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Use of “**Constitutional morality**” to strike down laws very dangerous, hope it dies soon, AG KK Venugopal

Murali Krishnan December 9 2018



Constitutional morality is the new tool in the armoury of the Supreme Court to test the validity of laws and it could have dangerous repercussions, Attorney General for India, KK Venugopal said yesterday.

He was delivering the Keynote address at the second JB Dadachanji Memorial Debate organised by ILA Pasrich & Company.

Venugopal began his speech by tracing the history of conflict between the Supreme Court and Executive especially during the era of land reform laws and nationalisations laws which were repeatedly struck down by the Supreme Court.

"It led to Constitutional amendment and things came to a head with Kesavananda Bharati when the Court laid down the Basic Structure doctrine which was a deathblow to the supremacy of the Parliament."

Venugopal said that he was citing the historical aspect to show how the Court is now using Constitutional morality to strike down laws which could lead to dangerous repercussions.

"I am saying all this because I fear this new concept of "Constitutional morality" may now be used [by judiciary] for testing laws..

Use of Constitutional morality can be very very dangerous and we can't be sure where it will lead us."

The Court will keep expanding the scope of Constitutional morality and "keep discovering new basis and aspects of it just as it expanded the scope of Basic Structure and widened its powers under Article 142.

"Don't know where that will take us", he said.

He also underlined the wisdom of the people and their elected representatives and how Court should not discount their judgment.

"We gave to ourselves this Constitution. Are you (judiciary) going to treat the whole population of this country as illiterate and not able to think for themselves? Even the 26 percent of illiterate people have basic wisdom. For the court to believe that unless it interferes, the country is doomed is not correct"

He also cited the recent Sabarimala judgment to buttress his point.

"If a Bench of the Supreme Court speaks in two different voices, one saying Constitutional morality will permit the entry of women and the other one which says it is prohibited because of Constitutional morality, then it becomes a very dangerous weapon. Court should be very very careful while interfering in religious beliefs", said Venugopal.

He expressed hope that the doctrine of "Constitutional morality" dies with its birth.

"Otherwise, our first Prime Minister Pandit Nehru's fear that the Supreme Court will become the third chamber might come true", he concluded.

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Well said within his boundaries. Recent incidents have shown that Constitutional morality overrides public order and morality. News reports reveal that more than 2200 house wives eloped their husbands for joining their lovers after nullification of Adultery, with majority of them thrown to streets after few days of honeymoon.

"Where are we heading to" is a million dollar question.

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