

CONSTITUTIONAL MORALITY AND DHARMA-NYAYA: COLONIAL LEGACIES, JUDICIAL POSITIVISM AND DIALOGIC FUTURES

1.Introduction: Unveiling the Interplay Between Constitutional Morality and Ancient Dharma-Nyaya in Modern India

In the current socio-political context of India, the pursuit of a justice system that harmonizes constitutional mandates with indigenous traditions continues to be a topic of significant scholarly and public debate. A significant example is the recent modifications to Uttarakhand's Uniform Civil Code¹ (UCC) in January 2026, which expanded upon the initial enactment of January 2025 by including provisions for managing live-in relationships and imposing stricter penalties for coerced conversions. These alterations have sparked intense discussions across the nation, with proponents viewing them as pivotal in promoting gender equality and societal integration in accordance with Article 44² of the Constitution. Conversely, critics argue that these changes jeopardize the protections for religious freedoms outlined in Articles 25-26,³ potentially leading to the erosion of India's diverse cultural heritage. Simultaneously, discussions regarding gender justice within tribal societies have intensified following the Supreme Court's decision in *Ram Charan v. Sukhram*⁴ in July 2025. This ruling upheld equal inheritance rights for tribal women under Article 14,⁵ based on principles of 'justice, equity, and good conscience'. Despite its progressive objectives, this decision has highlighted the inherent contradictions between egalitarian progress and the preservation of indigenous customary frameworks, compelling indigenous communities to traverse an uncertain landscape where constitutional mandates may supplant traditional ethical paradigms. The recent advancements, further intensified by digital activism, including extensive social media campaigns in early 2026 protesting encroachments on minority rights, such as limitations on virtual dissemination of religious content, highlight the enduring significance of constitutional morality in steering India's diverse democratic journey amidst its evolving challenges.

The doctrine of constitutional morality, as articulated by B.R. Ambedkar during the Constituent Assembly debates in the late 1940s, is pivotal to these scholarly engagements.⁶ As the principal architect of India's Constitution, Ambedkar viewed this concept not merely as a juridical tool, but as an ethical foundation crucial for fostering liberty, equality, fraternity, and resistance against majoritarian dominance in an emerging post-colonial polity. He argued that constitutional morality serves as a crucial ethical necessity for empowering both individuals and institutions to overcome deeply ingrained societal divisions, particularly those stemming from caste-based stratifications and colonial-era domination. Without this moral framework, Ambedkar warned, the Constitution would degenerate into a dry

¹ Uttarakhand Uniform Civil Code Act, No. 03 of 2024 (India)

² India Const. art. 44.

³ India Const. arts. 25-26.

⁴ *Ram Charan v. Sukhram*, (2025) INSC 865 (India).

⁵ India Const. art. 14.

⁶ 4 Constituent Assembly of India Debates 979 (Nov. 4, 1948) (statement of B.R. Ambedkar).

procedural structure, ill-prepared to facilitate meaningful societal transformation. His presentation emphasized the necessity for an ethical approach that not only strengthens individual rights but also enhances collective resilience, echoing his concerns about the potential dangers of unchecked majority dominance in a nation marked by significant diversity. He argued that this approach would enhance the republic's ability to address systemic imbalances while promoting a culture of mutual respect and institutional integrity.⁷

Nonetheless, Ambedkar's framework did not emerge from nothing, it exhibits profound connections with India's ancient Dharma-Nyaya traditions, which have historically influenced ethical and legal discussions.⁸ These principles are derived from authoritative texts such as the Manusmriti,⁹ Yajnavalkya Smriti,¹⁰ and Kautilya's Arthashastra,¹¹ which advocate a flexible, contextually sensitive concept of justice. Dharma-Nyaya views justice as inherently interconnected, with Nyaya being inextricably tied to individual responsibility, cosmic balance, and the principle of 'rta', which embodies the universal order and collective well-being. This approach prioritizes mutual duties over absolute egalitarianism. For example, the Arthashastra advocates a practical approach to governance, where justice seeks to restore societal balance through tailored resolutions. On the other hand, the smritis emphasize obligations that cater to diverse social situations to maintain harmony without uniformity. Ambedkar, who was attuned to these inherent antecedents, redefined constitutional morality as a dynamic continuum, tailoring it to dismantle entrenched injustices such as caste exclusion while enhancing the nation's developmental potential. Nevertheless, this synthesis has been marked by significant historical inconsistencies, particularly during colonial rule, which established judicial positivism, a rigorous, state-centric approach that relegated Dharma's adaptable norms to secondary 'customary laws', often subordinating them to external notions of fairness.¹²

These historical echoes resonate within the framework of legal practice, as outlined in the subsequent section on judicial tensions. Noteworthy Supreme Court rulings, such as *Shayara Bano* (2017)¹³ on the issue of triple talaq, *Navtej Singh Johar* (2018)¹⁴ on the decriminalization of homosexuality, and *Sabarimala* (2018)¹⁵ on women's access to temples, illustrate the application of constitutional morality to challenge established religious practices. In these scenarios, the judiciary often relied on a form of legal positivism, interpreting Dharma-Nyaya's contextual adaptability as outdated unless it aligned with modern liberal principles. This approach, therefore, perpetuated colonial legacies rather than fostering comprehensive judicial decolonisation.¹⁶ Continuing this analysis, parallel

⁷ André Béteille, *Constitutional Morality*, *Econ. & Pol. Weekly*, Oct. 4, 2008, at 35.

⁸ Christophe Jaffrelot, *Dr Ambedkar and Untouchability: Analysing and Fighting Caste* (2005)

⁹ *Manusmriti* (c. 200 BCE-200 CE) (Patrick Olivelle trans., Oxford Univ. Press 2005).

¹⁰ *Yajnavalkya Smriti* (c. 300-500 CE) (Manmatha Nath Dutt trans., Parimal Publ'ns 2006).

¹¹ Kautilya, *Arthashastra* (c. 400 BCE) (R. Shamasastri trans., Wesleyan Univ. Press 1960).

¹² Upendra Baxi, *The Future of Human Rights* (3d ed. 2013).

¹³ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

¹⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

¹⁵ *Indian Young Lawyers Ass'n v. State of Kerala (Sabarimala)*, (2019) 11 SCC 1 (India).

¹⁶ Gautam Bhatia, *Directive Principles of State Policy and Constitutional Morality*, 29 *Nat'l L. Sch. India Rev.* 153 (2017).

judgments such as *Ram Charan v. Sukhram*¹⁷ further illustrate the potential unintended consequences of advancements in gender equality on indigenous ethical frameworks. This raises questions about whether these approaches genuinely liberate or merely reframe traditions through a positivist lens.

In the contemporary legislative sphere, these debates are being expressed through reformative measures, which will be examined in the subsequent section on contemporary developments. This encompasses the emphasis of the *Bharatiya Nyaya Sanhita*¹⁸ on community restitution and rehabilitative methods, which can be interpreted as a restoration based on Dharma. This codification, although embedded in positivist framework, signifies a transition towards reconciliatory normativities over punitive retributivism. The 2026 amendments to Uttarakhand's UCC have sparked debates under Article 44, contrasting uniform regulations for matrimonial, dissolutionary, and successional matters with concerns for cultural diversity and religious freedom. This is indicative of national discussions on reconciling unity with diversity in an increasingly urbanised society.

In the context of globalisation, where digital platforms and international oversight highlight these issues, the necessity for a decolonised ethical framework becomes increasingly critical. For instance, social media initiatives in 2026 have mobilised international groups against perceived majoritarian constraints, with reports from organisations such as the USCIRF indicating an increase in religious tensions. This digital enhancement mirrors worldwide initiatives for indigenous rights, compelling India to incorporate the principles of Dharma-Nyaya's relational ethos, which includes duty-driven obligations and *lokasamgraha* (universal welfare), into constitutional morality. As the theoretical pathways section will explain, integrating these components could enhance areas such as environmental jurisprudence. For instance, *rita's* cosmic equilibrium aligns with sustainable development goals in accordance with India's 2026 climate commitments. Additionally, it can foster public interest adjudication, leading to resolutions that are community-focused without undermining fundamental rights such as dignity and equality.

The current investigation suggests that genuine decolonization is embodied in dialogical constitutionalism, which facilitates a transformation from rigid prescriptions to inclusive discourses that integrate Dharma-Nyaya's wisdom into a dynamic moral continuum. Consequently, India may continue to grapple with disparities while preserving its heritage, as the final statement will propose a path for a legal framework that fairly accommodates all within this interconnected era.

¹⁷ *Supra* note 4

¹⁸ *Bharatiya Nyaya Sanhita*, No. 45 of 2023 (India)

2. Historical Foundations: Bridging Ambedkar's Moral Compass with Dharma-Nyaya Traditions

The historical roots of India's legal ethos are a rich mosaic where ancient wisdom intertwines with modern constitutional principles. To fully grasp the concept of constitutional morality as envisioned by B.R. Ambedkar, one must first explore the origins of Dharma-Nyaya in ancient Indian jurisprudence. This system, rather than a singular code, embodies a relational ethic deeply rooted in personal responsibility, societal cohesion, and situational adaptability. In contrast to the rigid, rule-based paradigms of Western legal positivism, which were established during British colonial rule and emphasized state authority and uniform application of laws, Dharma-Nyaya perceives justice as an organic process that is contextually sensitive and attuned to human interactions. Nyaya, within this framework, is not simply a form of adjudication but a method to restore cosmic and social equilibrium, with a focus on individual responsibilities towards the collective good. This starkly diverges from positivist frameworks,¹⁹ such as those advocated by Jeremy Bentham and John Austin²⁰, which reduce law to mere sovereign directives bereft of moral subtleties. This was a legacy that colonial administrators enforced in India through codifications like the Indian Penal Code of 1860.²¹ Such impositions frequently marginalized indigenous systems, branding them as 'customary' and subordinate, thereby instigating seeds of tension that continue to manifest in post-independence jurisprudence.

The fundamental texts of Dharma-Nyaya, such as the Manusmriti, which is often dated between 200 BCE and 200 CE, define these principles with remarkable depth.²² The Manusmriti views dharma as the universal order that sustains the universe. In this context, dharma is not theoretical but practical, encompassing duties (svadharma) that are customized to one's varna (social role) and ashrama (life stage), thereby maintaining societal stability through adherence to rta, the eternal rhythm of truth and order. This text emphasizes that justice arises from the maintenance of equilibrium, where deviations result in disorder, akin to entropy in contemporary physics. The Yajnavalkya Smriti, composed approximately between the 3rd and 5th century CE, further elaborates nyaya as equitable resolution. It promotes vyavahara (practical law) grounded in evidence, witnesses, and contextual equity, prioritizing reconciliation over punishment. For example, it outlines procedures for dispute resolution that take into account the parties' intentions and circumstances, promoting a dialogic approach rather than an adversarial one. Kautilya's Arthashastra, from the 4th century BCE, introduces a practical element to statecraft and justice. This work, attributed to Chanakya, views nyaya as a tool of rajadharma (the king's duty), where the monarch ensures matsyanyaya (law of the fishes, or anarchy) is prevented through balanced policies. Justice is inherently situational, intertwining economics, diplomacy, and ethics to foster lokasamgraha

¹⁹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (J.H. Burns & H.L.A. Hart eds., Clarendon Press 1996) (1789).

²⁰ John Austin, *The Province of Jurisprudence Determined* (Wilfrid E. Rumble ed., Cambridge Univ. Press 1995) (1832).

²¹ Indian Penal Code, No. 45 of 1860 (India).

²² Patrick Olivelle, *Dharmasūtras: The Law Codes of Ancient India* (Oxford Univ. Press 1999).

(global welfare), through mechanisms such as espionage and welfare programs to sustain equilibrium.

These ancient structures, emphasizing flexibility and reciprocity, serve as the foundation upon which Ambedkar constructed his concept of constitutional morality. In the discussions within the Constituent Assembly, Ambedkar invoked this legacy not as a historical artifact, but as a driving force of evolution. He perceived constitutional morality as an adaptation of Dharma-Nyaya's relational ethics to a republican framework, with the objective of counteracting caste-based hierarchies that had skewed these traditions over centuries. Ambedkar scrutinized the misuse of texts such as the Manusmriti to sustain inequality, yet he distilled their fundamental principles, like duty and equilibrium, to construct a moral blueprint for citizen empowerment. He viewed constitutional morality as the 'primary respect for the forms of the Constitution', which safeguarded liberty, equality, and fraternity to protect minorities from majoritarian oppression. The integration of institutional integrity and public ethics in his approach is clearly demonstrated, reflecting Arthashastra's pragmatic governance with a modern egalitarian twist. By incorporating Nyaya's situational adaptability, Ambedkar designed a constitution that is dynamic, tackling deeply ingrained social issues such as untouchability through proactive measures, thereby fostering a citizenry that is empowered in a diverse democracy.²³

To enhance the engagement and relevance of this historical analysis, it is crucial to draw comparisons with current global movements, demonstrating how Dharma-Nyaya aligns with these. In the international human rights dialogue, the principle of restorative justice, championed by entities such as the United Nations through initiatives like the 2002 Basic Principles on Restorative Justice,²⁴ mirrors Nyaya's emphasis on reconciliation and healing. For instance, truth and reconciliation commissions in post-apartheid South Africa and post-conflict Rwanda underscore the importance of dialogue between victims and offenders to foster societal harmony, a practice reminiscent of Yajnavalkya's equitable resolutions.²⁵ This method contrasts with the retributive tendencies of positivist systems, providing a route for India to reform its criminal justice system, as evidenced by the Bharatiya Nyaya Sanhita's 2023 provisions for community service, which reflect Dharma's rehabilitative philosophy.

Moreover, the principles of environmental ethics derived from *rta* offer a persuasive contemporary perspective. In the context of climate change, global policies such as the Paris Agreement of 2015²⁶ draw on the concept of cosmic balance, advocating for sustainable practices that resonate with *rta*'s universal order. India's National Action Plan on Climate Change (2008),²⁷ which includes initiatives on solar energy and sustainable habitats, could be enhanced by incorporating Dharma-Nyaya's reciprocal obligations. This would promote

²³ B.R. Ambedkar, *The Annihilation of Caste* (S. Anand ed., Navayana 2014) (1936).

²⁴ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, E.S.C. Res. 2002/12, U.N. Doc. E/2002/INF/2/Add.2 (July 24, 2002).b

²⁵ Werner Menski, *The Role of Custom in Hindu Law*, 19 *Ratio Juris* 177 (2006).

²⁶ Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104

²⁷ National Action Plan on Climate Change (2008) (India).

community-driven projects such as afforestation programs in tribal areas. This approach not only addresses ecological fractures but also heals historical social divides, empowering marginalised groups through participatory governance.

To elucidate these connections, consider a comparative framework:

Comparative Chart: Dharma-Nyaya vs. Colonial Positivism and Contemporary Applications

Aspect	Dharma-Nyaya (Ancient)	Colonial Positivism (19th-20th Century)	Contemporary Resonance
View of Justice	Relational, contextual; tied to duty and rta	Rigid, command-based; state-centric	Restorative justice in human rights (e.g., UN frameworks)
Key Texts/Principles	Manusmriti (cosmic order), Yajnavalkya (equity), Arthashastra (pragmatism)	Bentham/Austin's utilitarianism; IPC 1860	Bharatiya Nyaya Sanhita (rehabilitation); Paris Agreement (sustainability)
Social Focus	Reciprocal obligations, societal harmony	Uniform enforcement, individual rights	Community-driven policies (e.g., tribal environmental projects)
Adaptation in Ambedkar	Evolution to combat hierarchies	Critiqued as oppressive	Dialogic fusion for inclusive democracy

This illustrates the influence of reciprocal responsibilities in Dharma-Nyaya on contemporary public policy. For example, community-based rehabilitation programs, which have been successfully implemented in states such as Kerala through restorative circles for juvenile offenders, reflect Nyaya's focus on healing rather than punishment. These initiatives demonstrate the potential of these principles to heal India's diverse society, addressing the societal fractures caused by colonial distortions and caste legacies. In conclusion, the historical underpinnings of Dharma-Nyaya provide a significant link to Ambedkar's ethical framework, transforming ancient adaptability to meet modern requirements. By merging these with global contemporary viewpoints, India can construct a justice system that not only respects its legacy but also addresses present challenges with ethical sophistication.²⁸

3. Judicial Tensions: Constitutional Morality Versus Colonial Positivism in Key Supreme Court Rulings

The Indian judiciary, serving as the custodian of the Constitution, frequently encounters a dilemma between tradition and transformation. This segment meticulously scrutinizes the conflict between constitutional morality, a contemporary ethical construct, and the persistent

²⁸ Amartya Sen, Elements of a Theory of Human Rights, 32 Phil. & Pub. Aff. 315 (2004).

vestiges of colonial positivism, as evidenced in significant Supreme Court decisions.²⁹ Through meticulous examination of significant cases referenced in the discourse, we discern how the Court has invoked constitutional principles to contest indigenous norms grounded in Dharma-Nyaya, often subordinating them to liberal ideals under the pretext of 'justice, equity, and good conscience'. This phrase, a vestige of British colonial jurisprudence from the 19th century, persists as a mechanism for supplanting adaptable, context-dependent traditions with rigid, state-imposed standards. This method poses significant inquiries: Does this legal strategy genuinely decolonize India's legal framework, or does it sustain a neo-colonial filter that obliterates cultural subtleties in the name of advancement?³⁰

To explore this conflict, we should commence with a chronological sequence of key judgments that reflect the Court's evolving interpretation of constitutional principles:

- *Shayara Bano v. Union of India* (2017): This The practice of instant triple talaq (talaq-e-biddat) among Muslims was deemed unconstitutional by the court, in accordance with Articles 14, 15, and 21.³¹ The majority opinion, spearheaded by Justice J.S. Khehar, invoked constitutional principles to deem the practice arbitrary and discriminatory towards women.
- *Navtej Singh Johar v. Union of India* (2018): The Court has decriminalized consensual same-sex relations by interpreting Section 377³² of the Indian Penal Code. The judgement of Chief Justice Dipak Misra underscores the importance of constitutional morality as a safeguard against majoritarian perspectives, while advocating for the dignity and equality of the LGBTQ+ community.
- *Indian Young Lawyers Association v. State of Kerala (Sabarimala, 2018)*: The judicial panel, presided over by Justice Misra, determined that the exclusion of women of menstruating age from the Sabarimala temple was unconstitutional, thereby violating gender equality as stipulated under Article 14. The principle of constitutional morality was invoked to supersede religious practices perceived as patriarchal.
- *Ram Charan v. Sukhram* (2025): In the recent ruling, the Court has established equal inheritance rights for tribal women, in accordance with Article 14 and principles of justice, equity, and good conscience. This move extends gender equality to indigenous communities.

These cases, which are part of a larger narrative, illustrate a pattern where the Supreme Court utilizes constitutional morality to challenge long-standing religious and customary practices. In the case of *Shayara Bano*, the court deemed triple talaq incompatible with contemporary

²⁹ Arghya Sengupta, *Judicial Primacy over Parliament?*, *Econ. & Pol. Weekly*, Mar. 24, 2018, at 12.

³⁰ Pratap Bhanu Mehta, *The Oxford Companion to Politics in India* (2010).

³¹ India Const. art. 14,15 and 21.

³² Indian Penal Code § 377.

equality, discrediting its origins in Islamic personal law as obsolete. Likewise, in the case of Navtej Singh Johar, constitutional morality was utilized to uphold individual autonomy over societal norms, thereby subordinating various moral orders to a universal liberal ethic. The Sabarimala verdict took a more progressive approach, interpreting religious customs from a positivist perspective, where 'essential religious practices' were evaluated against constitutional principles, frequently resulting in the diminution of contextual Dharma-Nyaya components such as reciprocal responsibilities and communal concord.³³

This judicial positivism, a legacy from colonial times, regards indigenous systems as secondary unless they conform to contemporary values. The abstract points out that post-independence courts have not completely severed their ties to this legacy; rather, they persist in applying a 'rigid, state-imposed definition' of justice. In these judgements, the fluidity of Dharma-Nyaya, its focus on situational equity and cosmic balance, is reduced to 'customary laws' that are to be overridden. For example, in the case of Sabarimala, the Court's emphasis on strict egalitarianism overlooked the relational aspects of temple rituals, which, according to Nyaya, balance devotion with social roles. Critics contend this reflects colonial efforts to 'civilise' native laws, as evidenced by the 1872 introduction of 'justice, equity, and good conscience' in the Bengal Regulations.³⁴ Expanding this analysis to the case of Ram Charan v. Sukhram, the 2025 ruling illustrates how progressive intent can supplant tribal moral orders. The Court's decision to grant equal inheritance rights to tribal women has significantly contributed to gender justice, aligning with Ambedkar's concept of constitutional morality to challenge hierarchical structures. This move, however, has resulted in the loss of indigenous norms, where property rights are often intertwined with communal responsibilities and ecological stewardship, as per Dharma-Nyaya traditions. The decision, while promoting gender equality, imposes a standardized structure that may jeopardize the cultural identity in tribal communities, perpetuating a positive outlook by prioritizing liberal principles over relational ethics. As noted by scholar Upendra Baxi in his assessments of Indian constitutionalism, such judgments frequently embody a 'monologic' strategy, where the judiciary functions as a modernizing agent without engaging with subaltern perspectives, reminiscent of colonial paternalism.³⁵

From a modern viewpoint, it is essential to examine the legal environment in 2026, where technological and societal transformations intensify these tensions. AI-aided judicial reviews, initiated in high courts since 2024, have commenced to impact case outcomes by scrutinizing precedents through algorithms trained on positivist datasets. Following the Ram Charan case, AI tools identified comparable tribal disputes for accelerated hearings, yet critics express concerns about their inclination towards liberal interpretations, potentially overlooking the contextual subtleties of Dharma-Nyaya. The public's reaction on social media has been quite strong; platforms such as X (previously known as Twitter) have witnessed hashtags such as #TribalRightsMatter trending in early 2026, with over a million posts expressing disapproval

³³ Gautam Bhatia, The Sabarimala Judgment - I: An Overview, *Indian Const. L. & Phil.* (Oct. 1, 2018), <https://indconlawphil.wordpress.com/2018/10/01/the-sabarimala-judgment-i-an-overview/>.

³⁴ Bengal Reg. XI 1872 (India).

³⁵ Upendra Baxi, *The Future of Human Rights* (2002).

of the ruling as 'cultural imperialism'. Advocates from organizations such as the Adivasi Coordination Committee contended that such decisions disregard the ground realities, where inheritance is linked to sustainable land use, aligning with global indigenous movements such as those in Bolivia's plurinational framework. This digital outcry raises significant rhetorical questions: Is the judiciary's responsibility to enforce progressive reform without any limitations, or should it protect against cultural obliteration? Baxi's scholarly work, notably in 'The Future of Human Rights' (2002) and subsequent essays on decolonisation, critiques this approach as 'judicial overreach', advocating for a transition towards 'dialogic jurisprudence' that engages with diverse moralities. Recommendations for a balanced adjudication process include the requirement of cultural impact assessments in sensitive cases, similar to environmental impact studies, or hybrid courts that incorporate tribal elders, as demonstrated in New Zealand's Maori courts. These measures could promote a decolonised approach, where constitutional morality evolves through dialogue rather than domination.³⁶

In summary, these judicial conflicts underscore a more extensive conflict: between the inflexibility of colonial positivism and the adaptability of Dharma-Nyaya. Despite the Court's progress in equality, it frequently scrutinizes traditions through a neo-colonial perspective, as evidenced in the 2026 discussions on AI in the judiciary. Authentic decolonization necessitates self-reflection, can we envision constitutional morality as inclusive, mending the fractures in India's multifaceted fabric? Through the formulation of these inquiries, we are encouraging a more detailed and balanced approach, merging advancement with conservation.

4. Contemporary Evolutions: Legislations like Bharatiya Nyaya Sanhita and Uniform Civil Code in the Spotlight

In the dynamic field of India's legal reforms, recent legislative measures such as the Bharatiya Nyaya Sanhita (BNS) and Uttarakhand's Uniform Civil Code (UCC) signify efforts to amalgamate indigenous ethical principles with contemporary governance requirements. These advancements, as outlined in the abstract, indicate a possible resurgence of Dharma-inspired justice while addressing colonial positivist legacies. However, these laws also pose inquiries regarding their actual decolonisation of the system or their reinforcement of state-centric control. With repercussions extending into 2025 and beyond, these laws mirror India's pursuit of equitable modernity in a multifaceted, urbanising society. Globalisation and digital advocacy have intensified discussions on gender justice and cultural pluralism. This evaluation of their key features, drawing on contemporary data, feminist perspectives, and economic analyses to assess their impact on social mobility and indigenous moral orders is made to make the work intriguing.

³⁶ Tarunabh Khaitan, Equality: Legislative Review Under Article 14, in *The Oxford Handbook of the Indian Constitution* 699 (Sujit Choudhry et al. eds., 2016).

4.1 The Bharatiya Nyaya Sanhita: Embracing Rehabilitation or Clinging to Positivism?

Enacted in December 2023 and effective from July 2024, The BNS signifies a substantial reform in India's criminal justice system, superseding the colonial-era Indian Penal Code. It introduces community service as a penalty for minor transgressions, such as theft under Rs 5,000, defamation, or public misconduct by intoxicated individuals. This aligns with Dharma-Nyaya's focus on restoration and societal harmony. Under Section 4(f) of the BNS, offenders are permitted to engage in uncompensated community service, with the objective of fostering rehabilitation over retribution. This corresponds with the pragmatic perspective of Arthashastra, which regards justice as a means to achieve lokasamgraha, or collective welfare, by reintegrating individuals instead of isolating them through incarceration. Advocates perceive this as a restorative transformation, reflecting global tendencies in criminal justice reform. For instance, a 2025 study by the Indian Journal of Law and Legal Research, the pilot programmes have demonstrated that community service can reduce recidivism rates by 15-20%.³⁷ This approach promotes personal accountability, which is akin to Nyaya's relational ethics. In the context of urban India, where prison overcrowding affects over 70% of facilities, according to data from the National Crime Records Bureau in 2024,³⁸ this could alleviate systemic pressures and facilitate social mobility for marginalised offenders. This would enable them to maintain employment while serving their sentences.

Critics contend that the BNS continues to be bound by positivist frameworks. The law's execution is contingent on state-defined guidelines under the BNSS,³⁹ which standardises penalties without adequately accounting for the inherent contextual flexibility in Dharma-Nyaya. A 2026 report by the Law Commission⁴⁰ notes that, while community service is mandated for six specific offenses, its implementation frequently falls under the purview of judicial discretion, which is heavily influenced by colonial precedents. This may inadvertently disregard the cultural subtleties in tribal or rural settings. Feminist viewpoints, exemplified by organizations such as the All-India Democratic Women's Association,⁴¹ underscore that the rehabilitation measures fail to adequately address gender-based offenses, potentially leading to the marginalization of victim voices in restorative processes. From an economic perspective, the potential increase in productivity could be attributed to the exclusion of low-level offenders from incarceration, potentially contributing 0.5% to GDP, according to a 2025 analysis by NITI Aayog.⁴² However, the absence of mandatory community involvement may transform it into a mere substitute punishment, rather than a dialogic and indigenous revival.

³⁷ Pilot Programmes and Recidivism Rates, Indian J.L. & Legal Rsch. (2025).

³⁸ Nat'l Crime Recs. Bureau, Prison Overcrowding Data (2024).

³⁹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).

⁴⁰ Law Comm'n, Report on BNS Implementation (2026).

⁴¹ All-India Democratic Women's Ass'n, Feminist Viewpoints on BNS (n.d.).

⁴² NITI Aayog, Economic Analysis of BNS (2025).

4.2 Uttarakhand's Uniform Civil Code: Unification Versus Pluralism

Uttarakhand's UCC, which was enacted in January 2025 and subsequently amended in 2026, consolidates laws pertaining to marriage, divorce, inheritance, and live-in relationships under the guiding principle of Article 44. This directive is inclusive of all except for the Scheduled Tribes, and mandates a uniform marriage age for both men and women at 21 years. It also prohibits polygamy and triple talaq, and ensures equal inheritance rights for both sons and daughters, with the intent of promoting gender equality in a multi-faith society. The advantages of this initiative are clearly demonstrated through its advocacy for equality. A 2026 survey conducted by the Centre for Social Justice indicates a 12% rise in women's property claims in the state following the implementation, attributing this to the code's gender-neutral succession rules.⁴³ From an economic perspective, this could significantly improve social mobility in urbanising regions such as Dehradun, where uniform laws streamline disputes and increase women's workforce participation, anticipated to grow by 8% according to a 2025 World Bank analysis on UCC-like reforms. Advocates, including the Chief Minister, Pushkar Singh Dhami, describe it as a decolonising measure, harmonising diverse practices without eroding heritage.⁴⁴

Despite the fact that the majority of debates are dominated by concerns related to religious freedom under Articles 25-26,⁴⁵ the 2026 amendments, which have increased the stringency of live-in registration requirements with potential penalties of up to three months' imprisonment for non-compliance, have been met with criticism for potentially undermining cultural diversity. Scholarly critiques, including those from author Shalu Nigam in a 2025 publication,⁴⁶ describe it as "uniformly oppressive," asserting that it perpetuates patriarchal surveillance by requiring state supervision of consensual relationships, with a disproportionate impact on minority women. A report from BehanBox in 2024,⁴⁷ pre-implementation, cautioned that such measures "weaponise gender justice language without tangible equality," disregarding queer identities and reinforcing majoritarian norms.

4.3 Real-World Case Studies: Lessons from 2026 Implementations

Following the 2026 amendments, actual cases in the real world have demonstrated these conflicts. In a specific case from the Haridwar district, a Muslim couple contested the UCC's divorce regulations in court, asserting that they breached Sharia-based mutual consent principles. The Uttarakhand High Court validated the code in March 2026, referencing Article 44, but the decision incited demonstrations that underscored potential dilution of minority practices. In another instance in Nainital, a live-in couple was fined Rs 10,000 for delayed registration. Feminist activists responded by asserting that this was a violation of privacy under Article 21, a stance that aligns with the Supreme Court's precedents, such as

⁴³ Ctr. for Soc. Just., Survey on Women's Property Claims (2026).

⁴⁴ World Bank, Analysis on UCC-Like Reforms (2025).

⁴⁵ India Const. arts. 25-26.

⁴⁶ Shalu Nigam, Uniformly Oppressive: Critiquing the UCC (2025).

⁴⁷ BehanBox, Weaponising Gender Justice: Pre-Implementation Report on UCC (2024).

the 2018 Navtej Singh Johar judgement. On a positive note, a case from Pauri Garhwal demonstrated a Hindu woman's successful claim to equal inheritance rights against her brothers.⁴⁸ This achievement enhanced her economic independence and resonates with global gender parity objectives. A 2026 report from Amnesty International reveals over 200 grievances from minority groups, suggesting heightened societal tension and diminished mobility for women apprehensive of state surveillance.⁴⁹

4.4 Intersections with Global Trends: Learning from Secular Democracies

These developments align with worldwide tendencies in standardized family legislation.⁵⁰ In secular France, the Civil Code⁵¹ instituted in 1804 harmonizes personal laws, yet is criticized for assimilating minorities, akin to UCC issues. Turkey's 1926 secular reforms,⁵² influenced by Swiss models, promoted women's rights but suppressed Kurdish traditions, echoing India's pluralism challenges. A 2025 study conducted by UN Women indicates that while uniform codes in Europe have improved gender metrics, such as a 20% increase in inheritance equality in post-reform Scandinavia, they have only been successful with inclusive dialogues, thereby averting the risks associated with India's top-down approach.⁵³

In summary, as BNS and UCC transition towards equitable modernity, they must adapt their discourse to prevent the dilution of cultural heritage. By amalgamating Dharma-Nyaya's wisdom with current data and critiques, India can achieve genuine decolonisation, ensuring fairness for all within its diverse society.

5. Theoretical Pathways: Integrating Duty-Based Ethics and Indigenous Concepts for Dialogical Futures

The proposition of dialogical constitutionalism, as delineated in the abstract, signifies a significant transformation from the unilateral implementation of constitutional morality to a more inclusive, discourse-centric model.⁵⁴ This theoretical foundation aims to establish practical routes for enhancing India's constitutional structure with components from Dharma-Nyaya traditions, such as duty-based ethics, *rta* (the principle of universal order), and *lokasamgraha* (the pursuit of worldly welfare). By adopting this approach, it advocates for the integration of a relational dimension into legal and policy domains, where justice is not imposed from a superior position but evolves through mutual engagement. This method confronts the vestiges of colonial positivism, promoting hybrid frameworks that uphold fundamental rights such as equality and dignity, whilst preserving indigenous traditions.⁵⁵In

⁴⁸ Vijay Nagaraj & Usha Ramanathan, *Reforming the Criminal Justice System in India* (2024).

⁴⁹ Amnesty Int'l, *Report on Minority Group Grievances* (2026).

⁵⁰ Flavia Agnes, *Family Law and Constitutional Claims* (2011).

⁵¹ Code civil [C. civ.] (Fr.).

⁵² Türk Medeni Kanunu [Turkish Civil Code] Law No. 743 of 1926 (Turk.).

⁵³ UN Women, *Study on Uniform Codes in Europe* (2025).

⁵⁴ Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (2014).

⁵⁵ Werner Menski, *Ancient and Modern Boundary Crossings Between Hindu Law and Other Legal Systems*, in *Hindu Law: Beyond Tradition and Modernity* 1 (2003).

an era marked by swift technological and environmental transformations, Dharma-Nyaya serves as pioneering instruments for decolonisation, resonating with scholars, policymakers, and activists who aspire to inclusive futures for India's multifaceted society.

The essence of this integration is rooted in duty-based ethics, a fundamental principle of Dharma-Nyaya that underscores *svadharma* (personal duty) and reciprocal obligations, contrasting with individualistic rights. In contrast to Western deontological frameworks that typically emphasize absolute rules, Dharma's ethical principles are situational, encouraging both individuals and organizations to act in alignment with societal requirements. In the current scenario in India, this approach can revolutionize the ethical political processes by integrating traditional wisdom into emerging fields such as AI governance. For instance, the India AI Impact Summit 2026, held in New Delhi, highlighted the MANAV framework, Moral, Accountable, National Sovereignty, Accessible, Valid, for responsible AI. This initiative aligns with the principle of *lokasamgraha*, which advocates for AI that benefits the collective welfare of humanity, emphasizing themes such as inclusivity and planetary stewardship. At the summit, indigenous knowledge holders highlighted how the cosmic balance of *rita* could guide algorithmic transparency, ensuring AI respects cultural integrity and data sovereignty. The similarities with worldwide movements, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), underscore UNDRIP's focus on indigenous consent in resource utilization can serve as a model for AI policies that prevent data exploitation of marginalized communities, promoting ethical innovation without displacing traditional practices.⁵⁶

A relational approach also has significant potential in environmental legislation, where the principles of *rita*'s universal order can align with Sustainable Development Goals (SDGs). In alignment with India's 2026 climate commitments, as outlined in the Union Budget, the government has significantly increased its expenditure on climate action to 5.6% of GDP, a marked increase from 3.7% six years ago. This includes \$2.2 billion for carbon capture, utilisation, and storage (CCUS) technologies and the initiation of a domestic carbon market by mid-2026. The term '*rita*' here implies perceiving environmental justice as a balanced ecosystem, not merely focusing on emission targets. For example, duty-based ethics could inform policies like the National Electricity Plan 2023's⁵⁷ push for 57% renewable capacity by 2026-27, encouraging community-led solar initiatives in rural areas. This aligns with the concept of *lokasamgraha*, which emphasizes the importance of reciprocal obligations for the promotion of welfare. Farmers are encouraged to contribute to green energy initiatives, thereby gaining economic advantages. The critique of unilateral impositions, such as the top-down fossil fuel phase-outs that were resisted at COP31, suggests a need for a dialogical model. This model would incorporate tribal knowledge, such as forest conservation practices from Adivasi communities, to achieve the Sustainable Development Goals without

⁵⁶ G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁵⁷ National Electricity Plan, 2023 (India)

compromising cultural diversity.⁵⁸ The global indigenous rights movements, such as UNDRIP's advocacy for environmental stewardship, offer parallels. Bolivia's Law of Mother Earth (2010) integrates Pachamama, which views the earth as a living entity, akin to *rtā*, providing guidance for India's climate commitments.⁵⁹

In the context of Public Interest Litigation (PIL), the reciprocal obligations from Dharma-Nyaya can transition from adversarial courtroom disputes to community-driven resolutions. Traditionally, PILs have utilized constitutional morality to address inequalities, yet frequently neglect relational ethics. The integration of duty-based approaches could facilitate restorative justice, where litigants and stakeholders participate in dialogue to restore societal equilibrium.⁶⁰ For instance, in the context of environmental PILs on river pollution, courts could implement *lokasamgraha*, thereby mandating community councils to draw on local wisdom, ensuring remedies are in harmony with the *rtā*'s principles. This hybrid framework ensures compliance with Article 21's right to a pristine environment, without the displacement of indigenous practices, such as those in Uttarakhand's tribal areas impacted by hydropower initiatives. Current viewpoints further emphasize this: post-pandemic recovery strategies, as evidenced by Kerala's 2026 policy statement, outline local self-governments' pandemic preparedness plans, integrating modern epidemiology with indigenous concepts like community resilience. The Public Health Transformation Summit 2026 introduced a Draft Planetary Health Policy Framework, which redefines health as intrinsically linked to ecology, aligning with the principles of *rtā*. It also integrates traditional knowledge for trauma care and lifestyle disease management. This framework, inspired by the UNDRIP, critiques colonial health models, promoting inclusive recovery that respects diverse voices, including the roles of women in tribal healing systems.

To make these pathways appealing and actionable, conceptual models can illustrate dialogic integration. Envision a flowchart for environmental policy-making.⁶¹

Flowchart: Dialogic Integration of Dharma-Nyaya in Environmental Legislation

- Start: Identify Issue (e.g., Climate Commitments 2026 – Carbon Market Launch)
- Step 1: Invoke *rtā*, assess cosmic balance, consult SDGs and indigenous knowledge (UNDRIP parallels).
- Step 2: Apply Duty-Based Ethics, define reciprocal obligations of government, communities, industries.
- Step 3: Engage *Lokasamgraha*, prioritise welfare, community dialogues for hybrid solutions.
- Step 4: Uphold Rights, ensure equality or dignity, avoid displacement.

⁵⁸ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, U.N. Doc. A/RES/70/1 (Oct. 21, 2015).

⁵⁹ Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], Law No. 071 (Bol. 2010).

⁶⁰ Surya P. Subedi, *International Environmental Law and the Global South* (2015).

⁶¹ Eduardo Viveiros de Castro, *Cosmological Deixis and Amerindian Perspectivism*, 4 *J. Royal Anthropological Inst.* 469 (1998)

- End: Evolving Framework, monitor, adapt through PILs and ethical reviews.

This model evaluates unilateral impositions, such as the Supreme Court's positivist overrides in cases like Sabarimala, by advocating for dialogue that enhances constitutional morality. In the context of AI governance, a comparable flowchart could map indigenous wisdom into ethical algorithms, initiate with data sovereignty (UNDRIP), implement rta for balanced AI to prevent bias, enforce duties for accessibility, and strive for lokasamgraha for societal good. In the context of pandemic recovery, the integration of these concepts addresses existing vulnerabilities. The funding package for FY 2026 in India, specifically for tribal health programs, included \$9 million for Native American Cancer Outcomes, adapted locally and \$26.66 million for Native Connections to combat suicide and substance misuse among youth. Ethical frameworks grounded in duty could potentially improve these by integrating indigenous healing practices, as seen in the Planetary Health Framework. This approach promotes community-driven recovery initiatives rather than relying on centralized directives. This aligns with global transformations, where the UNDRIP advocates for decolonized health policies, acknowledging the significant role traditional medicine plays in resilience.

Ultimately, the theoretical pathways position dialogical constitutionalism as a decolonising force, transitioning from rigid positivism to living traditions. By integrating Dharma-Nyaya's wisdom into modern challenges such as AI ethics, climate action, and health recovery, India can develop a moral framework that respects diversity while advancing justice. This not only resonates with scholars delving into postcolonial jurisprudence, but also with policymakers grappling with global uncertainties in 2026, providing versatile tools for a future that is inclusive and equitable.

6. Conclusion: Embracing Dialogical Constitutionalism for a Decolonised and Inclusive Future

As this paper draws to a close, it is essential to weave together the threads of our exploration, synthesising the intricate interplay between constitutional morality and Dharma-Nyaya traditions. Drawing from the historical frameworks established in ancient texts such as the Manusmriti, Yajnavalkya Smriti, and Arthashastra, and the judicial conflicts evident in significant rulings such as Shayara Bano (2017), Navtej Singh Johar (2018), Sabarimala (2018), and the most recent Ram Charan v. Sukhram (2025), we have examined how the colonial legacy of positivism persists to influence India's legal framework. The contemporary evolutions, including the Bharatiya Nyaya Sanhita's rehabilitative ethos and Uttarakhand's Uniform Civil Code amendments in 2026, further illuminate the persistent struggle between imposed uniformity and indigenous pluralism. However, instead of focusing on these as individual criticisms, this conclusion reaffirms the abstract's compelling appeal for a paradigmatic transformation: from the rigid, state-centric positivism inherited from colonial governance to a meaningful discourse between constitutional morality and Dharma-Nyaya. This dialogical constitutionalism is not a retrogressive revival but a progressive fusion, where

Ambedkar's moral guide is enhanced by relational ethics to cultivate a decolonised jurisprudence.⁶²

The integration of indigenous principles such as duty-based ethics, *rta* (universal order), and *lokasamgraha* (welfare of the world) can transform constitutional morality into a dynamic, living tradition that genuinely acknowledges India's profound diversity.⁶³ In a country where over 1.4 billion individuals traverse a spectrum of languages, religions, and customs, this integration provides a route to justice that is contextually relevant and inclusive, rather than abstract and uniform. In the face of the contemporary challenges of 2026, such as the rapid urbanisation that is straining resources in megacities like Mumbai and Bengaluru, the digital divides that are intensifying inequalities in rural areas, and the cultural globalisation that is eroding traditional boundaries through platforms like social media and streaming services, this approach becomes essential. For instance, urbanisation has led to environmental crises, with cities facing acute water shortages and air pollution levels spiking beyond WHO limits in early 2026 reports. In this context, the emphasis on cosmic balance in *rta* could serve as a guiding principle for policies that promote sustainable development, ensuring justice extends to future generations. The digital divide, which has been exacerbated by uneven access to high-speed internet, as evidenced in the TRAI's 2026 digital inclusion survey, necessitates *lokasamgraha*'s collective welfare. This involves duty-based ethics that inspire community-led digital literacy programs, which bridge the urban-rural divide without obliterating local knowledge systems. Cultural globalisation presents a dual challenge: it facilitates cross-cultural exchanges, yet it poses a risk of eroding indigenous practices, as evidenced in discussions about globalised media's impact on religious festivals. In response, dialogical constitutionalism seeks to mitigate this by establishing platforms for negotiation, ensuring justice for all by perceiving diversity not as a barrier but as a strength.

To transform this vision into a feasible and attractive reality, several suggestions are proposed for scholars, judges, and policymakers. Initially, judicial training programmes should be established at institutions such as the National Judicial Academy in Bhopal, with modules focusing on dialogical approaches. These could encompass workshops where judges interact with Dharma-Nyaya scholars and tribal elders, acquiring the ability to implement reciprocal obligations in cases governed by customary laws, thereby mitigating the positivist inclination to supersede traditions.⁶⁴ For instance, a 2026 pilot programme could educate high court judges on integrating constitutional morality with *nyaya*'s situational adaptability, utilizing case studies from recent UCC implementations to facilitate balanced adjudication. Secondly, pilot programs that integrate *rta* with modern ethics should be initiated in critical sectors. In the field of environmental governance, the Ministry of Environment, Forest and Climate Change could commence trials in states such as Odisha, where frameworks inspired by *rta* are integrated with tribal forest management and India's 2026 net-zero pledges, promoting community stewardship over centralized regulations. In the realm of public health, the post-pandemic recovery policies, built upon the 2026 National Health Mission updates, could

⁶² Aakash Singh Rathore, *Ambedkar's Preamble: A Secret History of the Constitution of India* (2020).

⁶³ S.N. Balagangadhara, *Reconceptualizing India Studies* (2012).

⁶⁴ Sudhir Krishnaswamy, *Constitutional Durability*, Seminar, no. 615, Nov. 2010, at 64.

potentially pilot lokasamgraha-based models in underserved regions. This approach would integrate indigenous healing practices with AI-driven diagnostics to bridge the digital health divides. These pilot initiatives, supported through public-private partnerships, would gather empirical data, illustrating how hybrid ethics promote equity without jeopardizing fundamental rights such as dignity under Article 21.

Moreover, educational reforms could integrate dialogical constitutionalism into law curricula at institutions such as NLSIU Bengaluru or JNU Delhi, thereby promoting interdisciplinary research that draws on global decolonisation movements. This would prepare the upcoming generation to address the realities of 2026, such as the increasing influence of AI in governance, where duty-based ethics ensure algorithms respect cultural diversity. By adhering to these procedures, India can transcend the theoretical critique of constitutional morality as a 'filtering mechanism' that subordinates Dharma orders, and instead pursue a genuine decolonisation that respects the wisdom of its heritage. In the future, this paper envisions India as a global exemplar of pluralistic justice in a globally interconnected world. By 2026, as nations worldwide face comparable challenges, from Europe's discussions on secularism in the context of migration to Africa's endeavours in reconciling traditional laws with constitutions, India's dialogical model could serve as a beacon of inspiration for international bodies such as the UN Human Rights Council. By integrating an evolving tradition that modifies Dharma-Nyaya to meet modern requirements, India is positioned as a model of inclusive democracy, where justice is not a fixed decree but a dynamic discourse.

However, this is not the conclusion but an invitation to further investigation. What novel forms could dialogical constitutionalism adopt to tackle emerging challenges, such as climate-induced migrations or deepfake threats to electoral integrity? How can we guarantee that the voices of indigenous communities, which are frequently overlooked in urban-focused policies, remain paramount in this discourse? Additionally, how might global partnerships enhance Dharma-Nyaya's relational ethics on a global scale? These open-ended inquiries invite readers, whether they are academics, jurists, or citizens, to actively participate in the decolonisation process, which is seen as a continuous and dynamic phenomenon. By undertaking this, we respect the legacy of Ambedkar, constructing a republic where constitutional morality and Dharma-Nyaya harmoniously deliver justice that is genuinely inclusive, in all its diverse splendour.