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CONSTITUTIONAL MORALITY AND ITS ORACLE

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Morality, in simple words, is a code of conduct that may vary from one society to another. Constitution has not defined the term morality anywhere in its articles. The term constitutional morality is an undefined code of conduct. Through its power of interpretation, the Supreme Court is comfortably adding in and deleting conducts that are nowhere mentioned in the constitutional text within the ideal of constitutional morality. While many legal scholars consider constitutional morality to be essential for the proper implementation of the constitution, few others consider it as another weapon of judicial overreach. The courts have time and again used the aid and measure of constitutional conventions, constitutional assembly debates, and precedents to maintain the dynamic character of the constitution to meet the changing wants of society. This is questioning the very purpose of preserving the ideal of constitutional morality. In the words of Attorney General K K Venugopal;

“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 Jawaharlal Nehru's fear that the Supreme Court will become 3rd chamber (of Parliament) might come true.”¹

Holy books have often been criticized for its inability to comply with the standards of transforming understandings of right and wrong. The recent dissenting judgment of honourable Justice R.F Nariman in *Kantararu Rajeevaru v. Indian Young Lawyers Association and Ors* ² described Indian Constitution as a holy book that set the great goals of

¹ “Constitutional Morality Must Die or SC Could Become Parliaments Third Chamber, as Nehru Feared: A G Venugopal”, TIMES NOW (Dec. 9, 2018, 8:39 AM), <https://www.timesnownews.com/india/article/kk-venugopal-attorney-general-sabarimala-news-address-constitutional-morality-supreme-court-jawaharlal-nehru-bharatiya-janata-party-chief-justice-of/328266>.

² MANU/SC/1565/2019.

the future. Hence, it needs to be critically studied and evaluated in accordance with the philosophical theory of pragmatism. In the light of theories propounded by the critical legal school, the law should not be assumed to be just, unbiased, unproblematic, and open to modernity without subjecting itself to critical jurisprudential scrutiny. Similarly, the precedents set by the apex court through its radical judgments should not be swallowed as it is. The real meaning and philosophical background of fancy terms coined by the judges sitting in ivory towers need to be subjected to critical examination. Considering something to be the only ultimate source of morality can produce negative setbacks for society. It can have long-lasting consequences and may even hinder social progress.

The rationality of jurists should not be surrendered to the assumed neutrality of the courts and judges. Hence, the idea of constitutional morality, which judges in their judgments repeatedly use to justify their stance, needs to be subjected to critical study. In order to subject the ideal of constitutional morality to critical examination, its meaning, purpose, and status in a constitutional democracy should be understood. Further, its relevance in a modern democratic State like that of India should also be subjected to study. Whether the courts are subjecting themselves to this ideal should be finally looked into to assess how it has been respected as an ideal by its greatest proponent. The constitutional assembly debates and the judgments of the honourable Supreme Court can be relied upon to study the same. If constitutional morality is recognized to be a utopian ideal set forward by pure philosophical minds of judges without considering the ground realities, or if it is recognized to be an ideal advocated by the courts to ensure the superior role for the judiciary in Indian democracy by hampering the constitutional value of checks and balances, the use of constitutional morality as an ideal to justify the judgments of the courts needs to be firmly opposed by the legal and academic fraternity.

True Meaning of Constitutional Morality

Indian democracy has always viewed the legislative and executive actions with an eye of suspicion. Both these constitutional organs are continuously subjected to severe judicial scrutiny. Judiciary is always considered as a ray of hope by the poor and marginalized sections of society. Political developments in India and scholarly judgments of judges like Justice Krishna Iyer, Justice Bhagawati, and Justice Khanna helped the judiciary to develop a strong Mashiach image among the general Indian population. The Apex Court of India, which is vested with the power of judicial review, tested the constitutional validity of legislation passed by the parliament and held unreasonable and arbitrary legislation that violated part III of the constitution to be invalid. The Courts generally used constitutional provisions, constitutional assembly debates, and precedence as an aid to discharge this function that has been vested upon it. However, the Apex Court came up with doctrines and ideals such as basic structure and constitutional morality over the course of time. These doctrines and ideals propounded by the Apex Court were never part of the constitution. This power of the court has been developed by the assumed responsibility of the judiciary to fill in the silence of the constitution. However, such exercise of unnatural powers by the judiciary should also be viewed with suspicion and subjected to criticism. Nevertheless, the legislature and the executive seem to have been amputated of their power to keep the judiciary within its constitutional limits. The judiciary has even extended its powers beyond the limits set by the constitution by propounding the idea of constitutional morality. It has now become a fancy term which legal and political scholars use. The Apex Court's judgment in the Sabarimala

Case³ of 2018 gave the term constitutional morality wide popularity. However, its real meaning is still unknown to most of who are using it frequently throughout their speeches.

Dr. Ambedkar introduced the concept of constitutional morality in the Constitutional Assembly by quoting George Grote, a political radical and historian.⁴ According to Grote;

A paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own.⁵

Thus, according to Grote, constitutional morality meant observance of the rule of law by recognizing the ideals set forth in the constitution. The ideals outlined in the constitution are very well explained through the already recorded and well-documented constitutional assembly debates. It provides the interpretation of actual historical facts and the thought process of the constitutional drafters. Thus the historical conditions under which the constitution was formulated and created are very well made known to the public by the visionaries of the Indian constitution.⁶ During the period of uncertainties when the judiciary might be posed with questions that are not very well documented in the words of the constitution, it can very well suggest solutions to the problem that has been posed before it by placing its reliance on the constitutional assembly debates. Thus, as the intention of the constitution-makers is not unknown to the generation of today and generations to come, questions on constitutional values need not be left to judges' interpretation.

Ambedkar further went on to add that;

“While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the

³ 2018 Indlaw SC 905.

⁴ Constitution Assembly Debates, CONSTITUTION OF INDIA. NET (May 20, 2020, 11:00 AM), https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04.

⁵ Ibid.

⁶ Shri. Goopal Subramaniam, Constitutional Morality-Is it Dilemma for the State, Courts and Citizens, 1st D D V Subba Rao Memorial Lecture (2016), <http://www.aprasannakumar.org/pdf%20files/Constitutional-Morality.pdf> (last visited on May 20, 2020).

risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.”⁷

Thus, according to Ambedkar, the determination of limits of administrative power should not be left to the legislature or the political executive. If done so, the diffusion of constitutional values into the citizens of the nation will remain a distant dream. It means constitutional morality essentially aims to set limits to the powers of the constitutional machineries of the State. The restraint imposed by the constitutional values over the constitutional machineries is essential for the prevalence of the rule of law. In the absence of such restraint, the operation of the branches of the constitutional democracy may be prone to exercise arbitrary, erratic, and capricious power.⁸ This may lead to compromising the vision of constitutional makers in ensuring constitutionalism. Compromising constitutional limits may lead to the majority's rule and thus the abuse of populist majoritarian power.⁹ However, it should be understood that these constitutional limits are also applicable to the Indian judiciary. Judiciary is also a creation of the constitution and is bound to comply with the restraints prescribed by it. Arbitrarily striking down the legislation that aims to ensure judicial restraint brought in by the democratically elected parliament is nothing other than compromising the democratic value of constitutionalism.

The reservation which the constitutional assembly had against judicial review of legislative action is often largely ignored by the judges while striking down the laws passed by the parliament.¹⁰ The strong objections which jurists like justice Frankfurter had against judicial review and their observations against its undemocratic character as to how it opposed the provisions of the constitution made the constitutional assembly give up the broad power of judicial review which was intended to be provided to the Courts through the wordings of Article 21 of the Constitution.¹¹ The Indian Supreme Court showed huge disregard for these facts by evolving the doctrine of basic structure. This doctrine, which the judiciary evolved to preserve the fundamental essence of the constitution in effect, led to the violation of the constitutional ideal of limited judicial review and rejection of the intention of the constitution-makers. Thus, from the understanding of the principle of constitutional morality as defined by Ambedkar, the judicial decisions reiterate the principle of constitutional morality that gave the Indian Supreme Court unprecedented power to strike down the provisions of laws passed by the parliament, in essence, violate the ideal of constitutional morality.

Judicial Notion of Constitutional Morality

⁷ Supra note 4.

⁸ Supra note 6.

⁹ André Béteille, *Constitutional Morality*, OXFORD SCHOLARSHIP ONLINE (May 19, 2020, 12:30 PM), <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198080961.001.0001/acprof-9780198080961-chapter-4>.

¹⁰ Supra note 6.

¹¹ Abhinav Chandrachud, *A Tale of Two Judgments*, THE HINDU (May 12, 2016, 1:36 AM), <https://www.thehindu.com/opinion/lead/a-tale-of-two-judgments/article8586369.ece>.

Transformative Doctrine and Progressive Doctrine

Apex Court in *K S Puttuswamy V. Union of India and Ors*¹² held that constitutional morality is considered to be the silences of the constitutional text and tool to fill the gaps of the constitutions to meet the demands of the future generations. This definition of constitutional morality appears to be an appealing guarantee. Constitutional morality, in this sense, is capable of helping the court in protecting individual rights from being sacrificed at the altar of societal morality. As observed by the Supreme Court in *Navtej Singh Johar v Union of India*¹³ it will also help the society to move forward by upholding the individual dignity of the citizens by subjecting them to a process of self-renewal by not limiting the ambit of the constitutional guarantee of justice to the forms and procedures of the constitution and by providing an enabling framework for the societies to progress.¹⁴

The doctrine of transformative constitution and the doctrine of progressive constitution forms the essence of constitutional morality. These doctrines were very well discussed in the case of *Navtej Singh Johar v. Union of India*,¹⁵ which decriminalized homosexuality. The court, in this landmark judgment, observed that the legal provisions which assume an unreasonable character by becoming a weapon in the hands of the majority to alienate, exploit and harass the marginalized sections of the populations are irrational, indefensible, and manifestly arbitrary when tested with the standard of constitutional morality.¹⁶ The court further observed that such legislation hinders the ideas of progressive realization of the rights and transformative character of the constitution.¹⁷

The doctrine of the progressive constitution provides that the Indian constitution is a dynamic constitution that responds to the wants of the changing societies by progressively realizing the rights guaranteed under the Indian Constitution.¹⁸ Through this, the court made it clear that the Indian constitution is a liberal text that is accommodative to societal changes and this accommodative and liberal character of the constitution is one of the primary constituents of constitutional morality. Thus, according to the doctrine of progressive constitution, a retrogressive change brought into the constitution or an effort to bring in legislation that retrogrades the constitutional values violates the ideal of constitutional morality and hence has to be held void.

The doctrine of the transformative constitution provides that the constitution being a forward-looking text, aims to keep itself dynamic.¹⁹ The constitutional values look into the future of the Indian democracy and suit it in a manner that is necessary for it to reform itself. As held by the honourable Supreme Court in the landmark judgments of *National Legal Services Authority v. Union of India*²⁰ and *Justice Puttuswamy v. Union of India*²¹ constitutional morality advocates the Indian democracy to take the risk of becoming the cause for a progressive society, it compels the society to ask for searching questions

¹²(2017) 10 SCC 1.

¹³ 2018 Indlaw SC 786.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ AIR 2014 SC 1863.

²¹ Supra note 12.

against the forms and symbols of injustices that are prevalent in the society. Thus, the doctrine of transformative constitution base itself on the questions of who we are? who we can be? and who must we be to ourselves and to each other?.²²

The development of concepts like that of Public Interest Litigation and expansion of fundamental rights without changing the wordings of it are examples of the transformative and progressive character of the Indian constitution. Realizing it to be part of constitutional morality was expected to improve the justice delivery mechanism and serve justice to the poor, underprivileged, and marginalised. However, the recent trends show the inherent doubts that existed for a long time within the minds of the nation's judges as to the extent to which the progressive and transformative character has to be identified as an essential component of constitutional morality. The infamous judgment of the Apex Court which upheld judicial supremacy in India,²³ the doubts expressed by the Supreme Court about the historic Sabarimala judgment²⁴ of 2018 which affirmed the supremacy of individual dignity and the rejection of public interest litigations during the novel COVID-19 pandemic which were filed regarding the case of walking migrant laborers²⁵ with the threat of imposition of costs throws some serious questions as to the observance of values of transformative and progressive doctrines propounded by the Supreme Court by the same. Immunising the greatest advocate of constitutional morality from its applicability is nothing but a paradox. It is arbitrary and opposed to the principle of the rule of law. The questions posed by honourable Justice Chelameswar in his judgment on the constitutional validity of the National Judicial Appointment Commission Act, 2014 thus echoes even now from the minds of every student of law and officers of justice.²⁶ In the words of Justice Chelameswar;

"We the members of the judiciary exult and frolic in our emancipation from the other two organs of the State. But have we developed an alternate constitutional morality to emancipate us from the theory of checks and balances, robust enough to keep us in control from abusing such independence? Have we acquired independence greater than our intelligence maturity and nature could digest? Have we really outgrown the malady of dependence or merely transferred it from the political to judicial hierarchy? Are we nearing such ethical and constitutional disorder that frightened civil society runs back to Mother Nature or some other less wholesome authority to discipline us? Has all the independence acquired by the judicial branch since 6th October, 1993 been a myth – a euphemism for nepotism enabling inter alia promotion of mediocrity or even less occasionally – are questions at the heart of the debate in this batch of cases by which the petitioners question the validity of the constitution (99th Amendment) Act, 2014 and The National Judicial Appointments Commission Act, 2014 (hereinafter referred to as the "AMENDMENT" and the "ACT", for the sake of convenience)."²⁷

²² Supra note 12.

²³ (2015) 11 Scale 1.

²⁴ 2018 Indlaw SC 905.

²⁵ Social Distancing from the Powerless, THE HINDU (May 19, 2020, 12:02 AM), <https://www.thehindu.com/opinion/lead/social-distancing-from-the-powerless/article31617566.ece>.

²⁶ Supra note 20.

²⁷ Supra note 20.

If doubts arise in the minds of enthusiasts as to whether the court has emancipated itself from the theory of checks and balances through crooked interpretation of constitutional morality, they can never be blamed. The experiences throw light into the same. It seems that the judiciary has grown even beyond the ideal of constitutional morality. Its efforts appear to be to outgrow the checks and balances that were constitutionally mandated over it. The role of legislature and executive in serving justice has often been ruled out by the courts through their judgments. It is also often forgotten that even the judiciary should follow the ideals of constitutional morality to ensure constitutionalism as envisaged by the constitution. Constitutional morality does not vision the judiciary as an organ that is completely detached from the body of the constitution. Thus, the judiciary, which creates the constitutional ideals should also be ready to undergo a progressive transformation that modern civilized democracies have demanded. Such a transformation will reaffirm the superiority of the constitution and, at most, the relevance of constitutional morality in Indian democracy.

Unpredictable Morality

Honourable Justice Indu Malhotra, in her dissenting judgment in the Indian Young Lawyers Association v. Union of India²⁸ used the ideal of constitutional morality to reject the arguments of the petitioners. She even observed that permitting the entry of women in Sabarimala will violate the concept of constitutional morality. In her words:

"The concept of Constitutional Morality refers to the moral values underpinning the text of the constitution, which are instructive in ascertaining the true meaning of the constitution, and achieve the objects contemplated therein. Constitutional morality in a pluralistic society and secular polity would reflect that the followers of various sects have the freedom to practise their faith in accordance with the tenets of their religion. It is irrelevant whether the practise is rational or logical. Notions of rationality cannot be invoked in matters of religion by courts. The followers of this denomination, or sect, as the case may be, submit that the worshippers of this deity in Shabarimala Temple even individually have the right to practise and profess their religion under Article 25(1) in accordance with the tenets of their faith, which is protected as a Fundamental Right. Equality and non-discrimination are certainly one facet of Constitutional Morality. However, the concept of equality and non- discrimination in matters of religion cannot be viewed in isolation. Under our Constitutional scheme, a balance is required to be struck between the principles of equality and non-discrimination on the one hand, and the protection of the cherished liberties of faith, belief, and worship guaranteed by Articles 25 and 26 to persons belonging to all religions in a secular polity, on the other hand. Constitutional morality requires the harmonisation or balancing of all such rights, to ensure that the religious beliefs of none are obliterated or undermined."²⁹

Thus, according to Justice Indu Malhotra, constitutional morality, which referred to the moral values of the constitution, guaranteed the freedom to hold and practice personal religious beliefs. The logic of such practices cannot even be a subject matter of question before the court. In her observation, when there is a conflict between the principles of

²⁸Supra note 24.

²⁹ Supra note 24.

equality and non-discrimination with the liberty of faith, belief, and worship, the solution should be designed so that the religious beliefs of no person are obliterated or undermined.

In the same case, honourable Justice Chandrachud, in his majority concurring judgment, said that;

"The Constitution is meant as much for the agnostic as it is for the worshipper. It values and protects the conscience of the atheist. The founding faith upon which the constitution is based is the belief that it is in the dignity of each individual that the pursuit of happiness is founded. Individual dignity can be achieved only in a regime which recognises liberty as inhering in each individual as a natural right. Human dignity postulates an equality between persons. Equality necessarily is an equality between sexes and genders. Equality postulates a right to be free from discrimination and to have the protection of the law in the same manner as is available to every citizen. Equality above all is a protective shield against the arbitrariness of any form of authority. These founding principles must govern our constitutional notions of morality. Constitutional morality must have a value of permanence which is not subject to the fleeting fancies of every time and age. If the vision which the founders of the constitution adopted has to survive, constitutional morality must have a content which is firmly rooted in the fundamental postulates of human liberty, equality, fraternity and dignity. These are the means to secure justice in all its dimensions to the individual citizen. Once these postulates are accepted, the necessary consequence is that the freedom of religion and, likewise, the freedom to manage the affairs of a religious denomination is subject to and must yield to these fundamental notions of constitutional morality. In the public law conversations between religion and morality, it is the overarching sense of constitutional morality which has to prevail. While the constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail. These, above everything else, are matters on which the constitution has willed that its values must reign supreme."³⁰

He went on to add that;

"A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to the constitutional values of liberty, dignity and equality. Exclusionary practices are contrary to constitutional morality."³¹

Thus, from the words of honourable Justice D Y Chandrachud, it can be understood that the right to profess and practice religion though is a fundamental right, cannot violate the constitutional values of liberty, dignity, and equality. Further, his judgment affirms that the constitution offers protection even to the rights to the conscience of an atheist. To him, human dignity is the value that postulates equality between individuals. Thus, the right to equality ensures citizens the right to be free from discrimination based on gender and sexes. Through these words, he observed that liberty, dignity, and equality are the founding values

³⁰ Supra note 24.

³¹ Supra note 24.

of constitutional morality that can no way be violated on the excuse of exercise of the right to belief and worship.

The concurring judgment of Justice Chandrachud and the dissenting judgment of Justice Indu Malhotra are based on the single principle of constitutional morality. The judges used the same principle to support their inherently conflicting judgments. This shows how abstract the concept of constitutional morality is and how dangerous it can be to the principle of constitutionalism. The abstract character of the principle of constitutional morality makes it vulnerable to judicial abuse. It makes it possible for the judges to interpret it according to their individual conscience. This fact makes constitutional morality an arbitrary principle that can venomously strike at the root of the rule of law, leaving the interpretation of abstract ideals like constitutional morality, which appears to be the synonym of the rule of law to judicial discretion can extent the constitutionally prescribed limits of the judiciary. Thus, this alarming feature of constitutional morality makes it largely impossible for it to perform the role of an intellectual guardian of the rule of law as, in practice, it violates the very essence of the rule of law by conferring arbitrary power to the judiciary.

Constitutional Morality, a Principle of Contradictions

"Unbounded judicial creativity will make this court into a day to day constitutional convention."³²

- Justice Hugo Black

The Indian judiciary uses constitutional morality as the source of unguided power. Thus, the judicial activism that misuses the term constitutional morality violates the fundamental constitutional ideal of the rule of law. This results in the arbitral and unguided exercise of judicial power. In addition to the clear words, the constitutional conventions and purpose act as the guiding source for the judiciary to interpret the provisions of the constitution. Thus, constitutional morality is not a necessary tool for interpretation. Using this as a tool to check the constitutional validity of laws empowers the court to decide cases in the way favourable to it. It is yet another weapon of the judiciary to expand the scope of unfettered power, which it began to advocate right from the 13-judge bench decision of *Keshavanada Bharati v. State of Kerala and Others*.³³

Constitutional morality is now being used for anything and everything. Different judges have used it differently to substantiate their personal ideological affiliations. This affects the consistency of judgments and makes it unpredictable. Thus, the constitutional morality used arbitrarily by individual judges may not help to inculcate constitutional values among the common public. To make the public aware about the constitutional culture of the rule of law, they should be allowed to know the constitution, and they should be educated as to why they are expected to act in accordance with the decisions of the constitution for which the courts should be able to define constitutional morality in a consistent, predictable and known beforehand manner.

The Apex Court order, which referred to constitutional questions of Sabarimala review case to 9 judge bench, pointed out the question concerning the actual meaning of constitutional morality as an important constitutional question of concern.³⁴ The considerable

³² *Grisworld v. Connecticut*, 381 U.S. 479.

³³ (1973) 4 SCC 225.

³⁴ *Supra* note 2.

discrepancies in the manner of interpretation of this ideal from one judge to another complicated the entire relation of the judiciary and the political executive. It also posed serious questions of the extent to which constitutional morality should oppose social morality. Thus, the manner of interpretation of constitutional morality is very much relevant in these times. The doctrines of the progressive and transformative constitution used by the judges in several judgments to explain constitutional morality should also be understood in its real sense. Though the Apex Court has repeatedly used the term constitutional morality in the landmark judgments *Keshavanada Bharathi Case*³⁵ and *S P Gupta*,³⁶ the ideal remains to be a highly ambiguous one. Constitutional morality varies from one judge to another like a Chancellor's foot as social morality varies from one society to another. Morality acquire its value only when it has been used with qualifiers while been employed to work. This largely depends on the understanding of the individual judges concerned. Thus, a wrong understanding of constitutional morality can have long-lasting consequences, and the democracy may also incur high expenses due to the same. Thus, the question is, "would the Hercules judges of Supreme Court be able to upgrade the silences of the constitution to the status of voices of the constitution as an interpretative tool in resolving hard cases?"³⁷

Conclusion

New justice ideals developed by the Supreme Court, which is otherwise known as the protagonist of justice, are very much required for a nation that is governed by a single text which was written years back. Constitutional silences need to be answered to facilitate the easy progressive transition of society. However, the undefined principles which the Courts have developed pose a potential threat of abuse by the very same institution. Judges cannot be allowed to be lawmakers who fill in silences through legislative additions. The addition of ideals to the structure of constitutionalism is nothing but a legislative function. Such function is further screened with the help of its consistency with the constitutional procedures. However, the judiciary, which is supposed to observe self-restraint while playing its activist role to serve justice to the marginalised, keeps itself free from constitutional checks. It violates its precedential definitions of constitutional morality in the guise of serving justice to the subaltern, where in practice, it sets a plethora of diametrically opposite contradictions. It retrogrades the constitutional values by quoting its absolute power under Article 142 of the constitution. The Supreme Court thus freed itself from the hands of the absolute authority of law. Judiciary is not like any other organ of the State, it is the watchdog of justice.

The Apex Court is the defender of constitutional chastity, which prevents the constitution from being corrupted by majoritarian politics. Such an institution vested with the vital role of protector of the constitution should free itself from all suspicions. Thus, the use of constitutional morality to interpret the unanswered questions of law should be exercised by the judiciary with at most caution. As said in Julius Caesar famous play of William Shakespeare, "Caesar's wife must be above suspicion." Constitutional morality is another synonym for the rule of law should not be allowed to be another weapon in the court's hands to practice judicial activism. Thus, the judiciary should be made accountable to the ideal of constitutional morality, and it should be forced to perform and practice its function according

³⁵ Supra note 29.

³⁶ AIR 1982 SC 149.

³⁷ M D Zeeshan Ahmed, *The Challenge of Constitutional Morality before the Supreme Court*, THE LEAFLET (Mar. 26, 2020), available at <http://theleaflet.in/the-challenge-of-constitutional-morality-before-the-supreme-court/>.

to constitutional morality. As the famous saying goes justice should not only be done, but it must also be seen to be done, the judiciary should clean itself from the allegations of arbitrary exercise of its power of judicial review. Then only it will be able to perform the ultimate aim of the constitution to instil the spirit of the constitution among the commoners of the nation.