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An Insight into the Concept of Constitutionalism: A Safeguard against Arbitrary Power

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Abstract
This doctrinal research paper offers a foundational exploration of constitutionalism, emphasizing its evolutionary trajectory. It presents an interesting insight into the emergence of constitutional principles from ancient civilizations to modern democratic frameworks, the study highlights the persistent quest for limited government, rule of law, and the protection of fundamental rights with special focus on the philosophical underpinnings and political milestones that shaped constitutional thought, including the Magna Carta, Enlightenment ideals, and the rise of codified constitutions. It explores how each jurisdiction has uniquely contributed to the evolution of constitutional thought—ranging from the UK's unwritten constitutional conventions and the Magna Carta, to Sweden's early adoption of constitutional monarchy and its Instrument of Government, and finally, to India's comprehensive, written Constitution embodying both liberal democratic ideals and indigenous values. From a comparative perspective, the study examines the historical context, institutional design, and philosophical foundations in shaping constitutionalism as a safeguard against arbitrary power. The paper concludes by asserting the continuing significance of constitutionalism in sustaining the rule of law, democratic governance, and the protection of rights in diverse political processes.

Key Words: Constitutionalism, rule of law, constitutional monarchy, limited government, democratic governance.

I.Introduction

Constitutionalism as a concept grew up in United Kingdom from the political theories of John Locke and in the American republic, from Madison. It is equated with the ideas of '**Rule of Law**', and that government can and should be legally '**limited in its powers',** to save the governance of a State from tyranny and autocracy. 'Rule of law' consists in this that all the governmental authorities accountable to the prescribed fundamental laws, rules and regulations.

Difference between a Constitution and constitutionalism can be stated that a Constitution consists of the fundamental laws, custom, conventions, rules and regulations, involved in the governance of a State, while constitutionalism is not just a Constitution but what ensures rule of law with limitations on the government, so that the governance may not go haywire. The existence of a Constitution contains fixed norms and principles that are considered as the fundamental law of the polity, which at the same time effectively controls the exercise of political power. And such a government would be rightly called a Constitutional government.

Constitutional Monarchy

This concept of constitutionalism grew up in a democratic climate where the head of state and other officials were representatives of the people. This does not mean that constitutionalism cannot develop in a monarchical environment. In such an event it will be called the '**a constitutional monarchy'**. Many of the Western European countries do have constitutional monarchies. For example; the United Kingdom, the Netherlands, Belgium, Norway, Denmark, Spain, Luxembourg, Monaco, Liechtenstein and Sweden.

A constitutional monarchy, or a limited monarchy, is where either an elected or hereditary monarch is the head of state; the constitutional monarchs are bound to exercise their powers and authorities within the limits prescribed within an established framework. Constitutional monarchy differs from absolute monarchy, where the king is the sole source of political power and he is not legally bound by any law.

Constitutionalism as a theory, mainly dealt with development of constitutionalism in the west, especially in U.S. and England, analyzing largely the constitutional history particular to those

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countries[1], and occasionally that of France, Germany, Russia[2], and cursorily of Nigeria, Zimbabve, Nepal....etc.; *'limited government'* and *'rule of law'* were regarded as the fundamental principles of constitutionalism, often arising out of popular struggle for obtaining control over arbitrary political rule, compelling them to adhere to 'rule of law'.

Rule of Law and Rule by Norms

'Rule of law' in substance is 'rule by norms'; and the concept automatically excludes any kind of tyranny or autocratic rule. 'Limited Government' is effectively achieved, when those 'limits' that are well incorporated into the 'norms of governance'. Thus the notion of **'**rule by norms', is in fact implicitly contained in the idea of 'limited Government'. A cursory survey of the literature on constitutionalism goes to show that at the root of all lies what is attributed to James Madison: "But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."[3]

Theory of Constitutionalism

Schochet concludes, from John Rawls's reliance upon formal institutions in *A Theory of Justice* to encourage and support the "moral development" of citizens in his just society, that the eighteenth century theories of constitutionalism have handed down a bold union of virtue and liberalism, which certainly goes to add vitality and value to the concept of constitutionalism.[4]

The renewed academic interest in constitutionalism during late 20th century, can be found in a number of studies of the nation state's constitutional traditions as well as of the constitutions itself. For example, John Rawls devoted one third of his *'Theory of Justice'* to analyze the constitutional structure of a *just society.* Yet there are no rigorously comprehensive conceptual studies of constitutionalism forthcoming. There have been some attempts to distinguish constitutionalism as a conception of political limits from classical appeal to natural law and to the cosmic order of political limits, but always wrongly labeled as ancient and medieval constitutionalism.[5] The west has admittedly failed to recognize the call of 'natural law' to seek political limits, and that of the cosmic order for a sustainable political stability, both of which were the marks of ancient Indian constitutionalism.

Scanning through the literature on constitutionalism as it emerged in western countries, the following propositions do emerge:

1. That the essence of constitutionalism has to consist in the existence of an *authority that would determine specifiable powers*, according to which proper Govt. would be limited rather than remain omnipresent.
2. The principles of such governmental specificity are necessarily *external, logically prior, and independent* of the operation of the system.
3. While constitutional rules of governmental specificity often appears to be contingent and sometimes arbitrary, the *validity* of these rules depend exclusively on the *system's own internal sustainability.*
4. Constitution and its *rules must have a basis on* solid universal first principles, and grow out of ideology, even if it is slow, depending upon how quickly they obtain legitimacy.
5. Constitutionalism does not require a particular set of political arrangements uniquely (democratic or monarchical); what is desirable and constitutionally valid at one time can be deemed invalid at another. Therefore, constitutional rules are always positive and they can be altered as political efficacy vary.
6. Constitutionalism and having a constitution is not one and the same thing, though both are close to each other, both in the political as well as conceptual aspects.[6]

Most of the writers of the west on modern constitutionalism are unanimous in acknowledging the inner contradiction or logical incoherence with the theory. That seems to have happened due to their over-anxiety to fit in the political reality of the times to the theory of constitutionalism as a justification or legitimization. They tried to explain and impose

[1] Vide, Pennock and Chapman, (1979).
[2] Vide, William G.Andrews, (1961).
[3] *Federalist* 51, Quoted from p 9, Pennock and Chapman, (1979).
[4] Vide, Gordon J. Schochet, in Pennock and Chapman 1979, at p.9.
[5] Vide, Pennock and Chapman (1979), at p.10.
[6] Vide, Pennock and Chapman (1979), at p. 9-11.

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limits on the supreme political authority and without denying its existence, and sought to accord a place of absolute sovereignty to popular sovereignty, which enabled them to tolerate popular sovereignty together with its contradictions. Sir Robert Filmer best expresses this contradiction:

"There never was, nor ever can be any people governed without a power of making laws, and every power of making laws must be arbitrary: for to make a law according to law, is *contradictio in adjecto."*[7]

The West has been struggling to get out of these apparent contradictions. The entire theories of western constitutionalism are built on the basis of the studies on American civil war, the French Revolution, and the *Magna Carta*. There never was any study on the ontological aspect of power that underlies the constitutionalism of any country; what has so far been attempted is the functional matrix of power that underlies the process.

Is Constitutionalism a Political Process?

Constitutionalism in substance, therefore, is more or less agreed to be a political process by which political power is gradually institutionalized, on the one hand to gain control over the governed, and on the other hand, the governed adopts ways and means to ensure that the process of institutionalization of **power** would not become arbitrary. It is in this conception of constitutionalism that many find that there exists a contradiction in the process. Is it because this process necessarily presupposes certain external and prior principles out of which constitutionalism usually emerges; and what is that renders legitimacy to such pre-existing principles for the growth of constitutionalism? History at different periods and at different region has witnessed emergence of such external factors for legitimacy, such as dependence on 'divine origin', evolving factors from 'natural law', dependence on the 'might of one particular charismatic leader', dependence of any single 'enlightened personality who faces bitter experience' in the early years, principles arising out of the 'perceived self-sustainability of the nature itself', and the like.

Political Power and Sovereignty

'Majestas est summa in cives ac subditos legibusque solute potestas' 26

Sovereignty is absolute, without limits other than those imposed by the laws of God and nature.

Majestas: Sovereignty

Potestas: Power

1. *De jure, Authoritas,* Roman *Lex de imperio,* lawful authority
2. *de facto,* actual might; highest in actual might (*potentissima)*

Highest *de facto* power may be different from the one whose claims are the highest *de jure* (eg. Rajendra Prasad and Nehru)

"Without justice, what are the kingdoms but robber bands enlarged?

Majestas: Sovereignty is the highest authority, not the greatest might.

Sovereign power is the highest legal power in a state, itself subject to no law. It is purely a juristic term and it should convey a purely juristic idea. It is a political concept. When one say, people are sovereign, it is only in the juristic sense and not in a political sense. Therefore, people's sovereignty is a contradiction in terms, because 'sovereignty' there is understood in the absolute sense and people in that sense cannot be subject to any law.

For Germans (31) the highest organ is the true sovereign and the only one because it is the highest body legally able to make rules for the subjects and itself free of the law. It may be controlled by the people who set it up, but their control over it is not through laws. They control it politically not legally. (Right to revolt as Lock puts it, as a political right. 37] Therefore sovereignty is a fiction.

In seventeenth century, there arose a difficulty, due to the fact that the actual power and the constituted authority were found as not always the same.

Supreme power (*summa potestas)* in any form cannot exist, because the actual forces [*bal?]* that lie behind such *potestas* sometimes tends to become stronger.

No organs of state really have **coercive power** ["I will go to SC!] [It may not be true, since the executive can use coercive power (*bal)*, or even an extra-legal force in the state which may or may not at any time be securing the enforcement of its will through the constituted framework of the government.

THE Green: "The power of the ultimate imponent of law cannot be derived or limited by law." "The ultimate imponent of law", the forces that lie behind the government, the powers that set it going, are not *de jure* but *defacto.*[8] *35*

[7] (1648), he was the Royalist defender of Charles I and posthumous opponent of John Locke.

[8] Constitutionalism in the Changing World. Pg 35

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A people may set up a good or bad government, and in the long run it will be good or bad in about the same proportion as they themselves are good or bad.

Aristotle recognizes this aspect, because it ultimately rest on the consent of the people. And an interest in the common good is the ground of political society in the sense that no body of the people would recognize any authority having a claim on their common obedience. If any government represents that it stands for common good and the people are conscious of it, **the obedience** will be readily forthcoming.

The Aristotelian theory ultimately consists in this that in a good state, the rights and claims of all, whose aims are not harmful to the whole will be respected and safeguarded.

The authority of a 'sovereign organ' comes from the permission of the people, and if that authority is the highest, it will be uncontrollable by law, and it will be *potestas legibus solute* as Bodin 26 puts it. It will be destroyed or limited by power only, not by law. [Eg. Nanda, which can be describes as the anarchy of a limited or mixed monarchy. 39]

Majestas of Bodin is the *summa potestas* and such sovereign power is a matter of law, a purely juristic notion; it holds with a legally constituted organ, with the only admissible limitations in accordance with the laws of God and of the nature. And both these are inherent in nature.

There can still be another system where the power is limited internally. *Summa potestas* limited by its nature [the *prabhava-shakti,* the majesty, the *majestas*]

Instead of imputing limitations upon God or nature, the intrinsic nature of the *majestas* itself will have all the limitations inbuilt upon it; but we may have to abandon the theory, that 'the king can do no wrong' with a necessary corollary, 'what is wrong therefore, is not regal'. The real idea of attributing a legitimate sovereignty to monarchs, is to make them responsible rulers; and that can be regarded as *legibus solutus* impelled from within. Here the starting point of political thought would not be the rights, much less the natural rights, but obligations inherent in the people as well as the monarch alike, and performance of these respective duties, both by the monarch as well as by the people. [This is ancient wisdom of India.] These are not the inclinations of the individuals, rather the duties written into their very existence.

Ontological Nature of Political Power

Scanning through various literature on the subject of political power, the author finds no work that would deal with the topic squarely, except Kautilya. Karl Loewenstein did deal with the political power and the governmental process, and has recorded that politics is nothing but the struggle for power, but further lamented,

"Political power is discernible, observable, explainable, and evaluable only by its external manifestations and realizations. We know, or we believe we know, what power does, ***but we are unable to define its substance and essence.*** The science of '*Cratology*' [from Greek '*kratos*', 'power] if it exists at all, is still in its infancy and it may be well questioned whether it will ever mature to be a reliable tool of human understanding."[9] [Brackets and emphasis added.]

From Buddhist Traditions[10]

According to these traditions, *Mahasammata* is to bring order and organization amidst chaos confusion of the primeval times; he is a sagely figure and he discharges his functions on the promise of payment of a part of the produce of the cereals, and manage the affairs of the society. The power exercised by him is not from any divine source. The kings of the Ikshvaku dynasty were considered the descendants of the *Mahasammata.*

The tradition further elucidates the five-fold types of power (*Bala):* (1) *Sahaja* (physical and natural); (2) *Putra-bala* (The power that derives from own sons); (3) *Jnati-mitra* (the power that derives from the the relations and friends); (4) *Chaturanga* (the power that derives from the four wings of the army; and (5) *Prajna-bala* (power that comes from within).[11] To this we must add that power of the king is said to consist in treasury (*kosavalinascarajanah).* [12] The Buddhist traditions clearly indicates that the kings power is the real power, and all other power arise from this power only (*Rajabalam-balam)*, thus definitely denying the divine source of power.[13]

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[9] Karl Loewenstein "Political Power and the Governmental Process", The University of Chicago Press, Chicago and London (1957) 1965. At Pg 5.

[10] For an insight into this I am indebted to Varma, Dr. Vishwanath Prasad, 'Ancient and Medieval Indian Political thought', Lakshmi Narain Agarwal Publishers, Agra, 2004 (1986).

[11] Ibid., at Pg. 163.

[12] Ibid. at Pg. 165.

[13] Ibid., at pg. 171. Compare this with '*Majestas'* of the western thought as mentioned above.

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The Greek Experience[14]

Prior to sixth century, the Hellenistic world was scattered little communities among the hills and valleys of the peninsula, and on the adjacent coasts and islands; by the sixth century, the little states happened to in the hands of Tyrants (monarchs), due to newly found prosperity and growth of the cities. Violence and cruelty was the characteristic of their rule. Slowly a coalition of aristocracy and populace started to overthrow the tyrants, but again failed to replace the rule uniformly in the Greek states, and generally there was a conflict between aristocracy and democracy. Thus during the period, thus the city states of Greece experienced various form of rule in aristocracy, tyranny, oligarchy and democracy, and it was under pressure from Persian power, the job of protecting the unity of the Greek States, was entrusted to the institutions of a political character, with general consent, first to Sparta and then to Athens. These two city states could grow through military prowess to imperial dominion, even though they had nothing in common between them, as politically they had embodied the opposite extremes of democratic and aristocratic tendency, and the rivalry leading to the Peloponnesian War, which ended the idea of political unity temporarily, to be revived by Macedon.[15]

Constitution of Sparta:

The population of this small city state remained substantially the same throughout its history; they fell into three categories, Spartans, Perioikoi and Helots. The Helots were the most numerous but they are at the bottom of the social structure. They were peasants serfs, fully engaged in agriculture, and their manual labour sustains the entire population. They do not have any rights, civil or political. They suufer abject slavery, except that when the need arise they are employed as the light-armed troops in the army. Perioikoi on the hand are a kind of middle class population; they enjoy civil and political rights at the local level. They can engage in agriculture, industry and commerce; but had no share in the political life of the state in general.

The first is the Spartans proper, numerically almost insignificant, they never lost the absolute control of the city. They had no occupation and were trained for performance of public duties, in military political career. They had no land of their own, but supported from the land of the Helots. Trade and commerce were forbidden. They scrupulously followed the so-called Lycergean Rules, which gave them a class character of military brotherhood, whose sloe function was dominion.

At the age of seven the children are removed from parents and taken charge by the state officials. Their physical development consisted in the gymnastic training, which gradually took these children to military type so as that by the time they were adults they were experts in all the duties of a soldier. (The girls' duty is to bring forth hardy offspring.) And best part of their life they mainly occupy in military service, and it is during the later years of life they assume the duties of the magistracy.

Every adult male Spartan has to take his meals with his fellow from the public mess, under the supervision of the magistrates. No room for luxury or inequality in matters of food. No family life, no trade or agriculture, and no intercourse with foreigners; strict adherence of laws and all the controversies reach to a final resolution by the judgment of the magistrate. Therefore there is no chance for any type of litigation.

The Spartan constitution (otherwise known as the Lycergean Rules) enabled the Spartans to mark as a separate class for themselves, exclusively performing political functions. At the top of the system there were two kings, equal in dignity and authority. Next below was the senate with 28 members, elected for life. Next was the assembly consisting of the whole body of Spartans, out of whom there were the 'ephors' consisting of 5 members annually elected, usually to function in the place of the assembly, who gathered only occasionally, and to approve some important projects. The senate with both administrative functions of a judicial character was more powerful than the kings. But subsequently the ephors replaced all other organs and became the final authority in matters of administration and general policy. Partly royal and partly democratic, in essence they were oligarchic. 'Royal' in the sense, they had two kings; 'democratic' in the sense the ephors were annually

[14] The first part of this section on the Greek is adopted from Lavine T.Z., 'From Socrates to Sartre: The Philosophic Quest', Bantham Books, USA, 1984; and Will Durant, 'The Story of Philosophy', New York, 2006 (1926). And the second part, from Dunning, William Archibald, The History of Political Theories, Ancient and Medieval, Columbia University, 1901, Indian Reprint from Central Book Depot, Allahabad.1964.

[15] Dunning, William Archibald, The History of Political Theories, Ancient and Medieval, Columbia University, 1901, Indian Reprint from Central Book Depot, Allahabad.1964, Pgs. 1 to 6.

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elected, but from among the Spartans only, leaving almost entirely the two large classes of of the population from political life, in which sense, they were 'oligarchic'.[16]

Athenian Constitution[17]

The Athenian system of governance was much older than that of Sparta, but was essentially democratic. The population was divided into three, the nobles (the Eupatridae), the commons and the slaves. The first two are not considered on a racial basis; even foreigners can enter these classes. But the authority of political nature remained with the nobles.

The city of Athens had become a democracy by the fifth century B.C., by the end of a long struggle between a small number of land-owning families of the aristocracy and a majority who were poor. There was equality among the rich and the poor, but not for the women and the slaves. The years **445 to 431** were the Golden Age of **Athens** and those were the years of peace and internal improvements. It was during these years, the constitution and the supreme court, with a jury system of six thousand jurors, divided into panels, functioned as a rule that lead the populace into prosperity.

But everything came to end, after its defeat in **404,** dawning an era of disintegration of Greek city-states. But the intellectual growth that underlined in these city states was unparalleled.

Born in 427 B.C., Plato was a victim of conflicts and deep frustrations that arose from the execution of Socrates (399 B.C.), his own teacher, and defeat of Athens in war and the subsequent decline of her great civilisation. When the trial of Socrates took place, Plato was only 28 years old, and the charges were of impiety, speaking against the gods, and also corrupting the youth, who are said to have been incited to revolt against democracy. After the death of Socrates, Plato left Athens with some of his close associates, expecting trouble from the democratic Athens; but was soon ordered to be sold into slavery, by another neighbouring king. Plato managed to get ransomed and returned to Athens, where he established his Academy. At the age of sixty he returned Syracuse (367 B.C.), after the king had died, and found a chance to introduce his concept of philosopher-king in that city-state, combining the true philosophy and power over a dominion united in the same person. But the attempt remained a dream, even after a third attempt in 361 B.C., and he died at the age of 80 (348 B.C.). In 367 B.C. Aristotle at the age of 18 came to the Academy of Plato, and taught there for about 20 years, ie., until the death of Plato.

Athens regained its glory again under its conqueror Philip of Macedonia (338 B.C.), and the Athenian cultural and intellectual activity continued. He left the Academy and Athens to devote to the study of politics biological research, and it was in 342 B.C. that Aristotle was summoned by Philip to be the teacher of Alexander, his son; he returned to Athens in 335 B.C. He established his own Academy there, but had to flee Athens after Alexander died in 323 B.C., for the fear of danger from the anti-Macedonian rage that swept the Athens.[18]Aristotle died on the following year.

Aristotle's Contributions to Constitutionalism

The contribution of Aristotle has two faces, one his role of analysing, interpreting and if necessary differing from the views of Plato, his teacher, and the other his own views, based on his core philosophical principles of 'matter and form' and 'potentiality and actuality'. His role in the former was mainly to meet the speculative political theories of Plato; and Aristotle asserted that 'good state is one in which the constitution is sovereign and the relation of the ruler to the ruled is that of freemen who are morally equal'. In fundamental opposition to the unattainable ideals contained in the *Republic*, Aristotle 'looks to the ideals which are expressed in the laws, customs and public opinion of the people of actual states; these are the materials which politics must respect, work with and seek to improve'. Like Plato, Aristotle also asserted the teleological aspect of politics: the highest possible moral development and happiness of the citizens. State has the primacy over the family or the individual. 'He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or god'.[19]

But his main contribution to the politics came from his surveying about 100 of the constitutions of the city states of Greece, and finding an answer to the question, what type of government is best, most workable for most of the states; what could be the best polity between oligarchy and democracy. He came to the conclusion, 'The best

[16] Adapted from Dunning W. Archbald, op.cit. at pages 6-11.
[17] Ibid, pages 11 to 16
[18] 'The boy-emperor remained a barbarian after all Aristotle's tutoring, and was not enamoured by the rich culture of Greece.' Vide, Will Durant, 'The Story of Philosophy', New York, 2006 (1926).
[19] Adapted from Lavine, Op. Cit. at Pgs. 68-75.

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political community is formed by the citizens of the middle class, holding the balance of power against the very rich, who can only rule despotically and the very poor, who are too degraded to rule'.[20]

Aristotle[21] had definite thoughts about sovereignty, and starts with the question, 'on what rational principle is the abode of this sovereignty to be determined'.[22] According to him, for those who advocate democracy, sovereignty is to be found in the general body of citizens where all are equal in respect of freedom and equal in political power; and for those advocate oligarchy, sovereignty is to be found in a few who possess wealth and intelligence, even birth is that would carry superiority in power. But to identify the determinant in the right manner is to first conceive as to what is the correct end of the state. And that according to him, 'the state the state has its end living well-living happily and nobly: it is an association not for mere life, but for noble actions'.[23]The 'greater the share in political power should belong to those who contribute most to the perfect life'[24]. Therefore 'Virtue' in the species of justice is to be the criteria, rather than freedom, wealth, intelligence or birth. It is in the mass of the people and not in the dominant faction of the community that sovereignty should rest. Sovereignty of the whole people, subject to one qualification that election of members, who could be held to be accountable to their office is where ultimately the power of the state is located.

Sovereignty in any form, whether of the one, the few, or the whole people should concede the sovereignty of the law. Therefore, rule of law is the rule of 'god'[25] and reason only; and in the rule of man there appears in addition something of the brute. One important rider he has added is that 'only where the law is uncertain or incomplete may the authority of man be conclusive'.[26]

Aristotle classifies the constitutions into two broad categories, the number of those in whom sovereignty power is vested is one kind of constitutions, and the other category are those where the conduct of the government is directed and administered looking at the end ie., perfection of all its members. Oligarchy, monarchy and democracy belongs to the fist group, and the second distinguishes the pure from the corrupt. These classifications can be reduced to the following format, and it is almost the same as what Plato had conceived.

Sovereignty of	*Pure Form*	*Corrupt Form*
The One	Royalty	Tyranny
The few	Aristocracy	Oligarchy
The whole people	Polity	Democracy[27]

Different constitution assumes different forms, according to the three elements of government they proscribe, and these are (1) deliberative organ, (2) a system of magistracies, and (3) a judicial organ. In an un-equitable democracy the 'deliberative' organ would be an assembly of all the people, determining directly all the questions pertaining to this organ; magistracies would be filled –up by lot, and all citizens would be eligible for all offices; the administration of justice would be in the hands of a jury court, chosen by lot from the general body of citizens and exercising jurisdiction.

The Greek [274-278] was more concerned with the problem of the realization of the highest good of man, and not so much how a large state or an empire is to be ruled. Plato for example has gone to the extent of advocating absolute monarchy the best form of governance where the ruler would not be hampered with public opinion or with law. Thus the concept of limited governance and rule of law is a foregone question. Aristotle, a senior contemporary of Kautilya had absolutely had no ideological control upon Alexander who went about conquering countries after country. Both Plato and Aristotle were preoccupied with the notion how to build a perfect city-state. Aristotle even wanted the number of citizens in an ideal state to be strictly restricted. Plato even suggested the number to be 5040. It is true that in Athens in those days there were 50,000 citizens, who will be busy in participating in the activities of the state and endeavoring to protect its sovereignty; while all the economic activities were left to the slaves numbering about 1,00,000 in the state.[27]

Dunning, William Archbald, in his book 'A History of Political Theories, Ancient and

[20] Id at Pg. 76.
[21] Adapted from Dunning, William Archbald, 'A History of Political Theories, Ancient and Medieval', Central Book Depot, Allahabad, 1962 (1901) Pgs67-71.
[22] Ibid at Pg. 67
[23] Ibid at Pg. 68
[24] Ibid at Pg 68-69.
[25] 'god' here may have to be understood as 'the prescriptions of the customary law'.
[26] Vide, Dunning, Op. Cit. at page 71.
[27] Kangle, R.P. *The Kautaliya Arthashastra* Part III (A Study), Bombay University, 1965, Reprint from Motilal Banarasidass Publishers Private Limited, Delhi, 1965 and 2010. Pgs.274-78.

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Medieval', (1901), has brought out that the history of political theories goes back to a narration as far as the political theories that governed the city-states of Sparta and Athens, ie., 5th century B.C. In the Introduction, the author asserts that 'the scope of the present work limited practically to the philosophy of the European Aryan peoples. The Oriental Aryans never freed their politics from the theological and metaphysical environment in which it is embedded today'.[28] Obviously he was ignorant of the political theories of ancient India, including that of Kautilya, who was only codifying the long standing traditions from the Bahrspatya School of thought, through Samkhya, Yoga and Lokayata Schools of political thought, based on the rudiments from Rigveda, centuries back.

Fons et Origo of Constitutionalism in India

Every student must make an endeavor to find whether a so-called imported elements of constitutionalism in the wrong sense has any relation to the soul of this country. The search may go back into the ancient history, which we find was a hot pot of experimentation with monarchy, autocracy, republicanism, and even anarchy. K.P.Jaiswal tells us about different forms of ancient constitutions that existed, such as *Bhaujya, Svarajya, Vairajya, Dvairajya* and *arajaka* constitutions.[29]

So far what are fairly recognized as identifying the factors that contributed to Indian constitutionalism in the modern times. During the freedom movement, the first traits came from Gandhji in the form of his *'Hind Swaraj'*,[30] which incorporates the basic ideals, such as the indigenous culture and civilization, on which the future Constitution of India should be based; the *'Congress-League Scheme'* of 1916 followed this. The latter had advocated certain principles based on the British Parliamentary system, the Scheme was a sincere attempt to frame a satisfactory Constitution acceptable to both the Hindus and the Muslims. Next came the *'Outline Scheme of Swaraj'* which was prepared by Deshbandhu C.R.Das and Dr. Bhagawandas after the Gaya Congress in 1922. Thereafter, it was Dr. Annie Besant who had brought out a pioneering work, in consultation with many prominent Indian leaders, *'The Commonwealth of India Bill'* in 1924-25. Basically the proposal of Dr. Besant was formation of a self-governing Dominion, remaining within the British Empire at the same time upholding the ideal of the ancient village panchayat system as the basis of our future Constitution. In 1928 came the *'Nehru Report'*, as the report of all the parties. The new *'Constitution of the Aundh State'* was framed in 1939, under the guidance of Gandhiji. Another effort in constitution making came in the form of *'Report of the Conciliation Committee'* under the chairmanship of Sir Tej Bahadur Sapru. Then came the '*Objective Resolution*' introduced by Jawaharlal Nehru in the Constituent Assembly, and finally the Constitution of India itself.

During the years when the leaders were busy with preparing a Constitution for India, a section of the leaders wanted the forthcoming Constitution in accordance with the ideals of Gandhiji, expressed during the years of freedom struggle. Even though, Gandhiji himself did not write any 'Gandhian Constitution', Shriman Narayan Aggarwal, the then Principal of Seksaria College of Commerce, Wardha, had made an attempt to prepare a Constitution in accordance with the principles, Gandhiji had been advocating.[31]

II.Conclusion

The study of constitutionalism with reference to the United Kingdom, Sweden, and India reaffirms that while the foundational principles—limited government, separation of powers, rule of

[28] Dunning, Op. Cit. at Pg. xix.
[29] Jayaswal K.P., 'Hindu Polity'.
[30] Gandhi, M.K., 'Hind Swaraj' (1908).

[31] Vide the 'Foreword' in Narayan Aggarwal, 'Gandhian Constitution' (1946), Kitabistan, Allahabad. Gandhiji himself wrote the Foreword to the said publication, while he was traveling by train to Calcutta, on 30th November 1945. It transpires from the 'Foreword' that the entire work cannot be said to represent Gandhiji's view in every detail, rather the framework is that of the author himself, based on the study of Gandhiji's writings, and the author did not want to publish anything without showing them to Gandhiji himself. He further warns the readers not to treat it as his view in every detail, if that was to be so, he would have written it by himself. Nevertheless he had gone through the draft twice, and the author has made every effort to make it as accurate as he could. "There is nothing in it which has jarred on me as inconsistent with what I could like to stand for." And, "the author was good enough to make such alteration as I thought were necessary." He has further noted that the 'work' of the author is a thoughtful contribution without having any pretension to be a professional job of writing a complete constitution, but "the merit of his attempt consists in the fact that he has done what for want of time I have failed to do."

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law, and fundamental rights—are universally recognized, their interpretation and implementation remain context-specific.

Let's not forget that Constitutionalism is not a rigid template but a dynamic, evolving process responsive to a nation's historical, political, and cultural milieu.

I am often reminded of one think time and again is The UK's enduring yet unwritten constitutional framework which demonstrates the strength of conventions, legal precedents, and parliamentary supremacy. Sweden exemplifies a unique blend of legal clarity and democratic consensus, underpinned by a rational-legal codification of state power. India, on the other hand, offers an ambitious and expansive model that fuses liberal democratic ideals with socio-economic transformative goals, reflecting the complexities of a post-colonial, pluralistic society.

In contemporary times, constitutionalism faces serious tests—executive overreach, erosion of judicial independence, populist pressures, and challenges to civil liberties. These trends threaten the delicate balance of power and the very legitimacy of democratic institutions. Therefore, constitutional resilience must be cultivated through an active civic culture, judicial courage, and institutional checks and balances.

Recommendations arising from this comparative study include the need for regular constitutional audits to ensure relevance, the strengthening of civic education to deepen public commitment to constitutional values, and institutional reforms that safeguard the independence of the judiciary and legislature. Countries must resist the temptation to dilute constitutional safeguards in the name of efficiency or nationalism.

Ultimately, constitutionalism must be understood not merely as a legal doctrine but as a moral and political commitment to accountable governance and the protection of human dignity. As democracies worldwide grapple with internal and external disruptions, the reaffirmation of constitutional values remains the most effective bulwark against tyranny and injustice.

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