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Constitutionalism and Rule of Law in India ; A Critical Examination

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***Abstract*-- Constitutionalism is a normative commitment to limited government, accountable public power, enforceable rights and institutional restraints. A written Constitution may establish the legal framework of the State, but constitutionalism requires that every public authority act within constitutional limits and that those limits be effective in practice. The Indian Constitution embodies this commitment through its Preamble, Fundamental Rights, Directive Principles, federal distribution of powers, institutional checks and judicial review. This article examines the essential principles of constitutionalism, its close relationship with the Rule of Law, the judiciary's role in preserving constitutional supremacy, and the tensions that arise when affirmative action is designed to secure substantive equality for historically marginalized groups. It argues that Indian constitutionalism is transformative rather than merely formal: it seeks both to restrain State power and to use public power to dismantle entrenched disadvantage. Recent decisions on electoral transparency, sub-classification within Scheduled Castes, demolitions without due process and reasonable accommodation illustrate the continuing development—and contestation—of this constitutional project.**

***Keywords*-- Constitutionalism; Rule of Law; Basic Structure; Judicial Review; Separation of Powers; Substantive Equality; Affirmative Action; Transformative Constitutionalism.**

I. Introduction

The proposition that constitutionalism is more than the existence of a written Constitution is fundamental to modern constitutional government. A Constitution may be formally adopted yet fail to control those who exercise power. Constitutionalism therefore concerns the actual organisation, limitation and accountability of State authority. It insists that government is constituted by law, derives its powers from law, and remains answerable to legal and constitutional standards.

The Indian Constitution, which came into force on 26 January 1950, is not simply an institutional charter. Its Preamble promises justice—social, economic and political—liberty, equality and fraternity. It establishes a democratic republic in which governmental power is divided, rights are guaranteed and courts are empowered to enforce constitutional limitations.

At the same time, it seeks social transformation in a society marked by caste hierarchy, gender inequality, poverty and exclusion.

Indian constitutionalism must consequently be understood in two connected senses: as a restraint on arbitrary power and as an instrument for transforming unequal social relations. The central question is whether institutions consistently translate this constitutional promise into practice.

II. Essential Principles Of Constitutionalism

2.1 Constitutional supremacy and limited government

Constitutional supremacy means that the Constitution is the highest law and that all organs of government derive their authority from it. Articles 245 and 246, read with the Seventh Schedule, distribute legislative competence between the Union and the States. Articles 53 and 154 vest executive power in the Union and States respectively, subject to the Constitution. Article 13 invalidates laws inconsistent with Fundamental Rights. Neither Parliament nor the executive possesses unlimited or inherent authority.

The doctrine of limited government requires that public power be exercised only for authorised purposes, through lawful procedures and within substantive constitutional boundaries. In

Kesavananda Bharati v State of Kerala (1973), the Supreme Court held that Parliament's power to amend the Constitution under Article 368 does not extend to destroying its basic structure. The doctrine protects constitutional identity against legally authorised but destructive exercises of constituent power.

2.2 Fundamental rights and human dignity

Part III (Articles 12–35) protects civil and political freedoms and guarantees equality. Articles 14–18 address equality; Articles 19–22 protect important freedoms and personal liberty; Articles 25–28 protect freedom of religion; and Articles 29–30 protect cultural and educational rights. Article 32 provides a guaranteed remedy before the Supreme Court, while Article 226 gives High Courts broad writ jurisdiction.

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The meaning of rights has developed beyond narrow textual formalism. In Maneka Gandhi v Union of India (1978), the Court held that a procedure depriving a person of life or personal liberty under Article 21 must be just, fair and reasonable, and that Articles 14, 19 and 21 must be read together. In Justice K.S. Puttaswamy (Retd.) v Union of India (2017), privacy was recognised as a fundamental right grounded in dignity, liberty and autonomy. These decisions show that constitutionalism protects individuals not merely against unlawful detention but against arbitrary and disproportionate State interference.

2.3 Separation of powers and checks and balances

The Constitution does not prescribe an absolute separation of powers. India follows a parliamentary system in which the executive is drawn from and accountable to the legislature. Nevertheless, legislative, executive and judicial functions are institutionally differentiated. Articles 50, 121, 122, 211 and 212, along with the provisions establishing the courts and legislatures, reflect aspects of this distribution.

The purpose is not to create isolated compartments but to prevent concentration and abuse. The legislature makes law, the executive administers it, and the judiciary adjudicates disputes and reviews legality. Each institution has constitutionally recognised functions, and checks operate through legislative accountability, judicial review, executive responsibility and constitutional procedures. In Indira Nehru Gandhi v Raj Narain (1975), the Court treated free and fair elections, rule of law and judicial review as features of the basic constitutional framework. In Supreme Court Advocates-on-Record Association v Union of India (2015), the Court invalidated the Ninety-Ninth Amendment and the National Judicial Appointments Commission Act, emphasising judicial independence as a basic-structure requirement. The judgment remains debated because the collegium system itself raises concerns about transparency and accountability.

2.4 Rule of Law and non-arbitrariness

The Rule of Law requires that power be exercised under publicly known, prospective and fairly applied laws. It rejects arbitrary government, official impunity and unequal application of legal standards. Article 14's guarantee of equality before the law and equal protection of the laws is central to this principle. In E.P. Royappa v State of Tamil Nadu (1974), the Court connected equality with the rejection of arbitrariness. In S.G. Jaisinghani v Union of India (1967), it stressed that absence of arbitrary power is the first essential of the Rule of Law.

2.5 Democracy, federalism and constitutional accountability

Constitutionalism also requires representative government, periodic elections, political participation and institutional accountability. Articles 324–329 regulate elections, while the Tenth Schedule addresses defection. Federalism distributes power vertically and protects pluralism through the Union, State and local institutions. In S.R. Bommai v Union of India (1994), the Supreme Court affirmed that federalism and secularism are basic features and made the exercise of Article 356 subject to judicial review. The Seventy-Third and Seventy-Fourth Amendments strengthened democratic decentralisation through local self-government.

2.6 Social justice and transformative constitutionalism

The Indian Constitution does not treat equality as a purely formal demand that everyone be treated identically regardless of historical disadvantage. Articles 38, 39, 39A, 41, 45 and 46 direct the State to reduce inequalities, secure livelihood and promote the educational and economic interests of weaker sections, particularly Scheduled Castes and Scheduled Tribes. Fundamental Rights and Directive Principles are complementary. In Minerva Mills v Union of India (1980), the Court held that harmony and balance between Parts III and IV form part of the Constitution's basic structure.

Granville Austin described the Constitution as an instrument of social revolution, seeking to reconcile individual liberty with social reform. More recent scholarship, including Madhav Khosla's work on the Indian founding, highlights the distinctive project of creating democratic citizenship through constitutional institutions and practice. Constitutionalism in India is therefore both limiting and enabling: it restrains State power while authorising measures to address structural injustice.

III. Constitutionalism And The Rule Of Law

Constitutionalism and the Rule of Law are closely related but not identical. The Rule of Law is a central component of constitutionalism; constitutionalism is the wider framework that organises, limits and legitimises public power. A State may enact laws and administer them regularly yet remain authoritarian if laws suppress basic freedoms, eliminate meaningful accountability or concentrate power. Constitutionalism demands that law itself conform to higher constitutional norms.

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A.V. Dicey's classical account emphasised supremacy of regular law, equality before the law and the predominance of legal spirit. In the Indian setting, these ideas must be adapted to a written, supreme Constitution with judicial review, fundamental rights and affirmative duties. The Rule of Law is not satisfied merely because an action is authorised by some statute. The statute and its implementation must also comply with constitutional guarantees, including equality, liberty, non-arbitrariness and procedural fairness.

The connection is visible in Article 14, which prohibits arbitrary State action; Article 21, which requires fair, just and reasonable procedure; Articles 32 and 226, which provide remedies; and Articles 141 and 144, which secure the authority and enforcement of Supreme Court law. Judicial review ensures that legislative and executive action remains within constitutional limits.

Recent decisions illustrate this relationship. In Association for Democratic Reforms v Union of India (2024), the Supreme Court invalidated the Electoral Bond Scheme and related amendments, holding that anonymous political funding infringed the voter's right to information under Article 19(1)(a), and that unlimited corporate contributions were arbitrary under Article 14. The ruling connected electoral transparency with the conditions necessary for meaningful democratic choice.

In In Re: Directions in the Matter of Demolition of Structures (2024), the Court held that executive demolition of a person's property merely because that person was accused or convicted of an offence, without following due process, violates the Rule of Law and separation of powers. The executive cannot assume the judicial function of determining guilt and imposing punishment. The judgment articulated procedural safeguards for demolitions, while leaving lawful action against unauthorised structures possible when due process is followed.

These examples demonstrate that the Rule of Law is not a slogan but a practical discipline imposed on public authorities. Its credibility, however, depends on prompt remedies, compliance with court orders, fair investigation, access to legal assistance and equal treatment regardless of wealth or influence.

IV. Role Of The Judiciary In Upholding Constitutionalism

The judiciary is a principal constitutional guardian, though not the sole custodian of the Constitution. Its central functions include interpreting constitutional provisions, enforcing rights, reviewing the legality of State action and resolving institutional disputes.

First, judicial review protects constitutional supremacy. Articles 13, 32 and 226 empower courts to examine laws and executive action. In Kesavananda Bharati, the basic-structure doctrine placed substantive limits on constitutional amendments. Minerva Mills reaffirmed that limited amending power and judicial review cannot be destroyed. In I.R. Coelho v State of Tamil Nadu (2007), the Court held that laws placed in the Ninth Schedule after 24 April 1973 remain open to review if they damage the basic structure by violating essential rights.

Second, the judiciary has expanded the content of liberty and dignity. Maneka Gandhi transformed Article 21; Puttaswamy recognised privacy; Olga Tellis v Bombay Municipal Corporation (1985) linked livelihood with life; and Common Cause v Union of India (2018) recognised dignity and autonomy in end-of-life decision-making. Public interest litigation, developed through cases such as S.P. Gupta v Union of India (1981) and Bandhua Mukti Morcha v Union of India (1984), relaxed standing rules to improve access to justice for disadvantaged communities.

Third, courts have advanced equality and inclusion. In NALSA v Union of India (2014), the Court recognised the rights of transgender persons and affirmed self-identification of gender. In Navtej Singh Johar v Union of India (2018), it decriminalised consensual same-sex relations between adults and rejected constitutional adjudication founded on majoritarian morality. These cases illustrate transformative constitutionalism: constitutional guarantees must be interpreted to enable dignity, equal citizenship and meaningful participation.

Fourth, the judiciary protects institutional boundaries. In S.R. Bommai, it subjected the proclamation of President's Rule to judicial review. In the NJAC case, it protected judicial independence, although the continuing debate over judicial appointments demonstrates that independence must be balanced with transparency and institutional accountability.

Judicial power also has limits. Courts lack the democratic mandate and administrative capacity to govern every policy field. Excessive judicial intervention may blur institutional boundaries, while judicial delay, unequal access to representation and inconsistent enforcement can weaken constitutional protection. Judicial review should therefore be principled, reasoned and sensitive to institutional competence, without surrendering the judicial duty to enforce rights. The legitimacy of the judiciary depends on independence as well as transparency, consistency, accessibility and reasoned decision-making.

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V. Affirmative Action, Substantive Equality And Marginalized Groups

One of the most challenging questions for Indian constitutionalism is how to reconcile equal treatment with measures designed to remedy historical exclusion. Formal equality treats similarly situated persons alike. Substantive equality recognises that entrenched discrimination, unequal access to education and employment, and social stigma may require differential measures to create genuinely equal opportunity.

The Constitution expressly authorises affirmative action. Article 15(3) permits special provisions for women and children; Article 15(4) enables special provisions for socially and educationally backward classes and SCs and STs; Article 15(5) addresses admissions to educational institutions, subject to its terms; and Article 15(6) provides for economically weaker sections. Article 16(4) permits reservation in public employment for backward classes inadequately represented in State services, while Articles 16(4A) and 16(4B) address specified aspects of reservation in promotion and carried-forward vacancies. Article 46 directs the State to promote the educational and economic interests of weaker sections, especially SCs and STs. Articles 17 and 23–24 further attack caste oppression, forced labour and exploitative practices.

In State of Kerala v N.M. Thomas (1976), the Court recognised that affirmative measures may advance equality rather than constitute exceptions to it. Indra Sawhney v Union of India (1992) upheld OBC reservations, articulated the creamy-layer principle for OBCs and generally maintained a 50 per cent ceiling, subject to exceptional circumstances. The Constitution (One Hundred and Third Amendment) Act, 2019, introduced Articles 15(6) and 16(6) for EWS reservations. In Janhit Abhiyan v Union of India (2022), a majority upheld the amendment, including the exclusion of SCs, STs and OBCs from the EWS category.

A significant recent development is State of Punjab v Davinder Singh (2024). By a 6:1 majority, a seven-judge Bench overruled E.V. Chinnaiah v State of Andhra Pradesh (2004) and held that States may sub-classify Scheduled Castes for reservation where a rational basis and relevant empirical data establish that some groups remain more disadvantaged or inadequately represented. The judgment emphasised that sub-classification must not become political or arbitrary micro-classification. Some judges also discussed applying a creamy-layer principle to SCs and STs, though the opinions were not identical on every aspect.

The decision recognises that constitutional categories may contain internal inequalities and that substantive equality may require attention to those differences.

Affirmative action nevertheless presents difficult questions. How should backwardness and inadequate representation be measured? What data are constitutionally adequate? How can benefits reach the most disadvantaged without fragmenting protected groups? How should reservation be balanced with educational quality and administrative efficiency under Article 335? How can policies be periodically reviewed without making social justice vulnerable to shifting political priorities? These questions require transparent criteria, reliable data, reasoned legislative choices and judicial scrutiny for arbitrariness—not a presumption that reservation is either inherently unconstitutional or an unlimited entitlement.

The constitutional commitment to marginalized groups extends beyond caste-based reservation. Article 15(3), the Equal Remuneration framework, maternity protections and laws addressing violence against women reflect the need for substantive gender equality. In Jane Kaushik v Union of India (2025), the Supreme Court discussed reasonable accommodation and transformative constitutionalism in the context of disability and education, emphasising that equality may require institutional adjustment rather than identical treatment. NALSA and Navtej likewise demonstrate the importance of protecting gender and sexual minorities from exclusion.

The challenge is to ensure that protective measures are both effective and constitutionally disciplined. A measure intended to advance a disadvantaged group must have a legitimate objective, a rational connection to that objective and a defensible evidentiary basis. At the same time, courts should not use formal equality to invalidate measures that respond to real structural barriers. Constitutionalism requires an approach that is attentive to context, evidence, dignity and the lived consequences of public policy.

VI. Contemporary Challenges To Indian Constitutionalism

Despite a strong constitutional text and an extensive body of case law, several challenges persist.

First, the concentration of political and administrative power can weaken checks and balances. Constitutional conventions, legislative scrutiny, parliamentary debate and independent institutions are essential complements to judicial review. Second, delays in the justice system and unequal access to legal representation mean that rights may be formally available but practically inaccessible.

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Third, preventive detention, restrictions on speech and assembly, surveillance and broad discretionary powers require rigorous scrutiny for legality, necessity and proportionality.

Fourth, majoritarian pressures may place pluralism, secularism and minority rights under strain. Constitutional democracy is not simply majority rule; it is majority rule constrained by equal citizenship and fundamental rights. Fifth, social discrimination, caste violence, gender-based violence, disability exclusion and economic inequality reveal the distance between constitutional promise and social reality. Finally, judicial independence must be protected while judicial appointments, case allocation and institutional administration remain open to legitimate demands for transparency and accountability.

The response cannot be to rely on courts alone. Constitutional culture must be sustained by responsible legislatures, impartial administration, independent institutions, a free press, civil society, legal aid and citizens who understand constitutional rights and duties. The Constitution's success depends on everyday institutional practice as much as on landmark judgments.

VII. Critical Evaluation

The Indian constitutional framework offers a powerful model of constitutionalism because it combines constitutional supremacy, enforceable rights, judicial review, federalism, democratic government and social transformation. The basic-structure doctrine prevents constitutional amendment from becoming a route to constitutional destruction. Articles 14 and 21 have enabled courts to confront arbitrariness and procedural unfairness. Directive Principles and affirmative-action provisions make clear that the Constitution is concerned not only with negative liberty but also with social conditions necessary for equal citizenship.

Yet there is a continuing gap between constitutional design and constitutional practice. Formal guarantees may be weakened by arbitrary administration, weak institutional accountability, delayed justice and unequal social power. Judicial activism can protect vulnerable groups, but it cannot substitute for democratic deliberation or effective public administration. Conversely, judicial restraint cannot justify abdication when fundamental rights or basic constitutional structures are threatened.

Affirmative action is a particularly revealing test. If constitutionalism meant only identical treatment, remedial measures could appear exceptional or preferential. But the Indian Constitution recognises that historical exclusion can make identical treatment reproduce inequality.

Substantive equality therefore requires calibrated and evidence-based measures. The Davinder Singh decision reflects this insight, while its insistence on rational criteria and empirical support also illustrates constitutional limits on State action.

Ultimately, constitutionalism is not secured by the text alone, nor by courts alone. It is sustained when all public institutions accept that power is limited, rights are enforceable, differences are accommodated and the dignity of every person is protected.

VIII. Conclusion

The proposition is therefore correct: a written Constitution is a necessary but insufficient condition for constitutionalism. Constitutionalism requires limited government, rights protection, separation of powers, accountability and fidelity to the Rule of Law. In India, these principles are embedded in the Preamble and the institutional and rights-based architecture of the Constitution, and reinforced by judicial doctrines such as basic structure, judicial review, substantive equality and transformative constitutionalism.

The Indian model is distinctive because it seeks simultaneously to prevent arbitrary State power and to use constitutional authority to remedy entrenched injustice. The judiciary has played a vital role in preserving this balance, but its work must be supported by democratic institutions and a constitutional culture that values pluralism, fairness and accountability. The true measure of Indian constitutionalism is not merely whether the Constitution exists, but whether public power is exercised lawfully and whether its promises of justice, liberty, equality and fraternity are experienced by all, especially those historically placed at the margins.

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