



CONSTITUTIONALISM VALUES AND CHALLENGES: A PERSPECTIVE

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Abstract: Constitutionalism is a type of Government where a country is ruled according to the guidelines mentioned in the constitution. Constitution is a document which consists of basic structure of Government and rules regulations of the state as well as rights and duties of citizens. Constitutional system protects individual rights and liberties. Constitutionalism prevents autocracy and dictatorial regimes from emerging. However, constitutionalism is confronting various challenges. In this background this paper makes an attempt to understand Constitutional values and the challenges.

Key words: Constitutionalism, Rights, Liberties, Citizens, Government.

Introduction:

Constitutionalism is a system of Governance. In this system the entire structure of Government, administrative mechanism, rules and Regulations, Rights and duties of Governing and Governed will be based on the philosophies inscribed in the constitution. The word Constitution is derived from the Latin word "Constitutes" which means to setup¹. Constitution is a document which comprises the rules and regulations, rights and duties which has to be followed by people as well by Government within the state. Constitution provides details of structure of Government, explains power and functions of different branches of Government. Constitution also provides framework for relation between people and Government. Constitutions gives Rights and liberties to the people as well as imposes limitations on those rights and liberties. If a government is functioning according to the instructions mentioned in the Constitution, it is called as Constitutional Government. Constitution can be classified into two types - written constitution and Unwritten Constitution. Written constitution is the one in which all the rules' regulations rights and duties of the ruled as well as of Rulers will be in a clear-cut written form in a document. Unwritten constitution is the one in which the rules, regulations, rights and duties which has to be followed within the state are not found in single document. Unwritten constitution is more in the form of legislations of legislature, judicial decisions of the courts and also endures as traditions and customs which was followed throughout History. Majority of the constitutional Governments are following written constitutions. Though there are various debates regarding the merits and demerits of written and unwritten constitution, unwritten constitution requires advanced discipline, patriotism and civilized conduct on the part of Governed as well as by the Government. Constitutions can be rigid or flexible depending on the mode of amendment. Rigid constitutions involve more procedures and time, whereas Flexible Constitutions can be amended by a simple majority in Legislature and it is less time consuming. There are countries who follow rigid constitution like USA and whereas there are countries who has flexible Constitutions like Great Britan. Some countries adopt the benefits of both the methods like India wherein certain provisions can be amended by flexible method and amendment of certain provisions requires rigid method. The system of Governments based on Constitution can be traced to the ancient Greece. In ancient Greece the Great political thinker Aristotle has classified Governments based on Constitution. The growth of constitution-based

¹ <https://www.vocabulary.com>

Governments in the modern era can be traced to Magna carta in 1215 in England which imposed rules and regulations on the king. In 17th and 18th century, writings of Philosophers like Thomas Hobbs, John Lock, J.J. Rousseau, Montesquieu gave further fillip to growth of Constitutional Governments in Europe. French revolution and American war of Independence established constitutional Governments as the most popular form of Government. The Decolonization process that followed second world war has spread constitutional Governments in erstwhile colonized States in Africa, Asia and Latin America. However, the new developments in international politics after the end of Cold war like globalization, growth of transnational institutions, terrorism, growth of digital technology, impact of social media coupled with domestic issues has created new challenges to constitutionalism. In this background this paper is an attempt to comprehend and explore the challenges confronted by Constitutionalism in the contemporary World.

Objectives of Study:

1. To understand functioning of Governments based on constitutional values.
2. To explore the challenges confronted by the Governments to govern within the framework of constitutional Values.
3. To understand the limitations of constitutionalism.

Operational Values of Constitutionalism: Governments which functions within the framework of constitutions has to follow certain basic values. The extent to which the Governments stick to constitutional values decides the effectiveness of constitution in meeting the expectation of the people. The basic values or principles under which a Constitutional Government should function is:

- **Rule of Law:** Constitutional Government should have a legal system which should be applicable to everyone within the state. Law is the binding order of the state which will be explained in the constitution and will be implemented by the Government. Rule of Law is a principle that law of the land should be equally applicable to all the citizens in the country. It states that irrespective of difference in class, gender, region or race law should be equally applicable to everyone. Though a person can occupy a powerful position in political, economic and social life he has to be obedient to the legal system of the State. Law should be equal to those in power and for common citizens. No one in the State should be above law of the land is the basic tenet of Constitutionalism.
- **Fundamental Rights to People:** Rights are the inherent opportunities given to the people for their self-development by the state. Fundamental Rights are the rights given to citizens within the State. Some of the essential rights that has to be given to the people are Right to life, right to liberty, right to property, right to association, movement, expression etc. These rights should be mentioned in the Constitution. These Rights should be protected by the Judiciary. Citizens should have the right for legal remedies for violation of their Rights. The fundamental rights should be given to all the citizens within the state without any discrimination on race, gender, class or region. All most all the democratic states in the world have mentioned rights for the people in their constitutions, for instance Constitution of USA, Russia, India has list of fundamental rights in their Constitutions. Some states have provision to temporarily suspend fundamental rights during emergencies, which has to be restored after the emergency situation gets over. Constitutionalism doesn't carry any value if the citizens of the state doesn't have rights which should be free from Government interference.
- **Liberty to people:** Liberty is one of the requirements of Constitutionalism. People within the state should have liberty to lead a life of their choice. The most essential liberties which people should have is political liberty, economic liberty, social liberty, personal liberty, liberty of religion etc. Political liberty is the liberty to decide Government of one's choice, vote freely in Elections, participate in political process. Economic liberty is the freedom to decide profession or occupation. Social liberty is the liberty to lead life in the society without any constraints. Personal liberty is the opportunity to safeguard personal life from others. Religious liberty is the opportunity to choose religion of his choice and practice it. constitution should guarantee liberty to people and also gurentee safeguards. Liberty should be provided to all the citizens within the state without any discrimination of race, gender, class or region. Government should not interfere or obstruct the liberty of citizens.

- **Separation of power:** Separation of powers is another important aspect of constitutionalism. The theory of separation of power argues that the three organs of the Government- Legislature, Executive and Judiciary should be kept separate from each other. The three organs of the Government should be independent of each other at the same time having checks and balances on each other. The theory of Separation of Power was first advocated by Montesquieu. The objective of theory of separation of power is to prevent the Government from being autocratic in nature. The concentration of legislative, Executive and Judicial powers in a single institution may turn it into autocratic neglecting Constitutional values.
- **Independent Judiciary:** Judiciary should be Independent. Judicial structure and powers should be defined in the Constitution. Judiciary should function as Guardian of the Constitution. Judiciary should derive its powers directly from the Constitution. Judiciary should uphold rule of law and citizens should be able to approach judiciary to protect their rights. The mechanism to deliver justice should be simple, quick and less expensive. Judiciary should also have the power of “Judicial Review. The power of Judicial Review will allow the judiciary to declare legislative and executive Acts as ultra virus or unconstitutional thereby preventing it from implementing such Acts which are Contrary to Constitution.
- **Peoples Participation in Political Process:** Constitutionalism requires people’s participation in Political process of the state. People should be able to participate in political process through periodic elections. Elections should be periodic and it should be free and transparent. People should be able to vote without any constraints. Franchise should be given to all the citizens without differences in class, literacy, gender, race and region. All the citizens in the State should have freedom to express their political views and participate in party politics or any other political activities.
- **Limited State Interference:** The activities of the state should not be constraining factor in Individual life. State should not interfere in individuals social political or economic activities unless it is required to protect the less fortunate, downtrodden or to prevent exploitation to certain section of the society. Too much of state control can restrict individual development and also turns State into autocratic neglecting Constitutional values. Limited state interference in the individual activities is one of the prerequisites for Constitutionalism. Citizens should have the freedom to follow economic activities of their choice, embrace divergent views on politics, protect their privacy and individuality.
- **Transparency in Governance:** Government should work transparently. Policy making, execution of policy and financial management should be transparent. Citizens should have the rights to collect information from Government whenever they require. People should not be kept in the dark about Government activities and people should not be suspicious about their government. The transparency in Government actions can build trust among the citizens in their political system and can protect constitutionalism.

Challenges to Constitutionalism:

Constitutionalism which protects individual rights, liberties and an accountable form of Government is facing many challenges. The important challenges of Constitutionalism can be listed as follows –

- **Poverty of the masses:** Poverty and deprivation of basic necessities can create unrest among the citizens. Poor people can be easy targets for bribery during elections. Poverty can erode people’s faith in constitutional process and they can be influenced by populism.
- **Illiteracy:** Illiteracy is another aspect which effects constitutional system. If the citizens don’t have basic education, they cannot understand the working of Government. Uneducated people will not have any awareness about their rights and privileges which are given to them by the Constitution. They will not have any awareness about legal system or the legal remedies available to them if their rights are violated. Without informed citizens Constitutionalism can be meaningless.
- **Corruption:** Corruption which is major menace in many countries is another factor which is affecting the working of constitutionalism. Corruption leads to favoritism, violation of rule of law. Massive corrupt practices in administration will have the effect of eroding the faith of citizens in constitution. This lack of faith in constitution can even lead to the growth of authoritarian regimes.

- Emergence of authoritarian leadership: Legally elected leaders can at times turn out to be authoritarian. They may misuse the constitutional mandate given to them. They may use their power to curtail citizens' rights through censorship, scrutiny or at times in the name of emergency, national interest or pandemic. This will also affect the Constitutional system.
- Lack of separation of power: If there is no effective system of separation of power any one branch of the Government can be powerful and can dominate the other branches of the Government. Checks and balances cannot be exercised. This will lead to the weakening of the constitutional system.
- Weak Judicial system: If the judicial system is weak, the judiciary cannot interpret the laws as well as individual rights cannot be protected. Citizens will not have any legal remedies for violation of their basic rights and liberties. The judiciary should function as guardian of the constitution. If the judicial system is under a lot of pressure or does not have sufficient safeguards constitutionalism is bound to suffer.
- Lack of periodic elections: One of the essential prerequisites for the effective functioning of the Constitutional system is periodic elections. If elections are not conducted in the required time, it will impact Constitutionalism. Governments can be authoritarian setting aside constitutional values and norms. Along with periodic elections, it should be free and transparent. People should be allowed to freely exercise their franchise. If it is not done it will affect constitutionalism.
- Restriction of Peoples participation in Politics: If people are restrained from participating in the political process through dishonest methods of election, postponement of elections, through censorship, scrutiny or even curbing genuine protests it will affect the functioning of constitutionalism. Without the participation of citizens the constitutional system cannot survive.
- Terrorism: Terrorism both local as well as international can pose a challenge to constitutionalism. Terrorism can increase state surveillance on citizens which in turn can have the effect of violating citizens' rights. Terrorism will also create fear among people preventing them from free movement. Terrorism can also sabotage the democratic process and can lead to theocracy or authoritarian regimes.
- Fundamentalism: Fundamentalism is another important factor that affects constitutionalism. Fundamentalism takes away rationality and makes people think in an emotional perspective. Even when their rights are violated or administration is lacking efficiency citizens do not give attention if they are under the influence of fundamentalism. Fundamentalism creates a sense of false illusion in citizens about issues that in turn affects the constitutional system.
- Civic indifference: Civic indifference is the negligence on the part of citizens towards state issues. When citizens are indifferent towards administrative issues Governments can violate the rule of law, can cross constitutional limits easily and can also be corrupt. Vigilant people can be a protection to constitutionalism. If vigilance of people on administration is absent it can pose a challenge to Constitutionalism.
- International developments: New developments in international politics like change in power equations, Globalization, growth of transnational business groups, transnational monetary institutions can put pressure on domestic political systems. Governments on various occasions will be forced to change domestic policies to meet these international pressures thereby weakening their constitutional structure.

Conclusion: Constitutionalism which has a long tradition is a type of Government which is more citizen friendly and the one which protects individual rights and liberties. Constitutionalism works under certain value systems. These Value systems should be operational for the system to survive. If these value systems are affected by various factors like poverty, illiteracy, fundamentalism, corruption, civic indifference Etc. then Constitutionalism will be at risk. Constitutionalism should be protected to continue rights and liberties of people as such it is the responsibility of Citizens as well as on Governments to eradicate the challenges and safeguard its values.

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