

Morality as a Tool to Assess Constitutional Value in Indian Society –An Analytical Study

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Abstract: The concept of Constitutional morality remains understudied and that there has been no agreement over the exact location. The mere physical presence of the term ‘morality does not constitute the source of Constitutional morality; we need to dig into the essence of the Constitution. The constitution is based upon some basic governing principle of society as well as the Rule of Governance and those principles are fundamental of the Constitution. For example, rule of law, the principle of reasonableness, the principle of non-arbitrariness, principles of natural justice and so on. These principles form the basic structure of the Constitution; it is considered to be a living document that has its spirit and that spirit is the basic structure. All such principles that bind the basic structure are inter-prime, their separation is difficult. It is the ‘grundnorm’ of Indian society. Similarly, there is an idea of morality, exclusive to the constitution and it stands ahead of social as well religious morality being followed in the nation. When it comes to upholding the values of the Indian society there must be an involvement of the constitution values coupled with sprinkle of the morality aspect. All the organs of the democracy must own the responsibility to enhance the constitutional value for which they in turn need to hold on to the morality of the constitution in each aspect of their functions. Thus, the object of this paper is to analyze how far has been the contribution of the judiciary, legislature and the executive been successful in saving the constitution. It also contains suggestion to contribute towards betterment of Indian democracy.

Keywords: Constitution, Customary law, Morality, Rights,

1. Introduction

Indian Constitution has been amended over one hundred and four times over seventy years, why does the world's lengthiest Constitution need amendments? Nothing can be change-proof, nor does the Constitution of India. Thus, by amending the Constitution via amendments the document is altered and desired additions and substitutions have been made. This is one way of amending the Constitution. However, there are certain desperate changes needed in the modern nation which require amendment by way of interpretation of provisions and not a documentary amendment. Unlike the conventional method adapted for amendment under Article 368 of the Constitution certain amendments are needed in the society with the changing societal need be it on the ground of religious need or moral needs. Hence the courts started to make use of Constitutional morality to fulfil the democratic rights of individuals and help democracy survive for a long duration. We must understand that Constitutional morality though cannot be defined in exact words, is a holistic approach to achieve the aim of the Constitution mostly concerning socio-judicial situations, but not limiting to it. It extends to deliver rights of personhood to each individual for whom this Constitution exists and because of whom this Constitution exists. Strong governance is an added requirement along with the adherence to Constitutional morality for working upon the moral fabric of Indian society.

The dignity of the individual and their freedom is directly proportional to Constitutional morality being upheld by the judicial system. The core principles of the Constitution also known as the basic structure is the base for Constitutional morality, thus, the maintenance of democratic order will be achieved by commitment to core principles. "Constitutional morality will imply good collaboration between competing desires of numerous citizens and administrative cooperation to settle conflicts amicably and without disagreement within the various parties working to achieve their goals."¹The Supreme Court touched on various aspects of life through its judgements for example de-criminalization of homosexuality, recognising the identity of women in the marriage market by scrapping adultery as an offence, elaborating the right to privacy as both negative and positive fundamental right. These were all eventful moments when indirectly the essence of the

¹Scaria, M. E. (n.d.). Constitutional Morality And Judicial Values. LEGAL SERVICE INDIA. Retrieved April 28, 2021, from <http://www.legalserviceindia.com/article/1186-Constitutional-Morality-And-Judicial-Values.html>

Indian Constitution was celebrated. Similarly, the jurisprudential aspect of Constitutional law was reformed through the judgment of “**ShayaraBano v. Union of India**² and **Indian Young Lawyers Association v. State of Kerala**³ [3] popularly known as **the Sabrimala case**, in both these cases the court gave women their well-deserved rights, in **ShayaraBano case**⁴ the court by 3:2 majority declared instant triple talaq as unconstitutional saving Muslim women from destitution and vagrancy and in Sabrimala case the court upheld the concept of gender equality conferred in our Constitution, stepping one foot forward, Justice D.Y. Chadrachud also said the practice of prohibiting women from entering a temple was violative of Article 17 and the discrimination was based on purity which is not the new era democracy.”

2. Tracing parturition of Constitutional Morality- In India

The main source of the birth of Constitutional morality is the preamble of the Indian Constitution. Generally, a preamble is an introduction of the main document containing the purpose, philosophy and fundamental values of the text in the document; similarly, the preamble of the Indian Constitution describes the source and intention of the makers of the Constitution. It marks the beginning of the essence of the Constitution and forms a base of further content.

2.1. Preamble and its various latent facets

The base of the preamble in the Indian Constitution is ‘objective resolution’ which was written and later introduced by Jawahar Lal Nehru in the Constituent Assembly, the assembly accepted the same on 22 January 1947, and the objective resolution was introduced by Nehru on the 13th of December of 1947. The preamble is, however, limited to the extent of objectifying socio-political fulfilment and significant characteristics of the Indian society the matter is further clarified in the main text of the document. Without the preamble, Constitution would be missing its sole.

The process of election gives power to the citizens to choose their representative and criticizing their representative is also their right, this justifies the words “we the people of India” mentioned at the inception of the preamble. The main objective of the Constitution is to deliver justice, maintain equality and liberty of people; it focuses on fraternity which is the feeling of oneness

²W.P. (C) No. 118 of 2016.

³2018 SCC OnLine SC 1690.

⁴Ibid

that binds that nation which is expressly written in the preamble. “The nature in Indian state is also elaborately given in the preamble, it describes India to be a *Sovereign, Socialist, Republic, Secular, and Democratic* state and the justification of it is guaranteed by the Articles in the Constitution”. The promotion of harmony amongst the people of India is the ultimate aim of the Indian Constitution, supremacy of the Constitution is the first requirement to fulfil this aim. Constitution would thus become one binding force, eliminating all kinds of discrimination.

Justice, as guaranteed by the preamble, has three directs, i.e. social, economic and political, many a time the society makes their norms and customs which fails to render justice which is fair and reasonable, the morality of the Constitution comes into play, thus what are the mediums through which the Constitution explains the justice it wants to deliver? By social justice, the Constitution wants to make the society a discrimination-free zone; it covers all kinds of grounds on which discrimination can be made such as sex, race, language, gender etc. this in a way functions in line with promoting human rights of individuals by eliminating exploitation. Social justice has two aspects to it, one being equal treatment and the second being indifferent treatment with a class of people with less privilege, for example, we have a system of providing reservation to socially and economically weaker section of society. Although reservation is a much-debated issue nationwide it is one way of promoting socialism. Economic justice is a way of eliminating difference based on wealth, it does not mean that Constitution believes in distributing wealth in equal proportion to the citizens rather it believes that wealth must be distributed based on the nature of work that people are doing, it includes an opportunity to work and a classic example of the same is the MGNREGA which secures right to work. Political justice targets giving political opportunity without discrimination along with the right to transparent political functions as they affect well being of the people.

Another promise made by the Constitution through its preamble is the grant of equality. According to Article 14, equality has two aspects, “equality before the law and equal protection of the law”, the former means that each individual is equal in the eyes of law, nor there can be discrimination of opportunity neither any section of society will get any privilege and latter means class legislation i.e. treatment based on class. This classification, however, should be reasonable because not everybody is on the same socio-economic footage and to create that

balance justified amount of imbalance has to be created. Thus, the differentiation is based on the fact that a certain group of people are left out and the discrimination made has to be in proportion to the level of the object to be achieved to put that group on similar footing than other section of society. The courts had also said that such classification has to be non-arbitrary, fair and reasonable in nature. In **“E.P Royappav. State of Tamil Nadu and another”**⁵ which acted as a guideline to eradicate arbitrary acts: *“Equality is a dynamic concept with many aspects and dimension and it cannot be ‘cribbed, cabined and confined’ within the traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies...Where an act is arbitrary, it is implicit that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14.”*⁶

In a democracy, liberty plays an important role thus similar is the situation with Indian democracy. Liberty in term of the Constitution means freedom to people concerning their thoughts and choosing their way of life. However, liberty is subject to reasonable restriction. An individual or group cannot enjoy their liberty at the cost of someone else’s; they cannot in any way practice activities that violate the rights of someone. Laws are always there to govern the acts and illegal omissions, thus the law sets the limit for the extent and enjoyment of liberty. The power conferred on the law to restrict freedom is derived from the Constitution for the purpose of avoiding injuries. Fraternity, according to the dictionary, means ‘friendship and mutual support within a group’ this group herein is India itself. It is a feeling of oneness or brotherhood and in India; it can be achieved by creating a perfect balance of liberty, equality and justice which the courts have always tried on their end. Unless all sections, rather each individual feels that justice, equality and liberty has been delivered to them, India cannot be said to be promoting fraternity, thus in **Navtej Singh Johar’s**⁷ case, the court did not even care about the fact that LGBT community constitutes a diminutive section of Indian society, it focused only on delivering justice, equality and liberty. It is a much-appreciated judgement in the history of

⁵1974 SCR (2) 348

⁶Mustafa, F. (2019, December 11). Religious basis of citizenship would be a negation of secularism, liberalism, equality and justice. The Indian Express. <https://indianexpress.com/article/opinion/columns/betrayal-of-the-republic-citizenship-amendment-bill-6160572/>

⁷W. P. (Crl.) No. 76 of 2016

Constitutional morality in India. There shall be a feeling of belongingness towards the land consequently it will result in actively encouraging unity and dignity in the nation.

2.2 Preamble a part of the Constitution- a debate

Two leading case laws are extremely helpful in solving the query that whether the preamble is a part of Indian Constitution or not? In re Berubari Union Case referred under Article 143(1) in the Constitution an eight-judge bench declared that preamble is not the of Constitution. The decision with respect to preamble being part of the Constitution was reversed in the historic judgment of Keshavananda Bharti v. State of Kerala and others⁸, 13-judge bench declared preamble to be a part of Indian Constitution, it added that preamble is neither supreme to the Constitution nor it acts as any source of restriction rather it guides with respect to interpretation of statutes, in case of any conflict such interpretation shall be adopted which is in line with Constitutional morality.

3. Strengthen the Power of the Constitution

It is a well-established fact that the soul of a healthy democracy is its Constitution and part III of the India Constitution containing the Fundamental rights on individuals is addressed as the heart of the Indian Constitution, but how aware are we of the Constitutional essence? Justice, Liberty, Equality and Fraternity are not just words beautifying our preamble but they are the bedrock of the democratic system. In a diverse country, there is always a need for some fundamental factor that brings together the multiplicity in culture, religion and language of the nation. The mere fact that we belong to this nation will not be sufficient to get the feeling of oneness but the standards that are promised in the Constitution bind us together.

3.1 Set Forth the Value incorporated in the Indian Constitution

“Section 29 of the **Right to Education Act**, 2009 mandates imparting of Constitutional values to children; a similar activity was conducted in about 67,000 government schools but making children aware of provisions of Constitution. The feedback from teachers was that absenteeism

⁸AIR 1973 SC 1461

has reduced significantly, there is greater respect for punctuality and there is a spirit of inclusiveness where children have become more accommodative of one another.”⁹

“Latin maxim, *Ubi jus ibi remedium* which means, where there is a right there is a remedy applies in India to its fullest, the primary ingredient for the fulfilment of the maxim is knowledge of right but anybody who wants a remedy.”¹⁰ There is a statute for almost every situation but the validation of those statutes is derived from the Constitution, thus what becomes important here is knowledge of Constitutional rights. “In politics, we will have equality and in social and economic life we will have inequality. In politics, we shall be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, because of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions?”¹¹ In a vast country like India where multiple cultures are practised and multiple religions are practised the courts cannot *suo moto* take cognizance of social or religious failure in the name of morality hence, the people must know their rights in case it is violated. For example, child marriages are prohibited in India but they do take place, perhaps because the minor brides are unaware of their rights.

To deal with the situation of unawareness amongst the people concerning their rights, the executive has to play a more vigilant role in identifying places, religious activities and social activities that are taking place against the will of the Constitutional norms. In the broadest sense executive is that branch of democracy that deals with the function of running the state by implementing laws and policies. Executive in the modern times is not limited to the political executive but includes civil services as well. Procedurally, when the executive fails in implementation of law or policy there is an infringement of a right and for that infringement, the judiciary is approached by the sufferer. On a more broad level to spread knowledge of rights basic Constitutional rights should be taught at the school level, to people in the rural part of the nation, for instance, if women were aware of their right to marry to a person of their own choice,

⁹Vaidya, A. (2020, March 12). Imparting Constitutional values: A silent revolution is on in Maharashtra's 67,000 govt schools. Hindustan Times. <https://www.hindustantimes.com/pune-news/imparting-constitutional-values-a-silent-revolution-is-on-in-maharashtra-s-67-000-govt-schools/story-PRPfPwbMsBrvdIJZY861rK.html>

¹⁰Ashby v White (1703) 14 St Tr 695, 92 ER 126

¹¹Constituent Assembly Debates, Volume IX

khap panchayat would not have been an active violator of human right. The executive, on the other hand, must act as the protector of rights, protection may be granted by making people know of their rights so that contingencies do not even occur in the first place.

3.2. Requisite Contribution form Legislature

Legislative as another integral part of democracy can contribute to containing situation of violation of rights and destroying Constitutional morality. The major function of the legislature is to make laws. Laws are made for the people, people are progressive and society is dynamic, hence the ideologies adopted by the legislature must be progressive indeed. Instances, where women were harassed in their own houses or at the workplace, were addressed by the legislature with the help of the judiciary and finally statutes like The “*Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013*”¹² was enacted and alongside provisions were added to the law of crimes. The journey of enactment of such statutes or amendment in the criminal laws were possible when someone must have identified his or her right and subsequently approached the court

As mentioned multiple times, the Constitution makers could not anticipate a crisis that would arise post commencement of the Constitution. They drafted the Constitution in their best effort for containing situation that they could speculate at that moment in time. However, much later in time amendments were needed and as per requirement parliament and state legislature did make amendments suiting the evolving nature of society. Change is the law of nature, hence laws are updated via amendments, what happens then is it cannot reach all sections and stratus of society, as mentioned multiple times, India is a land of diversity and hence the mere change in law or making policies would not serve the purpose, rather it has to reach out to people with purpose and need behind such introduction of law or policy or any change in-laws.

Adultery, an age-old offence under the Indian Penal Code, was declared unconstitutional specifically in case *Joseph Shine v. Union of India*¹³ [13] and shifted the onus on the man who has sex with married women, the sheer reason for the court to come to this conclusion was the

¹²Act No 14 of 2013

¹³W.P. (CRIMINAL) NO. 194 OF 2017

nature of the offence, it treated women as object ownership of which was in the hands of the husband which was socially unacceptable in this era. In the present scenario, men and women are standing on the same footing hence, even women were held liable for the offence of adultery. The fact that before this judgement consent and connivance of husband of married women was used as an excuse was incorrect, validation for such excuse was derived from the section itself. Unlike old times, the court did not entertain contentions like preserving the sanctity of marriage or family issues. The social morality of alleging a man and not a woman who is equally involved in the offence was quashed by the apex court as it upheld Constitutional morality over social morality as vice-versa would have violated the spirit of the Indian Constitution. The court in its judgement gave the opinion the wife could get away with the liability of offence by treated as a victim since the offence is committed by both man and woman both should be liable and none should be absolved. The general rule of criminal law functions on gender neutrality but this concept is found to missing under section 497 of IPC reason being societal presumption that woman could not go against the ties of her marriage. From another angle, this section created a dent in the individuality and identity of a woman because of the fact that consent or connivance of the husband would make the offence ineffective. This goes completely against equality guaranteed under the Indian Constitution by placing the will of women subject to the approval of her man. By applying the feminist approach the bench gave effect to the substantive feminist nature of the Constitution.

Another case where Constitutional morality won over religious morality was in Sabimala's Case, the court discussed Article 17 because women were treated as untouchables. A religious practice which was based on sheer discrimination was without a doubt needed to be removed from the system, hence the court scrapped the provision and allowed the entry of women irrespective of their age.

3.1 Curb in Judiciary's Post Retirement Executive Plans

When it comes to infringement of rights, the first organ that crosses our mind is the judicial system, thus, maintenance of belief in the judicial system is a mandate for adherence to Constitutional morality. Patently, the function of the judiciary seems efficient however, some factors are leading to the lifting of trust from the judiciary. The greatest gift for the judiciary from the Indian Constitution is its independence from the Executive. On one hand, article 50 of

the Constitution gives a sense of relief to Indian national, on the other hand, judges post their retirement are indulging in executive functions. “A study by the think-tank Vidhi Centre for Legal Policy has shown that 70 per cent of judges in the Supreme Court get government jobs.”¹⁴[14] Inferences may be drawn concerning judgements being delivered in favour of the government. Such an act is a fraud on Constitution. Constitutional machinery functions on the efficient working of all three organs of democracy on an equal footing, thus, the judiciary being provided with an independent status has to save its reputation by distancing itself from governmental functions. Judiciary is from judges, hence independence of the judiciary has to be maintained by the judges, and it is the primary duty of the judges to respect Constitution.

Taking a few names, Justice P. Sathasivam took up the post of Governor in the State of Kerala in September 2014; coincidentally he was a part of the quorum which quashed in Tulsiram Prajapati Case in April 2013 in which one of the eminent politicians was a suspect. This may be a result of insecurity or desire for extra job security. For CJI Ranjan Gogoi also became a member of the Rajya Sabha immediately post his retirement, on the face of it he was nominated by the President but internally there has been a lot of suspicion on his appointment, and it is justified because after serving judiciary for such a long period a sudden shift in executive has arisen a lot of eyebrows. The mere fact that judges do not hide their executive connection does not validate their unconstitutional act, Justice Krishna Iyer before becoming a judge at the Supreme Court was a part of the government in Kerala, was participating a member of the legislative assembly of Kerala as a representative of the communist party, similarly, Justice-Subba Rao participated as candidate opposite to president for this he resigned from the post in the judiciary.

Experience and knowledge never go in vain, in the same manner instead of indulging in unconstitutional activities the retired judges of the Supreme Court can continue to be a part of the judicial system by indulging in statutory jobs. Various statutory bodies have come into play as per the requirement of administrative disorder, retired judges may be appointed for better functioning of these tribunals, NGT, NHRC and many RCT require retired judges to be a part of their special Constitution of judges to decide the matters exclusively for them. Judges may thus find such alternatives, use their judicial wisdom and save the Constitutional machinery. Taking

¹⁴“Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary in India”- Report available at <https://doj.gov.in/sites/default/files/document%282%29.pdf>

up private jobs is also an opening for the judges, this is another way of showcasing their skills and experience, former CJIs “*T.S. Thakur, Deepak Mishra and Jagdish Singh Kheha*” have marked themselves on this list.

Thus, upon following the above-mentioned methods dignity of the Constitution can be restored as we are accountable to the real Constitutional makers.

4. Courts are misusing Constitutional morality or using it aptly

Further, there are allegations on courts concerning judicial overreach to the extent of performing legislative functions. In the garb of Constitutional morality, the courts are using their power in ultra vires manner which is not convincing as the power to judicial review is limited as compared to the jurisdiction of other countries. Is it too premature to say whether courts are misusing or properly applying constitutional morality? “*Attorney General K.K. Venugopal* opined 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”.¹⁵ Contrary to the Attorney General’s view “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.”¹⁶

Rules regarding social order were issued by *Smriti* in past, though they were not binding still they were treated as an ideal guide for regulating social behaviour reason being, it was rendered by wise men like Manu, Narada and Yajnyavalka. Indian Constitution has been accepted as Ambedkar *Smriti* for the reason that Ambedkar played an exceptionally incredible role in drafting the Indian Constitution. Pre-existing Constitution of western countries along with the Government of India Act, 1935 were the primary sources for drafting Indian Constitution yet Ambedkar did not fail to sprinkle an Indian effect on the provisions. Ambedkar as an architect to the constitution was quite protective of it, while delivering a speech much before the final delivery of the constitution he spoke about three threats to the Indian constitution which are famously known as Ambedkar’s three initial warnings, firstly, he mentions strict obedience to

¹⁵Mittal, P. (2018, December 9). Use of constitutional morality may lead SC to become third chamber of Parliament: AG. Mint. <https://www.livemint.com/Politics/kmPJFgU8Qt6lCCLeIQ9z6l/Use-of-constitutional-morality-may-lead-SC-to-become-third-c.html>

¹⁶Ibid.

strategies for achieving socio-economic objectives set down in the constitution, any deviation from it would fail the purpose of democracy. He believed in Mahatama Gandhi's philosophy of 'Means are as important as the end', thus methodology for achieving constitutional goals must be just, fair and reasonable. No unfair techniques must be adopted for upholding constitutional values. As mentioned earlier, adherence shall be to the spirit of the constitution and not merely its words. While delivering the second warning Ambedkar said, "Bhakti in religion may be a road to the salvation of the soul. But in politics, hero-worship is a sure road to degeneration and eventual dictatorship"¹⁷, metaphorically comparing politics to religion he smartly suggested that unlike "Bhakti in religion may lead to salvation but on the contrary"¹⁸ worshipping any political leader would only lead to degradation of the federal system and eventually the same would end up in a dictatorship, which would be a defeat. Applicability of the second warning much needed for India in comparison to any other state. The third and the last situation that Ambedkar warned about contentment only with political democracy, according to him, it must be the aim to let democracy be absolutely in its social sense. Thus he said, "Political democracy cannot last unless there lies at the base of it, social democracy"¹⁹. In this regard the present legal system has been performing incredibly, attention is on adherence to the constitutional spirit in light of achieving social democracy, recent judgments by the Supreme Court have been trying to achieve much more than political justice, it is flowing towards achieving social justice as guaranteed by the constitution. ,

5. Conclusion

Thus, safeguarding constitutional morality is not a responsibility of anyone pillar of democracy; it is rather a combined effort of all three pillars of democracy i.e. Executive, Judiciary and Legislative. The fact that they are addressed as pillars signifies that each sector is one of its kinds in terms of its functioning and commitment towards the constitution. However, the legislature is the real protector of the constitution because lawmaking is its primary function and by the process of law making it is regulating the people or community to function in harmony with the constitution, any activity that goes beyond the unison of constitution the judiciary is always there

¹⁷Cultivating Constitutional Morality. (2019, November 25). Open The Magazine. <https://openthemagazine.com/essay/cultivating-constitutional-morality/>

¹⁸Ibid.

¹⁹Ibid.

to look into the matter and pass judgments that are fair and just. One major loophole in the constitution is that it does not require any qualification for members of the legislature and has high expectations of administrators. Primarily, the judicial system preserves rights granted by the constitution and in no case, it lets the constitution down. Therefore, preserving constitutional value is directly proportional to preserving the rights of people who are governed by the constitution; technically the whole nation. When it comes to the parliament, it is the heart of the Indian constitution, representative of the parliament are chosen by the people of India thus mortification of parliament would result in an apocalypse of the constitution. It is through the formation of the parliament that age-old monarchical practices were put to an end. It is a true source of democracy taking the nation in the aptest direction. The party in power faces multiple challenges concerning control and management but they have to stand by it and that is the real test.

In his final speech, Dr Rajendra Prasad elucidated the significance of a righteous elected leader, he said if the elected persons are men of integrity with the capability they would make the best out of the constitution even if it is a defective constitution, and if it lacks such qualities they will be able to make the constitution potential. In a practical sense, the constitution is a mere book-lifeless, it embellishes as a living document by the people who operate it. India in a true sense needs men who are visionary, honest, full of wisdom, holding constitutional values at the top and at no cost sacrificing the same.

“As opined by the famous French philosopher-writer Jean-Jacques Rousseau, ‘Man is born free, but everywhere he is in chains, social, economic and moral grounds are these chains that Rousseau refer to in his social contract theory. Since the ultimate aim of the constitution is to deliver justice-social, economic and moral, the judiciary through upholding constitutional morality delivers justice of all kinds.’”²⁰. The entire effort of the judiciary through the pronouncement of its revolutionary judgment was to accomplish the distribution of fraternity, subsequently, it was found that laws were inadequate in doing so; hence, the court took the matter into its own hands for the successful delivery of fraternity. If the LGBT community would

²⁰Deney-Tunney, A. (2017, September 20). Rousseau shows us that there is a way to break the chains – from within. The Guardian. <https://www.theguardian.com/commentisfree/2012/jul/15/rousseau-shows-us-way-break-chains>

have been left to suffer for the reason that the law is inadequate or women faced continued denial of their right to religion because of a defective law that would have been a failure of the constitutional mechanism.

This time it was the court who rescued the constitutional morality but it is not the duty of the court solely rather the society needs to shoulder such responsibilities for the betterment of the country. That would be a final win for the constitution against unhealthy social, religious or moral practices. As propagated by Dr B.R.Ambedkar, “Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only top dressing on an Indian soil, which is essentially undemocratic