



Use of constitutional morality may lead SC to become third chamber of Parliament: AG

Attorney General K.K. Venugopal also commented on the unfettered power of the Supreme Court under its interpretation of Article 142 of the Constitution

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New Delhi: Attorney General K.K. Venugopal criticized the principle of constitutional morality relied on by the **Supreme Court** and termed the practice as being “very dangerous” while delivering the key note address during the second J.B. Dadachanji memorial debate.

The AG, however, clarified that he was speaking in his personal capacity.

“Use of constitutional morality can be very, very dangerous and we cannot be sure where it will lead us. Unless it dies the former Prime Minister Pandit Jawaharlal Nehru’s fear of the Supreme Court becoming the third chamber of the Parliament may come true”, he said on Saturday.

The AG also commented on the unfettered power of the Supreme Court under its interpretation of Article 142 of the Constitution. Article 142 deals with the power of the top court to exercise jurisdiction and pass orders in the spirit of doing complete justice.

“The Supreme Court has garnered vast powers in its interpretation of Article 142 of the Constitution. Prohibitions applicable under other provisions cannot, ipso facto act as limitations under the powers granted under Article 142 of the Constitution. As a result, instead of the supremacy of the Constitution, supremacy of the **Supreme Court** was established”, he said. Justice Madan B. Lokur of the Supreme Court, however, said that the Indian judiciary was in the recent times criticised for “judicial activism” or “hyper activism” but it’s realm of judicial review was quite limited and restrained when compared to how far the jurisdictions of other countries had gone.

The issue of constitutional morality was also touched upon by Solicitor General Tushar Mehta who emphasized on the need to exercise caution while

relying on the doctrine of constitutional morality. He also spoke in his personal capacity and not as a law officer.

Venugopal also criticized how the Supreme Court had relied on constitutional morality to allow **entry of women of all ages into the Sabarimala temple** under a 4-1 majority verdict.

The concept of constitutional morality had ignited a debate following the Supreme Court's ruling on the Sabarimala and its view on Section 377. It opened up the temple in Kerala to women of all ages in October as restricting them would weigh against the principle of constitutional morality. A similar formula was used as it **struck down the archaic provision of Section 377** and upheld constitutional morality.

Venugopal traced back the rift between the executive and judiciary to the 1950' when the judiciary was striking down land reform laws on a "strict and liberal interpretation of the constitution". The government brought amendments to keep the legislation and the then chief justice M. Hidayatullah said that the government was amending the laws to neutralize the judgements of the Supreme Court.

"This settled down with the Kesavananda Bharati judgment in 1973, in which by a 7-6 majority, the basic structure theory was laid down drawing lines against the govt's amending powers.

Former Chief Justice of India Dipak Misra on his retirement in October had also underlined the primacy of constitutional morality in India, saying it must permeate not only justice but all walks of life.

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