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Navigating Constitutionalism in the Age of Social Media

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ABSTRACT

Internet and social media are characterizing features of present age wherein it is the aim of most of the countries to practice democracy and constitutionalism. Social media had begun its journey as a facilitator of constitutionalism by expanding the reach of civil and political rights to maximum number of people but it soon started degenerating into a menace. Social media has a mixed relationship with constitutionalism. It is vital for nations and the access to social media cannot be denied to people in today's time. But the very same agent of constitutionalism is making it an arduous task for governments to ensure same rights to every citizen. It helps in keeping a check on the government but has erased all the limits which should be applicable on citizens as their duties. Constitutional principles and objectives have been under a strain in the age of social media as it threatens the moral and constitutional boundaries of the society. Thus, in the given context, this paper aims to throw light on how social media plays a dual role: a threat and facilitator to constitutionalism at the same time. The research would make an analysis with a perception to uphold constitutionalism within the parameters of social media. There will also be an attempt to suggest some remedies to minimize the shortcomings of social media platforms.

Keywords: *Social media, constitutionalism, civil rights.*

I. INTRODUCTION

Constitutionalism is a modern concept which aims to establish a political order based on laws and regulations. Its larger objective is to limit the arbitrary action of the government and to guarantee rights to the people. Over the course of political history, the concept of constitutionalism has been in continuous experiment and fluctuation against many socio-political actors. There are many forces working against it. Social media is one such actor of modern age which has a mixed relationship with constitutionalism. Social media has expanded the spread of people's rights to speech and expression, right to know and many other civic rights. Social media is a vital tool for communication and democratic and constitutional governments world over cannot do away with it. But social media has simultaneously made it difficult for any government to ensure the same rights to each of its citizens. Constitutional

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principles and objectives have been under a strain in the age of social media as it threatens the moral and constitutional boundaries of the society. In a way, it promotes constitutionalism as it is upholding the civic rights of the people but it is also making it difficult for democratic and constitutional governments to function smoothly. In the above context, this paper aims to analyze how social media threatens and promotes constitutionalism through the research method of meta-synthesis. Works by academicians and court cases relevant to the topic would be referred to in the study. The title of the paper itself suggests that the aim of the researcher is to find means to protect our goal of constitutionalism within the parameters of social media. The research would also help in arriving at some suggestions to tackle the fallacies of social media.

II. GENESIS OF CONSTITUTIONALISM

Constitutionalism is a modern concept that desires a political order governed by laws and regulations. Its objective is to limit the arbitrary action of the government, to guarantee the rights of the governed and to define the operation of the sovereign power. It aims for a body of laws and conventions, lays down the structure and functions of various organs of the government and also ensures smooth changes in the political system, if any, so that the system is able to survive any violent stresses. Over its course of development, it has attempted to integrate the ideas of nationalism, democracy and limited government². It is just like a set of rules for a game which ensure fair play and make the government responsible. It is like a measuring rod to classify the governments as liberal or authoritarian.

The concept of constitutionalism is not a new concept but it has gone through many stages of development to reach the present shape. It grew with the development of political institutions that had their first emergence in the ancient lands of Greece and Rome. Plato's idea of incorruptible 'philosopher-king' and Aristotle's concept of 'polity'- a middle-class rule to strike a balance between worst and unattainable forms of government formed a strong foundation for constitutionalism. But these were far from reality, especially today's reality. The establishment of the Roman empire ushered in great changes in the ancient Greek city-state system. Romans popularized the principles of codification of law and representative government. The conception that the emperor is sovereign but his powers are ultimately derived from the people persisted and influenced the future of constitutionalism till date. These Roman ideas seem quite similar to what we perceive of constitutionalism today.

The steady pace of growth of constitutionalism experienced hurdles due to domination of the

² J.C. JOHARI, *COMPARATIVE POLITICS* 4-5 (Sterling Publisher Pvt. Ltd. , 2020th ed. 2020).

church in the medieval ages. Political thinkers like St. Augustine and St. Thomas kept secular authority under the authority of the church. Medieval ages relegated the concept of rights, limited government and constitutionalism to shadows. Such state of affairs continued for eight centuries but finally a break came with the rise of renaissance and reformation of 14th century. The re-emergence of humanistic and scientific outlook coupled with the rise of modern secular and sovereign nation states gave an impetus to the growth of constitutionalism. Britain, France and America heralded the new era of individual rights and democracy. Britain experienced landmark events of signing of Magna Carta of 1215, Petition of Rights, Civil War of 1640-48, Glorious Revolution of 1688 and Bill of Rights of 1689. All these events led to increase in supremacy of the Parliament and citizens over the monarch. Reforms Acts of 1832, 1867 and 1884 and Parliamentary Acts of 1911 and 1949 only furthered strengthened the growth of democratic institutions and principles. France had a very different trajectory of growth of democracy than that of Britain. It was caught up in a state of anarchy for decades still it managed to lay the foundations of ideals of liberty, equality and fraternity through its 'Declaration of Rights of Man and Citizen' of 1789. Based on Rousseau's Social Contract, it read as 'Men are born free and equal in rights....'. The American Declaration of Independence of 1776 also ran on same lines, 'all men are created equal; that they are endowed by their Creator with certain unalienable rights- that to secure these rights, governments are instituted among men, deriving their just power from the consent of the governed; that, whenever any form or government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government....'. With this, few principles of constitutionalism took concrete shape³:-

1. Government based on constitution
2. Integration of notions of nationalism, democracy and self-government
3. Federal government based on principle of 'separation of powers' and 'checks and balances'

The growth of constitutionalism again suffered a setback with the two World Wars. The world after First World War witnessed authoritarian reactions in the form of communism in Russia, Fascism in Italy and Nazism in Germany. Just like medieval ages, these ideologies promoted concentration of power in the hands of the government and almost negligible provision of rights to the people. This was in complete juxtaposition to the ideals of constitutionalism. It was the end of Second World War which led to renewed impetus to constitutionalism with the

³ J.C. JOHARI, COMPARATIVE POLITICS 8-9 (Sterling Publisher Pvt. Ltd. , 2020th ed. 2020).

establishment of United Nations and anti-colonial movement in Asia, Africa and Latin America. The rise of United Nations from the ashes of League of Nations added a new dimension of internationalism to the combined concept of nationalism and democracy. Now, attention was being paid to new themes like protection of human rights, preservation of a healthy environment and observance of norms of international law and morality. The new emerging independent countries completely transformed the political map of the world but they had varied experiences with the concept of constitutionalism. Some countries like India were able to successfully adopt the values of western constitutional state. Another set of countries like Ghana and Pakistan kept alternating between parliamentary government, presidential government and military dictatorships. Third world countries are still experimenting to arrive at a better and workable system suitable to their socio-political set up but there is a definite shift and acceptance of socialist values in the form of socialist welfare state to tackle the socio-economic problems.

Throughout the genesis of the term constitutionalism, we could identify many threats to its growth- war, emergency and socio-economic distress like poverty, malnutrition, illiteracy, etc. These are the conditions when the state assumes absolute powers in the name of defending the society. But a new age threat has emerged in the form of social media. Social media had emerged with the aim to expand the scope of constitutionalism. It was definitely loved by all in initial years but it proved to be a double-edged weapon soon.

III. SOCIAL MEDIA: A NEW AGE NON-STATE POLITICAL ACTOR

Man is a social being who cannot survive in a vacuum. One of his inherent needs is communicating with others. Communication gives meaning to his existence and an outlet to express and release his emotions and thoughts. Since ancient times, man has developed various means to communicate with others. The start of communication can be traced along with the development of language. The first rudimentary form of language was through signs and symbols. Verbal language took birth with the development of symbols when it started taking shape of letters or alphabet. Many languages developed in different parts of the world. At this stage, the communication was only face to face. Gradually, over many centuries, new forms of communication emerged like letters, telephone, fax, etc. with the development of technology. This enlarged the expanse of communication. Now people could communicate without being present at one place together. Still the communication was one to one. Communicating with many people at same time (one to many) became a reality with development of newer technology like television, radio, etc. This flow of communication was a great boon to the government as it could reach out to the citizens easily. It also led to development of

entertainment for common people. But one to many flows of communication exploded in the age of internet and internet led to rapid development of social media which became a very influential non-state political actor.

To understand social media, we can divide it into two parts: 'social' and 'media'. The word 'social' means living in organized communities for the purpose of cooperation and mutual benefit⁴. It is a defining feature of human nature- to live with others in cooperation and not in isolation. The other word 'media' means an instrument which helps to communicate, for example newspaper, radio, letters, etc. Thus, in simple words, social media would mean those forms of communication which help in sharing and exchanging of ideas, messages, information and knowledge with other members of our organized community, primarily through web or mobile based platforms. Social media is a platform which has enabled our species to live in an organized community in spite of being far from each other. It is a beautiful but complex blend of technology and social interaction. It is digital technology which has made communication possible through words, pictures, films and music. Most famous social media platforms have been Facebook, Instagram, LinkedIn, platform X and Pinterest.

Social media as an instrument has been able to rectify one of the demerits of globalization to some extent- increasing distance among people. Globalization opened many avenues in faraway lands- job and educational opportunities. People started moving and met new people but grew away from their own family and friends. This where social media played the role of bridging distances and brought people closer to their near and dear ones again. Social media platforms have enabled people to share photos, messages and videos and feel connected irrespective of the physical distance between them. Social media also created flexible and accessible education and job opportunities. One courses, work from home, online gaming, editing, content creation, etc. have made it easier for people, especially women to become a part of the mainstream economic sector.

Ever increasing impact of social media in our social lives has expanded to political sector too. It has widened the expanse of civil and political rights especially freedom to speech and expression. People are now highly aware of what rights they are entitled to and when they are violated. Social media provides a platform to raise voice against exploitation and protect their rights. It has increased people's engagement in their political and civil society. It is easier for citizens to be politically active and participate in public discourse. The government is continuously under a check but is also benefitting from social media platforms, like its citizens.

⁴ M. Allgurin et al. *The 'Social' in Social Work*, 13(1) NORDIC SOCIAL RESEARCH WORK 1, 1-3 (2023).

Government is able to reach out to the people with their schemes and policies and also get feedback from the electorate. Political parties also use social media in their election campaigns. It is evident that social media has become an essential agent of constitutionalism. Life without social media is unimaginable.

There is another side of social media also. It has played a facilitating role but has also created many hurdles in the path of constitutionalism. If people are able to exercise their right to speech and expression more freely, then the very same right is being misused also. Social media has become a breeding ground for misinformation, fake news, data breach, cyberbullying and harassment. All this has led to increase in mental, emotional and psychological distress, crimes like cyberstalking, online harassment, identity theft, hacking, online threats and more. Misinformation and fake news go viral in no time, leading to confusion, distrust and panic. Plus, social media is very addictive in nature. Humans especially the youth are adversely affected. Social media is negatively impacting productivity, sleep patterns, relationships and over all well-being. People continuously seek instant gratification, leading to compulsive and addictive behaviors, low self-esteem, feelings of inadequacy, loneliness and isolation, short attention span and other health concerns.

All these demerits of social directly or indirectly hurt the cause of constitutionalism in any country. Throughout the research work on constitutionalism and social media, the bulk of the studies have focused on social media as a threat to constitutionalism. Social media has made it very difficult for the governments' world over to provide rights to every individual in an equal manner. Social media has not just made it easier for citizens to exercise their freedom of speech and other rights. It has in fact erased any boundaries or limits to it. It has become difficult for the government to be able to protect the same rights of everyone at the same time.

IV. THROUGH THE LENS OF INDIAN COURTS

Indian courts have always tried to take a balanced stand over the power of social media. They have the nuanced understanding that social media can be a double-edged sword and that is why they have, at all instances, validated the need of caution. Bombay High Court in *Marco Limited vs Abhijeet Bhansali, 2020* observed "Today social media in one of the most impactful and effective ways of marketing and advertising... Social media influencer have the power to influence people, change attitudes and mindset. This mindset can be changed for the better and scarily even for the worst... There needs to be a deep awareness about the basic fact that this indeed is a responsibility... There is a need to understand what these responsibilities are and

why they matter so much...”⁵. There have been many cases where the judges of Supreme Court and High Courts upheld people’s right over government arbitrary actions to control social media. One of the most recent and prominent cases in this direction has been *Shreya Singhal vs Union of India, 2015*⁶ in which the Supreme Court struck down restrictions on online speech under Section 66A of the Information Technology Act. But at the same time, we come across many cases where the Indian courts have justified government’s right to control the irresponsible aspect of social media. For example, *Tehseen S. Poonawalia vs Union of India, 2018*⁷ is an immensely important case when it comes to controlling vigilantism and mob violence. The Supreme Court endorsed that the government has complete right to stop the circulation of explosive and irresponsible messages on various social media platforms to avoid any unwarranted law and order mismanagement.

Government has also acted on the same lines and has introduced various measures to be able to use social media tactfully. For example, Information technology Act of 2000 which governs all areas of electronic communication, including social media. Section 69A of the IT Act, 2000 empowers Government to block information from public access under specific conditions of interest of sovereignty and integrity of India, maintenance of friendly relations with foreign states, public order and preventing incitement to the commission of any cognizable offense relating to above⁸. Also, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 mandates social media platforms to exercise greater diligence in content moderation, ensuring online safety by promptly removing inappropriate content. Code of Conduct for Journalists, Voluntary Code of Ethics by Internet and Mobile Association of India- 2019 (especially in times of elections), Election Commission Guidelines of 2013 directing ethical and responsible use of social media platforms by every actor involved in elections are many other such examples.

V. CONCLUSION

Thus, we can conclude by going back to the concept of constitutionalism where it was discussed that it has become a synthesis of nationalism, democracy and limited government in the present era.

- Social media protects and promotes *democracy* as it has enlarged the scope of civil and political rights. Now more and more sections of society are able to participate in their

⁵ Marco Limited vs Abhijeet Bhansali, (2020) BOM 3109 (India).

⁶ Shreya Singhal vs Union of India, (2015) SC 1523.

⁷ Tehseen S. Poonawalia vs Union of India, (2018) 9 SCC 501.

⁸ The Information Technology Act, 2000, No. 21, Act of parliament, 2020 (India).

civil and political surroundings.

- Social media upholds the concept of *limited government* as it has put the government under a continuous scrutiny by press and citizens. Elections are held after every five years, still the government has become accountable to people on daily basis through the medium of online platforms.
- But social media has been lacking in protection of *nationalism*. Social media users should be aware of their duties even while being active on online platforms. It is duty of the citizens to never threaten the unity and integrity of their country even while exercising their rights. Only performance of their duties can guarantee the protection their rights.

All the three components of constitutionalism are beautifully linked and protected by social media. Thus, social media cannot be done away with. Just like the Indian courts, the literature on relationship between constitutionalism and social media should also shift its focus. Instead of criticizing and justifying arbitrary and stringent curbs on social media, there needs to be an acceptance that it is a necessary non state political actor now which cannot be abandoned. It can play a very positive role if used carefully. Both constitutionalism and social media are evolving concepts and a balance can be achieved definitely.
