

Constitutional Morality- A Tool For Judicial Governance?

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Abstract

The Supreme Court of India has applied the concept of Constitutional Morality in various landmark cases in the recent times for eg. the Shabrimala Judgment, The Naz Foundation case, the Triple Talaq case etc. Thus debate on Constitutional Morality is at upswing now-a-days. The debate doesn't surround the basic concept of Constitutional Morality but the question or the fear of its abuse in a democratic country. The concern that comes to researcher's mind is that the Constitution which gives sovereignty to "We the people", yields a morality which is against the popular morality. Taking Indian *Young Lawyers Association v. State of Kerala and Others*, as starting point as it gave rise to the debate related to Constitutional Morality. The author does not question the correctness of the decision but merely highlights the possibility of abuse of the doctrine of Constitutional Morality as this doctrine was used by Judges in the abovementioned case giving two conflicting decisions. The decisions where constitutional morality was used as a basis for the decision doesn't yield unanimous conclusion, thereby raising another concern of the concept of constitutional morality being fused with the Judge's personal opinion and background which is perilous to the Rule of Law.

Purpose: The researcher tries to articulate whether this doctrine of Constitutional Morality is an aid of interpretation of the Constitution or an aid of expansion of judicial power. This paper also highlights that Constitutional morality is different from Popular Morality however, it will lead to the same conclusion if interpreted properly by the Judiciary in order to balance out the individual rights as well as community rights. The researcher will thus articulate the capacity of the Judiciary to decide on moral matters

Research Methodology: The authors rely on the use of doctrinal method for studying the role of judiciary and the need for evolving abstract theories. The author will refer to various books, articles cases and various internet sources.

Findings and Interpretation: The authors emphasize that there is no need for development

of such an abstract philosophy in order to decide the case in question and it could have been resolved by applying the concept of public or popular morality.

Key words: Constitutional morality, Popular Morality, Judicial Supremacy, Philosophical Theory, Judicial Excess

INTRODUCTION

“India is a symphony where there are, as in orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score.”- Dr. S. Radhakrishnan- Constituent Assembly debates (11th December, 1946)

The expression of Dr. Radhakrishnan was indicating towards the three instruments of India, i.e. the executive, the legislature and the judiciary, each with its particular idiosyncrasy, its special facet, which combines together to pursue a particular purpose i.e. welfare of the state and its subjects. Thus the Indian constitution in order to pull off its goal of bequeathing welfare to the citizens of the state, established three organs of the state. These are the three pillars on which India, as a nation is standing upon; each organ is provided with its role and function but they were not strictly separated.

According to Shri K. Hanumanthiya, a member of Constituent Assembly: *“Instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we completely separate the executive, judiciary and the legislature, conflicts are bound to arise between these three departments of Government. In any country or in any government, conflicts are suicidal to the peace and progress of the country..... Therefore in a governmental structure it is necessary to have what is called “harmony” and not this three-fold conflict.”*¹ Thus in order to avoid such conflict, it was necessary to not to include separation of power in the Indian constitution and Indian polity. Article 50 of the Indian Constitution talks about keeping judiciary separate from the executive.

¹ Constituent Assembly Debates Book No.2, Vol. No. VII Second Print 1989, p. 959

However, since independence, vast change can be seen in the way judiciary has exercised its powers. The judiciary has widened its power from literal and conservative approach of delivering justice to act suo moto. After independence, judiciary was much seen into the literal interpretation of the law and the statute and dispense justice considering the Nehruvian thought. During this period only it gave many decisions against the government for example in the Fundamental Rights' case. During the late 60's and early 70's, judiciary was standing in the way of Mrs. Indira Gandhi's Government, striking down the bank's nationalisation, abolition of privy purses etc. From 1950-1975 i.e. before Maneka Gandhi's case, judiciary had a very restricted view.

Then the second phase came i.e. the post emergency era. Judiciary became active during 1975 to 1991 or rather say more specifically from 1976 and geared momentum in 1977. In this era it was judicial pro activism. The judiciary has taken indications from the Indira Gandhi government and made attempt to recast itself in the populist mode. The PIL initiatives that allowed the citizens to directly approach the Supreme Court gave judiciary a populist initiation and judiciary found itself supervising the work of the executive.

Then liberalisation came in 1991 and this was the progressive era where judiciary was more focused on the need of development. This era continued till 2005 and then after 2005, developed the stage of information and creativity in the judgments. This creativity can now be seen as promulgating new and abstract theories and doctrines like constitutional patriotism, constitutional morality etc. In this paper, the latest creativity of judiciary i.e. constitutional morality will be discussed. The paper will highlight the concept of constitutional morality, its history and how it was interpreted by judiciary in order to expand their power and to make it a tool for judicial governance.

Taking Sabarimala verdict, as starting point of discussion as it gave rise to the debate related to Constitutional Morality highlights the possibility of abuse of the doctrine of Constitutional morality. Morality as this doctrine was used by Judges in the abovementioned case giving two conflicting decisions. The concept of Constitutional Morality refers to the ethical ideals that are derived from the core values enshrined in the Constitution and also supplementary to

them.² Constitutional Morality requires that allegiance to the Constitution is non-transactional. It requires putting up with the possibility that what eventually emerges is different from what citizens envisaged.³ Reference to constitutional morality was made by Dr. B.R. Ambedkar in the Constituent Assembly Debates wherein he said that “Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it.”⁴ The significance of inculcation of Constitutional Morality in the people of India was highlighted by Dr. Ambedkar by quoting Grote, a great historian wherein he said, “The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable ; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves.”⁵

Despite such discussions on Constitutional Morality, there is not even a passing reference to this term in the Constitution of India. However, the Constitution contains the term “Morality”.⁶ The debate on morality was no less and the definition of morality was

²Prof. Jaydeva Uyangoda, *Constitution needs Constitutionalism*, Groundviews- Journalism for citizens, Available at: <https://groundviews.org/2018/12/02/constitutions-need-constitutionalism/>, Accessed on 26/04/2019

³PratapBhanu Mehta, *what is Constitutional Morality*, Seminar- India, (Nov. 2010) Available at: https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm, Accessed on 26/04/2019

⁴ CAD, Volume VII, 4th Nov. 1948, Available at: https://www.mea.gov.in/Images/attach/amb/Volume_13.pdf

⁵*ibid*

⁶Art. 19(2), Constitution of India- Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Art. 25, Constitution of India- Freedom of Religion: - Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Art. 26, Constitution of India- Freedom to manage Religious affairs: - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

questioned many a times. Having reliance on the Objective Resolution⁷ on which the Preamble was based, Judiciary has answered this as public morality.⁸ However, Dr. Ambedkar said Sin and immorality cannot become tolerable because a majority is addicted to them or because the majority chooses to practice them. If untouchability is a sinful and an immoral custom, then in the view of the Depressed Classes it must be destroyed without any hesitation, even if it was acceptable to the majority.⁹ Thus, popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights under Article 21.¹⁰ Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjecting notions of right and wrong. If there is any type of "morality" that can pass the test of compelling state interest, it must be "constitutional" morality and not public morality.¹¹ Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance.¹²

The five Judges bench again discussed the matter wherein the questions was posed that has the Judiciary developed an alternate constitutional morality to emancipate from the theory of checks and balances, robust enough to keep themselves in control from abusing such independence? Have we really outgrown the malady of dependence or merely transferred it from the political to judicial hierarchy?¹³

The article thus focuses on the possibility of abuse of the doctrine of Constitutional Morality and also whether the judiciary has still sustained faith in the people of the country. The article, taking into account the Sabarimala case, shows that Constitutional Morality is a Philosophical Theory or doctrine which if not defined property will lead to conflicting decisions. Also, this article focuses on the new dispute that is between the Judicial

⁷Constituent Assembly of India Debates (Proceedings)- Volume II, Jan. 22, 1947, Available at: <http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C22011947.pdf>, Accessed on 1/07/19

⁸*Indian Hotel and Restaurant Association and Ors. vs. The State of Maharashtra and Ors.* AIR2019SC589

⁹ Vasant Moon, *Dr.B.R. Ambedkar, Writings and Speeches*, Volume 5, Dr. Ambedkar Foundation, Available at: https://www.mea.gov.in/Images/attach/amb/Volume_05.pdf,

¹⁰*Naz Foundation v. Govt. of NCT, Delhi*, 160 Delhi Law Times 277

¹¹*Suresh Kumar Koushal and Anr vs. NAZ Foundation and Ors.* AIR2014SC563

¹²*Manoj Narula vs Union of India*, 2015 (2)ALD 84 (SC)

¹³*The Supreme Court Advocates on Record Association and Ors v. UnioinOf India*, 2015 (3) AWC 2575 (SC)

Supremacy or Popular Sovereignty.

CONSTITUTIONAL MORALITY: A CONTROVERSIAL PHILOSOPHICAL THEORY

Supreme Court, through cases tried to establish a new moral norm for the society, but the controversy lies on the question of scope of applicability of Constitutional Morality. Morality is a philosophical term whose connotation changes with the changing time and changing needs of the society. According to Professor Hart, standards and morals are necessary in our law because, in view of the highly variable nature of possible combinations of circumstances, it is not always possible to identify in advance the relevant features of cases to which rules might be applied.¹⁴ However, the morals and standards are indeterminate one and it would be highly vague to apply such indeterminate standards to unique states of fact.

It is a Universal Fact that humans are inherently biased in nature and therefore there is no doubt that a judge's decision is also influenced by various factors. It depends on how he defines his role as a jurist. Some judges strongly believe in Judicial Activism and some believes that their role is to apply law as it is. A judge who believes in judicial activism will apply indeterminate standards of morals in a manner to expand the rights of the individuals and personal liberty. While the one who believes in judicial restraint and that the role of judiciary is a limited one will narrowly interpret the constitution. This is where the controversy in this philosophy lies.

Dworkin argues that any legal theory which takes seriously the notion of individual human rights cannot justly make judicial decisions based either on arguments of social policy or on purely subjective moral convictions.¹⁵ Thus, if the court tries to expand its scope of

¹⁴ Robert S. Summers, *H. L. A. Hart's "Concept of Law"*, Duke Law Journal, Vol. 1963, No. 4 (Autumn, 1963), pp. 629-670 Available at: <https://www.jstor.org/stable/pdf/1371248.pdf?refreqid=excelsior%3A3214d0babd8d0426b3e357cebcab8a66>, Accessed on: 20/07/2019

¹⁵ Anthony R. Reeves, *Ronald Dworkin's Legal Philosophy*, Encyclopedia of the Philosophy of Law and Social Philosophy, Available at: https://link.springer.com/content/pdf/10.1007%2F978-94-007-6730-0_2-1.pdf, Accessed on: 1/08/2019

interpretation by incorporating a philosophical theory of Constitutional Morality, then it will be laid open to subjective interpretation and this will create a whole new problem of indeterminacy. Coleman and Leiter write that "moral principles that are supposed to enrich the domain of legal sources will, themselves, contain vague predicates--namely, moral ones"¹⁶

The apprehension of indeterminacy of Constitutional Morality was raised by Late Professor Madhav Menon. He further questioned where will be exactly look to find out the concept of Constitutional Morality? Is it the mere principles laid down in the Constitution? Or the debates that lead to framing of this Constitution or the principles or ideology with which the freedom struggle was fought?¹⁷ Justice Mishra explained "The concept of constitutional morality is not limited to the mere observance of the core principles of constitutionalism as the magnitude and sweep of constitutional morality is not confined to the provisions and literal text which a Constitution contains, rather it embraces within itself virtues of a wide magnitude such as that of ushering a pluralistic and inclusive society, while at the same time adhering to the other principles of constitutionalism. It is further the result of embodying constitutional morality that the values of constitutionalism trickle down and percolate through the apparatus of the State for the betterment of each and every individual citizen of the State."¹⁸

Theoretically, this explanation seems quite fascinating however, it comes with more practical problems. The explanation by Justice Mishra in *Navtej Singh Johar* case clarifies that Constitution is based on the history and therefore while interpreting, it would be erroneous to dissociate the provisions of the constitution with its history and the values embodied in it. But now, the whole controversy rests on the Liberal and non-liberal interpretation of the Constitution. Expanding the sources to determine the indeterminate standard of constitutional morality will be a mistaken resolution, this is because increased sources will lead to excess of

¹⁶ Scott Wisdom, *The Judgment of Constitutional Morality*, Unpublished, McMaster University, Available at: <https://pdfs.semanticscholar.org/3e7d/0b9aa90c4398618d2ea4e8d055fa0a5eee49.pdf>, Accessed on 24/07/2019

¹⁷ Prof Mahav Menon, *India and Constitutional Morality*, CNBC-TV18, Available at: <https://www.youtube.com/watch?v=AoanXSsKmiM>, Accessed on 17/05/2019

¹⁸ *Navtej Singh Johar v. Union of India*, AIR2018SC4321

applicable, possible and conflicting standards which will lead to different outcomes, which could be seen in the Sabarimala case¹⁹, where three different conclusions were drawn in the case by three different judges by applying the same principle of Constitutional Morality. For Justice Chandrachud, the morality of the Constitution was imbibed in the two values i.e. “dignity” and “equality”. For him individual dignity lies at the core of liberal constitutionalism. In his view, Justice, Liberty, Equality and Fraternity are three principles that lies at the Centre of the Indian Constitution and all other provisions must be interpreted with the broader objective to attain these principles. Individual dignity must serve as the principal value guiding the public life of the country. As against this pervasive stress on individual dignity, However, he only dissenting Judge keeps laying stress on “secularism” rather than justice and equality, she argues for an overall attitude of judicial non-intervention in religious matters. Articles 25 and 26 are the safeguards against the protection of religious practices. This demonstrates the indeterminate approach of Constitutional Morality and for use of such indeterminate standards, Judges should have “equal respect and concerns” towards all communities, religions and culture which is difficult due to the human nature and therefore, Constitutional morality must have a value of permanence which is not subject to the transient desires of every time and age.

POTENTIAL ADVENTURISM THROUGH CONSTITUTIONAL MORALITY

Judiciary is considered as a guardian of the Indian Constitution. It was considered as the Least Dangerous Branch, however, it cannot be considered now that Judiciary is using its power in a limited way. Indian Constitution advocates independence of judiciary but this independence is from the executive interference and not from the personal conscience. Judiciary is not an infallible institution and it can also give wrong decisions. There is no doubt that judges are expected to be exemplary citizens. However, judges are human, with their own interests, own backgrounds, own biases, and their weaknesses.²⁰ The debate that surrounds constitutional morality is not related to the concept of constitutional morality but regarding its undesired application and threat of overreach. Constitutional morality requires

¹⁹ *Young India Lawyers Association v. State of Kerala*, ILR2018(4) Kerala 285

²⁰ David Kosar, *The Least Accountable Branch*, Oxford University Press, Availabel at: <https://academic.oup.com/icon/article-abstract/11/1/234/776231>, Accessed on: 01/08/2019.

various forms of dissociation: the ability to dissociate a person from their views; the ability to trust someone despite deep disagreement based on the knowledge that there is a shared agreement on processes to adjudicate that disagreement. Caste identity, by its very character, made such dissociation impossible.²¹ It is impossible for any Human Being to be completely independent, impartial, neutral and objective knowledge. Prof Oliver Wendell Holmes writes that the personal element is unavoidable in judges and it is unwise and dangerous to deny it. Judges by being at such a high position are not liberated from their human element.

The usage of Constitutional Morality has been criticized by various Eminent Jurists of the country by stating “Use of constitutional morality can be very, very dangerous and we can't be sure where it'll lead us to. I hope constitutional morality dies. Otherwise, our first PM Pandit Nehru's fear that SC will become the third chamber might come true.”²² Ambedkar quoted Grote in his speech and considered Self- restraint as one of the elements of Constitutional Morality. This means that even the Judiciary is under the duty to exercise self-restraint while deciding cases and must not act as a third house of Parliament. However, the likelihood of the same is very less. Legal formalists believed that law is a tool to be applied on certain facts in order to bring out a neutral decision but the fact is that Judges can be sensitive to a variety of contexts and history which does not necessitate democratically legitimate decisions. There are various factors like background, ideology, history, belongingness to a certain community, values etc. which might eventually lead to a scenario where a same principle is applied by different judges to the same fact yielding to different conclusions or decisions. Jerome Frank, a former federal appeals judge, wrote famously that the “law may vary with the personality of the judge who happens to pass upon any given case”²³

This undetermined morality leads to subjective decisions because of lack of high-order

²¹*Supra* 2

²²*Constitutional morality must die or SC could become Parliament's third chamber, as Nehru feared: A-G Venugopal*, Times Now News, Available at: <https://www.timesnownews.com/india/article/kk-venugopal-attorney-general-sabarimala-news-addressnstitutional-morality-supreme-court-jawaharlal-nehru-bharatiya-janata-party-chief-justice-of/328266>. Accessed on: 11/07/2019

²³ Jerome Frank, *Law and Legal Mind*, Transaction Publishers, p.120, Available at: https://books.google.co.in/books/about/Law_and_the_Modern_Mind.html?id=r-zosoYdNgEC&redir_esc=y, Accessed on 12/07/2019

ranking principles and reflective equilibrium test and this lack of clarity might in all likelihood, lead to dangerous and ignorant use of the principle of Constitutional Morality. Without something objective to guide decisions, judges are left with their discretion and their own account of the nature of morality and here arises the scope of judicial innovation as well as arbitrariness in decision making. In a constitutional democracy the moral content of law must be given by the morality of the framer or the legislator and not by the morality of the judge. The sole task of the judges is to interpret the framer's or the legislator's moral intent into a law to govern unanticipated circumstance and this abstinence from giving its own morality or imposing one's personal views in the name of interpretation of Law is the morality of a judge.

The question which is raising concern is that whether the judges are capable enough to differentiate between reasoning morally on one's own account to reasoning morally on account of the whole society or reasoning morally constitutionally. Now it can be said that the judicial decisions are highly influenced by the judge's own background, their ideology and their world view and that guides what constitutional morality is, therefore this might lead to misapplication of the doctrine. This doctrine, if remains undefined, would become an unguided power to decide those issues which the court would otherwise have no power to decide upon. This Indeterminacy will lead to Judicial Activism or liberal interpretation by judges which may end up in serving ends of justice or inaccurate application of the doctrine. In the present scenario, it can be seen that in Sabarimala case, the ultimate end led to justice however, the question is about the means to that end and this means is misbalancing the separation of power.

JUDICIAL INNOVATION V. POPULAR SOVEREIGNTY

Indian Constitution is drafted in the name of "we the people" shows that it is a people's document. It was the driving force behind the making of Indian Constitution. The three branches i.e. the Executive, Legislature and Judiciary are merely agents of the people and the power of Judicial review comes directly from the concept of popular sovereignty but not the power of judicial supremacy. However, the irony is that this driving force is absent from the

debates of present constitutional reforms which are brought about by the Judiciary in the name of liberal interpretation of laws in a progressive society.

The Preamble states that Indian is a Sovereign, Socialist, Secular Democratic Republic. The creation of republic is an evidence that the collective of the people is capable of holding sovereign powers. Therefore, the point of debate is not whether the people are sovereign or not or the Judiciary has the power to expand its scope through interpretation, but the point of focus is that people have been left out from the very topic of discussion by the Legislature, the Executive and now the Judiciary.

Constitutional Morality has been recognized by the framers of the Constitution, but they were of the view that it is not something which can be imposed upon people, it is a sentiment which will be inculcated over time and not by (en)forcing them upon the public by out rightly rejecting the public morality. The Supreme Court has also given importance to public Morality

“Public order, decency or morality’ are recognized as one of the interests for which reasonable restrictions can be imposed on the freedom of speech and expression. This is because the social interest of the people overrides individual freedom. Whether we regard the state as the parens patriae or as guardian and promoter of general welfare, we have to concede, that these restraints on liberty may be justified by their absolute necessity and clear purpose. Social interests take in not only the interests of the community but also individual interests which cannot be ignored. A balance has therefore to be struck between the rival claims by reconciling them. The larger interests of the community require the formulation of policies and regulations to combat dishonesty, corruption, gambling, vice and other things of immoral tendency and things which affect the security of the State and the preservation of public order and tranquillity.”²⁴

The Sabarimala verdict was decided on the same principle as laid down in the case of KA

²⁴K.A. Abbas v. Union of India, AIR 1971 SC 481

Abbas. However, a different terminology has been used i.e. Constitutional Morality which led to controversy related to wide ambit and scope of its interpretation. The problem of indeterminacy and precedence of one FR over Other was posed by this doctrine of “Constitutional Morality” which was already answered by the Supreme Court by using the old and traditional notion of “Public Morality”²⁵ The court held that the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive.

“Conflict between different Fundamental Rights was seen in many cases and “to weigh the balance the test that is required to be applied is the test of larger public interest and further that would, in certain circumstances, advance public morality of the day. To put it differently, the “greater community interest” or “interest of the collective or social order” would be the principle to recognise and accept the right of one which has to be protected.”²⁶

The question of diversity relating to application of public Morality was raised. To which the court answered that meaning of morality must be drawn from the evolving standards of public morality and consciousness that mark the progress of a maturing society.

“Having regard, however, to the conditions in India, to the variety of social upbringing of its citizens, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture ,... the said standards have always been progressive and acquire meaning as public opinion becomes enlightened by a humane justice. The scope of determining the standards is never precise and rarely static.”²⁷

²⁵ Mr. ‘X’ v. Hospital ‘Z’, AIR 1999 SC 495

²⁶ Asha Ranjan v. State of Bihar and Ors., (2017) 4 SCC 397

²⁷ Shabnam and Ors. vs. State of U.P. MANU/SC/0649/2015

Had the principle of “Popular Morality” been applied in Sabarimala case, the judges would have reached upon the same decision without leading to expansion of their power of interpretation and leading to such huge hue and cry in the society. However, the court’s approach of making “Constitutional Morality” as a basis of deciding the case and out rightly rejecting the concept of public morality showed that no importance to the people has been given and It resembles the situation when the Britishers tried to implement their laws through the formal court system in colonial India system that they had established. People back then felt alien and strange about it and people now feel the same.

This is not the first attempt by the Indian Judiciary to establish its supremacy over the legislature, the executive as well as the people. Judiciary, in the guise of interpretation, has various times used or introduced terms with indeterminate meaning so that it can be used to expand its power. One such example is introduction of a doctrine called “Constitutional Patriotism. This was used in the National Anthem case in order to overreach their power and impose their personal views on the people.

CONCLUSION

The Concept of Constitutional Morality is a theory introduced in to prevent the subversion of Constitutional Provision. However, the indeterminate nature of this theory has left it open to abuse. Not only Constitutional morality, but in the recent past, Judiciary has coined various terms like Constitutional patriotism which has led to immediate criticism and controversy as it has led to an incorrect decision. However, the case with Constitutional Morality is different. It has led to a progressive decision but this doesn’t mean that it is a perfect ideology to be adopted as its indeterminacy leaves it open to abuses and imposition of Judge’s views of the world on the people and therefore making it a supreme authority which was never intended by our constitution makers even when they made judiciary a guardian of Indian Constitution.

Since, Constitution reflects the wishes and aspirations of the people, a doctrine which rejects the morality of people at large is itself unconstitutional. The concept of Constitutional

Morality which Dr. Ambedkar quoted in Constituent Assembly states that this concept is to prevent monopoly of legislature over Popular will, therefore, it is inferred that no institution of government, be it Legislature, Executive or Judiciary can claim monopoly over popular will.

Also, while looking at the application of Constitutional Morality and Popular Morality with interpretation given by judiciary through cases, it can be concluded that even if the Judiciary would have used Popular Morality as a basis of this decision, it would lead to the same conclusion. Therefore, it can also be said that introducing Constitutional morality is like “Holding Old Wine in a New Bottle”. The Courts has passed such a decision that does not meet even the minimal burden of reasoning and reminds citizens of the growing imperiousness of their claims.

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