but it seems to be a distant reality as even many legislators tend to see the Constitution for the first time, they enter the parliament then how the cling to the belief would take place in the life of the ordinary citizens and to follow the constitutional principles and values prevailing in the Constitution of India.²⁵

25. Official Report, Lok Sabha Secretariat, New Delhi. Dhar, P N (2000):

The political system in India has undergone many crisis since the independence and still struggles to refute the possibility of the proper establishment of the democracy and it has not only weakened the position of the constitutional values, but has also led to the anarchy and abuse of power in the popular movements that disrupted the very foundation of the democracy in India and has led to the social and political turmoil in the disregarded manner of the constitutional morality and loosened the set up for the discovery of the said principles and values to be imbibed in the society.²⁶

The inherent will of the Constitution and spirit in the legitimised established way created its roots in the institutions for the mounting of the social and political turmoil that started with the nerve breaking state action emergency wherein India actually for the first time saw the extreme abuse of power and the defying of the constitutional values and morality.

26. Gandhi M.K, and Bharatan Kumarappa. *Non-violent Resistance (Satyagraha)*. N. Y Schocken Books, 1961.

3.2 UNDERSTANDING THE CONCEPT OF CONSTITUTIONAL MORALITY

Dr. B.R Ambedkar in one of his constituent assembly debates quoted Greek historian George Grote and said “ 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 define legal control, and unrestrained censure of those very authorities as to all their public acts combined, too with the perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of constitution will not be less sacred in the eyes of his opponents than his own.”²⁷

This observation by Ambedkar in the conjugal inclusion of the Constitution which was taken from the part and parcel of the Government of India Act,1935 but also made the justified approach of Grote followed by the inclusive research into the divulgence of Constitutional Morality but also had this reference and justification from the Greece’s quote.²⁸ “The diffusion of constitutional morality not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable since even any powerful and obstinate minority may render the working of a free institution impartible, without being strong enough to conquer ascendancy for themselves.”

27. Constituent Assembly Debates, Vol. 7 (4th November 1948),

28. Grote History of Greece, Vol III, The Quarterly Review, page 347,1856

There is extreme diffusion towards the recognition of the constitutional morality in the democratic constitution wherein two things constantly seem to be interconnected but unfortunately not recognised. The form of administration is closely linked with the constitution so it must be appropriate and the other is to prevent the constitution from being changed and amended merely by the change in the administration and to make it inconsistent with the spirit of law in our country.

People of India deemed to conquer the saturated risks with the constitutional morality as described by Grote, the risk taken by the legislature and the administration to omit the details of the constitution and presuming the diffusion of constitutional morality. But Ambedkar made sure at that time it was not wiser to trust the law makers or to define the administration and the rule making in the parliamentary form of government which is the self-restraint provided the better understanding of the constitutional morality and the commitment to the citizens. The rule of law and constitutional supremacy has always played the major role in understanding the concept of constitutional morality in all eras.²⁹

29. Dr. Baba Saheb Ambedkar, Writings and Speeches Volume 13. Pg no.60.

The principles are basically the adjudicatory rules laid down under the pretext of Constitution and not being of the rule of law. It acts as fulcrum and strong guide in the institution building and the traditions have to ingrown in the manner as to sustain the morality especially in a country like India. The democratic values here tend to survive only when the morality along with the constitution parameters are followed with full integrity without the paving the path of deviancy and against the requisite constitutional restraints.

But the concept seems to be not only mere observance of the principles of constitution or the constitutional morality and the real sweep is not limited or confined to the literal provisions and text of the constitution, rather within its virtues it ushers the wide magnitude possibility of the inclusiveness of the pluralistic society following the constitutionalism rather than the mere constitution as a document.³⁰

It is by the percolating approach of the constitutionalism into the rules and administration but also for the betterment of all the individuals paving their way into the constitutional morality.

30. Manoj Narula v. Union of India (2014) 9 SCC 1

Therefore, the values imbibed in the spirit of Preamble can be inherited from the shackles of past and be liquidated into the present concept of constitutional morality but constitutional morality in a democratic set up needs some essential and minimum assurance for the existence of the right of each individual. Where on one hand preamble of the constitution recognises the rights such as equality, liberty and freedom, constitutional morality on the other hand is the guarantee seeker that all forms of inequalities are removed from the social structure and all the guaranteed rights are enforced by infusing the spirit of brotherhood in this heterogeneous population for the Indian democracy.³¹

The constitutional morality must be seen as the extension of social reform and transformation in the constitutional set up by Dr. B.R Ambedkar highlighting the importance of the individual rights in the social set up and welfare state.

“The assertion by the individual of his own opinions and beliefs, his own independence and interest—over and against group standards, group authority, and group interests—is the beginning of all reform. But whether the reform will continue depends upon what scope the group affords for such individual assertion.”³²

31. Navtej Singh Johar & Ors.v Union of India AIR 2018 SC 4321

32. Dr. Babasaheb Ambedkar: writing and speeches volume 3-page no.333

The idea of constitutional morality relates to the basic rights guaranteed by the constitution in the text and spirit. It not only prohibits any kind of discrimination against the individual in the society but also ensures the constitutional setting that will adhere to the above rights and their implementation in favour of the individuals. The main aim of constitutional morality is to turn up the process of the claim resolution and recognise the pluralism in our society in every manner possible as India being the diversified country.³³

The most important goal of constitutional morality was to believe the corollary pursuit of the pluralistic Indian society and not to go against the popular sovereignty. The prime aim was to prevent the government or the state to declare any law that could have gone against the imbibed principles of the constitution and the representative cosmopolitan Indian Constitution on the realm of represent sovereignty.

The configuration of the concept depends not only on the majority but also the minority community and judgments but it is the condition on the government to have a powerful and unbiased institutions and the power to conquer the obstinate minority among themselves with the virtue of constitutional values.³⁴

33. Dr. Babasaheb Ambedkar: Writing and Speeches Vol 3 Page no.333

34. The Constitution and the Constituent Assembly Debates. Lok Sabha Secretariat, Delhi, 1990, pp. 107-131 and pp. 171-183.

3.3 CONSTITUTIONAL MORALITY THROUGH PRISM OF AMBEDKAR AND GROTE

In the rendition of Grote constitutional morality has a different meaning than the actual two actual conceptualized related to the phrase. In the contemporary times, constitutional morality referred to mostly the substantive content of the constitution wherein moral principles and entailment were practised. Whereas the non-discrimination is a device in the light of the constitutional morality that seems to have the modern approach.

There was this second aspect by Ambedkar which was more tilted towards the 19th century provenance. Here the constitutional morality referred to the government decision making power within the conventions and protocols. The purpose of Ambedkar using this term was to have a refined meaning of constitutionalism whereas Grote's purpose was to rescue the Athenian democracy from the elitist critics into the shackles like Aristotle and achieve the genuine elements of constitutional morality.

For Greece Grote there can be historical conventions where constitutional morality was realized one was the aristocratic liberation in 1688 in England and the other American Constitutionalism. Whereas for Ambedkar it was the worrisome of the Indian Democracy which he feared that yet the people need to learn the real meaning of constitutional morality. On 25 November 1949³⁵, Ambedkar after the whole range of substantive discussions on the basic issues like federalism, rights, parliamentary government he returned to the prefigured constitutional morality but not as the noun rather adverb.

35. Ambedkar, 'Speech Delivered on 25 November 1949' in *The Constitution and Constituent Assembly Debates*, p. 174.

For Grote, the main elements for constitutional morality were the self-restraint and freedom wherein the self-restraint was necessary to maintain a constitutional government. Ambedkar in his speech takes on the anti-revolutionary principles of constitutionalism for the maintenance of democracy and he adds “Hold fast to constitutional methods of achieving our social and economic objectives. It must mean that we abandon the bloody methods of revolution. It means we must abandon the method of civil disobedience, non-cooperation and satyagraha.”³⁶

In Ambedkar’s experience satyagraha was a posits between violence and form of coercion and constitutional morality means a criticism subject to the government and not the pacific criticism. Both revolution and passive resistance can be treated and exemplified as the lack of self-restraint that can be a pose of threat on constitutional morality. The political actions in the name of democracy were completely incompatible in the ambit of constitutional morality as the demands of the nationalist movement were entirely repertoire.

The second important element in the morality with the constitutional aspect is the acceptance and recognition of the plurality in our society in the deepest form. For Ambedkar following the constitutional norms is the only kind of non-violence as the main challenge in the pluralistic society like India is the implementation and adjudication of the differences of the opinion and identities.

36. Ambedkar, ‘Speech Delivered on 25 November 1949’ in *The Constitution and Constituent Assembly Debates*, p. 174.

The best way to gain the unanimity in the constitutional morality is to mediate the process and declaration of the truth and one's own conscience that may result to the personal integrity which will actually help in the practical implementation of the constitutional values and morality in the society.

Constitutional morality not only requires the adjudication of the constitution but also of the parliament and courts. And in case of any difference, the proper adjudication process should be sought and this is one of the main reason Ambedkar did not thought of including socialism in the constitution as to him equality was of the paramount importance. Therefore, constitutional morality is the non-transactional essence and allegiance to the constitution to the possibility of the eventual process from the citizens envisaged.

The third element of the constitutional morality is the representation of the will of the people and the suspicion to its claims. This was the most manifested personification by Ambedkar from the constitutional point of view as it seems to be the uncompromising structure as he himself faced the ironic fears and sensibilities from the popular sovereignty as the evidence is unmatched so seems to be ominous to the constitutional morality.

Thus, Ambedkar was very reluctant in recognizing any branch of the government or even the constituent assembly itself to claim the undistinguished sovereignty that would entrust the defense for the process of amendment or the compromise on the deeply entrenched rigid constitution with the morality of the present generation and their preferences.

The foremost function of the lawmakers seems not only to represent the sovereignty and maintain it as it is paradoxical and preventing the government to claim complete monopoly on the people. The main and dominant question is on the multiplying will of the people and not the claims of the people. Judiciary and legislature are just the constitution seekers and impulse over the arbitrary and single authoritative will of the people.

Ambedkar's theory can be related to Grote's invocation of constitutional morality more of that as criticism as the threat to the freedom and individuality. Grote in a novel way wrote "*Allegiance to forms of constitution was not to be confused with deference to popular sovereignty.*"³⁷

The claims and decisions by the authorities can be interrogated and subject to the unrestrained criticism representing the popular sovereignty and the practice of pacific and bloodless cannot be silenced by the arbitrary claim of the people. The concept of indrawn constitutional approach in the morality aspect may have the formal elements like respect and inclusion for plurality, self-restraint, adjudicating process, concern for an open culture, claims to popular sovereignty and other constitutional forms. Ambedkar always had his doubt regarding these elements as they were not only difficult to achieve in toto in Indian democracy set up but also their implementation in the constitutional revolution. It has always been a political organization set up and sustainment of achieving the objectives through the conditions.

37. George Grote, *A History of Greece*. Routledge, 3, London L.J, p. 93. (2000)

3.4 LIBERALISTIC APPROACH OF CONSTITUTION AND MORALITY

A constitution was supposed to be of abstract nature between the concrete persons wherein specified people have the substantive process and the culture to emerge according to the powerful provisions of the constitution. Caste has always been an impediment in the path of constitutional morality in one way or the other. It is some kind of social felony that exists constantly into the undermine of the constitution for the self-making of the central path in the constitutional morality and the ability of people to associate with it and develop a deep knowledge upon the adjudication and the dissociation as much as possible.

According to Ambedkar caste was always a principle of social separation that not only precluded the identity of the people but also affected the principles such as equality, liberty and fraternity among people. A constitutional morality always requires the constitutional values and common deliberative practices to be followed by all the people.

Formalism was the main ingredient in understanding the formation of the constitution by the makers and it was the main striking factor for Ambedkar as he did not want to collapse it with the distributive justice and constitutional aspirations. The constitutional justice comes from the right procedures and claims like that of socialism above capitalism in the structure of India. The constitutional courses can be one of the particular disagreements or the framework that can have space both for the socialists and capitalists but would still uphold the constitutional morality and values at the higher pedestal.

In his final analysis he believed that there should be an allegiance between the constitutional forms of distributive justice and constitutional morality. He was well aware of the fact that constitutional morality will produce the substantive equality that could be negotiated between the constitutional morality and the substantive justice but can never be a revolutionary.³⁸

The foremost and final reason for focusing on the concept of constitutional morality was the extreme exemplar of Ambedkar as he defined the transactional sensibilities in the constitution be it political or social. Constitutional morality holds as a yardstick of justice in the arena of arbitrary power and administration or the shaping of the self and future horizons.

Constitution was an impairment insight and work of historical imagination of the constitution makers in way of including the diversification along with the ideological battles of all the leaders from all the backgrounds be it Nehru, Ambedkar, Patel or Prasad as the greatness in their philosophies not only contained the distinctive points but also the extraordinary capabilities to behold the entire historiography of the constituent assembly with the exemplary constitutional morality.

38. Ambedkar, 'Speech Delivered on 25 November 1949' in *The Constitution and Constituent Assembly Debates*, p. 181.

The collective philosophies and the deeper paths of all these leaders with their legal knowledge and sheer command on the language helped them to achieve the greatness of the outlook in the mutual regard and understanding and recognizing the constitutional morality as the stoic decency³⁹ that would prevent the rupture from the disability and polarization in the future. They all made mistakes but they acknowledged the same and embodied a central principle and element of morality into the legal aspect recognized by the constitution to make the provision of equality deeply and seriously rooted in the stones of Indian history with the mark of equal respect for all the citizens without the basis of any background feature.

Thus, the constitution was made with the liberal approach along with the constitutional morality not in the ideological senses but deeply rooted in the virtues and provisions made with the sense of antiliteralism and democratic approach with the sheer commitment of hope for the future holding the present and the past.

39. Gopal Sarvepalli, *Jawaharlal Nehru: A Biography*. 3, Cambridge Harvard University Press Pp. 336 (1984)

CHAPTER IV- JUDICIAL ROLE IN ESTABLISHING DOCTRINE OF CONSTITUTIONAL MORALITY

4.1 USE OF CONSTITUTIONAL MORALITY CONCEPT BY THE COURTS:

“Whenever we embark on the study of morality without interest in its application I cannot but think that it is not morality we are studying. Morality does not arise till the point of application is reached. The effect of a moral theory launched upon the world is next to nothing unless the application of it can be reinforced by powerful motives...” Prof. Jacks.⁴⁰

In the pretext of Constitution, the term ‘Constitutional Morality’ has not been mentioned in any of the article or explained in the context. However, Morality as a term has been used under Art 19(2), 19(4), 25(1), and 26. From the preview of Ambedkar on the usage of this term even the Supreme Court has used it in latest decade and times to interpret the fundamental rights of the individuals as a broaden horizon and also for the interpretation of the statutes in a constitutional mode.

In *Manoj Narula v. Union of India*⁴¹ the supreme court dealt with the corruption in the politics and the importance of moral turpitude present in the ministers as to the legality of the person appointed should be cleared of all the criminal charges. They observed that Constitution of India is a living document having great possibilities of the dynamic changes according to the pursuit of the progressive society. The conditions of working in the prevalent structure fastens the working of the constitution and it can grow on the bedrock of the constitutional morality.

40. Dr. Babasaheb Ambedkar: Writing and Speeches Vol.3 Page no.333

41. (2014) 9 SCC 1

There would be no necessity of any government if the men would have been angels or if angels were to govern men, then the role of government would not have been necessary from the internal or external means. The framing and administration of the government is sought to be the difficult task as the place must oblige and control the people who need to be governed. The dependence on the government can be the primary role of the democracy but the people never want to be governed or intend to be governed by criminal antecedents.

The idea of the executive governance is enshrined not only with the hopes and aspirations of the citizens but also governed by the idea that a country is run on the basis of constitutional provisions, values, morality and trust that has been part of the culture in India since the inception of the century.

The concept of morality be it constitutional and social morality was discussed by the Supreme court in the case of Navtej Singh Johar⁴² that struck down the Sec 377 of IPC and declared it unconstitutional and criminalized consensual. The reference was made from the Suresh Koushal⁴³ and Naz Foundation case⁴⁴ and were overturned. In these cases, the judges were leading on the concept of social morality perception in case of the constitutional morality.

42. Navtej Singh Johar & Or's. v. Union of India the. Secretary Ministry of Law and Justice, W. P. (CrI.) No. 76 of 2016 (para no.116 and 117)

43. Suresh Kumar Kaushal & Anr vs Naz Foundation & Or's CIVIL APPEAL NO.10972 OF 2013

44. Naz Foundation vs Government of NCT of Delhi 160 Delhi Law Times 277(2009)

In the Naz Foundation case the concept of constitutional morality was referred and it was extracted that popular morality or the justification for any act validated by the public in order to restrict the fundamental rights are distinct from the concept of constitutional values and it cannot be shifted to the notions of the constitutional morality and any kind of morality must pass the basic test of being ‘Constitutional’ and not mere public morality.

With the concept of constitutional morality, the background and the main informatory observation of the judges relates to the multifarious ways in which constitutional morality has tied up this heterogeneous society and urges the state to maintain the popular sentiment or majoritarianism.

It is the collective and major incarnation of the legislature, executive and judiciary to promote the proclivity of the heterogeneous society and respect the opinion of the will in a uniform and standardized philosophy in the complete society and ensure that principle of constitutional morality is not deferred. Any attitude in the society be it symmetrical and asymmetrical will be within the sustained environment of the legal and constitutional framework. The freedom of choice and expression can only be implemented with the quintessential approach of constitutional morality.⁴⁵

45. Navtej Singh Johar & Or’s. v. Union of India the. Secretary Ministry of Law and Justice, W. P. (CrL.J) No. 76 of 2016 (para no.116 and 117)

The transgression of the concept of fundamental rights have been emphasized by the constitutional courts on the basis of social morality in all these years and the dereliction of the human rights are far and in any way with the aid of the judicial recognition and constant engagement that the constitutional morality has finally come up in order to prevail over the social morality.⁴⁶

4.2 CRITICAL APPROACH BY THE COURTS ON CONSTITUTIONAL MORALITY

The law minister on the occasion of Constitutional day critically viewed the doctrine of constitutional morality and stated:

“We hear about Constitutional Morality; we appreciate innovations but nuances of constitutional morality should be outlined with clarity and should not differ from judge to judge and there must be a consensus.”⁴⁷

46. Ibid at para no.121

47. Law Minister Sri Ravi Shanker Prasad on Celebration of Constitutional Day Source:
<http://www.newindianexpress.com/nation/2018/nov/27/apply-yardstick-of-constitutional-morality-evenly1903665.html>

In the recent landmark judgment of Sabrimala temple⁴⁸, the majority of the judges applied the view and concept of constitutional morality over the minority opinion. The writ petition was filed under Art 32 for giving instant directions against the Govt. of Kerala, Devaswom Board of Travancore, Chief Thantri of Sabrimala Temple and DM of that place to ensure the entry of women in the temple aged from 10-50 years which has been specifically denied to them on the religious custom and usage. To declare rule 3(b) of the Kerala Hindu Places of Worship (Authorization of Entry) Rules, 1965 and Section 4 of the said act unconstitutional as they are violative of Article 14, 15,25,26 and 51A(e) of the Indian Constitution.

The majority judgment was delivered by Hon'ble Justice Deepak Misra, CJI in which he observed that Sabrimala Temple is a public temple by virtue of Section 15 of 1950 Act and vests all powers of directions, control and supervision over it to the Travancore Devaswom Board. It has clearly violated the right of the women to visit and enter a temple freely and to practice Hindu religion as the Right under Article 25(1) that seems to be both against inter-faith but also intra-faith parity also.⁴⁹

48. Indian Young Lawyers Association ...Petitioner(s) & Or's. v The State of Kerala & Or's (2018) SCC 1690

49. Indian Young Lawyers Association ...Petitioner(s) & Or's. v The State of Kerala & Or's WRIT PETITION (CIVIL) NO. 373 OF 2006. (Para no.106)

Rule 3 cannot be saved by public morality and this morality does not mean public morality but constitutional morality under Article 25(1). With relation to the view on public morality, it was made crystal clear upon the adoption by the people in the term of morality that is being used in the pretext of constitutional morality.⁵⁰

According to him the notions and exceptions used in the articles like public order, morality and health these cannot be used as the means of colorable legislation to perceive the freedom of religion or he basic tenets of the rights that can simply violate the rights of people to practice any religion without any kind of discrimination against women in this Sabrimala case.⁵¹

To this with the concurring judgment Hon'ble Justice Chandrachud said "Constitutional morality must hold a value which is not mere a fleeting subject but should hold a permanent value in every time and age. The roots of constitutional morality must be firmly rooted in the shackles and vision of our constitutional provisions like equality, liberty, fraternity and dignity. These are not only necessary to safeguard the right of all citizens and secure them justice but also accept the compliance with the freedom of religion as an equally important right like the other fundamental rights."⁵²

50. Indian Young Lawyers Association ...Petitioner(s) & Or's. v The State of Kerala & Or's (2018) SCC 1690
(Para no.106)

51. Ibid at Para no.111

52. Ibid

In the domain of religion and morality it is the constitutional morality that has to prevail in all the overreaching possibilities. Our constitution being liberal has the capability of being accepting the enormous versions of protection under the given rights and provisions. The constitutional morality in the content is being infused into the fundamental principles of the preamble and the importance has been far reaching into the constitutional ethos.

Whereas Justice Indu Malhotra in her minority judgment⁵³ observed: The pinangs of constitutional morality has been underpinned into the constitution which are the moral values ascertaining the true meaning of the objectives of the constitution. According to her the religious rights are constitutionally protected under Article 25 & 26(b)of The Indian Constitution. Courts usually do not indulge into the issues related to religion mostly in the cases of aggrieved person when he is from particular religion or sect.

In a diversified country like India where people with multi-lingual faiths and beliefs are practiced by the people and entertaining the pleas on the particular religious sects and systems would result in serious damage to the constitutional and secular fabric of this country. It would compel the court to undertake judicial review under Article 14 to delineate which would be outside the ken of the court.

The issue of what constitutes an essential religious practice is for the religious community to decide and if they do not have any issue then courts are no one to interfere.

53. Indian Young Lawyers Association ...Petitioner(s) & Or's. v The State of Kerala & Or's (2018) SCC 1690

It is beyond a shadow of a doubt that there are lots of expectations from the aforementioned review petition. In such a scenario, the need of the hour is that the Supreme Court establishes a stable doctrine on the touchstones of harmonious not favorable construction. The existence of literature and theories over matters of the transformative accommodation of cultural differences in the interest of constitutional morality would be of immense help to the judiciary in arriving at such a construction.

For instance, Ayelet Sachar's⁵⁴ theory of joint governance as mentioned in his book 'Multicultural Jurisdictions — Cultural Differences and Women's Rights'.

This theory suggests the division of jurisdictional authority between the state and cultural groups both over matters like the Sabarimala dispute, thereby ensuring that neither of the two is in a position of undue advantage. Incorporation of such a concept by the Apex Court in its quest to define constitutional morality would ensure that the right to equality and non-discrimination doesn't come at the expense of the right to freedom of religion as happened in the Sabarimala judgment.

Constitutional morality in a secular and heterogeneous society needs to be more rational and logical. Equality and non-discrimination are definitely the main elements for constitutional morality but in the matters of religion it is viewed in isolation. There has to be a perfect and striking balance between the constitutional provisions and constitutional morality backed by the strong and withholding adjudication process by the judiciary.

54. Pierik Roland, *Ayelet Shachar: Multicultural Jurisdictions: Cultural Differences and women's rights*, Vol 32, Political Theory, 585-589 www.jstor.org/stable/4148111. Accessed 26 July 2021.

In the review petition⁵⁵ the court reached on the discussion that now constitutional morality has reached the level of Stare Decisis and has been explained in various constitutional bench judgments. Hence, not wrong to test this rule on the basis of constitutional morality. Justice Indu Malhotra quoted Dr. B.R Ambedkar in her dissenting judgment:

"There are movement when I think that the future of Democracy in India is very dark.

But I do not want to say that I have not other moments when I felt that if all of us put our shoulders together and pledge ourselves to "Constitutional morality" we should be able to build up a regular party system in which there could be liberty equality and fraternity"⁵⁶

Although a huge amount of uncertainty looms over the future of constitutional morality, we believe that it should certainly not walk down the path of another basic structure. We believe that unless the definition of constitutional morality is given some definite contours, using it would lead would to an endless chain of interpretations; changes and vagueness in the effort of creating a moralistic utopia much distant from the reality.

55. Kantaru Rajeev Aru v. Indian Young Lawyers Association, REVIEW PETITION (CIVIL) NO. 3358/2018

56. Dr. Babasaheb Ambedkar: Writing and Speeches Vol. 17 page 378

While the courts all over the world have been thrifty in order to interpret the constitutions especially written, the courts in India have taken this issue of morality in the lieu of religion quite seriously and in an adamant manner to understand the unintended consequences with reference to the usage of the famous doctrine Constitutional Morality wherein the actual concept by the means of constituent assembly debates.

Constitutional Morality was used as the benchmark in the judgment of Sabrimala wherein the prohibition on the entry of women was removed. But this right is not meant to intend or limit the enjoyment of its right in the private realm or only against the state arbitrary interference but this doctrine follows the belief of people to have the similar perception of their religion to that according to the courts' interpretation of constitutional morality.

CHAPTER V- CONCLUSION AND SUGGESTIONS

The relationship between Religion and Morality is dealt to be a deep and quintessential topic relating to both methodological and theoretical issues that has complexity of issues but at the same time though with the conceptual shortcomings it has prevailed through the sphere of progress and contemporary categories interplayed between cognition and culture. There have been immense theories and efforts that came into play for determining the social behavior and cultural dominance regarded as “moralizing god” to encompass the relationship wherein the artefacts, concepts, dogmas and practices are both rigorously followed and practiced.

The cultural representations for identifying the cognitive systems have been the most prominent system and evolutionary domain that has ultimately foreseen the natural and cognitive substances that can be advocated in the coherent systems that can be both fragile and cognitive in the name of the matrix that expands in order to obstruct and suppress others in the name of God which we called religion and what we mean by it is the “good” in the concept of morality. Although on the verge of extended conjectures there cannot be any plausible conjectures for characterizing or fractionate the connections between religion and morality in the facile form and the historical predisposition affecting not only the psychological elements but the decisive culturally developmental and innate preparedness in order to jointly work under the umbrella of extreme followship of the religion and morality.

The altruistic behaviors in the empirical work done for the approach of expanding the concept of religion and morality there has to be prosocial consensus between the society and the conceptual hallmark for the expectations of the people and the society in the filed of maturation in order to recognize any field of science and not only for the sake of the religion and morality in the apparent face of the record for it.

The foremost duty of the courts in the constitutional matters is to validate the established principles and adjudicate them if the legislative competence fails to do the same or the fundamental rights are violated in any of the constitutional provisions. As the constitutional courts are expected to be the safeguarding interpreters of the constitution and uphold the principles of the constitution and not by the disregard in any form from the majority or the popular opinion and perception of the people.

The court needs to know the difference between the public and constitutional morality and they have to create innovative methods in order to implement the constitutional morality as stated in Navtej Johar case and not been guided by the societal morality. However, the same concept was criticized in the Sabrimala judgment and it appears on the apparent face that the agreement related to the concept of constitutional morality has remain understudied and the thoughts of Ambedkar in the constituent assembly debates need to be applied in underlining the concept and consensus by the legal scholars.

In the absence of the concrete and solid study about the past studies, constituent assembly debates and understanding the law in India since the basic roots there will be haul of popular morality overpowering or interpreted as constitutional morality. It is with the help of sheer determination by the courts on the basis of the doctrines and explicit constitutional provisions in the favor of constitutional morality it can be subjected as the perceived notion of the pillar of the democracy and can be a success in the idealistic democratic country like India.

When there are proclaimed faithless perceived to be dangerous confidence While reeling from a natural disaster and counting on exemplary camaraderie, the cloak of political correctness can be interpreted as an opportunity to affricate the progressive society in the certain state of without offending others the state ought to be naked and what God proposes for its own country would fall under the redemption disposed by God.

Even though no one wishes for Constitutional Morality's demise because it is a very dangerous weapon, and no one can deny that its use necessitates extreme caution and restraint. Even divine nectar, as the adage goes, can become poison in excess, in this case for the society.

Thus, rationality has no place and account in morality. Reason may judge the relations and matters of fact but the weakest feelings and vivid outcomes never act in any compulsion entailing to the moral obligation being obliterated by the religious sentiments and factors. "Reason is, and ought to be, only the slave of the passions," Hume was right. Without the intervention of human reason, all human actions flow naturally from human feelings.

Morality paves the way for religious beliefs to be maintained, while religion reinforces morality through its supernatural sanctions. The legal framework for addressing such issues will be addressed across various arena with relevant case studies. Ultimately the aim is to identify how well equipped our Indian law with such insightful legal framework and judiciary in order to attempt to bring Indian law in synchronization with the religion along with morality and uplift the cultural diversity of a country like India.

The formation of the constitution was made possible as the liberal approach of the constitutional morality at its core. It is not said to be liberal but what Ambedkar meant was the liberalistic in the deeply rooted ideologies of the virtues in the society along with the mutual sprang aspirations of the individuals at their core intellectual, democratic sensibility, sense of commitment to the institutions and the decision-making power for the future keeping in mind the due regard of the past and present.

Even with the cross-cultural domain and establishment of religion and morality in our society but the effect of one another on their domains seems to be the least accorded advocating the putative moral grounds based on the religious apprehensions.

The inherent will of the Constitution and spirit in the legitimised established way created its roots in the institutions for the mounting of the social and political turmoil that started with the nerve breaking state action emergency wherein India actually for the first time saw the extreme abuse of power and the defying of the constitutional values and morality.

But the concept of morality in terms of both public and constitutional is not mere observance of the principles of constitution and the real sweep is not limited or confined to the literal provisions and text of the constitution, rather within its virtues it ushers the wide magnitude possibility of the inclusiveness of the pluralistic society following the constitutionalism rather than the mere constitution as a document.

It is only through the values of constitutionalism the real perception of constitutional morality flows and trickle down the percolating system of the state administration for the betterment of each citizen.

The concept of constitutional morality may have the formal elements like respect and inclusion for plurality, self-restraint, adjudicating process, concern for an open culture, claims to popular sovereignty and other constitutional forms. Ambedkar always had his doubt regarding these elements as they were not only difficult to achieve in toto in Indian democracy set up but also their implementation in the constitutional revolution. It has always been a political organization set up and sustainment of achieving the objectives through the conditions.

In the domain of religion and morality it is the constitutional morality that has to prevail in all the overreaching possibilities. Our constitution being liberal has the capability of being accepting the enormous versions of protection under the given rights and provisions. The constitutional morality in the content is being infused into the fundamental principles of the preamble and the importance has been far reaching into the constitutional ethos.

The Constitutional Morality seems to have a realistic approach in the context of religion and morality that is determined by the complex adjudication system which needs to have a distinct mechanism for the insulation and safeguard by the superior courts in the realm of justifying the societal morality and also seeming the every possible way to include the suggestions given by Justice Indu Malhotra in her dissenting judgment as there needs to be a constant and subtle balance between respecting the fundamental rights of the individuals regarding the religion and also safeguarding the rights of the specialized communities in the name of protecting their special interests in the pretext of misuse of the fundamental rights regarding the arena specific.

There has to be a proper machinery to adjudicate and differentiate between the protected interests and fundamental rights protected under the Indian Constitution. The same can be achieved by reading down the concept and approaches by Ambedkar on the constitutional morality that needs to be studied through pretext in and out to understand the real meaning of the constitutional morality. It encourages the judicial supremacy and activism by the courts and uphold the democratic principles in a country like India but at the same time if used in the realm of protected interests it hampers the liberalism and autocratic principles in a democracy that would also lead to the disruption in the balance of separation of powers when the judiciary seems to overpower the other two bodies.

Constitutional morality if used in the principle of constitutionalism it tends to include the diversified principles and fraternity among people in the vibrant use of Constitutional silences.

This doctrine emerged from the pretext of constitutional morality and seemed to be inherited by the Supreme Court in the name of diligence and protecting the interests of the specialised class. This doctrine seems to be more of the class bringing positive transformation in the societal and public morality but at the same time the balance between the same has to be maintained in the safeguarding of the rule of the law of the nation and enforcing the arena that seemed to be liberal and constructive in the same manner.

It should act more of as the resilience towards the balancing approach in the realm of societal and public morality and not as the “dangerous weapon” in the interference of the religious practices and also the essential religious practices that needs to be decided and governed by the religion and the personal laws and not by the courts to decide the religion realistic limitations for the citizens of the country like India where religion is meant to be diversified and hold the people together in the bond of religious entities followed by the practice and transformation of morality with age and time.

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