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CONSTITUTIONALISM OF LIMITED GOVERNMENT

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INTRODUCTION

Constitutionalism is a complex of ideas, attitudes, and patterns of behaviour elaborating the principle that the authority of government derives from and is limited by a body of fundamental law. Constitutionalism recognizes the need for government with powers but at the same time insists that limitation be placed on those powers. It is said to be a legal device for the prevention of tyranny and for the protection of the rights of people.[1] It furnishes the opportunity to provide exact, enduring, and compulsory language in a document to limit the powers of government and to control the conduct of government officials by rule of law.

Constitutionalism in a rather primitive form began in Greece about twenty-three centuries ago. The development of constitutionalism is a history of the growth of political institutions that had their first important manifestation in the soils of ancient Greece. After the Greek's eclipse of the city-state system, a great empire under the Romans was establishment. Romans codified their law and laid down the principle of representative government that came to be the most celebrated principles of constitutionalism. The concept of constitutionalism took a shift after the disintegration of the Roman Empire in the fifth century A.D. and its substitution by the establishment of a number of feudal states. The era of feudalism represented a phase of transition, decentralisation, and disintegration as a result of the spread of the religion of Christianity. The renaissance period marked the re-emergence of a humanistic and scientific outlook to the concept of constitutionalism. After sixteenth century, some countries have significant place in the development of constitutionalism namely Britain, France and America which further adopted with

[1] C. Perry Patterson, The Evolution of Constitutionalism, 32 Minnesota Law Review 427, 427 (1948)

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certain modifications by emerging independent nations after the first and second world wars.

Limited government protects and serves citizens by not using their overwhelming power to control citizens. Limited government is a concept directly related to constitutionalism and therefore constitutionalism means that the Constitution of a country should contain provisions to limit the authority of the government so that they do not override the Constitution and act in an arbitrary manner, which might threaten the rights of the individuals of the country, a situation which is regularly happening in dictatorships and military rules.

Prerequisites of constitutionalism of limited government includes a written Constitution, independent judiciary with powers of judicial review, the doctrine of rule of law and separation of powers, free elections to legislature, accountable and transparent democratic government, Fundamental Rights of the people, federalism, decentralisation of power etc. There are countries which follows the above prerequisites in their own ways to limit the government and secure protection of individual rights.

A detailed study on the concept of written constitution, independent judiciary, rule of law, separation of power, free elections, fundamental rights for individuals and federalism required to understand the relationship between constitutionalism and limitation on the role performed by government.

CONSTITUTIONALISM AND ITS EVOLUTION

MEANING OF CONSTITUTIONALISM

Constitutionalism is only the name of the trust which man reposes in the power of a document as a means of controlling a government. It is a legal device for the prevention of tyranny and for the protection of the rights of man. It furnishes the opportunity to provide exact, enduring, and compulsory language in a document to limit the powers of government and to control the conduct of government officials. Man down through the ages has searched for the means of establishing limitations upon government and of forcing government to observe these limitations in practice. Constitutionalism is the result not only of his inventive mind but also of a heroic struggle at the expense of his life and property. It is a priceless heritage which gives man the right to govern himself. It is the means which enables him to draft his own constitution, to establish his own government, and to organize its powers in such form as "shall seem the most likely to affect his safety and happiness."

Constitutionalism is a modern concept that desires a political order governed by laws and regulations. It stands for the supremacy of law and not of the individuals; it imbibes the principles

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of nationalism, democracy and limited government. It may be identified with the system of 'divided power'. As Friedrich says: Constitutionalism by dividing power provides a system of effective restraints upon governmental action. In studying it, one has to explore the methods and techniques by which such restraints are established and maintained. It is a body of rules ensuring fairplay, thus rendering the government responsible. 'Constitutionalism, thus, stands for the existence of a constitution in a state, since it is the instrument of government, or the fundamental law of the land, whose objects are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operation of the sovereign power.

In order to have a proper understanding of the term constitutionalism, 'we must first understand the meaning of terms like 'constitution' and 'constitutional government'. A constitution "may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted". In other words, it may be described as a frame of political society organised through and by law, in which law has established permanent institutions with recognised functions and definite rights. According to Wheare:

The word 'constitution' is commonly used in at least two senses in an ordinary discussion of political affairs. First of all, it is used to describe the whole system of a government of a country, the collection of rules which establish and regulate or govern the government. These rules are partly legal, in the sense, that the courts of law will recognise and apply them, and partly nonlegal or extra-legal, taking the form of usages, understandings, customs, or conventions which courts do not recognise as law but which are not less effective in regulating the government than the rules of law strictly called. In most countries of the world the system of government is composed of this mixture of legal and non-legal rules and it is possible to speak of this collection of rules as the 'Constitution'.

The constitution of a state may be a deliberate creation on paper effected by some assembly or convention at a particular time, it may be found in the shape of a document that has altered in response to the requirements of the time and age; it may also be a bundle of separate laws assuming special sanctity of being the fundamental law of the land, or again, it may be that the bases of a constitution are fixed in one or few fundamental laws of the land, while the rest of it depends for its authority upon the force of the custom. A look at the constitutions of the countries of the world shows that for most of them the constitution is a selection of the legal rules which govern the government of that country and which have been embodied in a document. However, Britain

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affords the peculiar case where the constitution is not in the form of a document; it is a growth and not a make. Bolingbroke thus said about the English constitution: By constitution, we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason that compose the general system, according to which the community hath agreed to be governed.

Whereas the constitution refers to a frame of political society organised through and by means of law and in which law has established permanent institutions with recognised functions and definite rights, a constitutional state is one in which of the powers of the government, the rights of the governed and the relations between the two are, adjusted. According to Wheare, constitutional government means something more than a government according to the terms of a constitution.

It means government according to rule as opposed to arbitrary government; it means government limited by the terms of a Constitution, not government limited only by the desires and capacities of those who exercise power. From the above, it may be inferred that a constitutional government is one that operates within a universe of positive restraints. It is, however, a different matter that the degree of restraint may vary from one political system to another. That is, while one state may be constitutional by virtue of being set in a universe of more restraints, the other may be of the same category by virtue of being set in a universe of few restraints.[2] The charge of being 'unconstitutional' can be levelled against a state only if it has 'no restraints' as specified by Friedrich in his paradigm:

It is, therefore, clear that, like all true functional concepts, the notion of constitutional government is essentially descriptive of two poles: very strong restraint and very weak restraint. Between these two poles, all actual governments can be ranged. Carl Friedrich, however, makes it very clear that the case of an unconstitutional state can be conceived in mere theoretical terms as every state of the world has a constitution of its own that places restraints to some degree at least. As he shows in his paradigm and says: "The unreal limits are 'complete restraint' and 'no Restraint'."

Moreover, constitutionalism‖ as Blondel says, is clearly a dimension: it is an over simplification to classify regimes as 'constitutional' or 'non-constitutional', as it is an oversimplification to classify them as 'liberal' or 'authoritarian'. Dichotomies may be useful in practice, but a general theory of constitutionalism must take into account the fact that the regimes stretch along a continuum ranging from complete authoritarianism to full liberalism and that a replica of this

[2] Johari, J. C. Comparative politics [by] J. C. Johari Sterling Publishers New Delhi 1972

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continuum is provided by an axis stretching from 'full constitutional government' to 'pure non-constitutional rule'.

Constitutionalism, in this way, desires a political order in which the powers of the government are limited. It is another name for the concept of a limited, and for this reason, a civilised government. The real justification of the constitution finds place in having a limited government and of requiring those who govern to conform to laws and rules. We are required to see how the constitution of a state works in actual practice and whether usages and conventions operate to strengthen or weaken the machinery of the constitutional arrangement.

We may find that, apart from those limitations that have their place in the provisions of the constitution, there are well established customs and norms that have their own effect for the same purpose. Keeping such empirical facts in mind, one may say that there exists no government in the world that may not be called constitutional, though he may also say that such a government hardly exists in a country binder a totalitarian rule where the constitution is seen with contempt. For this reason, it is only in a democratic country that constitutional government can be said to exist.

EVOLUTION OF CONSTITUTIONALISM

Constitutionalism has been discussed by various jurists over the years. It had its share in history, being developed in various stages by various great thinkers of the world. The Greeks and the Romans were amongst the first in the world to discuss constitutionalism, although they did not do it directly. Aristotle, the great Greek philosopher, came up with the theory of separation of powers, which is now one of the most important aspects of a democratic government. The principle of checks and balances was developed by the Romans, although it is not yet clear as to who came up with the principle first. The principle of checks and balances was accompanied by the principle of the supreme law of land i.e. the Constitution. This is where the founding stones for the concept of limited government and constitutionalism were laid. The Greeks and Romans were the first to differentiate between the fundamental law and ordinary law of the land, and this differentiation is one of the reasons why the concept of Constitutionalism is understood the way it is understood today.

European thinkers and jurists like Ulpian, Gaius, Gratian, Justinian, and Christian leaders St. Paul, Augustine, Jerome etc., all of them have played their part in the development of this concept. There was no concept of limited government in reality at that time because of the fact most regions of the world were under monarchy at that time and it is very much impossible to convince a king to

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put restrictions on their own powers, especially in a time period when kings regarded themselves second to none other than God himself.[3]

Thomas Aquinas of Italy was one of the first thinkers who related the concept of natural law to the present-day understanding of Limited Government. It was observed by him that the concept of Constitutionalism can only be applied in a limited state and that restrictions cannot be imposed on the supreme powers of a sovereign or a sovereign land that is not regulated by a Constitution. Also, it was realized by the medieval jurists that Constitutions of that era are not as effective because of their flawed implementation and the only check against violations was a revolution, which is never a mean in a healthy democracy. Madison famously said that a government should first govern the people of the country and govern itself.

The British themselves have made big contributions to the concept of constitutionalism as they have to the concept of democracy. Sir Edward Coke, an English jurist and a lawyer, was one of the first to establish that authority was derived by the law, and hence, must be limited to the law. If one reads this sentence carefully, they can realize that this is one of the if not the main principles behind the present-day concepts of constitutionalism and limited government. Bracton, Henry of Bratton, in one of his decisions laid down another such principle. He said that the King is subject to the god and the law, and not to man because it's the law that makes him the King.

Without law, there is no king and no dominion can ever have a king which is ruled on the will and not law. The doctrine of supremacy of law is one of the most essential elements of constitutionalism, which has been developed by these principles. There are some thinkers who have disregarded the concept of constitutionalism in one way or another. Thinkers like Thomas Hobbes and John Locke don't think sovereignty can be limited in any and that the concept of limited government of limited sovereignty is incoherent and non-practical. Another English thinker, Austin, again, regarded the concept of limited government as impractical. His reasoning was that the authority may remain either with a body of sovereign rulers, or a single ruler, or the people, but the sovereign authority of these bodies cannot be limited.

Then the American and Indian systems of government have given new dimensions to the concept of limited government. India and the USA are the two biggest democracies in the world and their governments and Constitutions are great examples of modern-day constitutionalism.

PROBLEMS AND PROSPECTS OF CONSTITUTIONALISM

[3] https://blog.ipleaders.in/constitutionalism-limited-government/

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In present context, mention must be made of the forces that work against the operation of a constitutional government and whose results shake our faith in the concept of constitutionalism as an addiction to the establishment of a democratic political order. Three factors may be discussed in this regard: war, emergency and socio-economic degeneration. It is in the war time when the government claims absolute power and in the name of defending the realm from foreign aggression goes to the final extent of crushing the essential liberties of the people.[4] The government undertakes several measures like compulsory conscription, military training, nationalisation of major industries, censorship of the press, etc. for the sake of defending the country. It appears that the framework of a constitutional government is subverted during war times. Such a statement may and may not be correct depending upon the nature of the case. Thus, whereas a constitutional government had its total doom in countries like Italy, Germany and Japan during the days of the Second World War, it could not have the same fate in other countries like France and Britain. A return to the normal constitutional government occurred after the termination of hostilities.

A constitution may incorporate a particular clause saying that the powers of the government shall be unlimited during the days of war or armed rebellion as we may see in the case of the Irish constitution. It, however, depends upon the nature of the case whether such a categorical provision goes against the very spirit of constitutionalism or not. It is said that the emergency powers of the President, as given in the Indian constitution, look like a replica of the Weimer constitution wherein the seeds of future totalitarianism were embedded. One may well disagree with such a rash judgment and endorse the sane observation of Wheare: "The extent to which constitutional government has been suspended in time of war varies a great deal. It need not be assumed that war means the destruction of constitutional government in every case. Yet it is certain to put a strain upon it and it usually suspends it in some degree."

Allied with this is the second factor of emergency. The suspension of the constitutional government is justified if there are the conditions of national emergency. It was under these conditions that USA President Lincoln went to the unprecedented extent of using troops to crush the revolt of the southern States of the American Union that had raised their heads in opposition to his mission of banishing slavery. The British government took several important measures to meet the conditions of emergency during the days of the first and second world wars. American President Roosevelt went to the length of having "New Deal" legislation in the 1930's to face the

[4] https://www.britannica.com/topic/political-system/Constitutional-government

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conditions of great depression. The Government of India had made several important arrangements after the proclamation of national emergency in 1975 that were dubbed by its critics as the murder of democracy. What we have said above applies here also. It depends upon the nature of the case whether conditions of emergency entail the doom of the constitutional government or not. Thus, while countries like the United States and Britain returned to the era of a limited government after the termination of the conditions of emergency, others like Italy, Germany and Japan took the matter to a point that their constitutional governments‟ had a quite inglorious end.

Finally, there is the factor of the social and economic distress. Eradication of the conditions of starvation, famine, illiteracy, disease, poverty, squalor, prestilence, etc. requires discretionary action of the state. The government is called for to take immediate and drastic action to alleviate the sufferings of the people. What the Government of India has been doing since the inauguration of the five year plans can be cited as a clear instance in this direction. We may once again reiterate the same point that the outstretched authority of the government to alleviate the conditions of social and economic distress may, and may not, entail the destruction of the constitutional government.

It depends upon the sagacity and wisdom of the men in power that by extending the area of their discretionary authority they may save the country from the challenge of social and economic disintegration, or they may push it to the most disastrous consequences. Wheare rightly suggests that conditions of national emergency or socio-economic distress “lead to the suspension of the ordinary limitations upon government in order to permit swift and effective action. Crisis or emergency government can seldom be constitutional government: peace and prosperity are in truth strong allies of constitutional government. Their prospects are its prospects.”

LIMITED GOVERNMENT

MEANING OF LIMITED GOVERNMENT

Limited government is defined as a political structure where laws limit the powers of the government to avoid abuse. Democracy is a significant example of a limited government where the power is distributed across the cabinet. It also restricts a single person from wielding excessive influence in decision making. Governmental authority is prescribed and restricted by the law, and individual's rights are protected against government intrusion. Limited government is a concept directly related to constitutionalism. Limited government is an ideology that restricts allowing absolute powers to a government so that the lawmakers also abide by the laws. In a democracy, political leaders, lawmakers, judicial bodies, administrative forces, and citizens are all required to

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adhere to the directives of the constitution.[5]

ADVANTAGES AND DISADVANTAGES OF LIMITED GOVERNMENT

Limited government protects the rights of the people and prevents government from exerting extensive or total control over people's lives, actions and speech. This can lead to increased freedom for all. For this reason, democratic and republican political systems normally have limits on the power of the government. Limited government values individual and economic freedom. Less government means less intrusion into our lives. The more freedom from government regulation or mandates, the more choices citizens can make on an individual and financial level. We can live our lives as we see fit, not how the government sees fit.

Limiting the power of government protects rights, but it can also limit the government's ability to take actions on behalf of the people. If the government is too weak, either because of constitutional limitations or political policies, it is possible for individuals to have their freedom restricted by non-governmental concentrations of power. For example, Theodore Roosevelt worried that "malefactors of great wealth" were using economic power to stifle liberty in the early 20th century.

FEATURES OF CONSTITUTIONALISM WITH LIMITED GOVERNMENT

RULE OF LAW: Rule of law denotes a government of laws and not of men. Individuals working within the state machinery are expected to exercise their official duties and responsibilities in accordance with the law. In other words, rule of law represents the supremacy of law.

According to Dicey, rule of law envisages the following: -

- No one is punishable except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land: The first component of rule of law is related to the principle of legality. If a certain behavior is not categorized as a criminal act by the constitutionally mandated law-making organ, it is not treated as a criminal act and is not punishable. It is treated as an innocent act. Secondly for an act to be punishable, the act must be classified or identified as a criminal act by the legislature through the law-making process enshrined in a constitution and other laws. Finally, once a certain behavior is classified as a criminal act, the accused should be tried and punished by the ordinary courts. Ordinary courts refer to courts established in accordance with a country’s constitution. It

[5] https://www.wallstreetmojo.com/limited-government/

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may not include any extra-judicial or extraordinary court not recognized by the constitution of the land.[6]

- No person is above the law: These words express the absolute supremacy of law over arbitrary power including widespread discretionary power of government. We are all human beings created in the image of God, and we should be treated equally before or under the law without discrimination on the basis of status, wealth, race, nationality, gender, sex, etc. Every person from a president down to a vegetable seller should equally become subject to the law.

Similarly, even though avoidance of discretionary power is totally impossible, the manner in which such power is to be exercised is strictly monitored. Discretionary power is one of the reasons for the prevalence of corruption. According to Professor Klitgaard, corruption is defined as monopoly of power plus discretion minus accountability.

- Courts play a vital role in protecting the rights of individuals: According to Dicey, the mere recognition of rights in a constitution alone does not secure or ensure the rights of an individual. The rights recognized by a constitution and other laws are to be protected or defended through the medium of courts whenever these rights are infringed.

SEPARATION OF POWER: Under constitutionalism, power is not concentrated in any one organ of the state. It is diffused (divided) among the three organs of the state i.e., the legislature, the executive and the judiciary. If power is monopolized by any one organ of the state there could be abuse of power, tyranny and dictatorship. Nor can there be liberty. For example, the legislature, in addition to its law-making power is not allowed to exercise the roles of the executive; and the judiciary is not allowed to execute the laws which it interprets. These two powers are reserved to the respective organs i.e. the executive and the judiciary, respectively.

FEDRALISM: Federalism in general is a form of government in which sovereign powers are constitutionally divided between a central government and geographically defined, semi-autonomous regional governments. In the Indian context, Austin says, "Federalism is an idea and a set of practices, the variety of which depends upon the goals of the citizenry and its leaders, the consequent definition of the term, and the conditions present in the would-be federation.

Federalism's commitment to justice and democracy imposes obligation upon power holds to act

[6] Maru Bazezew, Constitutionalism, Mizan Law Review Vol. 3, 2009

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with a sense of responsibility to avoid disparities in access to positive rights and welfare. The features of economic and social asymmetry are to be tackled by the benevolent goal of equal liberty of all. Effective utilization of the centrally sponsored welfare schemes by the states, fiscal federalism's focus on development of backward states and equitable apportionment of inter-state water by using the principle of non-disparity do expand equal rights. The question of diversity of jurisdiction versus rights can neither be dealt mechanically nor in obstructing the way of social justice and multiculturalism. Cooperative federalism in the matter of combating organised crimes or in rectifying state inaction tends to create an atmosphere supportive of rights. asymmetry by special status is prone for egalitarian influence.

Federalism, as a type of state, is an enduring expression of the principle of constitutionalism that retains the unity of federal units and effectuates the constitutional goals through mutual co-operation and co-ordination amidst central and state governments.

POPULAR SOVEREIGNTY: Popular sovereignty envisages the fact that the public is the source or fountain of all governmental authority. The legitimacy of any governmental power is derived from the consent of the public. In other words, the government acquires its mandate from the people. The source of all sovereignty lies essentially in the nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it. Even though there is a certain sovereign entity which is empowered to govern, ultimate sovereignty resides in the nation. The power of such sovereign entity emanates from the public.

In other words, the public is involved in the decision-making process which may take different forms. The most obvious one is election of representatives. The public is entitled to elect representatives who represent it. However, such election should be free, open (transparent) and fair. When the public loses confidence in its representatives and where the latter fail to represent the interest of the public, representatives may be recalled before the expiry of their term of office.

INDEPENDENT JUDICIARY: In liberal democracy the individual is at the center, and "Judicial independence is the hallmark of liberal democracy". The rights of individuals are ensured and respected. Courts play a vital role in ensuring and respecting the rights of individuals. An independent judiciary is the cornerstone of a free society and rule of law. As it is already discussed hereinabove, rule of law envisages a government of laws. A government is obliged to act according to laws set by the legislature. However, if there is failure to adhere to the laws, an independent judiciary shall check such events. An independent judiciary is also necessary to maintain the

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supremacy of a constitution. If the legislature comes up with a law which is contrary to the constitution, an independent judiciary, through the principle of judicial or constitutional review, has the power to declare it null and void. Hamilton in Federalist stressed the role of courts in reviewing the constitutionality of laws passed by the legislative organ as follows; -

As Hamilton expounded, although checking the constitutionality of laws passed by the legislative organ is not the only role or function of courts, courts are bound to review whether laws passed by the legislature are constitutional. The whole purpose of judicial or constitutional review is not to snatch the powers given to other organs or to create judicial despotism, but to maintain the supremacy of the constitution i.e., the supreme law of the land.

In addition, judicial independence helps judges to discharge their judicial functions without fear or favour. Bhagwati stated that Justice can become fearless and free only if institutional immunity and autonomy are granted. Bhagwati stressed the autonomy of the judiciary as an institution; yet, the independence of the institution is inseparable from the independence of individual judges.

Moreover, the decision or judgment rendered by courts must be executed. If decisions are overturned by other organs of the state, the independence of the judiciary shall be at a risk. It is a threat to the very independence of the judiciary. The judiciary shall become like a lion without teeth. Furthermore, the sitting of judges in particular benches should be handled by the courts themselves. Any external entity must not be allowed to order a court in the assignment of judges to cases.

CONSTITUTION WITHOUT CONSTITUTIONSLISM

A written Constitution is no guarantee for Constitutionalism. Even Nazi Germany had a constitution but that does not mean that it adhered to the philosophy of Constitutionalism be it a negative or positive aspect of it. As the Supreme Court said in S.R. Chaudhuri v. State of Punjab (2001)[7], the mere existence of a Constitution, by itself, does not ensure constitutionalism. What is important is the political traditions of the people and its spirit and determination to work out its constitutional salvation through the chosen system of its political organisation."

The reality of constitutional experiences demonstrates the presence of constitutions in the core of States whose characteristics are not related to the principles of constitutionalism. Very briefly, some of the characteristics of those experiences:

a) The affirmation of fundamental human rights is not assisted by an adequate system of guarantee

[7] S.R. Chaudhuri v. State of Punjab, (2001) 7 SCC 126

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instruments;

b) An effective separation of powers is not contemplated;

c) The autonomy of politics from religion is not ensured.

The complexity of the phenomenon comes from the fact that these three characteristics, which mark a break from the ideals of constitutionalism, do not occur in isolation but most often combine and intersect, as we shall see below.

A couple of observations can be made from the point of view of comparative research's methodology. First, from the perspective of studies anchored in Western visions, you can see phenomena that are not always interpreted with legal categories rooted in the constitutional experience of the West. Thus, the study of the constitutions without constitutionalism requires a relativistic approach, which means that the constitutional document must be read and interpreted "in relation" to the principles and values that define its state system.

Second, in the study of comparative constitutional law, one must often deal with the phenomena of circulation of legal models characterized by a certain asymmetry or inconsistency. The case of the constitutions without constitutionalism is exemplary. We said that the constitutions in the modern sense are the product of constitutionalism; yet constitutions can be found without the background of ideals and values related to constitutionalism. This is therefore a phenomenon that has observed the circulation of the formal aspect, the linguistic formula "constitution", and the external shell called "constitution"; but not the endorsement of the principles and values that the formula originally intended to express. Confirming therefore, that there are "cracks" that mark the distance between the formal constitution and the actual constitution, between written formulas and rules and living formulas and rules. On the other hand, it is well known that the constitutional models circulate if the ideas behind those legal provisions circulate as well; otherwise, we'll have a mere transposition of empty formulas.

It is appropriate to ask ourselves what are the reasons for an authoritarian State to adopt and proclaim formulas such as "constitution", "human rights", "rule of law" and so on, without recognizing and adopting their substantial value, just as we can ask what functions are intended to be fulfilled by a constitution without roots.

What is the purpose behind an authoritarian regime spending the time, and the political and intellectual resources and energies, in order to give itself a constitution?

Considering that under authoritarian regime we mean a system of power without democratic

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legitimacy, which exercises pervasive control on society and does not tolerate limitations other than those established by itself, what reason could it have to approve a constitutional text?

Evidently, the idea of constitution that exists in authoritarian regimes has different contents and purposes than the constitutions of democratic regimes. It is a fact: the linguistic formula "constitution" is used in authoritarian contexts with different meanings compared to the original. The comparative legal scholar must acknowledge the existence of a plurality of meanings and interpretations of the word "constitution"; but at the same time cannot ignore the original meaning of the word that has formed within an ideal and politically determined cultural context, such as the constitutionalism of liberal-democratic matrix.

The examination of the constitutions of authoritarian regimes shows frequent use of typical formulas of the democratic constitutions; it is very frequent to find self-qualifications and statements that portray the framework of reference standards expected of a democratic constitution. However, since the provisions of the authoritarian constitutions are generally in the availability of political authority, which may evade compliance with them or may introduce derogations and exceptions based on arbitrary assessments, those same constitutions end up fulfilling the purpose of sustaining of the regime.

Therefore, those can reproduce a number of announcements or information, a sort of billboards or political agendas, idealistic aspirations that the regime has sought to proclaim so that the recipients, the citizens, are informed and can freely and or coercively join. In these cases, we have manifesto constitutions. Sometimes the constitutional provisions do not express any political intention or ideal aspiration, but only and exclusively fictions; the purpose is to conceal the real authoritarian practices in these circumstances the approval of a constitution corresponds to a kind of window dressing.

The authoritarian constitutions generally describe the institutional architecture of the power apparatus. From this point of view, they perform a coordinating function between the components of the ruling elite, resolution of possible institutional conflicts and control of the dynamics of internal dissent. It is useful in consolidating the team exercising the authoritarian power, without even minimally involving the people.

The adoption of a constitution by an authoritarian regime pursues more often the need to obtain a recognition by the international community and to establish itself as a subject of international law: the lure of principles such as the rule of law and the adherence to the principles of conservation

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and protection of Human Rights can open the doors of the WTO and give access to the benefits of international trade and the ability to attract foreign investments.

In the international public opinion, the adoption of a written constitution gives to that State a formal reliability that economic or geopolitical reasons can render more than sufficient. International public opinion, therefore, even warned of possible fracture between what is proclaimed in the constitution and what is practiced in the regime, pressed for other advantages and indifferent to the fate of the people subjected to that regime, eventually finds into that authoritarian constitution -either newly adopted or amended to appear more pleasing- the sign of a democratic orientation - or alleged such that deserves to be encouraged.

Another function assigned to the authoritarian constitutions is to calm and placate the claims spread around the country and the population. Just like around the middle of the nineteenth-century monarchies granted the first constitutions to partially satisfy the demands of the emerging middle class, so the authoritarian regimes of the twentieth century have often resorted to the adoption of "honest" constitutions to appease the most pressing demands of the people. In such circumstances, the adoption of a constitution does not change the authoritarian nature of the regime, so that the effective application of constitutional rules or their dis-application remains in the hands of the political authority.

Adopting a constitution in order to obtain the recognition of the international community, or to appease some people's demands or to attract foreign investment, confirms the idea that the meaning given in such cases to the formula "constitution" is the original one, that has its roots in the constitutionalism of the western matrix. The authoritarian regime "wears", honestly or fictitiously, a western matrix constitution to be admitted in the international community or to gain credibility and reliability.

In other words, those authoritarian regimes that adopt a constitution for the purposes of international accreditation and internal peace, in real fact recognize in the formal constitution those attributes that are derived from the constitutionalism of the democratic matrix. So they are not carriers of an original idea of the constitution, they take ownership of the original notion in order to get formal credit in the Westerners' eyes, which are often very forgiving, given the economic and geopolitical interests that support the formal accreditation.

We cannot exclude a priori that the adoption of a constitution that appropriates fictitiously connotations foreign to the authoritarian regime ends up triggering mechanisms of evolution of

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that regime in a democratic sense. According to the opinion of M. Tushnet -that relies on empirical traits, rather than on legal connotations- one could speak of an "authoritarian constitutionalism" in those cases in which -although it is a regime controlled by the ruling party, the party that takes authoritatively all fundamental decisions without the order providing legal instruments through which the decisions taken can be questioned- the following circumstances apply: a) the regime does not exercise arbitrary repressive action against the opposition, although it could impose sanctions and countermeasures; b) the system lets the opposition, although sanctioned, spread some political criticism within certain limits; some mechanisms are developed in order to allow the expression of dissent to the extent that the regime believes convenient, c) political elections are provided for, a sort of "competitive authoritarianism", where competition is apparent only by virtue of measures to ensure the victory of the ruling party, so that the use of physical intimidation and electoral fraud becomes only occasional, d) the ruling party shows sensitive to public opinion, when it senses the force and intensity of social tension is willing to reverse its political decisions.

This is, in hindsight, a number of facts of political importance that express a way of interpreting the constitution, however, according to the arbitrariness of political authority. It is not clear if an authoritarian regime it might have an idea and an experience of original constitutionalism precisely defined as "authoritarian constitutionalism", or if, for a series of political circumstances, the authoritarian regime is keen to keep occasionally or at least to his liking behaviours resembling those of a democratic regime.

The latter perspective seems the most plausible, it follows that the construction of a conceptual category as that of the "authoritarian constitutionalism" based on political attitudes of those authoritarian regimes that mimic certain expressions of Western democracies, does not appear at all convincing.

CONCLUSION

It can be concluded that constitutionalism is a modern concept that desires a political order governed by laws and regulations. With some exceptions most of the countries have Constitutions but it in no way means that they practice constitutionalism. Some of the basic principles developed over time that embody the concept of constitutionalism are separation of powers, judicial control and accountable government. In IR Coehlo v. State of Tamil Nadu,[8] the Court held that Constitutionalism is a legal principle that requires control over the exercise of governmental power

[8] I.R. Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors, 2007

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to ensure that the democratic principles on which the government is formed shall not be destroyed. Chandrachud, CJ, in Minerva Mills case[9] observed, "The Constitution is a precious heritage and, therefore, you cannot destroy its identity". The rise of a constitutional state is essentially an historical process whose chief material is contained in the history of political institutions coupled with the history of western political ideas right from ancient to modern times. There are many scholars from different part of the world who contributed to the development of concept of constitutionalism in different phases of history.

The forces that work against the operation of Constitutional government and the consequences of which shake our faith in the concept of constitutionalism. The three factors discussed in this regard are war, emergency and socio-economic collapse. The countries have different extraordinary provisions under their respective constitutions for war or emergency like situation, where the principle of constitutionalism takes a back seat. Almost every established democratic country at some point of time has suppressed the principles of constitutionalism under extraordinary situation. Limited government has been understood as a concept directly related to constitutionalism. It can be understood from the above discussion that constitutionalism means that the Constitution of a country should contain provisions to limit the authority of the government so that they don't override the Constitution and act in an arbitrary manner, which might threaten the rights of the individuals of the country, a situation which is regularly happening in dictatorships and military rules. Examples of limited governments are the UK, USA, India, etc. Limited government protects the rights of the people and prevents government from exerting extensive or total control over people's lives, actions and speech. This can lead to increased freedom for all. But at the same time but it can also limit the government's ability to take actions on behalf of the people. If the government is too weak, either because of constitutional limitations or political policies, it is possible for individuals to have their freedom restricted by non-governmental concentrations of power.

A discussed above there are certain important and necessary features of constitutionalism like 'Rule of law', 'Separation of power', 'Federalism', Independent judiciary, etc. These features says that the supremacy of law must be maintained, the different institutions must perform their functions without interfering into others domain, federal character of states must be respected and judicial bodies must work independently without any inference from outside. The above

[9] 1980 AIR 1789, 1981 SCR (1) 206

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discussions also shows that the constitution is not the necessity for attaining the constitutionalism. There are many countries in the world who do not have a written constitution but it cannot be said that such countries are not having constitutionalism. As the Supreme Court said in S.R. Chaudhuri v. State of Punjab (2001) the mere existence of a Constitution, by itself, does not ensure constitutionalism.

Constitutionalism, being a vast subject cannot be confined to some principles only. Its essence is in every nation where the government's objective is not only to rule but the empowerment, development and equal opportunities for all. But to understand the meaning and the importance of it, we have to analyse some pre-established doctrines as we have seen above. By analysis of all these contentions in support of Constitutionalism, we can consider its importance in enhancing nation's integrity, fraternity and unity. Rule of Law, Separation of Powers are the principles which usher our legislature and judiciary to provide us a unique, antique and ever-updated or expedited Constitution which is the base of the democracy which is known as the best democracy of the world. The concept of limited government has proved to be a major advancement in protecting the fundamental rights of the citizens from the ruling governments.