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EDITORIAL NOTE

The Political Class and the Decline of Constitutional Morality

The Supreme Court, last year, delivered several landmark judgments with respect to the conduct of free, fair and peaceful elections in the country. Significant among them was the judgment in *Lily Thomas v Union of India* which held that Section 8(4) of the Representation of People's Act, which defers the date on which the disqualification of a sitting member will take effect, to be ultra vires the Constitution. The Court based its reasoning on Article 102(1) and Article 191(1) which mandate that the disqualifications for a contesting and sitting member have to be the same. Further, Article 101(3) and Article 190(3) expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting member of Parliament or a State Legislature. The government then filed a review petition, which was rejected. The Parliament then introduced a bill in the Rajya Sabha to nullify the Supreme Court judgment. Before it could be passed, the Parliamentary session expired. Thereafter, an Ordinance was proposed to amend the law. The proposed Ordinance was however not passed on a diktat from a popular ruling party functionary.

The Supreme Court also delivered the *Chief Election Commissioner v Jan Chaudhary* judgment on the same day it delivered *Lily Thomas*. The judgment says that a person who is confined in a prison or in the lawful custody of police, loses the right to vote (S. 62(5) of The Representation of the People Act, 1951), and is hence disqualified from contesting elections. The government soon after filed a review petition, which was admitted for hearing by the Supreme Court. But alongside, the Parliament hurriedly passed the Representation of the People (Amendment and Validation) Act, 2013. The Act negated the

earlier Supreme Court judgment and restored the previous position of law, making the review petition infructuous.

The above two instances show that in matters of convenience, both the ruling party and the opposition are hand in glove with each other. They lost no time in joining hands to introduce amendments which would nullify the effect of the judgments. Similarly, when the Central Information Commission (CIC) bench in *Subhash Aggarwal v Indian National Congress and Ors.* in June 2013 ruled that six national parties are “public authorities” and are thus covered under the ambit of the Right to Information Act (RTI Act), the government hastily introduced a Bill to amend the RTI Act and nullify the CIC judgment. It was reported in several quarters that there was unanimity among the parties that the Act needs to be amended. It was only after large scale campaigns and protests by NGOs that the Bill was referred to a Standing Committee. This is a worrying trend for the Indian democracy as the constitutional scheme is such that the opposition occupies an extremely important position in it so as to maintain checks and balances against the excesses committed by the executive. That is why the post of Leader of Opposition in both the Houses of Parliament is treated to be equivalent to the post of a Cabinet Minister and his importance is acknowledged in all constitutional appointments such as that of the Chief Vigilance Commissioner.

This is in sharp contrast to the Parliament’s usual laxity in matters concerning corruption, rights of socially disadvantaged people, etc. Important social welfare legislations like the Food Security Bill, and the Street Vendors Bill took a long time to be passed. Similarly, legislations like the Rights of Persons with Disabilities Bill, Citizens Charter Bill, etc. are pending since long. In fact, it took a prod as cruel as the rape and death of a young girl and an indignant population on the warpath, to wake the government from its executive and legislative slumber and enact an appropriate legislation last year to deal with the growing peril of sexual offences.

Thus, what can be seen is a decline in constitutionality morality of our legislators. It is said that our Constitution is lengthy because we have not yet developed a culture of Constitutional morality. The same

is true of today's political class as well. Consequently, in the absence of a culture of constitutional morality, the operation of a constitution, no matter how lengthy it is and how meticulously it is written, tends to become arbitrary. Hence, without an infusion of constitutional morality amongst our legislators, the Constitution merely remains a visionary document, bereft of its significance it ideally should have in people's daily lives.

Legislators do not foresee the high ethical standards that they should lay down while conducting legislative business. Constitutional morality demands that forms and processes associated with it be observed scrupulously and not paid mere lip service – the spirit in which certain provisions were enacted are as important as the words. In a parliamentary democracy, constitutional morality is not only expected from the ruling party but equally from the opposition. However, the manner in which the opposition parties of today have joined hands with those in office to protect their own interest is deplorable. At the same time, when it comes to highlighting the rights of the people, instead of directing the government's attention to these pressing issues, they end up disrupting parliamentary proceedings. Civility is an important component of constitutional morality which allows the smooth operation of institutions such as the Parliament – a quality lacking in today's legislators.

Right after the commencement of the Constitution, Jawaharlal Nehru felt that the money being spent on the privy purses of the erstwhile rulers of the princely states was a waste and could have been better served for the need of the poor people. However, since a promise was made to them guaranteed by the Constitution in the form of Article 291, he did not attempt to amend the Constitution although he had the required majority to do so. He merely wrote letters to them from time to time requesting them to surrender their privy purses. This is an example of constitutionally moral behaviour wherein though Pandit Nehru could claim to represent the popular mandate of the people by abolishing the privy purses, yet by respecting and honouring the sovereign promise, he set an example for future parliamentarians to emulate. Thus, the concern to adhere

to ethical standards of law making is much more than to merely represent the popular will of the people and in that garb do everything that pleases oneself. In other words, constitutional morality is more about showing observance to those values which are unsaid than those procedures which are written down.

In two of the above mentioned cases, an attempt was made by the Supreme Court in writ petitions filed by public spirited citizens to rid our legislatures of members who have criminal antecedents. It is on very few occasions that the Parliament acts with great alacrity. Such is the moral fibre of our legislators, that in one of these cases they could not even wait for the Supreme Court to conclude hearing in the Review Petition that the government had filed. It is one thing to say that the Bill was passed with thumping majority in both the Houses and legislators are best placed to represent the true will of the people but it is a completely different thing to understand that what is positively right may not always be moral. When political parties are being blamed constantly for criminalising politics and when such a concern had found voice in the form of a Supreme Court judgment, it was best to respect and honour that decision in letter and spirit rather than trying to show its majoritarian powers. A high regard for Constitutional morality is a necessity to ensure smooth functioning of different branches of the State as well as peace and harmony in our Constitutional democracy. Unfortunately, this clearly seems to be on the decline amongst our political class today.

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On behalf of the Editorial Board