
CONSTITUTIONALISM IS THE ROAD AHEAD

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ABSTRACT

"Constitution is the weapon to rule in the democratic country freely."

1. Brief About Constitutionalism
2. Brief About Rule of Law
3. Relation between Rule of Law and Constitutionalism.
4. Why Constitutionalism is the Road Ahead

These are the four-point that are used to give a frame way of Constitutionalism is the road ahead. For this, the author uses a subtopic that is Rule Of Law from which he concludes. Firstly the author gives a small introduction and familiarizes with the constitution. According to the author whether he reads MP Jain, Bare Act, DC Pandey, and from the lectures he found that constitution is not a book but an emotion, a holy book, a pathway to present the country in front of the world. He uses the emotion of holy books because in every person who sustains on the beautiful world they need only Rights. When there is a Right then there are Duties. Rights and Duties are interconnected and without duties, there is no meaning of rights. While studying the holy books we found about what is our rights and duties and if there are rights then there are emotions also. When any person is given a right they know then for using these rights we have to do some duties so they found emotion in the rights because they give a free way to sustain in life. Now the author explains that why he used the emotion holy book. So, we all Indians have Constitution and in this constitution, there are 392 articles that clearly mentions the rights and duties. In every democratic country, there are rights and duties. In India, our forefathers who framed the constitution gave a whole and clear data about the rights and duties. As we see that India is a country ruled through its history by the British, Aryans, Mughal, Cholas, etc. over a long time and after 15th August 1947, the country became free from colonialism and made its own laws and regulation. For making laws and regulation for free India every citizen want rights and duties

because every citizen of the country requires some rights and duties that are important for sustenance. After the independence, the constitution was drafted and it is till now one of the longest written constitutions in the world. It declares India a democratic country and as a democratic country, we have a lot of rights and duties.

CONSTITUTIONALISM

Modern political thought distinguishes the constitution and constitutionalism. A country may have a constitution but not necessarily constitutionalism. For example, a country with a dictatorship, where the dictator's word is the law can be said to have a constitution but not constitutionalism. The underlying difference between the two constitution ought not to confer powers on the various organs of the government but also restrain those powers.

Constitutionalism recognizes the need for the government but insists upon limitations being placed upon government power. Constitutionalism envisages checks and balances and pitting the powers of the legislature and executive under restraints and not making them uncontrolled and arbitrary.

Unlimited powers jeopardize the freedom of the people. As has been well said: power corrupts absolute and absolute power corrupts absolutely. If the constitution confers unrestrained power on either the legislature or the executive, it might lead authoritarians to, oppressive government. Therefore, to preserve the basic freedom of the individuals and to maintain their dignity, the constitution should be permeated with constitutionalism and it should have some restrictions on the powers conferred by it on governmental organs.

What constitutionalism connotes is limited government or limitation on government. Constitutionalism is the antithesis of arbitrary powers. Constitutionalism recognizes the need for a government with powers but at the same time insists that limitations be placed on those powers. The antithesis of the constitution is despotism unlimited power may lead to an authoritarian oppressive government that jeopardizes the freedom of the people. Only when the constitution of a country seeks to decentralize power instead of concentrating it at one point and also impose other restraints and limitation thereon does a country have not the only constitution but also constitutionalism.

Constitution spring from a belief in limited government according to Schwartz in the USA the word constitution means argue 10 organic instrument under which government powers are both

conferred and circumscribed. He emphasizes that this is stress upon grant and limitation of power it is fundamental. As professor Dicey has remarked:

Western institutional theory steps concern themselves with the problem of ensuring that the exercise of governmental power which is essential to the realization of the value of their society should be controlled so that it should not itself with respect to values it was intended to promote.

The idea of constitutionalism is not new and it is embedded deeply in human thought. Many philosophers have promoted this idea through their writings, some of these philosophers are: Aquinas, Locke, Paine, Grotius, and Rousseau.

The Magna Carta (1215) strengthened the traditional view that law is supreme. As observed by Arthur Sutherland, "The Great Charter was a cherished standard, a welcome assurance that people could set some limitation on the arbitrary power of the king"

A written constitution and an independent judiciary with the power of judicial review, the doctrine of rule of law and separation of power, free election to the legislature that is accountable and transparent, democratic government, fundamental rights of the people, federalism and decentralization of power are some of the principals and norms which promote constitution in a country.

RULE OF LAW

The doctrine of rule of law is ascribed to Dicey whose writing in 1885 on the British constitution included the following three distinct though kindred ideas in rule of law.

I. Absence of arbitrary power: No man is above or no man is punishable except for a distinct breach of law established in a country legal manner before ordinary courts. The government cannot permissibly assume power by its own fiat. Persons in authority in Britain do not invite arbitrary discretionary powers asserted that wherever there is discretion there is room for arbitrariness.

II. Equality before law: Every man irrespective of his rank or condition is subject to the ordinary law and jurisdiction of the country quotes no man is above law.

III. Individual liberties: The general principle of the British constitution is the liberty of the individual judgment that is the result of judicial decisions determining the rights of private persons in particular cases brought before the courts from time to time.

Dicey asserted that the above-mentioned feature existed in the British constitution. The British constitution is judge-made and the rights of the individual form part of and pervades the constitution. The rights of the individuals are a part of the Constitution because these are secured by the courts. The British constitutional law is not the source but the consequence of the rights of the individual defined by the courts.

Dicey was thinking of the common law freedom such as personal liberty, freedom of the press, beach public meeting it is what he was saying that certain constitution proclaims and conveys some rights but do not provide adequate means to enforce them. In the British constitution on the other hand there is an inseparable connection between the means of enforcing rights and the right to be enforced. Referring in particular to the Habeas Corpus act, Dicey said that it was a word hundred constitutional article granting individual liberty.

The third principle is, particular to Britain. In many modern constitutions the basic right of the people are granted in the constitution itself this regard as a better grant for this right and even in Britain there exist at present the strong opinion that the basic rights should be granted in the constitution.

The Dicey thesis has been criticized by many from various angles but, the basic tenet expresses the theme that power is derived from and is to be exercised according to law. In substance, Dicey is a force on the whole, in his enunciation of rule of law is on the absence of arbitrary power, discretionary power, equality before the law and legal protection to certain basic human right and this idea is remaining irrelevant and significant in every democratic country even today.

It is also true that dictated by the needs of practical government a number of exception have been engrafted on these ideas in modern democratic countries. Due to that, there is a universal growth of broad discretionary power of the administration that has grown the institution of preventive detention which has become a novel feature in many democratic countries the basic idea is worth preserving and promoting.

The concept of rule of law has been discussed in several international forums. The effort being made is to give in to a sociolegal economic content and Sabah national complexion.

Rule of law has no fixed articulation and attention though the Indian Courts referred to this phrase time and again. The rule of law means an absence of any centre unlimited or arbitrary power in the country on proper structurization and control of power, absence of arbitrariness in the government. Government intervention in many daily activities of the citizens is on the increase creating the possibility of arbitrariness in the government.

A significant derivative from rule of law is judicial review. Judicial review is an essential part of rule of law. Judicial review in board determination not only determines the constitutionality of the laws but also the validity of administrative actions. The actions of the state public authority and bureaucracy are all subject to judicial review; they are thus all accountable to the port for the legality of their actions. In India, so much importance is given to the judicial review that it has been characterizing as the basic feature of the constitution which cannot be done away with even by the exercise of the constituent power of the legislature.

RELATION BETWEEN RULE OF LAW AND CONSTITUTIONALISM

The basic relationship between Constitutionalism and rule of law are "The rule of law is applied by the top government officials to their subordinates, while the constitutionalism aims higher. It seeks to constrain whoever is regarded as sovereign in and over an entire government" After the 2nd world war, the world has forced to reconsider the views of many social phenomenal including law. The idea of law or the rule of law put so generally, but more specifically on constitutionalism. Constitutionalism was originally instantiated in the first modern written constitutions adopted in the U.S., France, and Poland in the late 1700. It as an effort to limit government via law it is the pursuit of the "ideal of limited government under the law"—and he stresses that it involves more than efforts to limit particular subordinate agencies of governments. When there is constitutionalism there is also rule of law. If there is a rule of law there is a follow of constitutionalism.

WHY CONSTITUTIONALISM IS THE ROAD AHEAD?

As from the above discussion, we are familiar with constitutionalism, constitution, rule of law, and the relationship between constitutionalism and rule of law but the question is that why constitutionalism is the road ahead.

Constitutionalism is the road ahead because it embraces the limitation of power in every country where there is a constitution. As we live in the 21st century there are so many countries

but yet, there are 195 countries with a combined population of 759.43 crores in the world who all want the personal liberty and freedom.

If we see our history we'll find that there were so many rulers who did whatever they wanted and treated the citizens as slaves also there were some rulers who ruled in a better way and learned how to rule and also there is monarchy system after a time the monarchy system has come to end. Hence our philosophers, leaders, gives about the constitutionalism that is not again binding on the monarchy system. At this time there also a monarchy system 46 countries have a monarchy but they ruled based on constitutionalism.

The main features of constitutionalism are:

1. **Sovereignty:** It means the supreme powers of the state over citizens. Sovereignty is authority to govern a state or a state that is self-governing.
2. **Separation of Power:** It means there is a division of powers in different form as in India there is Legislative(make laws peoples representative), Executive(execute the law) and Judiciary (maintain the laws) . It is interconnected with each other and there is no supremacy between them.
3. **Accountable Government:** It means answerable to its citizen.
4. **Rule of Law:** As we discussed above.
5. **Independent of Judiciary:** It means there is no one above law and law is equal for all.
6. **Individual Rights:** It means it gives rights and maintains the rights.
7. **Police governed by law and Judicial Control:** It means that police is an institution that works to maintain the law and regulation so we give some powers to them in order to maintain the rule and regulation.