

FUNDAMENTAL RIGHTS AS AN EXPRESSION OF CONSTITUTIONALISM IN INDIA

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Introduction

In this present running time of Indian Judiciary and the Society as a whole, a very blistering topic is being discussed and that is 'What are the Fundamental rights of the Citizen' and how are they carved and granted by the 'Constitution of India'. The most recent tempering in this debate has been done by the *Shreya Singhal v. Union of India*⁵¹⁸, where Section 66 A of IT Act has been held as unconstitutional by the Supreme Court, as it was found running in contrast to the spirit of the Article 19(a) of the Constitution, which granted freedom of speech and expression to the subjects of the Country. The Constitution of India under Articles 12 to 35 grant various rights to the subjects of the nation know as "Fundamental Rights" synonymously known as basic Human Rights by the layman of the nation. Going by the list of the fundamental rights sketched in the Indian Constitution it can be seen that all the rights mentioned above are the minimum requirements for a human to live a dignified life. And after *Maneka Gandhi v. Union of India*⁵¹⁹, Article 21 specifically got a new meaning which without changing the text of the Article transformed the meaning of the legal text and transformed the Article in that plethora box, where solution to everyone's problem lies. Thereafter, it has been made a mandate that procedure of law shall be just, fair and reasonable. Mere text of law cannot be taken for granted by the law enforcement authorities, essence of justice and fairness shall be there, without fail. This interpretation expanded the working area of Article 21 so much that Fundamental rights which are not there as text in the Constitution gained ground of their existence. For example:-

- Right to health:- *CESC Ltd. vs. Subash Chandra Bose*⁵²⁰
- Right to sleep :- *Ramlila Maidan Incident V. Home Secretary, Union of India*⁵²¹
- Right to make Appeal:- *M.H. Haskot v.State of Maharashtra*⁵²²
- Right to be protected against police torture:- *Francis Coralie Mullin v. Union Territory of Delhi*⁵²³
- Right to claim damages in criminal law:- *Nilabati Behera v. State of Orissa*⁵²⁴

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⁵¹⁸ WRIT PETITION (CRIMINAL) NO.167 OF 2012

⁵¹⁹ 1978 SCR (2) 621

⁵²⁰ AIR 1992 SC 573

⁵²¹ WRIT PETITION (CRL.) NO. 122 OF 2011

⁵²² AIR 1978 SC1548

⁵²³ AIR 1981 SC 746

⁵²⁴ AIR 1993 SC 1960

- Right to legal aid:- Khatri v. State of Bihar⁵²⁵

By the discussion made so far, it is very much clear that Constitution of India, 1950 is very well adopted by the legal system and its principles enacted in true sense by the judiciary of the country which is not only one of the organ of the state but also the guardian of the Constitution. This progressive attitude by the judiciary is presenting that not only the textual body of the constitution is in acceptance but the spirit of the legal provisions crafted is also very well carried out. However this progress is jinxed by winds of speculation, which alleges that picture is not that rosy as it seems to have been painted. So, keeping the speculations in mind this paper will weigh both sides of arguments that is, first that Constitution is followed in full spirits and second that claims of following constitution are nothing but political conveniences made. To mull over on both sides of the arguments a very important notion that is “Constitutionalism” needs to be analysed first.

Constitutionalism

The configuration of the word “Constitutionalism” seems to be an extension of word ‘Constitution’. The suffix ‘-ism’ seems to add substance in word “Constitution”. This interpretation in terms of English language lays out that Constitutionalism is that spirit of Constitution which makes a halo above the text of the constitution due to which this text seems to have a life, a sensitivity which is required to have a Legal system based on the principle of justice, equity and fairness. Going by the primary and secondary rules laid down by H.L.A Hart, Constitution can be said as primary rules of the society laying down the rule of conduct while secondary rules are laying down the means in which the primary rules can be altered as per the needs of the society rising over-time. In words of Koen Lenaerts, judge on the European Court of First Instance, constitutionalism is "limited government operating under the rule of law"⁵²⁶.

Unswervingly, one thing is clear about constitutionalism which is, that its aura is surrounded by mystery and thereby it is very difficult to define it when it comes to words. But this mystery vanishes when this very concept seeks applicability in any legal system. Meaning by, when textual principles of Constitution are followed as per the directives of rule of law, constitutionalism in constitution is said to be present and followed and if not then the text of Constitution is said to be present in a country but Constitutionalism is absent from the body and the system. For Instance, Countries like United Kingdom, United State of America have constitution based on sound principle of justice, fairness and equality which states that rule of law is there. Hence, constitutionalism is said to

⁵²⁵ AIR 1981 SC 928

⁵²⁶ Koen Lenaerts, *Constitutionalism and the Many Faces of Federalism*, 38 AM. J. COMP. L. 205

be present in these countries. Then we have countries like Pakistan, Afghanistan, Vietnam etc...which though we have constitutions as a body of law but rule of law is absent, meaning by, that Constitution in black and white is there but the spirit is completely absent and by the spirit the indication is pointing towards constitutionalism.

One must understand that Constitutionalism is a principle by which there is acknowledgement of rule of law working in the land with the acknowledgment of presence of structure in legal system, so as to assure basic rights of citizens which are required to assure a dignified life to them.

Seems simple enough!, but actually further lies a Pandora box, waiting to be opened. Constitutionalism stands for a greater mystery. It purports to guarantee that these attributes of law and government will be achieved in accordance with the "rule of law," that it will be directed to the realization of the common good, and that all this is to be accomplished through collective efforts of common man, even though as individuals they might act only in their self-interest. In short, the air of secrecy of constitutionalism holds that democracy and the rule of law have to stand in together. The former derived from the institutionalization of medieval civil disobedience can be made supreme through a special combination of electoral and governmental institutions.⁵²⁷

So what differs Constitution from Constitutionalism is that constitution is simply the body of law that sets forth the fundamental (that is, superior and more difficult to change) rules of a political community. A constitution constitutes as well as constrains political power, by creating working boundaries of the basic institutions and decision-making processes of a regime while constitutionalism is associated with number of more specific procedural and substantive limits that reflect liberal political values, including democracy, separation of powers, fundamental human rights, and judicial review.

Constitutionalism in Indian Constitution

From decades altogether there is one controversial but famous remark made in context of Indian Constitution which is, that the Indian Constitution is the outcome of utilization of “cut, copy and paste method” exploited in regards of Constitutions from United States of America, United Kingdom , Russia, Japan, Ireland, Australia, Germany and Canada. However this is highly debated and stand of scholars on this statement is divided. But point to note here is that no matter at what side the strength of argumentations is more, it is an acknowledged fact that

⁵²⁷ Harvey Wheeler , *The Foundations Of Constitutionalism*, 8 Loy. L. A. L. Rev. 507 1975 (accessed from <http://heinonline.org> on 10th April 2015)

Indian Constitution has that set of written law which is the most prized possession to sustain human life, titled as Fundamental Rights. It is said that Constitution of any country is also a mirror image of the society of people living in it and though the concept of fundamental rights might be borrowed, it demonstrates the fact that Indian Society values life of a Human and believe in concept of humanity. Hence Constitution of India is not a mere another structure of textual law but it is also a structure with a soul labelled as Constitutionalism.

Now the question which arises is, what are the tests which defines that a textual structure of Constitution is breathing Constitutionalism?

And it needs to be noted that these tests cannot give result in a laboratory or in a monitored environment. Human Society within the geography of the nation is the play field here. The concept of the Constitutionalism can be tested on following parameters like:-

- 1) Rights granted by the Constitution to its subjects in order to maintain dignity of a human life
- 2) Rule of law, which is how much fairness, justice and equality is visible and adapted.
- 3) Democracy, Secularism
- 4) Duties undertaken by the state to protect life of its subjects.

Considering the time limitations the researchers narrows down the scope of the test of constitutionalism to Category 1 only for this paper and begins the work with a presumption that principle of constitutionalism is working within the structure of Indian Constitution and the legal system to ensure dignified life to the subjects of the State as guaranteed by Part III of the Constitution under the heading of Fundamental Rights.

Fundamental Rights in Indian Constitution

Article 12 to 35 under Part III of the Constitution titled as “Fundamental Rights” sketch out provisions which are in required to have a dignified life of human by the subjects of the Country.

Fundamental Rights as an expression of Constitutionalism in India

The intention of the researchers behind this exercise of listing fundamental rights was to see whether traces of Constitutionalism can be seen in them or not. And after the analysis following links to constitutionalism are located within the framework of Fundamental Rights drafted in the Constitution of India, 1950:-

- 1) Equality assurance (Art. 14- 16)
- 2) Freedom of speech (Art. 19)
- 3) Protection to individual's life and liberty(Art.21)
- 4) Justice system to be just , fair and reasonable(Art. 20-22)
- 5) Curbing arbitrariness in the Criminal proceedings of law(Art. 20-22)
- 6) Secularism(Art. 25)
- 7) Judicial Remedies(Art.32)

This analysis leads our way to the notion that text of Constitution of India is not dry. The framers of the Constitution without utilizing the word constitutionalism, made sure that its principles are very well mixed in the provisions drafted. However when the principles of constitutionalism were implanted by the Constituent Assembly, it was said that Constitution of India will not survive for long as it is thriving on the borrowed principle of alien lands.

And this proclamation succeeded in the every first year of the adoption of Constitution, when the Apex court in *A.K. Gopalan v. State of Madras*⁵²⁸ declared that procedure formulated by the legislature is more than sufficient to deprive the person of his liberty. This interpretation was a major blow on the concept of personal liberty and natural justice framed in Constitution. Then came *R.C.Cooper v. Union of India*⁵²⁹, where the Court did not shy away to show its Land-lord's attitude and mercilessly gagged agriculture reforms and move to nationalise banks in India. This State of affairs in India kept the nation in category of those countries who though have Constitution but no constitutionalism.

However the things on the table turned when came *Keshvanand Bharati v. State of Kerela*⁵³⁰. Here Court perfectly balanced the political aspirations with the larger interest of the public and stated that Legislature is free to amend the Constitution but kept a rider that the amendment shall not bring any change in the basic structure of the Constitution which it deliberately restrained to explain. However this did not brought a over- night change in working of the all the three organs of the state. Despite this emergency provisions imposed by the then Prime Minister of India Late. Smt. Indira Gandhi was upheld by the Court, which is also called as Constitutional murder by the legal scholars. And this in the opinion of the researchers is indeed a very right term used. The national emergency then is an ideal example when all the organs of the State diverted their attention in killing the concept

⁵²⁸ AIR 1950 SC 27

⁵²⁹ AIR 1970 SC 564

⁵³⁰ AIR 1973 SCC 1461

of constitution and violated the basic principle of life which had been made fundamental to life by the Constitution.

It was only after *Maneka Gandhi v. Union of India*⁵³¹, when the spirit of constitutionalism began to flow in India. A broader meaning to life and liberty was given and Court stated that right to travel abroad is also inculcated under umbrella of liberty . And due process of law ensuring justice, equity and fairness was introduced in Indian Legal System without going into the formality of amending the Constitution so as to substitute 'due process of law' to procedure established by the law. It was made clear that procedure of law cannot be any given point of time be arbitrary, fanciful and oppressive. The procedure shall comply with the principle of natural justice and equality irrespective of the fact that the questioned person here is technically free or under the confinements of State.

The impact of this changed approach was evident in *Sunil Batra v. Delhi Administration*⁵³², where it was stated that:-

*For what is punitively outrageous, scandalizingly unusual or cruel, rehabilitatively counter-productive is unarguably unreasonable or arbitrary. Part III of the Constitution does not part company with the prisoner at the gates. Judicial oversight protects the prisoners' shrunken fundamental rights if frowned, frozen or flouted on by the prison authorities*⁵³³.

This paragraph written by the apex Court clearly presented that now constitutionalism is being followed in full spirits in Constitution of India. And the text is no more a dead matter, in fact it is very much living and evolving document⁵³⁴. No doubt that there have been instances where these rights have been violated by the State and its the legislature have stepped in to ensure checks and balance are made. For example in *Rudal Shah v. State of Bihar*⁵³⁵, Apex Court not only held that fundamental right of liberty guaranteed by Article 21 of the constitution stands violated in case of appellant but also introduced the concept of Compensation and awarded a sum of Rs 35,000/- to the appellant, who was kept in custody for a period of 14 years despite he being acquitted on grounds of insanity. In *Bodhisattva Gautam v. Subhra Chakarboty*⁵³⁶, Court introduced the concept of interim compensation to be awarded to the rape victim to maintain survival till the final verdict is delivered. In The

⁵³¹ *Supra.* note 2

⁵³² AIR 1980 SC 1565

⁵³³ *Id.* at 1586

⁵³⁴ *State of West Bengal v. Kesoram Indu. Ltd., A.I.R. 2005 S.C. 1646*

⁵³⁵ AIR 1983 SC 1086

⁵³⁶ 1996 SCC (1) 490

Chairman, Railway Board & Ors v. Mrs. Chandrima Das & Ors⁵³⁷, Court awarded compensation to a rape survivor amounting Rs 10 lakh when it was the personal conduct of the State employees which was faulty. Court held that State failed to protect life and dignity of a foreign lady which is its ultimate duty.

It is the era after 1980, when the judiciary seek right to health as one of the Rights omitted by the framers as one of the fundamental rights. Through the series of M.C. Mehta cases ranging from closure of tanneries to clean of Yamuna demonstrated the zeal with which the Court was giving serious weightage to this right. The Apex Court skillfully linked Directive Principles laid in Part IV of the Constitution as an effective mechanism to seek the rights laid down in Part III of the Constitution. Right to clean environment was made a fundamental right in Part III and the responsibility was laid on State to provide it under Article 48 A, which says that it is State's duty to provide clean environment to its citizen and shall consistently improve on it. In Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh⁵³⁸ Court prearranged the closure of certain limestone quarries in the Himalayan range of Mussoorie Hill on the grounds that their operations were upsetting India's ecological balance and harming the environment. Even though no direct reference was made to Article 21 of the Constitution, it is clear that the Court entertained the environmental complaints under Article 32-guided by Article 48A as violation right to life, a quality life as guaranteed by Article 21 of the Constitution.

The effect of this health crusade by the Court not only provided a better environment to Indians but also made Highest Court of land accessible to a common man through means of a letter and a telegram and sometimes newspapers. It ignited the fire lying beneath Article 32 and 226 of the Constitution and paved way for public or Social interest litigation. This 'act of lords' sitting on the highest bench of the nation made politicians accountable for their actions and put a tab on their unconstitutional activities as now the common person knew that law of land grants on its person fundamental rights which no one in the world can deny or snatch away.

This horizon of public interest litigation to protect fundamental rights of the individuals also moved towards the garb of reservation. In Ashok Kumar Thakur v. Union of India⁵³⁹, which is also known as OBC reservation case, court granted 27% reservation to people belonging to 'Other Backward Classes' in educational institutes solely on the basis of social and economic backwardness. However while granting this reservation Court observed that on any given day it will prefer to have a casteless society in India. But also acknowledged the fact that since in India everyone is not on same platform of the society, this casteless society is impossibility. Hence this

⁵³⁷ (1999) 6 SCC 667

⁵³⁸ AIR 1985 SC 652

⁵³⁹ (2008)6 SCC 1

opportunity was let out so that a parallel development in those of have's and have not's of the Indian Society could be assured.

Point to note that moment judiciary settled out this political sore of Indian Society, the hidden cysts in Indian Legal System began to spurt out. Most recent blister in this context is the JAAT reservation issues. The people belonging to JAAT community were allotted status of OBC's by the Central Government on 19th December 2013 both in educational Institutes as well as Government services. However in Ram Singh and others v. Union of India⁵⁴⁰, supreme Court of India did not hesitated in quashing the order of Central government stating that communities cannot self proclaim themselves as a backward class on the basis of being "less fortunate" as compared to others and on the flimsy grounds of historical prejudice. In this case Court was though constitutionally right to eradicate this unthoughtful and unconstitutional step of the State but this has lead to rise in major debate as to what shall be the exact test of reservation policies and to whom all it shall be implemented. Recently the Central Government has appointed attorney general Mukul Rohatgi to defend the case of JAAT community in Rajasthan High Court which has pulsatud the GUJJAR community which are alleging bias by the Central government towards their cause of reservation.

Here legislature is acting as a roadblock in the path of the Judiciary which is trying hard to pursue constitutionalism through fundamental rights of the citizen to make sure that a just society can be maintained.

Another conflict zone in arena of constitutionalism arose when in Naaz Foundation v. NCT of Delhi⁵⁴¹, Delhi High Court by upholding the right of privacy neutralized the effect of Section 377 of Indian Penal Code, 1860 for two consenting adults engaged in consensual sex in private. However this constitutionalism of justice through fundamental rights granted to LGBTI community did not went down well with the so- called normal and mainstream society. This lead to rise of Suresh Kumar Koushal and another v. NAZ Foundation and others⁵⁴², where Section 377 was reinstated in total and existence of consensual sex amongst LGBTI was again criminalized.

However a ray of constitutionalism has been reinstated by the Apex court in National Legal Services Authority v. Union of India and others⁵⁴³ by granting a legal identity to third gender and assuring principles of equality to

⁵⁴⁰ WRIT PETITION (CIVIL) NO. 274 OF 2014

⁵⁴¹ (2009) 160 DLT 277

⁵⁴² Civil Appeal No. 10972 of 2013

⁵⁴³ WRIT PETITION (CIVIL) NO.400 OF 2012 along with WRIT PETITION (CIVIL) NO.604 OF 2013

be carried out by the State Governments to bring the socially, educationally and economically backward community and identity of third gender at par.

Most recently in region of Maharashtra a controversy was sparked on March 2nd 2015 when the State Government under Section 5 A to 5D of Maharashtra Animal Preservation (Amendment) Act, 1995 penalized slaughtering any possession of meat of cows, bulls and calves in any form. The recent amendment under Section 8 penalizes the offence with jail term of 5 years and Rs. 10,000 as fine. Now on broader term one might say that ban on slaughter of cows and bulls is justified as it protects animal rights as well as make sure that milch animals are not used for beef consumption. But if this has been real intention of the government then why did it kept buffaloes and goats out of the preview. Why was it not realized that such a ban will increase the price of other forms of meat available and will deprive schedule tribes their staple diet , which is a part of their culture. This ban is clearly in violation of Article 19 which allows right to trade, Article 29 which allows Schedule tribes of Maharashtra belonging to the status of Minority to protect their cultural identity. It is true that certain limitations on Fundamental Rights in interest of greater good of society have been framed but State Government has failed to justify this greater good. Every time on being quizzed, the State Government prefers to cite Mahatma Gandhi arguments of life and non-violence towards living beings. But at the same time forgets the right to life of Schedule Tribes and the people involved in the trade of beef. In *Francis Coralie v. Delhi*⁵⁴⁴, Apex court said that right to life includes living with dignity and includes the bare necessities of adequate nutrition as well. Now how is this being neglected by the State Government as well as the Apex Court which finds nothing unconstitutional in complete beef ban in State of Maharashtra.

It seems that in the recent times judiciary as well as the legislature at one instance or another present themselves as the evil forces who are trying to take away the soul of constitution from the core text. A blame game has emerged on the turf where judiciary alleges that legislature is exceeding its authority and disturbing the balance between the three organs of the society. Most recently by the 121st amendment of the Constitution of India the collegium system of appointment of Supreme Court judges has been brought to an end. Now under Article 124-A of the constitution a clear path way for political parties of both in power as well as in opposition have been brought in⁵⁴⁵. Judiciary alleges that this step will increase immense pressure on it and will lead to tempering of

⁵⁴⁴ AIR 1981 SC 746

⁵⁴⁵ Article 124A. (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:— (a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of the Supreme Court next to the Chief Justice of India —Members, ex officio; (c) the Union Minister in charge of Law and Justice—Member, ex officio; (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition

its attempts to safe guard constitutionalism through its protection of fundamental rights approach. This apprehension was reciprocated but bid adieu recently in famous NJAC Case⁵⁴⁶ Researchers agree to the view taken by the judiciary because has the collegium system been so suffocating for the good of the nation then the fundamental rights which we enjoy today would have bid adieu long back. Had judiciary been so off-track from its role of guardian of Constitution Rs50,000 crore investment by Vedanta in Orissa would never have been shelved.

On the other hand legislature states that in garb of being the guardian of Constitution, judiciary many times steps in its domain and disturb the balance of work. For example, Central and state Government have been trying hard to make Adhaar Card a reality in India but Supreme court announced that it at present can only be one of the Identity card a person holds and hence made it optional. This on a deeper thought is correct also because there are security concerns in collection and formulation of the Adhaar card which Central government till date has not addressed. This conflict between the most prominent organs of the state got deeper when on 13th May 2015, Supreme Court ruled that tax payers money cannot be used to built political cults, exception being Prime Minister, President and chief justice of India. This again for obvious reasons did not go down well with the political parties concerned.

What is being forgotten here that this clash of titans of India Legal System will ultimately bring down the world's largest Constitution. They need to work together for betterment of the Indian Society and to make sure that principles of Constitutionalism which were planted by the framers of our Constitution keep flowing. From its inception till date the grund norm of the Country, that is, Constitution has been amended 122 times, with talks on to amend Article 370 of the Constitution. The question to answer is does it show flexibility to adapt to the changing circumstances in the Society?. The answer here will be subjective. Reason being that one who favours these amendments tends to answer in affirmative, vouching flexibility etc..as a need to do so. While the ones who are opposed to these amendments will answer in negative stating that too much of amendments will destroy the basic appeal of the Constitution. This difference of opinion about working of Constitution in India sends out a very wrong message which is grafting unsteadiness of Constitution of India on world's polity. Though Fundamental rights drafted in our Constitution are in accordance of many international documents like:-

- Universal Declaration of Human Rights, 1948

Party in the House of the People — Members: Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women: Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

⁵⁴⁶ Supreme Court Advocates-on-Record -Association and another v. Union of India WRIT PETITION (CIVIL) NO. 13 OF 2015

- International covenant on Civil and Political Rights, 1966
- International covenant on Economic, Social and Cultural Rights, 1966,

a doubt on their consistent working is often raised. The recent attacks on Churches in the Capital of the Country have raised serious doubts on secularism of the Country which is also the basic feature of our Constitution and coined as unalterable from the Country's political system⁵⁴⁷.

Constitution of India is a very unique document which makes sure that basics right to life of a human are not only restored but enforced properly. Even if entire machinery of legal system fails or refuses to aid a person, Constitution is there at that person's disposal both at State, that is, Article 226 of the Constitution as well as National, that is, Article 32 of the Constitution. But if the intention to follow the principles of Constitution is not there then even the best of the best remedies allotted tend to fail.

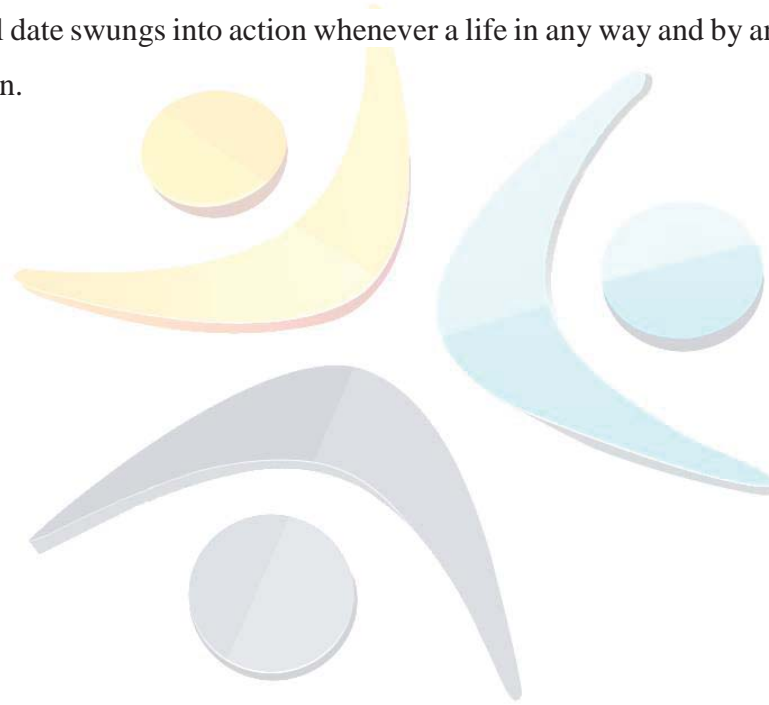
Conclusion

With the discussion carried above and with the analysis extracted, there is no doubt about the fact that there is Constitution in India, that is a textual body which in the language of HLA Hart can be called as set of primary rules is present in India. It is this ascertainment of the spirit of Constitution that is , Constitutionalism which is a problem. Point to be noted here is that it is the judiciary which has occupied itself predominantly to safeguard the concept of constitutionalism in India. With the given time frame of the work , it is only one of the tool to ascertain Constitutionalism, that is Fundamental rights which have been analysed here. What researchers observed here is that text of the Fundamental Rights has been used in such a way by the judiciary that it brought on surface the hidden chests of constitutionalism treasure riddled by the framers of the Constitution. It is noted that there is sort of insecurity and ego clash between the judiciary and the State and its machinery. Along with ego clash the matters have been made worse by the fundamentalist forces of religion. India being a land of diverse religions and culture is a very sensitive nation when it comes to these religious matters. This sensitivity has been well mis-used by the State as well which is strikingly visible in Maharashtra Beef- ban.

Presence of Constitutionalism in Indian Constitution through fundamental rights is an evident proof of its existence in the Constitution. Reason being that the rule of law which is advocated by the Constitutionalism is well implemented by the fundamental rights which have sanctioned subjects of the Country right to earn a livelihood to right to live across the country. Right of education to right to express the thought process etc. What causes hindrance in this process is when the personal interest disguised under the garb of religion, business

⁵⁴⁷ State of Karnataka v. Praveen Bhai Thogadia AIR 2004 SC 2081

interests etc.. steps in. Ideally all the three pillars of the Constitution shall be zealously protecting these rights of the individuals bestowed by the Constitution but the personal interest of the persons running them cast a spell on functioning of Constitutionalism in India. However the Constitution of India still stands strong and is successfully safeguarding interest of its subjects due to the doctrine of basic structure drafted by the Judiciary but what is question of concern here is till when this doctrine can save the concept of Constitutionalism alone if its subjects themselves are not willing to abide by it. To brief the things up, it is correct to say that fundamental rights are the source of constitutionalism in India because they are not only preaching the mandates of the life but by presence of Article 32 and 226 have given a structure also a mode of execution of the State machinery may be through judiciary which till date swings into action whenever a life in any way and by anyone gets violated within the boundaries of the nation.



The LAW BRIGADE