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# Revisiting the Idea of Constitutionalism in India: A Path towards Good Governance in a Democratic Republic State

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## ABSTRACT

*There is no explicit procedure enshrined under the constitution to demark the path of constitutionalism, it evolves and develop beneath the sense of what is righteous in a manner to act in accordance with the legitimate actions. Now the question may arise as to what are the legitimate action? To understand the difference between the constitutionalism and constitution it is necessary to critically examine and go narrowly into the formation and thereby legislative intent of a law. As Dr. Justice. D.Y. Chandrachud quoted the words of Dr. B.R. Ambedkar in response to the criticism of the borrowed Constitution in the Nani Palkhiwala Lecture , “No one owns the patent right to the fundamental ideas of the Constitution”, he acknowledges the great work of the constituent assembly in the formation of world’s largest constitution to govern the world’s largest democracy. The governing of the largest democracy bearing the system of the governance wherein the constitution contemplates the idea of federalism.*

*This paper aims to distinguish between mere rule of law and the spirit of constitutionalism and to understand why constitutionalism is important for a democracy to bloom and thrive.*

**Keywords:** *Constitutionalism, Magna Carta, Separation of Power, Political Expediency, Judicial Review.*

## I. INTRODUCTION

On 15<sup>th</sup> June 1215, for the first time, the doctrine of rule of law popularly known as the *Magna Carta*<sup>3</sup> was introduced to keep a check on the abuse of power by the King. It declared that the rule shall be in accordance with the law of the State and not as per the discretion of the one who exercises the control over the State i.e., the King. Though it turned out to be a failure for the near objective it was created, nevertheless magnificent charter is still recognized as the foundation of constitutionalism which incorporates the contemporary law that preserve the most vital civil liberties aslike, *habeas corpus*, *the right to justice and fair trial*. It symbolizes the

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<sup>3</sup> Claire Brey & Julain Harrison, ‘Magna Carta- An Introduction’ (British Library, 28 July 2014) < <https://www.bl.uk/magna-carta/articles/magna-carta-an-introduction> > accessed 14 September 2021

idea of the rule of law, which states that the king shall be one of the among, to be abided by the law and not the supreme in his capacity.

The *Magna Carta* indeed had an idea to restrict the arbitrary use of power by the sovereign, but it failed in its implication due to the philosophical issues that arose with its enactment to curb the powers of the King. It is therefore evident that the charter has no significance until it backed by *bequeath* of its subjects. Constitutionalism does not *per se* have any definite meaning but considering the *magna carta* it can be understood as, “the missing will of the subjects, for the implication of the charter that if had been present, could have led to the success of the object for which it was formed”. It is imperative to have clear sight to grasp what is the psychological factor while comprehending the term constitutionalism as it is neither the written nor obligatory commitment of the State. As observed by Hon’ble Supreme Court in the matter of *State (NCT of Delhi) v. Union of India, 2018*, Constitutionalism is purely the conformity with the basic tenets of the Constitution<sup>4</sup>. Constitutionalism not only indicates the belief in the government established by the constitution or that acts in accordance with law, but it is something that governs and controls over the actions of government on grounds of legitimacy.

Democracy, if not its sub-set, is an essential element in a constitutionalism. Walker states that “democracy and constitutionalism go supplement to each other, constitutionalism is contingently necessary for a democracy, whereas on the other hand democracy nourishes and upholds the principle of constitutionalism<sup>5</sup>”. To have the clear vision of what the constitutionalism expounds, it is certainly important to recognize and analyze the element of the constitutionalism.

## II. ESSENCE OF CONSTITUTIONALISM

Foundation of any theory is laid upon multifarious pillars that strengthens the structure. However, some of them are, in true sense the most fundamental element without which it may fall or have no significance. Constitutionalism does not have any definite path *per se*, as discussed above, however there are certain ways through which a state can achieve its commitment. As stated by Michel Rosenfeld, *Constitutionalism requires restriction on the power of the government, adherence to the Rule of Law, and protection of the Fundamental Rights*<sup>6</sup>.

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<sup>4</sup> State (NCT of Delhi) v. Union of India Civil Appeal No. 2357 of 2017.

<sup>5</sup> Wouter G. Werner, ‘Democracy, Constitutionalism and the Question of Authority’ (2010) Issue 3 NJLP <[http://www.njlp.nl/tijdschrift/rechtsfilosofieentheorie/2010/3/RenR\\_1875-2306\\_2010\\_039\\_003\\_006.pdf](http://www.njlp.nl/tijdschrift/rechtsfilosofieentheorie/2010/3/RenR_1875-2306_2010_039_003_006.pdf)> accessed 13 September 2021.

<sup>6</sup> Michel Rosenfeld, ‘Modern Constitutionalism as Interplay between Identity and Diversity: An Introduction’ (1993) 14 Cardozo L. Rev. <<https://larc.cardozo.yu.edu/faculty-articles/138>> accessed 22 August 2021.

Where a democratic state is concerned, paramount source of constitutionalism is the supreme law that governs it, and which bears the idea of formation of a democratic state.

In India, Part IV i.e., Directive Principles of State Policy (DPSP) manifests the forming of the nation as a welfare state. Professor B.O. Nwabueze in his book titled “*Constitutionalism in the Emergent States, 1973*” explains that,

*“The successful working of any supreme law i.e., the Constitution hinge upon the ‘democratic spirit of the state’ that comprises of fair play, self-restraint and mutual understanding of the different interests, thoughts and opinions. No constitutional government can survive unless there exists a source of power that also limits the governmental powers<sup>7</sup>”.*

Constitutionalism broadly refers to the specific way of thinking and theorizing about the constitution of the State. As per Walker, “*it comes in first to be defined as the functional restriction against the absolutism, so as assurance of the limited (so prescribed by the law) government. Constitution maybe in different forms, as dictatorial, but constitutionalism is what surpass mere words of constitution and is linked with the limited power of government through the balancing mechanisms, separation of powers, checks and balances of the actions of the government, upholding the civil liberties, etc.*”<sup>8</sup>.

### III. ELEMENTS OF CONSTITUTIONALISM

According to Hilaire Barnett, constitutionalism broadly embodies the limitation of the power of the government, and tries to create and demark the powers of the institution in the State, provides for the mechanism to keep proper checks and balances in the actions of government, to have a test of legitimacy in a law making, curb the arbitrariness in decision making, and provides for the responsible and accountable government in a State.

Whereas, Henkin stressed upon the popular sovereignty, rule of law, limited government, proper separation of powers, civilian control of the military and police governed by law, and foremost the independent judiciary, with respect for the individual liberties.

Some of the basic tenets of the constitutionalism are discussed below:

- **Popular Sovereignty**

The concept of Popular Sovereignty envisages that the people, or the citizen of the State is

<sup>7</sup> B.O. Nwabueze, ‘Constitutionalism in the Emergent States, 1973’ J. Mod. Afr. Stud. Vol. 13 Issue.1 <<https://doi.org/10.1017/S0022278X00025490>> accessed 14 September 2021.

<sup>8</sup> Wouter G. Werner, ‘Democracy, Constitutionalism and the Question of Authority’ (2010) Issue 3 NJLP <[http://www.njlp.nl/tijdschrift/rechtsfilosofieentheorie/2010/3/RenR\\_1875-2306\\_2010\\_039\\_003\\_006.pdf](http://www.njlp.nl/tijdschrift/rechtsfilosofieentheorie/2010/3/RenR_1875-2306_2010_039_003_006.pdf)> accessed 13 September 2021.

ultimate source or an epicenter of all the governmental powers<sup>9</sup>. The legitimacy of the actions of government can simply be tested if it is in consonance with the public interest. In simple words, it propounds that, the government draws its power to rule from the people itself and thereby to test the validity of any law, it must be tested upon the touchstones of interest associate with it, of the public at large.

The source of the government to rule over the subjects lies essentially in the subjects or nation itself. No individual, institution or corporate body can exercise any power that does not expressly emanate from the state. There are certainly institutions empowered to govern; however, ultimate sovereignty resides in the nation.

The related concept of *Sovereign* and *Sovereignty* is that “*the former upholds the nation as the ultimate supreme body of law*<sup>10</sup>”, whereas “*the latter recognizes the king as the supreme*”<sup>11</sup>. In sovereign state, the king, the ruler or in present context the head of the State is also subjected to the procedure established by law.

Hence, public in one way or the other is involved in the decision-making process of the State in different forms. Elections of representative is one such form where public exercise the right to elect by casting vote.

It can be understood from the system of Referendum, a mechanism through which the interest of the public is manifested. Constitutionalism requires that any law that concerns the public interest shall be consulted from the public itself to choose what is in their interest. This system is prominent in France. The President of France put forth to the referendum any bill that is proposed by the government, which greatly touches the economic and social policy of the State. If such referendum is in the favor of the bill, it may be promulgated by the President. However, if the mandate is otherwise, it may not be promulgated.

#### ○ **Separation of Power**

The separation of power is a vital principle for the healthy survival of a democratic state. The idea of the separation of power is that the power is not concentrated in one hand. However, with the passage of time, government has developed various organs. This principle at time is attributed as the negative constitutionalism due to its restrictive nature. In a democracy, three well established pillars i.e., the parliament, the judiciary, and the executive, shall have the defined powers and conjugately the limitations to the exercise of such powers by means of law.

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<sup>9</sup> Art. 3, France: Declaration of the Right of Man and the Citizen 1789.

<sup>10</sup> Dr. N.V. Paranjape, *Studies in Jurisprudence & Legal Theory*, 9<sup>th</sup> edn (Central Law Agency 2019).

<sup>11</sup> *Id.*

Parliament is vested with the power to make laws for the welfare of the State, and which is in consonance with the interest, security and integrity, foreign relations, and implementation of foreign treaties in the State. It does not have any power to interfere in the judicial setup or to perform the roles and duties of executives. Similarly, the judiciary has no power to bring any legislation or to formulate any law other than by means of Article 142 in the absence of the general legislation regarding the matter concerned<sup>12</sup>. However, it can interpret and examine the validity and legitimacy of law formulated by the parliament but has no business in law making<sup>13</sup>.

#### ○ Rule of Law

*The Magna Carta* expressly laid down the foundation for rule of law, which means in a state what is supreme is law and not who presides as the head of the state. The rule of law is sacrosanct principle and foremost for the foundation of a democratic state. It may require inquest to co-relate the thread-to-thread and yarn-to-yarn of a democracy and the cardinal principle of constitutionalism. However, an undisputed idea that stands distinctly is a check in the exercise of the powers and the arbitrariness in the actions of the state.

Rule of law is different from rule by law. The rule by law in other word implies “Rule by Men” meaning that any command by the Sovereign becomes a law. Whereas the rule of law states that, the head of the state should be governed by words of law.

As per the studies of Dicey<sup>14</sup>, the rule of law expounds:

- i) No one shall be punished except for any distinct breach of law established in the ordinary legal manner and before the ordinary courts of the land – It upholds the relation of law and the principle of legality. If any act is not categorized as an offence by the provision laid down in statute by the competent authority through procedure established by law it could not be treated as a punishable act, and no one should be punished accordingly.
- ii) No one is above the law- The objective of this principles is to establish the absolute supremacy of the law of land over any arbitrary power including the various degree of power vested upon the government. Every person in the state, from the President to last person, shall be equally subjected by the provisions of law.
- iii) Courts have the duty to protect the civil liberties- Merely recognition of the right in the constitution does not alone secures the civil liberties. There ought to be proper mechanisms for the enforcement of such rights. Court has a greater role to keep a check that parliament

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<sup>12</sup> Art.142, The Constitution of India, 1950.

<sup>13</sup> Maru Bazezew, ‘Constitutionalism’ (2009) Vol.3 Issue 2 MLR 358.

<sup>14</sup> Albert Venn Dicey, ‘Introduction to the Study of Law of Constitution’ [1885] MAC 1.

or the executive does not overreach the power bestowed to them by the constitution. And, to ensure that any law passed by the parliament does not infringes the fundamental rights of citizen.

○ **An Independent Judiciary**

The hallmark of the liberal democracy is an independent judiciary because the independent judiciary upholds the rights of individual and ensure the enforcement against the State. An independent and impartial judiciary depicts the free society and rule of law.

In a constitutional setup, the judiciary ensures the proper checks and balances against any action of other organs of government. The test of legitimate action can be well scrutinized by the wide power granted to the judiciary under the provisions of constitution. Judicial review is one such mechanism by which any law passed by the parliament can be declared null and void if it is inconsonant with the principles of constitution.

As Hamilton explains, “thought the test of constitutionality of any law passed by the legislature is not the alone role of the courts, courts are bound to review whether such law is in consonance with the constitution of the State. The motive of providing the judiciary with power of constitutional review is not to extremely restrict the business of the legislature, but to ensure that every law passed by the legislature stands the test of supremacy of constitution which is the supreme law of the State<sup>15</sup>.”

#### **IV. INDIA, CONSTITUTION AND CONSTITUTIONALISM**

The public declaration of *Purna Swaraj* i.e., the total independence at the Lahore session of Indian National Congress, urged to the countrymen to celebrate the day as an Independence Day<sup>16</sup>. Henceforth, the demand of the complete independence from the British regime upsurged and intensified. After 17 years, India finally witnessed the transfer of legislative sovereignty to Indian Constituent Assembly. Constituent assembly was bestowed with the power to draft the Constitution for the Dominion of India. On 26<sup>th</sup> November 1949 the constituent assembly sat for the final reading and the Constitution of India having 395 Articles, 8 Schedules and 22 parts was adopted after the assent from the President Dr. Rajendra Prasad.

As Gandhi tendered that the political destiny of India should be determined by the Indian themselves, and that *Swaraj* will not be a free gift by the British regime, it will be the self-

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<sup>15</sup> Maru Bazezew, ‘Constitutionalism’ (2009) Vol.3 Issue 2 MLR 358.

<sup>16</sup> Case Study 3 Background: The End of the British Empire in India’ (The National Archive), <<https://www.nationalarchives.gov.uk/education/empire/g3/cs3/background.htm>> accessed 9 September 2021.

expression of the Indians themselves,<sup>17</sup>. Accordingly, the preamble to the Indian Constitution reads as “We the people of India” which symbolizes that though the independence was through an Act of Parliament, but it is merely a ratification of the declared wish of the people of India.

## V. PREAMBLE TO THE CONSTITUTION- INTRODUCTION TO INDIAN CONSTITUTIONALISM

Constitution of any state is laid upon the foundation of the ideology of its people. Preamble to the Constitution is not enforceable in the court of law, however, it has in great details provided us with major extent of founding principles of India. It signifies the objects which the Constitution promotes through its various provisions. It is droolworthy to acknowledge the Objective Resolution adopted by the Constituent Assembly on 22<sup>nd</sup> January 1947 introduced by Pt. Jawaharlal Nehru which became the guiding principles for the formation of Indian Constitution<sup>18</sup>. Although, the preamble to the constitution of India is not enforceable in court of law, but it aids in the interpretation of the Constitution wherein the language of the provision is found ambiguous. The importance of the preamble has also been pointed out by the Apex court from time to time through various landmark decisions. It serves two major purpose which are core element of the Indian Constitutionalism:

- i) Source of the authority which the Constitution derives i.e., the People of India. It goes without mentioning that republic sovereign in a democracy derives its power to rule from the people through the constitutional mechanism which they adopt, enact, and give to themselves, and India is one such republic sovereign.
- ii) The preamble seeks to promote and establish the objective established by the Constitution. Sovereign, socialism, secularism, democracy, republic, justice, liberty, equality, and fraternity are the fundamental objectives which the Constitution of India seeks to promote by enactment of different provision. The law is nothing, but which serves the justice to the society The pith and substance of every enactment has in it, the fundamental objects idealized by the framers.

As discussed above, Gandhi pointed that the *Swaraj* will be the declaration of India’s full self-expression<sup>19</sup>, the preamble acknowledges the same. It reads as “We the people of India.....Adopt, Enact, and Give to ourselves this Constitution”. Which symbolizes declared wish of the people of India. By repealing the Indian Independence Act 1947, Government of

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<sup>17</sup> Durga Das Basu, ‘Introduction to The Constitution of India’ (24<sup>th</sup> ed, LexisNexis 2020).

<sup>18</sup> Pandit Jawaharlal Nehru, ‘Constituent Assembly Debates’ Vol. 1 (Centre for Law and Policy Research, 13 December 1946).

<sup>19</sup> Durga Das Basu, ‘Introduction to The Constitution of India’ (24<sup>th</sup> ed, LexisNexis 2020).



India Act 1935, etc. the new India was born with the idea of conformity to the Constitutionalism.

## VI. CONSTITUENT ASSEMBLY DEBATES

The world's largest written constitution is greatly detailed into its fabric by debating the provisions and considering each mandate of the constituent assembly. On the day of enactment, while addressing some skepticism of the members, Mr. President Dr. Rajendra Prasad elaborated some founding principles of framers of the Constitution<sup>20</sup> and addressed the thoughts that are in consonance with the Principles of Constitutionalism.

- 1) *“Para 37, The Constitution has provided for the Judiciary which shall be free and independent. It is difficult to provide any more suggestions to make the courts independent of the influence by the Executive and Parliament. Constitution has attempted to make even the lower-level judiciary independent of any extraneous influences<sup>21</sup>”.*

The checks and balances in the liberal democracy, to the great extent is upon the Judiciary. Principles of Constitutionalism as mentioned by Maru Bazezew<sup>22</sup> includes the Independent Judiciary to maintain the supremacy of the Constitution. Judicial Independence aids the judges to adjudicate in the matter without any fear or favor in which the State is party. As Mr. President mentions the efforts to make the judiciary independent by Constitutional means, it depicts the commitment of India towards following the Constitutionalism not just by words but also by the spirit.

- 2) *“Para 41, The Constitution has gone into the great details regarding the distribution of powers and functions between the State in various aspects. Powers have been very meticulously and elaborately defined and demarcated in the three list under Schedule Seven, and the residuary power does not cover any large perspective, it vests such powers which ought to belong to the Government at Center<sup>23</sup>”.*

Separation of Powers is recognized as one of the elements of Constitutionalism in the State. By mentioning the Schedule Seven of the Constitution of India, went to the great extend to elaborate the separation of the power by means of three lists which vest the different subject. The State list, Center list, and the Concurrent list has demarcated the law-making powers of the concerned

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<sup>20</sup>Mr. President Dr. Rajendra Prasad, ‘Constituent Assembly Debates’ Vol. 7 (Centre for Law and Policy Research, 25 November 1948).

<sup>21</sup> *Id.*

<sup>22</sup> Maru Bazezew, ‘Constitutionalism’ (2009) Vol.3 Issue 2 MLR 358.

<sup>23</sup> Mr. President Dr. Rajendra Prasad, ‘Constituent Assembly Debates’ Vol. 7 (Centre for Law and Policy Research, 25 November 1948).

government in the concerned subjects like, security of the state, citizenship, etc.

- 3) *“Para 47, We have drafted a democratic Constitution, but the successful working of the democratic institutions is depended upon the willingness to respect the viewpoints of other, and with the capacity to compromise and accommodate. There are many things which cannot be written in the Constitution are provided by the means of conventions<sup>24</sup>”.*

Constitution focused on the free working of the democratic institution with the idea of pluralism as an indistinct feature of the Constitution. Humans are not able to foresee each circumstance and situation that may arise in the working of an institution, here Mr. President indicates the norms laid down in the Constitution to address such unforeseeable circumstances which may arise in future.

- 4) *“Para 48, Whatever the constitution provides, the welfare of the country will depend upon the way in which the country is administered which is ultimately in the hands of the men who administers it. The constitution cannot help the country alone if the one who administer it is not capable, not a man of character and lacks in integrity. The constitution is nothing, but a lifeless machine. It gains the soul and heart from the men who controls it with the interest of the nation. I hope that the country will throw up such men in abundance<sup>25</sup>”.*

The Constitutionalism is not any definite theory, but such an approach as mentioned by Mr. President, which forms the *genesis of the constitutionalism*. It is true that the document is nothing but merely a lifeless mechanism, there are many countries with the constitution, but which lack in implementation of such in its true sense. It has been undoubtedly pointed that the core element of the Constitutionalism in the state, which signifies that having the constitution does not necessarily guarantee the constitutionalism.

These debates of the Constituent Assembly have aided the judiciary to reach into the idea of the provision of the Constitution which otherwise may have the ambiguity in understanding. It is the source of interpretation, the test of legitimacy and the litmus test for the actions of the Government. Parliament is vested with vast powers under Art. 368 to amend the Constitution, under Art. 245 to make the law for whole of India, but such power is subjected to the judicial reviews.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

## VII. SEPARATION OF POWER- IN INDIAN CONSTITUTIONAL SETUP

Separation of Power states that the power of State is delegated within the three principles pillar of the democratic government i.e., the executive, the legislature, and the judiciary. Each of the organ is empowered by law to carry-on their business in respective sphere and certainly limited by the same to act in accordance with the object of the constitution. Parliament has the power to legislate and make law binding on whole territory of India, the executives have the role to implement such law in the States. Likewise, the judiciary has the role to test the legitimacy of such law and has power to struck down if it is inconsonance with the fundamental rights or *ultra vires* to the spirit of the Constitution.

The well formulated precedent of federal or quasi-federal structure relates to the distribution with the three legislative lists under Schedule seven of the Constitution. Center list contains 97 items which are majorly concerning the security, integrity and sovereignty, defense, foreign trade and commerce, friendly relation with foreign states, etc. The State list on the other hand contains 47 matter which are in the interest of the State such as policing, agriculture, public health and sanitation, public order, etc. The third list i.e., the Concurrent list provides for 66 subjects in which both the Central and the State government can legislate<sup>26</sup>.

Chief Justice Deepak Mishra, in the *State (NCT of Delhi) v. Union of India (2018)*<sup>27</sup> observed that, the essence of constitutionalism is in the control of power by its distribution among the distinguish state organs is a way that they are subjected to the *vis-à-vis* to the cooperate in formulating the will of the state. In *Minerva Mills & Ors. v. Union of India & Ors., 1980*<sup>28</sup>, the bench headed by Chief Justice V.Y. Chandrachud unanimously held that the power of the parliament to amend the Constitution is limited by the Constitution itself and the basic structure. Similarly, in *S.R. Bommai V. Union of India, 1994*<sup>29</sup>, the Apex court propounded that the power of President under Art.356<sup>30</sup> to dismiss the state government in not absolute in nature.

## VIII. JUDICIAL INDEPENDENCE IN INDIA

In India, judiciary is vested with wide range of powers to check the abuse of power by the Parliament or the Executive. The writs available under Art. 32 of the Constitution for Supreme Court<sup>31</sup> and under Art. 226 for the High Court<sup>32</sup> namely, the writs of *habeas corpus*, *mandamus*,

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<sup>26</sup> Schedule 7, The Constitution of India.

<sup>27</sup> C.A. No. 2357 of 2017 State (NCT of Delhi) v. Union of India.

<sup>28</sup> Minerva Mills & Ors. v. Union of India & Ors AIR 1980 SC 1789.

<sup>29</sup> S.R. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3) 1.

<sup>30</sup> Article 356, The Constitution of India.

<sup>31</sup> Article 32, The Constitution of India.

<sup>32</sup> Article 226, The Constitution of India.

*prohibition, quo qarranto and certiorari* empowers them to strike down and declare any law or executive order as void which infringes the fundamental right.

Judicial Review is a necessary element of the “fundamental rights” as it is meaningless to enshrine rights in the Constitution as “fundamental rights” if they are not enforceable in the Court of law against the State. It is the unique achievement of the framers of Indian Constitution to establish the harmony between the Parliamentary Sovereignty and the Constitution by means of Judicial Review. The judicial power exercised by the Court as sentinels of Rule of Law is the basic feature of the Constitution<sup>33</sup>.

## IX. FUNDAMENTAL RIGHTS- THE GUARANTEE OF CIVIL LIBERTY

Fundamental Right under part III of the Constitution is the most basic restriction to the abuse of the power by the State. Nevertheless, they are not absolute in nature and can be restricted in a reasonable manner through the procedure established by the law.

In *IR Coelho v. State of Tamil Nadu and Ors (2007)*<sup>34</sup>, the court held that the principle of Constitutionalism is a legal validated principle which requires the control over the exercise of the governmental power to ensure that such power has not been abused in a way to destroy the democratic principles including the Fundamental Right.

Supreme Court in *IC Golaknath & Ors. v. State of Punjab & Anr.*<sup>35</sup>, overruled the earlier judgment of its own in case of *Shankari Prasad*<sup>36</sup> and *Sajjan Singh*<sup>37</sup>, and held that the amending procedure of the Constitution under Art.368<sup>38</sup> has been regarded as the “transcendental position” and that no authority under the Constitutional setup is competent to amend the Fundamental Rights.

However, the above observation of the Court was also overruled by the majority decision in *Keshavnanda Bharti v. Union of India*<sup>39</sup> wherein the court was of the view that every part of the Constitution is amendable by the Parliament. However, some implied limitations were also laid on the amending powers of the parliament, that such power cannot be exercised to amend the “basic structure” of the Constitution.

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<sup>33</sup> GC Kanungo v. State of Orissa (1951) 5 SCC 96.

<sup>34</sup> IR Coelho v. State of Tamil Nadu and Ors. Appeal (civil) 1344-45 of 1976.

<sup>35</sup> IC Golaknath & Ors. v. State of Punjab & Anr. 1967 AIR 1643, 1967 SCR (2) 762.

<sup>36</sup> Sri Sankari Prasad Singh Deo vs Union Of India, 1951 SCR 89: AIR 1951 SC 458.

<sup>37</sup> Sajjan Singh vs State Of Rajasthan 1965 AIR 845, 1965 SCR (1) 933

<sup>38</sup> Article 368, The Constitution of India.

<sup>39</sup> Keshavnanda Bharti v. State of Kerala & Anr. Writ Petition (civil) 135 of 1970.

## X. CONCLUSION

Based on the extensive research to explore the genesis and foundation of Constitutionalism with respect to Indian Constitution, it can be safely concluded, that it can be traced evidently from the formation of the Constitution itself. The profound debates by the Constituent Assembly had greatly analyzed each provision of the Constitution. Framers of the constitution has precisely made each article with great details to define the power and the limitation to those powers. Constitutionalism and democracy are corresponding principles to each other to a great extent. Democracy envisages that the government shall be for the people, of the people and by the people.

In “*Constitutionalism in the Emergent States, 1973*” Prof. B.O. Nwabueze explained that *the capacity of politicians to distort and vitiate post the greatest danger to the constitutional government in the emergent states. According to him, the actual behaviour of the individual exercising the power and their willingness to understand the rule is a great factor in the survival of the constitutionalism along with the “democratic spirit” of the State.*

It was held in *S.R. Chaudhari v. State of Punjab (2001)*<sup>40</sup> that constitutional restraints shall not be bypassed if it is found inconvenient to the suit of “political expediency”. The erosion of the principles of Constitutionalism should not be allowed. Also, Indian Constitution exhibits the rigidity in a manner that it cannot be amended by any level of the government, other than by Parliament as provided under Art. 368<sup>41</sup>. Though amendment to any part of the Constitution can be made by the Parliament as held in *I.C. Golaknath v. State of Punjab*<sup>42</sup> but the basic structure of the Constitution cannot be amended as laid down in *Keshavnanda Bharti v. State of Kerala*<sup>43</sup>.

The Constitutionalism states that the ultimate power resides with the nation itself and not the head of the state. Post-Independence, constituent assembly of India worked extensively in the framing of the democratic republic sovereign Constitution to govern the State and provide an instrument to the Institutional setup with the grants of power and limitations for the survival and growth of the nation as a “welfare state”. Separation of power is not to restrict the authority of the State, meanwhile, to curb the abuse of the power vested in sovereign. Checks and balances are necessary for the Constitutionalism to flourish and bloom with upholding the civil liberties.

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<sup>40</sup> S.R. Chaudhari v. State of Punjab Appeal (civil) 244 of 1997.

<sup>41</sup> Art. 368, the Constitution of India.

<sup>42</sup> I.C. Golaknath v. State of Punjab, 1967 AIR 1623, 1967 SCR(2) 762.

<sup>43</sup> Keshavnanda Bharti v. State of Punjab, (1973) 4 SCC; AIR 1973 SC 1461.