



CONSTITUTIONAL ETHOS

**QUINTESENCE
OF INDIAN CONSTITUTION**

INTRODUCTION

**“Dhrati Kshama Damah Asteyam Shouchamindriyanigrhah
Dhi vidya satyamakrodho dashakam dharma lakshanam”**

- Ten Commandments (Principles) of Dharma, Manu Smriti

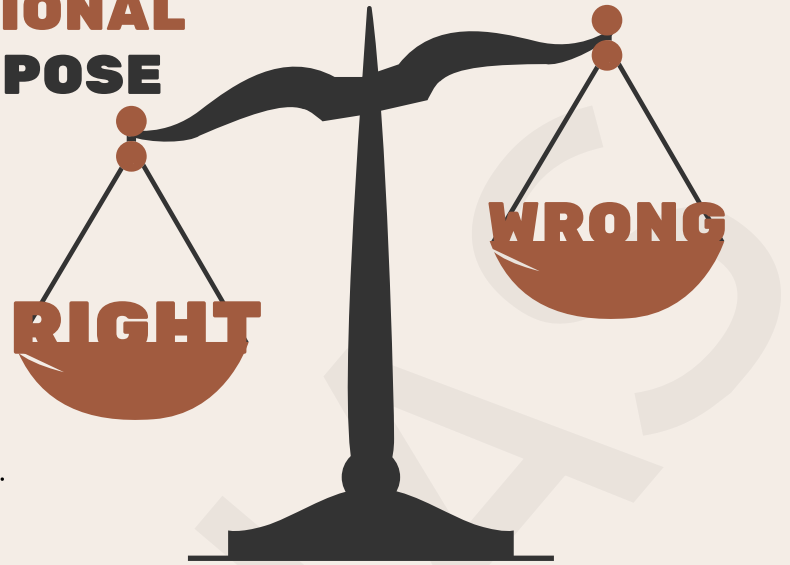
Principles, i.e., fundamental laws or doctrines are **universal** for humans. Every **society** or a **nation sets certain principles** or **behavioral standards** for its members/institutions based on religious ideals, social norms, influence of moral thinkers etc. These principles are manifested through the set of rules or laws that are used to govern the society/nation. Collectively they become their ethos, i.e., the distinguishing character or guiding beliefs of individuals as well as institutions.

Today, for most nations (especially democracies like India), its **Constitution** is the **Supreme law**. It carries special legal sanctity and acts as the foundational document for all other laws and governance. Therefore, the **Constitutional Ethos**, i.e., set of beliefs or ideas enshrined in the Constitution, become fundamental to its governance.

In this edition, we will try to investigate what are constitutional ethos? Next, we will cover the various theoretical alternatives on constitutional interpretation used by Judiciary. Based on the above, we will be identifying the **Constitutional Ethos of India** in light of historical sources, recent precedents, and contemporary debates –highlighting their significance and concerns regarding the inconsistent understanding and their irregular application. Based on it, we will identify ways to uphold the **Constitutional Ethos**, to **achieve the ideals and aspirations** of the **Constitution of India** and to create a harmonious social order in India.

WHAT ARE CONSTITUTIONAL ETHOS AND WHAT PURPOSE DO THEY SERVE?

Constitutional ethos refers to the **principle of justice** that a **collective group**, commonly referred to as **“the people,”** recognizes and respects beyond **majoritarian decision making**. It covers the fundamental principles of the constitution, their meaning, and interpretation. For example, the Preamble of the Constitution of India sets the fundamental principles of **liberty, equality, justice** etc.



The principles or constitutional ethos bear a **significant weight on constitutional decision making** and **sets the central purpose** of:

Creating a society of **free and equal citizens**.

Establish stable, egalitarian norms for the creation of government institutions.

Contribute to deliberative popular dialogue on **stable representative governance**.

Protect individual rights and ensure **public welfare**.

Place obligations on their functions.

Act as an **instrument of political education** to build a new civic culture.

But the details of these principles are worked out through social movements, judicial opinions, codifications, popular culture, and a host of other deliberative channels. Also, to **ensure constitutional governance**, they need to be **binding** for the **establishment** and **administration** of an impartial state.

In terms of Sources, the **Preamble of the Constitution** provides the starting point for any analysis of the **normative purposes** of the Constitution. It is the **key to the constitution maker's mind** and sets the **government mandate**. It binds it to one consistent standard against which all official actions can be gauged.

The essence of the Constitution lies **as much in the letter as in its spirit**. In this light, it is important that the Judiciary acts as an interpreter of the text in the Constitution. Thus, the Judiciary follows, upholds, and sometimes helps in building the Constitutional Ethos.

But before we discuss the Constitutional Ethos, we must look at various **theoretical alternatives (of Constitutional Ethos) on constitutional interpretation** used by Judiciary.

WHAT ARE THE THEORETICAL ALTERNATIVES TO CONSTITUTIONAL INTERPRETATION?

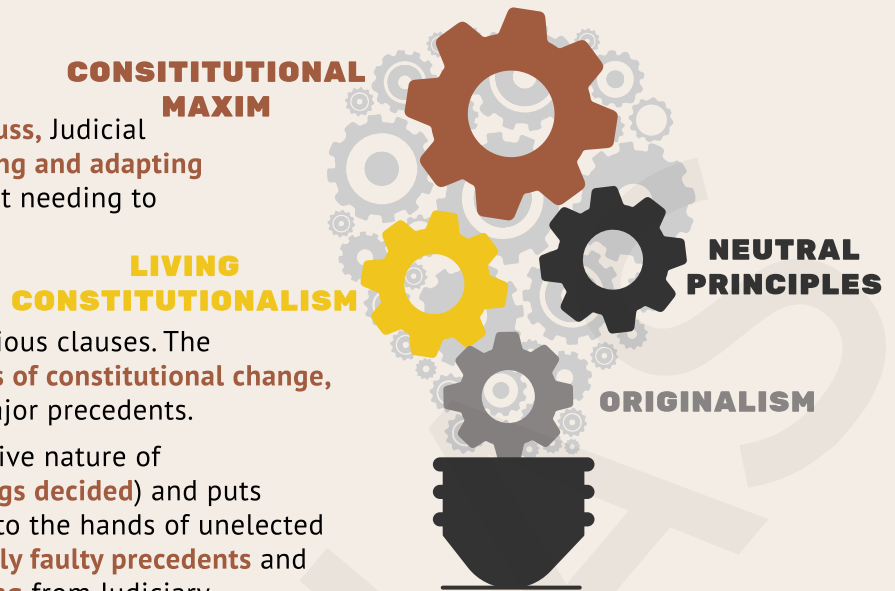
- **Originalism:** It stands for the interpretation of the Constitution according to the **initial intent of the framers'** or to the document's meaning to ordinary people living at the time of independence.
 - ▶ **Working principle:** It **prevents judges** from rendering decisions based on **political predispositions** by grounding them into historical significance. It also helps to **prevent judicial overreaching**.
 - ▶ **Issue:** It becomes outdated as historical interpretations come under fire from legal and political sides. Also, the **framers** were generally **intellectually not unified**, and it can be **inconsistent, incomplete** and **partisan** on contemporary debates.

◦ **Living Constitutionalism:** It is associated with **judicial decisions or precedents** that redefine the meaning of the Constitution. According to political scientist **David Strauss**, Judicial precedent is the primary means for **evolving and adapting the Constitution** to social progress without needing to formally amend its antedated provisions.

- ▶ **Working Principle:** It seeks to **demonstrate how precedents define and alter** the significance of various clauses. The **Supreme Court** is regarded as the **locus of constitutional change**, redefining the Constitution through major precedents.
- ▶ **Issue:** It takes for granted the progressive nature of **stare decisis** (meaning **to stand by things decided**) and puts resolution of political disagreement into the hands of unelected judges. Also, it **overlooks the analytically faulty precedents** and the **potential regressive decision making** from Judiciary.

◦ **Neutral Principles:** It uses the neutral principles or standards of interpretation and evaluates them in the light of the **constitutionalism maxim**.

- ▶ **Constitutional Maxim** refers to the overarching goal of government, which **sets limits on power** and holds the **obligation to act** for the public benefit. It provides **normative standards** for legitimate use of authority and helps to identify whether policy protects individual rights for the common good. It also helps to **identify analytical flaws** and **validate public decisions**.
- ▶ **Issue:** It leaves a host of **unanswered questions on rights of citizens** and **government duties**. For example, what are fundamental rights and who is to identify them? Is government required to create welfare programs or only guard against encroachments to legal entitlements? In what sense is “equality” to be understood: social, civil, or political?



Example: Philip Bobbitt's **six modalities of legitimate analysis for a legislation**

PRUDENTIAL, I.E.,

Seeking to balance costs and benefits of a particular rule.

06

ETHICAL, I.E.,

Deriving rules from those moral commitments of the Indian Ethos relected in the constitution.

05

DOCTRINAL, I.E.,

Applying rules generated by precedents.

04

01

HISTORICAL, I.E.,

Intentions of framers.

02

TEXTUAL, I.E.,

Looking at the meaning of the words of the constitution alone.

03

STRUCTURAL, I.E.,

Interfering rules from the relationships constitution mandates among the structures it sets up.



These alternative approaches have their own advantages and disadvantages. But overtime it has been observed that an approach centered around Constitutional Ethos is stable, sustainable, and progressive in the longer term. In this light, India has adopted a legal framework which is centered around the idea of Constitutional Ethos.

WHAT ARE INDIA'S CONSTITUTIONAL ETHOS?

Considered as one of the **world's longest written constitutions**, the Indian Constitution has only grown over time with a range of **Constitutional Ethos**.

Democracy for Social and Economic Welfare



Principle: Democracy

Considered as '**mother of democracy**' (oldest-known traditions of king elected by people and collective decision-making), the Indian Constitution provides for a **parliamentary form of democracy** with:

- ▶ **President as head of state.**
- ▶ An **executive headed by the Prime Minister.**

Objectives

- **Citizen-centric governance** based on **participation of people.**
- **Political representation** to all.
- **Equality of all citizens** before the law.



Principle: Social and Economic Welfare

The **Directive Principles of State Policy**, also known as **instrument of instructions**, lays down certain principles which are **fundamental** to governance of the country.

These principles direct the state when it is making laws or policies. E.g., **Article 41** and **Article 47** of the Indian Constitution provides that the state shall take care of the citizen's **Economic needs** and **Social needs** respectively.

Objectives

- **Create a welfare State.**
- **Establishment of Social and Economic Democracy.**
- **Provide Moral Guidance to the State** on matters such as environmental safeguards, international peace and security etc.

Unity in Diversity: Secularism and Multi-lingualism



Principle: Secularism

Though explicitly added in the Preamble during the **1975 emergency**, Secularism is an **integral part** of the Constitution. It mandates that the **Indian State be secular.**

Objectives

- **Protect religious freedom** of all citizens.
- **Avoiding** any state enforced religion.
- **Prohibit religious prosecution** of individuals.
- **Prevent domination** of one religion over another or within the same religion.



Principle: Multilingualism

Being a multilingual country, the Constitution of India recognizes **22 official languages** under the **Eighth Schedule** with provisions to protect linguistic minorities.

Objectives

- **Preserve India's pluralism.**
- **Teach children in mother tongues** to develop their full potential.
- **Conserve India's cultural wealth.**

Liberty and Freedom



Principle: Civil Liberties

The Fundamental Rights, also known as the **Magna Carta** or the **Great Charter of India** It is the **cornerstone** of the Indian Constitution.

It represents the **civil liberties** enjoyed by every citizen for a **meaningful life**. For instance, Equality before the law, access to public spaces, equal opportunities in public employment, protection against unreasonable searches and seizures, etc.

Objectives

- **Secure equal rights** to all (sense of equality).
- **Establish political democracy.**
- **Upheld supremacy of law.**
- **Protect minorities** and **weaker sections** of society.
- **Create a sense of responsibility** in public authorities by removing absolute state control.



Principle: Protection of Life and Personal Liberty

Most fundamental of all rights, the protection of life and personal liberty is described as the 'heart of fundamental rights' by the Supreme Court. It can't be suspended even during an emergency.

Objectives

- **Prohibit deprivation of life** except according to the procedure established by law.
- **Guarantee a dignified life** to citizens.

Sui-generis Federalism



Principle: Centralized Federalism

The Indian Constitution provides for a **governance structure** which is **federal in structure** and **unitary in nature**, thus concentrating greater power at the Union Government level, especially in extraordinary circumstances.

Objectives

- **Maintain supremacy of the constitution.**
- **Avoiding the total unitary system** of government.
- **Preserve India's diversity** and its **union.**
- **Enforce radical legislations** for social reforms (e.g., ban on untouchability).



Principle: No rigid Separation of Powers

Indian Constitution accepts the **separation of power** in a **broader sense**, i.e., the powers are divided between legislative, executive and judiciary at **functional level.**

Objectives

- **Create a system of checks and balances** (e.g., responsibility of the executive to the legislature).
- Prevent **abuse of power** (e.g., preventing the legislature from enacting an arbitrary rule).
- **Improve government efficiency** and ensure **judicial independence.**

WHAT ARE THE CHALLENGES IN IMPLEMENTATION OF CONSTITUTIONAL ETHOS?

The given Constitutional ethos have helped India in becoming one of most dynamic democracies of the world and preserve India as a **Union of States**. But some of promises made by the Constitution remain an illusion because of various reasons:

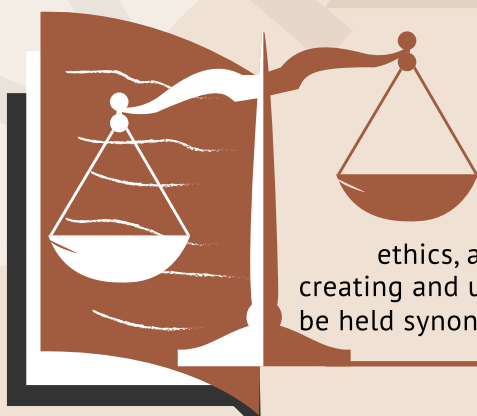
- **Lack of certainty on Rights:** Barring **Article 20** and **21**, all other civil liberties can be **suspended** during the operation of **National Emergency**, creating a scenario of potential misuse of power.
 - E.g., as happened during the **Emergency of 1975**, often regarded as the darkest phase of independent India's history.
- **Non-Justiciability:** Because of the non-justiciable (no court adjudication) nature of some constitutional ethos, the **legal stability** and **credibility** of these Ethos is found amiss.
 - E.g. the ethos enshrined in the DPSPs and the preamble isn't enforceable through court. Without **Social and Economic justice**, **political justice** also suffers.
- **Trust Deficit between Centre-State:** The **Centralized Federalism** creates trust deficit between the Centre and States, especially when having different political parties in power.
 - Similarly, a number of **other flashpoints** occurred between Centre and States over role (powers) of governor, altering of state territory etc. which threatens the Centre-State relationship.
- **Open-ended Provisions:** The language of Indian Constitution is largely complex, and open-ended. Also, it carries a large number of proviso's or riders, leading to lack of specific aims or limits.
 - It leaves **unelected judges** to be the **only legitimate elaborators** of constitutional principles. This **diminishes the consultative process** of democracy to the views of a **few judges**.
 - At times, it leads to issues such as **Judicial Overreach**, **interpretative inconsistency** and **loss of rationality**.
- **Lack of Awareness on Constitutional Ethos:** Whether it is the governance institutions, political parties or citizens, the awareness on constitutional ethos, their importance and related values is limited.
 - E.g. Indian democracy faces challenges such as **criminalization of politics**, **lack of inner party democracy**, **low voting**, **vote bank politics**, **corruption** etc.



WHAT CAN BE DONE TO UPHOLD THE ESSENCE OF CONSTITUTIONAL ETHOS?

The real implementation of the constitutional ethos requires an environment of trust between implementing institutions and a harmonious existence among people where laws are not broken. This can be achieved by:

- ◉ **Upholding Supremacy of the Constitution:** Since the Constitution is the highest law that no other laws can violate, no other branch of government should be able to overturn it.
 - ▶ The Centre and State should **set core** or **most fundamental constitutional ethos** and frame laws/policies in harmony with related constitutional provisions.
- ◉ **Bringing Political Reforms:** Ensure **democracy** and **transparency** within political parties through maintenance of proper record of its members by political parties, implementation of parties own Constitution and regular elections for highest posts in the party.
 - ▶ **Capacity Building of ECI** can help in it through increased resources and expertise to handle elections and implement Model Code of Conduct in letter and spirit.
 - ▶ Encouraging **principles-based** politics and strengthening of law-enforcement agencies.
- ◉ **Representative Government for Pluralistic approach:** To meet the needs of a complex and pluralistic society, India needs a representative government with adequate representation of marginalized sections such as Women, Scheduled Castes and Scheduled Tribes.
 - ▶ E.g. **Gender Mainstreaming**, i.e. integrating a gender equality perspective at all stages and levels of policies, programmes and projects for empowerment of women.
- ◉ **Framing an Information, Education and Communication (IEC) Strategy:** Government could frame an **IEC strategy** to bring awareness on Constitutional ethos, civil liberties and political entitlements.
 - ▶ It can help ordinary citizens to exercise their sovereign right of governance by engaging with their elected representatives in effective deliberations.
- ◉ **Encouraging Media and Civil Society: A free, independent and pluralistic media** (to perform its duties as 4th pillar of Indian Democracy) and **vibrant civil society** can help in preserving civil liberties and encouraging people participation.
- ◉ **Establish Rule of Law:** Remove absolute state control with equal protection of law, to bring a sense of equality with protection to the dignity and respect of the individual. It can help in protecting the interests of minorities and weaker sections of society.
 - ▶ **Good Governance** can help in it through stable principles to hold public officials accountable to ordinary people and ensure a transparent and inclusive approach.
- ◉ **Safeguarding dignity and advancing democratic institutions:** The Centre and States must work together to get at the most basic principle of constitutional purpose and avoid any arbitrary act to create trust between two; helping both in:
 - ▶ **Value-laden policy decisions** to create a more egalitarian society,
 - ▶ **Protecting equal individual rights** for the common good, and
 - ▶ **Providing a just regime** based on fair rules, equal access to government and judiciary for people.



CONCLUSION

Constitutional Ethos when in application, go beyond the political or legal realm. They influence the culture, ethics, and morals that the societies and individuals uphold. Thus, creating and upholding of Constitutional ethos based on right principles can be held synonymous to building a Nation via its collective value system.

CONSTITUTIONAL ETHOS: QUINTESSENCE OF INDIAN CONSTITUTION

- ◉ Constitutional ethos refers to the **fundamental principles of the constitution**, their **meaning**, and **interpretation**.
- ◉ **India has one** of the **world's longest written constitutions**.
- ◉ The constitution is interpreted by Judiciary also by using various **theoretical alternatives**.



Originalism: It stands for the interpretation of the Constitution according to the initial intent of the framers.



Living Constitutionalism: It is associated with judicial decisions or precedents that redefine the meaning of the Constitution.



Neutral Principles: It uses the neutral principles or standards of interpretation and evaluates them in the light of the **constitutionalism maxim**.

Central Purpose of Constitutional Ethos

- ◉ **Creating a society of free and equal citizens.**
- ◉ **Protect individual rights (Dignity)** and ensure **public welfare**.
- ◉ **Establish stable, egalitarian norms** behind government institutions and **place obligations** on them.
- ◉ **Contribute to deliberative popular dialogue** on stable **representative governance**.
- ◉ **Act as an instrument of political education** to build a new civic culture etc.

Constitutional Ethos of India

- ◉ **Parliamentary form of Democracy** for **citizen-centric governance**.
- ◉ **Secular State** to protect **religious freedom of all**.
- ◉ **Social and Economic Welfare** to create a **welfare state**.
- ◉ **Civil Liberties** to secure **equal rights to all**.
- ◉ **Protection of Life and Personal Liberty** to guarantee a dignified life.
- ◉ **No rigid Separation of Powers** to create a **system of checks and balances**.
- ◉ **Centralized Federalism** for **supremacy of the constitution**.
- ◉ **Multilingualism** to preserve **India's pluralism**.

Implementation Challenges

- ◉ **Lack of certainty on rights**, creating opportunities for misuse.
- ◉ **Non-Justiciable nature** removes legal stability and credibility of some ethos.
- ◉ **Trust Deficit between Centre-State** because of centralized federalism.
- ◉ **Open-ended Provisions** with large number of proviso's.
- ◉ **Lack of Awareness on Constitutional Ethos** in society.

Way Forward

- ◉ **Upholding Supremacy of the Constitution** in laws and policies.
- ◉ **Bringing Political Reforms** for democracy and transparency within political parties.
- ◉ **Representative Government** to meet the needs of a complex and pluralistic society.
- ◉ **Framing an Information, Education and Communication (IEC) Strategy** to bring awareness on constitutional ethos.
- ◉ **Encouraging Media and Civil Society** to preserve civil liberties and encourage people participation.
- ◉ **Establish Rule of Law** for equal protection of law and good governance.
- ◉ **Safeguarding Dignity and Advancing Democratic Institutions** to create trust.