



**AN EPOCH OF NON COMPLIANCE
OF JUDICIAL PRONOUNCEMENTS:
CONFLICT BETWEEN CONSTITUTIONAL
MORALITY AND PUBLIC MORALITY**

*By Purna Vijay
From VIT School of Law*

ABSTRACT

The paper deals with the thriving issue of unwelcoming of judicial pronouncements by public. India being a federal democratic union incorporated of different states and territories, jointly and individually administered by tiers of government and their organs, inculcating diversities and likeness, there are various reasons for this phenomenon of non-compliance. This article focuses on the issue of conflict between constitutional morality and public morality in the light of certain recent case laws. The article emphasise on the essentiality of considering both constitutional morality as well as public morality while deciding a case of public importance, and tries to throw light on the ramifications of ignoring any one of the above said notion. The paper further suggests method for deciding a case in a well conclusive manner by inculcating the concept of constitutional morality as well as public morality.

INTRODUCTION

Indian Supreme Court is well known for its crucial landmark verdicts and moves, being the apex court of the land, it is considered to be the repository of judicial powers. Further, our constitution has palpably laid down the authorities and privileges of the institution

running from Article 124 to Article 147. Despite this constitutional and legal arrangement, the apex court is suffering from a syndrome of non-compliance of its verdicts by inferior or subordinates authorities and public. And this reminds me of a anecdote about President John F Kennedy's derisive comment on President Dwight David 'Ike' Eisenhower about whose administrative ability he had a dismal opinion. Taking his guests on a tour of the White House, Kennedy would point to the presidential chair in the Oval Office and say: 'Ike would sit there, and say, 'Do this, do that' and nothing would happen!' Similarly, India's Supreme Court too, in many instances, sits there and says, 'Do this, do that' and nothing happens on the ground by way of compliance¹.

And this is a quite serious scenario and if this continues, will bring about dangerous outcomes that may vandalise the independency and majesty of Indian judiciary. Thus it is essential to tackle this contingency. This harrowing phenomenon can be attributed various causes or reasons such as irresponsible and corrupted attitude of executives and other subordinate authorities, illegitimate political inclinations, friction or hostility prevailing between states or among union and state, discrepancies prevailing among the organs of nation, failure of parliament to pass appropriate law in regard to verdict of Court, unreasonable or illegitimate intervention of presidential power. Apart from these causes, there is yet another thriving and trending reason behind

¹ B. S Raghavan, *Supreme Court Must Insist on Powers of Enforcement*, (Aug 7 2018, 11: 29 am), <https://www.rediff.com/news/column/supreme-court-must-insist-on-powers-of-enforcement/20180807.htm>



the non-compliance phenomenon, that is the lack of public support for the decision. Or can be rather explained as a conflict between constitutional morality and public morality. And this notion can be well understood through a critical analysis or appraisal of certain recent pronouncements by the Apex Court. But before moving on to that, it is inevitable to consider the concept of Public morality and Constitutional Morality.

PUBLIC MORALITY Vs CONSTITUTIONAL MORALITY

Public Morality and Constitutional Morality are two crucial, imperative concepts upon which the whole system of our nation is based upon. Public morality is a wide and exhaustive term, it can be defined as popular sentiment prevalent at a particular point of time. It showcases the desires, beliefs, values and intricate emotions of society, this is certainly a driving force of society.

Constitutional morality on the other hand is yet another intricate concept that depicts the legally embedded beliefs or constitution values of a state. Democracy, which has been best defined as the 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 affirmation of constitutional morality which is the pillar stone of good governance². The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would be arbitrary or violative of the rule of law³. The scope of constitutional morality is not

limited only to following the constitutional provisions literally but it is so broad that it includes commitment to inclusive and democratic political process in which both individual and collective interests are satisfied⁴.

According to me, a judgement can be said to well conclusive if it is evenly or finely incorporated with the principle or notion of Constitutional morality, Public morality. Incorporating these elements while pronouncing a verdict is one of the most challenging task as far as judiciary is concerned. The complexity in factual situation and legal issues embroils or excruciates the whole process of decision making and it often forces the judicial institutions to leave behind any of one the notion. Thus it is undoubtedly true that there often happens to be a conflict between constitutional morality and public morality, and this has undermined the impeccability or content of judicial pronouncements.

A CRITICAL ANALYSIS OF RECENT SUPREME COURT JUDGEMENTS

Let us now analyse three crucial judgements given in the year 2018. Consider the case of Navtej Singh Johar v Union of India, which partially decriminalised section 377 of Indian Penal Code, whereby it paved a way for homosexuals to have sexual intercourse without the fear of punishment. Definitely the decision was quiet justifiable or upright from its legal or constitutional perspective as it put an end to the 158 years old colonial law which positioned the homosexual acts under the title of 'unnatural offences'. The

² Justice K.S.Puttaswamy(Retd) vs Union Of India (2017) 10 SCC

³ Manoj Narula vs Union Of India, (2014) 9 SCC

⁴ What is Constitutional morality ?, Parivarthan, (April 5,2015, 12:15PM), <http://iksa.in/gs2/what-isconstitutional-morality/2324/>



decision was in congruence with the principle of equality, dignity and such other constitutional principles established under Article 14, Article 21 etc. Every person has got an identity or individuality, a very essential feature of a sovereign nation is the freedom of people to express or promulgate their identity or individuality. Identity is the vital unique feature of a person that determines his way of life and several other aspects. Any law which prohibits self expression is highly erroneous and discriminative. Section 377 was one such provision which impeded the process of self expression or determination, indirectly it was violating the fundamental rights of a particular class of people, it was basically against the very notion or essence of our Constitution. 'India, a democratic, secular, non-discriminative, empowering civilised nation', the alleged rule was totally contradicting the above said titles or features. I would say, through the act striking down 377 partially, India has taken a step to justify or comply with these disseminated titles. As a result of the societal set up, rigid stereotypes, and such other dogmatic social norms, this particular class of people (LGBTQ) were subjected social exclusion and identity seclusion, this so called judgment has rendered them a dignified position in the society.

In the case of *Joseph Shine v Union of India*, Supreme Court decriminalised the offence of Adultery (Section 497 of IPC), on the ground that it violates Article 14, Article 15(1) and Article 21. The court stated that section 497 is an archaic law premised on a feudal and paternalistic understanding of marital relationship. The alleged provision objectifies women and demeans or degrades

the status of women and thus falls out of modern constitutional doctrine⁵. Further, there were certain other discrepancies with the provision, for example, wife's extra-marital sexual acts, when done with her husband's consent are not a criminal offense made section 497 manifestly arbitrary. Thus the, whole decision seems to be valid and apt from the a legal point of view.

Likewise, in the case of *Indian Young Lawyers Association v State of Kerala*, Supreme Court struck down the years old ban on women between the age of 10-50 from entering the premise of Sabarimala Temple. The ban was based on the age old practices, tradition and religious beliefs of Hindus that Lord Ayyappa, the deity of Sabarimala is a celibate, and entry women between the alleged age gap would sabotage the sanctity of the temple. Court held that the ban abridges the principle of equality and is derogatory to the dignity of women. It further takes away the constitutionally religious freedom from women. Here again the judgement is condign or apt from constitutional point of view as the ban was violative of Article 14, Article 15, Article 17, Article 25.

Now consider the current status or social acceptance of these cases, all three remains unwelcomed and non-complied by the public. And this non-acceptance can be attributed to the lack of public morality in the judgements. In all three cases there was a thriving a conflict between constitutional

⁵ Supreme Court Observer, *Decriminalisation of Adultery, Joseph Shine v UOI*, <https://scobserver.clpr.org.in/court-case/constitutionality-of-adultery-law/plain-english-summary-of-judgment-197a6db3-fe46-40c3-8aac-7bda25a66f6a>



morality and public morality, and the court discarded popular sentiments or opinion. India is still a conventional society in many aspects and majority adheres to heterosexuality and consider homosexuality and related aspects to be unnatural . Thus, 377 judgement was forcefully imposed on Indian society, and therefore remain to be un-accepted by majority. Likewise, a lay man is totally unconcerned and ignorant of the alleged discrepancies and issues of objectifying women, according to him, all kind extra marital sexual affairs between a man and married women is immoral and illegal. Therefore there is nothing to get surprised or dejected with the unwelcomed status of Joseph shine v Union of India. Similarly, Sabarimala case involved a total destruction of age old beliefs and sentiments of Hindus. This was highly sensitive matter which is rooted to religious practice, such issues can be settled amicably only through considerable degree of public support, legal framework alone can't absolve the issue.. This is again well clear from kind of havocs and protests that was continuing in the state of Kerala . The whole situation was out of control and there was a failure of law and order. And still the matter is not settled, around 25 plus review petitions are pending before the Apex court.

These cases well definably established the importance of public morality and the ramifications if the said notion is not considered. With this note I am no way trying to undermine the value of constitutional morality. This is of course a most imperative notion in constitutional democracy like India, but this alone may not bring about the desired positive outcome always, especially when the issue is deeply

connected with public spirit or sentiments. In such cases it is inevitable to consider public morality to certain extent .

CONCLUSION

The concept of constitutional morality and public morality are closely connected. Constitutional morality has its certain roots in public morality , if travel back to the history of our constitution we will come across the notion that constitution is nothing but the will of people. This was further established in the case of *Supreme Court Advocates on Record Association v. Union of India*⁶ . Therefore, Constitutional morality and other subordinate law cannot go against the interest on public. It should consider larger public interest and safety at first. The individual or organization or any other entity who is party to the case may not always represent the public opinion or morality, that may something different. For example in the case of sabarimala, the women association or organization that opposed the ban does not represent the majority. Now here arises a question as to what can be done to thwart these displeasing outcomes. I would suggest, the method of plebiscite, that is whenever a public issue involving a conflict between constitutional morality and public morality comes before the court , it has to go for a plebiscite asking the people to cast their vote or opinion on the matter. This might appear to non pragmatic and impossible for a few at least, it is accepted that it is a humongous or excruciating task to go for plebiscite in a country like India where judiciary is suffering from slow motion syndrome due to heaps of cases pending. But this will be

⁶ Supreme Court Advocates on Record Association v. Union of India (1993) 4 SCC 441



definitely apt in a diverse democracy like India , if this is complied will certainly bring about some positive changes as to the acceptance or compliance of judicial pronouncements. Further this rejuvenate or Arden the public trust in judiciary. Further through this suggestion I don't mean to invite for public opinion in every cases or to totally discard constitutional morality, this said procedure should be practiced only in certain highly sensitive issues , resorting to this method in all cases will definitely destroy the judicial independency and the concept of constitutional morality. According to me, the pending review petition on Sabarimala matter has to be determined through a plebiscite. Here women and her religious right is the main issue, thus all women should asked to put her stand on it.

