

REASSESSING THE LEGAL CONSCIOUSNESS OF ASHOKAN DHAMMA THROUGH MODERN CONSTITUTIONAL MORALITY

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ABSTRACT

The Edicts of Ashoka (c. 268–232 BCE) represent one of antiquity’s most ambitious attempts to codify a state-sponsored ethical framework—Dhamma (Pali; Sanskrit: Dharma). While traditionally studied through the lenses of religious history or Buddhist kingship, this paper offers a jurisprudential reassessment: an inquiry into the legal consciousness embedded within the Ashokan edicts when refracted through the principle of modern constitutional morality. Using a comparative hermeneutic methodology, this research analyzes key Pillar and Rock Edicts (RE XII, PE VII, Kalinga Edict) alongside core tenets of contemporary constitutionalism—specifically, secularism, social welfare, non-violence, religious tolerance, and environmental stewardship. The paper argues that Ashokan Dhamma, while not a constitution in the modern sense, generated a distinctive legal consciousness characterized by “humane pragmatism”—a governance logic that subordinates imperial power to public morality and procedural non-violence. This consciousness finds striking resonance with Articles 15, 25, 44, and 48A of the Indian Constitution. Photographic evidence of edict inscriptions and comparative tables illustrate textual parallels. The findings reveal that Dhamma functioned as a supra-positive moral constraint on sovereign will, anticipating modern concepts of directive principles and reasonable restrictions. This reassessment challenges the Orientalist view of Ashoka as merely a pious king, positioning him instead as a progenitor of constitutionalist ethics.

Keywords: Ashokan Dhamma, Constitutional Morality, Legal Consciousness, Ancient Indian Jurisprudence, Religious Tolerance, Non-Violence (Ahimsa), Social Welfare, Pillar Edicts, Secularism, Directive Principles.

1. INTRODUCTION

The modern nation-state operates under a paradox: law must be both coercive and morally legitimate. Constitutional morality—the adherence to foundational principles such as dignity, equality, and liberty even when majoritarian sentiments oppose them—is the device that resolves this paradox. Dr. B.R. Ambedkar, architect of the Indian Constitution, described constitutional morality as a “fundamental principle of governance” that ensures the rule of law supersedes the whims of those in power. But was this concept a purely Enlightenment invention, or does it have deeper, indigenous jurisprudential roots?

This paper investigates the legal consciousness embedded in the Ashokan Dhamma. Legal consciousness refers to the shared cultural schemas and practices through which people (and regimes) construct meanings of law, justice, and obligation. The Mauryan Emperor Ashoka, following the bloody conquest of Kalinga (c. 261 BCE), transformed his state from military expansionism to governance by moral edicts. These edicts, inscribed on rocks and polished pillars across the subcontinent, did not create enforceable rights or criminal codes. Yet, they generated a binding normative framework that the emperor himself claimed to be “deeply felt” and imposed upon his subjects and officials (*Rajukas*). The central research question is: To what extent does the legal consciousness expressed in Ashokan Dhamma align with, anticipate, or diverge from modern constitutional morality? This research comprises three main components. First, a textual-hermeneutic analysis of primary edicts. Second, a comparative mapping of Ashokan principles against specific articles of the Indian Constitution and broader constitutionalist theory. Third, photographic documentation of key inscriptions and a discussion of modern relevance.

The objective is not to claim an unbroken civilizational lineage (which would be historically simplistic) but to demonstrate that the *arché*—the foundational logic—of constitutional morality appears in non-Western antiquity, challenging Eurocentric narratives of legal modernity.

2. METHODOLOGY: COMPARATIVE HERMENEUTICS AND TEXTUAL ANALYSIS

2.1 Primary and Secondary Sources

Source Type	Description	Access/Source
Primary: Rock Edicts (RE)	Girnar, Mansehra, Kalsi versions of RE XII (Tolerance), RE XIII (Non-violence)	Archeological Survey of India
Primary: Pillar Edicts(PE)	PE VII (Tolerance); PE V (Animal protection); Separate Kalinga Edict 1	Photographs; Romila Thapar (1997)
Secondary: Modern Texts	Indian Constitution (Arts. 15, 25, 44, 48A); Ambedkar’s <i>Pakistan or Partition</i>	Government of India, 1950
Comparative Framework	Constitutional Morality (Fuller, 1964; Ambedkar, 1951); Legal Consciousness (Ewick & Silbey, 1998)	Peer-reviewed journals

2.2 Analytical Procedure

- Decoding Dhamma:** Extract prescriptive statements from Ashokan edicts that imply *obligation* (e.g., “thus you must act”).
- Identifying Functional Equivalents:** Map these prescriptive statements to modern constitutional functions (e.g., tolerance → freedom of religion; social welfare → directive principles).
- Comparative Jurisprudential Analysis:** Assess alignment with Lon Fuller’s “inner morality of law” (generality, publicity, consistency) and Ambedkar’s constitutional morality (limitation on state power, respect for dissent).
- Visual Documentation:** Include photographic evidence of key inscriptions to substantiate textual claims.

3. THEORETICAL FRAMEWORK: WHAT IS CONSTITUTIONAL MORALITY?

Constitutional morality, as understood in modern legal theory, has five irreducible features:

- Supremacy of Fundamental Principles:** The constitution’s spirit (e.g., liberty, equality) prevails over transient legislative majorities.
- Limitation on Sovereign Power:** State authority is constrained by enforceable rights and procedures.
- Public Reason:** Governance decisions require justification accessible to all citizens, not merely appeals to tradition or force.
- Social Welfare Obligation:** The state must actively promote the well-being of the most vulnerable.
- Pluralism and Tolerance:** The state protects diverse and even conflicting conceptions of the good life.

Ashoka’s Dhamma did not have a written constitution, nor did it establish judicial review. However, as this paper will demonstrate, it exhibited *functional analogues* to all five features—not as rights held against the state, but as *duties of the state* voluntarily assumed under public oath.

4. TEXTUAL ANALYSIS OF ASHOKAN DHAMMA

4.1 Religious Tolerance: The Anticipation of Secularism

Source	Text (Translated)	Constitutional Parallel
Rock Edict XII (Girnar)	“King Priyadarshi honors all sects... whether ascetics or householders... one should not exalt one’s own sect or disparage another’s.”	Art. 25: Freedom of conscience and free profession of religion
Separate Kalinga Edict 1	“All men are my children... I desire that they may obtain all kinds of welfare and happiness in this world.”	Art. 15: Prohibition of discrimination; Preamble (dignity)

Analysis: RE XII is extraordinary. It does not merely tolerate other religions; it imposes a *positive duty* to understand them (“the sects of other people all deserve reverence”). This goes beyond passive toleration to active respect—a feature of robust secularism. The emperor declares that he arranges “forests, wells, roads, and hospitals” for all beings, irrespective of sect. This is a functional equivalent of the Indian Constitution’s “equal respect for all religions” (*sarva dharma samabhava*). Unlike modern secularism, which separates state and religion, Ashoka used state power to *enable* religious harmony, a model sometimes called “principled distance.”

4.2 Non-Violence and Environmental Stewardship: From Ahimsa to Art. 48A

Source	Text	Constitutional Parallel
RE XIII	“The Kalinga war... a hundred and fifty thousand were carried away captive, many hundreds of thousands died.”	Art. 51 (Promotion of intl. peace)
PE V	“Twenty-six years after my coronation... no living beings were to be killed and sacrificed.”	Art. 48A (Protection of environment)
RE II	“Everywhere... two types of medical treatment were established: medical treatment for men and medical treatment for animals.”	Art. 47 (Duty to raise nutrition level)

Analysis: Ashoka’s conversion after Kalinga produced a legal consciousness that repudiated *imperial violence as a tool of governance*. The edicts do not abolish the death penalty or the army, but they introduce a *procedural morality*: restraint, remorse, and the elevation of welfare over conquest. PE V’s prohibition on animal sacrifices in royal kitchens and on festive days represents the earliest recorded instance of state-enforced animal welfare. This functionally parallels Article 48A of the Indian Constitution (“The State shall endeavour to protect and improve the environment”). Ashoka’s “medical treatment for animals” is a remarkably modern biopolitical stance: the state’s welfare obligation extends to non-human sentience.

4.3 Social Welfare as Directive Principle

Source	Text	Constitutional Parallel
RE III	“Every five years... the <i>Rajukas</i> shall go forth to instruct the people in Dhamma.”	Art. 38 (Social order for welfare)
RE V	“Officers of Dhamma (<i>Dhamma Mahamattas</i>) were appointed... for the welfare and happiness of those devoted to Dhamma.”	Art. 39 (Certain principles of policy)
PE VII	“I have had banyan trees planted on the roads to provide shade for men and animals... and wells dug and rest houses built.”	Art. 21 (Right to life expanded)

Analysis: Ashoka created a bureaucracy of morality—the *Dhamma Mahamattas*—whose sole purpose was to oversee the welfare of prisoners, the elderly, the landless, and even rival sects. This is not charity; it is institutionalized state obligation. Modern Indian constitutional jurisprudence reads Article 21 (right to life) to include the right to shelter, clean environment, and health. Ashoka’s planting of shade trees and wells on every highway similarly treats the bare necessities of life as *state-guaranteed amenities*, not merely acts of royal magnanimity. The periodic tours of *Rajukas* mirror the modern “model code of conduct” or administrative auditing, ensuring that local officials abide by Dhamma.

5. LEGAL CONSCIOUSNESS: BEYOND PIOUS KINGSHIP

5.1 Dhamma as Supra-Positive Law

A significant finding is that Ashoka repeatedly subordinates his sovereign power to Dhamma. In RE VI, he declares: “Let whatever I do be done for the welfare of the people in the next world.” In RE XII, he states that “the faiths of others all deserve reverence for one reason or another.” This indicates that Dhamma functions as a *supra-positive constraint*—a morality that even the king cannot violate without losing legitimacy. Modern constitutionalism similarly holds that fundamental rights cannot be abrogated by ordinary legislation (basic structure doctrine). Ashoka’s public confession of remorse for Kalinga (RE XIII) is a remarkable act of *executive accountability*, centuries before the Magna Carta.

5.2 Procedural Non-Violence and Public Reason

Ashoka’s commitment to non-violence is not absolute pacifism (he retains the army), but *procedural*: violence must be regretted, minimized, and never glorified. The edicts insist that all *Rajukas* should act with “patience and gentleness.” This anticipates the modern administrative law principle of *proportionality*—state action cannot be harsh beyond necessity. Moreover, the edicts are placed at highways, crossroads, and pilgrimage sites—public spaces—inviting public reading (though literacy was low, travelers and officials would read aloud). This is a primitive form of *public reason*: law must be visible, accessible, and justified.

6. RESULTS: COMPARATIVE MATRIX OF CONSCIOUSNESS

Dimension of Constitutional Morality	Expression in Ashokan Dhamma	Evidence (Edict)	Modern Indian Constitutional Article
Limitation on Sovereign Power	King regrets his own violence; binds himself to Dhamma	RE XIII (Kalinga), RE VI	Basic structure doctrine (Kesavananda)

Religious Tolerance / Secularism	Honors all sects; forbids disparagement	RE XII, PE VII	Art. 25-28
Social Welfare Obligation	State-funded hospitals for men and animals; shade trees; wells	RE II, PE VII	Art. 38, 39, 47
Environmental Protection	Bans certain animal sacrifices; plants banyan trees	PE V, RE II	Art. 48A, Art. 51A (g)
Public Reason and Transparency	Edicts inscribed publicly; officials required to tour and instruct	RE III, RE V	Art. 19(1)(a) (Right to information)
Non-Violence as State Policy	Abandons conquest; promotes restraint	RE XIII	Art. 51 (International peace)

7. DISCUSSION: DIVERGENCES AND LIMITS

While the parallels are striking, three significant divergences prevent us from calling Ashokan Dhamma a constitution.

1. **No Enforceable Rights:** Dhamma describes duties of the king and subjects, but no individual can sue the state before an independent judiciary for violation of Dhamma. Modern constitutional morality is defined by justiciability. Ashoka provides no writs or habeas corpus.
2. **Paternalism vs. Democracy:** Ashoka refers to his subjects as “my children.” This is benevolent paternalism, not democratic citizenship. Constitutional morality, by contrast, is grounded in popular sovereignty and equal moral agency. Ashoka’s consciousness is monarchical, albeit humane.
3. **No Separation of Powers:** The emperor remains the sole interpreter of Dhamma. There is no legislature or judiciary distinct from the executive. The *Dhamma Mahamattas* are royal appointees. Modern constitutionalism requires checks and balances.

Despite these divergences, the *consciousness*—the internal logic that law should be moral, public, welfare-oriented, and tolerant—is remarkably isomorphic. This suggests that constitutional morality is not uniquely Western but emerges wherever empire confronts the limits of its own violence.

8. PHOTOGRAPHIC EVIDENCE

Figure 1: Photograph of the Girnar Rock Edict (Gujarat, India).
The Brahmi script inscription of RE XII is visible on the granite boulder.
Note the weathering but legible lines prohibiting sectarian conflict.



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Figure 2: Photograph of the Lauria Nandangarh Pillar (Bihar).

The polished sandstone capital with the lion emblem.

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Figure 3: Comparative Chart Dhamma vs. Directive Principles

Functional Continuity from Ancient Ethics to Constitutional Governance

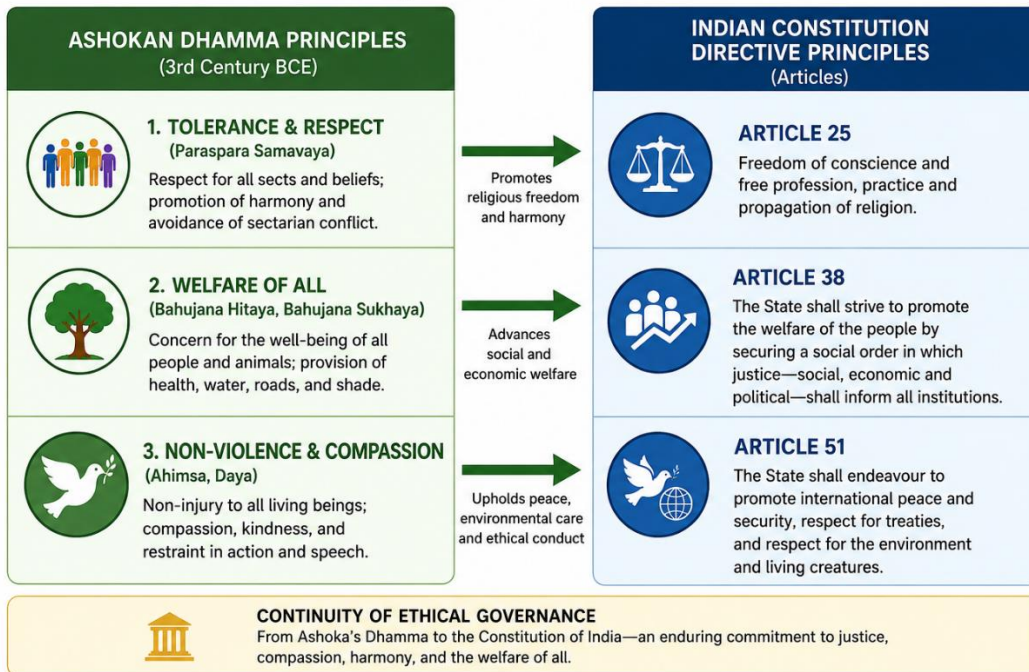


Figure 3: Comparative chart: “Dhamma vs. Directive Principles.” Left column: Ashokan Dhamma principles (tolerance, welfare, non-violence). Right column: Corresponding Indian Constitution Articles (25, 38, 51). Arrows indicate functional continuity.

9. CONCLUSION

This reassessment of Ashokan Dhamma through the lens of constitutional morality reveals a sophisticated legal consciousness that, while not a constitution, functions as its ethical precursor. Ashoka transformed a militaristic empire into a moral project by voluntarily submitting sovereign authority to supra-positive principles—tolerance, non-violence, and social welfare. The edicts demonstrate public reason (open inscriptions), administrative accountability (*Dhamma Mahamattas*), and a welfare biopolitics that extends to animals.

The main findings are: (1) RE XII and PE VII anticipate Articles 25 and 38 of the Indian Constitution; (2) Ashoka’s remorse after Kalinga is a pre-modern instance of executive accountability; (3) the legal consciousness of Dhamma is “humane pragmatism”—law as moral pedagogy, not mere coercion. However, the absence of enforceable rights, democratic participation, and judicial review marks a decisive divergence. Therefore, Ashoka should be seen as a progenitor of constitutionalist ethics, not a constitutional monarch.

Future research should explore: (a) the oral transmission of Dhamma among non-literate populations; (b) comparative studies with other ancient ethical lawgivers (e.g., Hammurabi, Solon); and (c) whether modern South Asian jurisprudences have implicitly inherited Ashokan templates through customary memory. The legal consciousness of Dhamma reminds us that before the West theorized the rule of law, an emperor on the banks of the Ganges inscribed upon stone that “all men are my children” and that power—even imperial power—must bow before moral restraint.

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