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FROM PRINTING TO DIGITALIZING : THE EVOLUTION OF CONSTITUTIONALISM DUE TO DIGITALIZATION

Abstract

From Writing on Stones to Writing on papers and from writing on papers to getting it printed, From Black and White Pictures to Colourful Pictures, From Radios to Televisions, From Sending messages through Pigeon to sending letters through post office, From sending letters through post office to sending Electronic Mails, etc. Technological Advancement has played a major role, like all other subjects, in constitutional governance transformed from constitutionalism. The technological advancement has fundamentally evolved the fundamentals of constitutionalism, somewhere hampering the legal framework due to new experiences and lack of proper way of treating technology. This paper surveys the changes of constitutional norms and principals as the society transforms from printage to digital age. The people in the former phase relied on newspapers, magazines, novels or books, or other forms of building awareness, being updated, safeguarding freedom of expression, spreading updates and notify democratic governances. In the contrary, the digital advancement has taken a sudden flip making people aware with every small information leading to both awareness and increase in knowledge, controversies and atrocities. The digital transformation needs changes in governance which countries and the government lacked. It somehow breaches rights and freedom of people, breaching privacy leading to cybercrimes and other digitalised offences.

This paper examines how did Constitutionalism rise and how it was brought into society, The Rise of Digital Constitutionalism, The Challenges in converting Constitutionalism into Digitalised form. What evolutions took place between the path from Constitutionalism to Digital Constitutionalism. What are the virtues of Digitalised Constitutionalism and What are its challenges. What is the Future of Digital Constitutionalism and Then this research paper ends with Landmark Legal cases, legal developments, and how the courts and government are adapting the new frameworks.

Keywords: Digitalization, Constitutionalism, Democratic Governance, Digital Advancement, etc.

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1. What is Constitutionalism?

As Lord Acton stated, "Power Corrupts, Absolute Power Corrupts Absolutely"¹. This means that if power is allotted to any person without limitation it will become arbitrary in future. In the same way, Constitution, being the sovereign authority and ruling body of every Country provides powers to its citizens and its government but it rarely sets a limit to the powers allotted. So to set limits and keep a check on the powers of the Citizens and Government, Constitutionalism term was used in Late 18th Century by Robert Southey, He explained Constitutionalism as an act that specifies that a country should be governed by well-defined rules or the sovereign authority i.e. Constitution in India. Constitutionalism is usually regarded as limited government i.e. it limits the power of the government of a state. Constitutionalism is that doctrine which helps in making sure that government is ruled by an authority and which helps them in working as the duty is provided to them, rather than being irresponsible. Constitutionalism makes sure that every ruler work effectively without procrastinating the work or getting it done arbitrarily.

Constitutionalism makes sure though all the organs of the government and all the bodies of governments are independent in their working but it keeps check and balances for all so that no individual having authority crosses the limits given to that person and does not become arbitrary in their rule, It helps in fair functioning of the government. It helps in determining the jurisdiction under which the authority has the power to work. Constitutionalism acts as a spy on all the working authorities, helps in identifying arbitrariness and then punish or reduce the power of person using arbitrariness this function helps in maintaining balance of powers and promote equality for all the masses. Though Constitution is found almost in every

country but implementing Constitutionalism effectively is a very rarely found which leads to lack in effective working of the government of the country. The Most recent example of ineffective application of the Constitution is Bangladesh where the norms of the Constitution are not effectively applied inspite of having a good framework of the Constitution and which is leading to internal disturbances. Constitutionalism makes sure that democratic principle of the preamble of India is effectively applied, and ensures that the elected representative works for the betterment of the people and society, ensures development of the society without being capricious.

- ¹ Thucydides," Lord Acton: 'Power corrupts, and absolute power corrupts" The Socratic Method

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Constitutionalism creates certain ethical behaviour and attributes within or according to which every government authority has to work, anything against it becomes ultra vires and applicable for punishment. Constitutionalism ensures the basic principles of the Constitution of every country are followed like- Rule of Law and Procedure established by law being the two every important principles that Constitutionalism works upon.

Constitutionalism assures that the principle given by Stan Lee is followed in i.e. With Great Power Comes Great Responsibilities. Furthermore, Constitutionalism helps in providing justice to the people who are suffering from arbitrariness of the ruling government.

2. What is Digital Constitutionalism?

As the society is dynamic in nature it brings new changes in its trends in every upcoming period Likewise the people within the society need to transform themselves to cope up with environment in the same-way Government's working needs to be transformed through Constitutional amendments. So with the changing environment and overtake of Western Culture , technological advancement is in hike, everyday a new technological advancement takes place which made people technologically active and that brought an alarming situation of bringing transformation to the constitutional norms and balancing them with the Technological Advancement.

Digital Constitutionalism, as the name suggests, is a compilation of two words namely 'Digital' which relates to the Technological advancement and Techno-World and 'Constitutionalism' means the norms and principles mentioned in the Constitution of a Country, Like India. Digital Constitutionalism depicts the application of norms of the Constitution to the technological revolution and helps in promotion of good governance and Programs that streamline the working of the Government.

Digital Constitutionalism acts as an advanced and evolved form of Constitutionalism which meets the current societal needs in the Digital Age. Digital Constitutionalism tends to widen the scope of Constitutionalism and brings certain new Constitutional norms that can balance the technological advancements with the current society. It identifies the limitations of Traditional Constitutionalism and tries to covers the gaps. Digital Constitutionalism looks after the influence of digitalisation on Constitutional Principles and norms. It tries to amplify the scope and working of Constitution. Digital Constitutionalism helps in acknowledging the trends in the digital age and work in the balanced way. It connects the Public authorities and Private Powers so that immediate complaint measures could be taken. When the Public authorities does not work properly it helps Private individuals in clamming their rights and

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ensuring that the officials perform their duty properly and does not become arbitrary. The dominance of electronic devices and expansion of social media networks has brought an alarming situation due to competition has compelled to expand the Constitutional Norms. The Digital Constitutionalism allows people from remote areas to approach the concerned authorities for resolution of any particular problem. Digital Constitutionalism is an evolution of the Traditional Constitutionalism which helps in including electronic communication, e courts, e-cases, helps in providing daily updates to people about the working in all the organs of the government, it helps an individual to reach to different authorities online, etc. Digital Constitutionalism has helped to cover the problems faced by people of backward areas by reaching them. Like- The New Indian Criminal Laws namely The BNS, BNSS, BSA, etc. have included various new norms that deal with electronic allowance for people like Electronic Communication, Audio Video Electronic Means, E-FIR, etc. Digital Constitutionalism has given the Constitutionalism norms a multidimensional scope because of its reach in every small place within the country. It has allowed people to know update of new cases everyday and the proceedings within a court. Digital Constitutionalism provides a platform to get solutions to problems in virtual modes. It allows small issues to be cleared virtually and reduce court pressure. Helps reduction of traffic in courts for case resolution. Digital Constitutionalism streamlines all the norms and the state in a horizontal stream,controls all of the to work properly.

3. The Importance of Constitutionalism

Constitutionalism is support to the norms of the Constitution of the country. It sets a proper order and limit for the following of Constitutional norms by the Government of the Country. So, it plays a very vital role in the working of Indian Constitution.

Likewise, there are many more points that makes Constitutionalism an important feature -

Limiting Government's Powers- As the Constitution of India and every other country provides many powers for the effective governance of the country , Constitutionalism helps in limiting those powers so that it should not be exercised more than it should actually be exercised. Constitutionalism helps maintaining the jurisdictional value of a particular authority and limits its work.

4. The Rise of Constitutionalism and Digital Constitutionalism

The Rise of Constitutionalism refers to the evolution of Constitutionalism from scratch. It depicts the historical development of the idea that government should perform their powers within the jurisdiction that is provided to them and it limits the powers not to work arbitrarily

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and against its spirit. It helps in ensuring that Constitutional laws are abided and followed effectively as per The Rule Of Law.

The Evolution of Constitutionalism can be traced back from several key aspects in history,

Ancient and Medieval Period- Greek and Roman traditions- In Ancient Greece, several thinkers like Aristotle, Plato, etc analysed the scheme of framework of a constitution in governance of the past.

5. The Virtues of Digital Constitutionalism

Digital Constitutionalism has digitalised the working of the people as well as the state . It has expanded its scope to various global platforms through social media networks. Likewise, There are many more virtues of Digital Constitutionalism that are as follows

I. Ensuring Protection of Human Rights- Digital Constitutionalism has protection of Human Rights both Fundamentally and Otherwise,

II. The Right to Privacy - Digital Constitutionalism helps in ensuring that people have their digital rights and also have their privacy. Digital Constitutionalism helps to protect the data of individuals creating strict norms of for sharing of data and recording data wisely. It brings laws and regulations for protection of privacy , It also makes sure that the government and social media networks values the privacy of individuals.

- **Freedom of Speech-** The Digital Constitutionalism helps in spreading own thoughts and thinking through social media networks but without infringing

others rights and interests.

- **Freedom to Access Information**
- **Freedom to file applications online**
- **Freedom to file complaints online**
- **Freedom to file FIRs online**

III. Limitation to Governments Jurisdiction- The Digital Constitutionalism helps in limiting the powers of the government to an extent they are provided and not letting them working beyond their powers.

IV. Checks and Balances- Digital Constitutionalism helps in keeping checks and balances on different organs of the government by making their working lives and transparent. **V.**

Consumer Rights- Digital Constitutionalism maintains rights of consumers by recording proper ids and details and allowing electronic filling of consumer cases. **VI. Equality-**

Digital Constitutionalism helps in promoting equality between people and the government by equally limiting powers of the government as well as individuals.

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VII. Cyber Security- Digital Constitutionalism ensures security through cyber laws and safety ensuring data not to be leaked without any attestation.

6. Challenges of Digital Constitutionalism

With Virtues always joins vice, Digital Constitutionalism imbeds many challenges along with its advancement. The Key Challenges of Digital Constitutionalism include.

I. Data Privacy- Digital Constitutionalism lags in protecting the data of individuals due to proper technological advancement and management. It does not allows proper streamlined protection of personal documents making it public-ally available to all.

II. Leads to Fake Complaints- Digital Constitutionalism though allows electronic complaints but also leads to filing of fake complaints that sometimes questions innocent and defames his or her identity. It also leads to ignorance of serious complaints due to access complaints.

III. Lack Of Transparency- Digital Constitutionalism lacks transparency due to less trust on digital platforms and technologies. This hides informations or spreads fake or hampered news.

IV. Artificial Intelligence- It does not allows the Effective use of human resources and leads to dependency on the Artificial Intelligence. It reduces employment rate making people to enter the BPL(Below Poverty Line) category.

V. Evidences- Digital Constitutionalism hampers real evidences by the digital evidences which does not allow proper justice to be made to any offence.

7. Challenges in Converting Constitutionalism to Digital Constitutionalism

Though it looks very easy to find the conversion of Constitutionalism to Digital Constitutionalism but it becomes very challenging when having a large population and lack in technological advancement for all due to economic disparities.

In a country like India where many are illiterate , uneducated and are not economically viable people are not able to enjoy the virtues of Digital Constitutionalism and it is leading to lack of knowledge and access to technology somewhere making it unequal.

I. Making laws related to digital world- Digital Constitutionalism forced laws to be made as per the Digital World which is challenging due to diverse society and lack of technological knowledge.

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II. Checking online complaints- It becomes hard to check all the complaints online because few information is missed and is hard to understand due to auto changes and that lacks transparency and accountability.

III. Deleting the traditional framework- The society being used too with the traditional framework takes a very long time to replace the traditional norms with the new norms and takes time to accept and learn the new once.

IV. Global Nature - Digital Constitutionalism expands globally needing more and more laws that govern countries mutually

V. E-courts: The E courts are hampering the normal courts and are leading to delay in the cases that are serious. This sometimes takes time , lacks understanding and explanation, lacks conformity of information.

VI. Private Control over Digital Platforms- The technological changes have transferred individual controls to digital platforms and becomes challenging to manage constitutional governance.

8. Future of Digital Constitutionalism

Digital Constitutionalism being required to be transformed from time to time due to technological advancements. It would bring various positive impacts and but also certain evils

with itself.

Virtues

- I. **Global Connectivity-** It will help in connecting more with other countries and making common Constitutional Norms and spread the principles which are effective or accept those principles that are needed as per the time.
- II. **Harmonise Digital Laws-** The Future of digital constitutionalism will increase attempts and expectations of harmonising digital regulations. Alarming on issues such as Data Privacy, Cyber Law, International Human Right Laws, etc.
- III. **Empowering Masses-** Digital Constitutionalism helps in promoting individuals thoughts and expectations by giving them an option of approaching virtually within no time. It will help in connecting to remote places and developing them equally.
- IV. **Democratisation of learning-** Digital Constitutionalism will help in access of information from all the countries and gain knowledge as well as experience.
- V. **Innovation-** Digital Constitutionalism will help in innovation of new laws for AI and other upcoming technological advancements.

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Vice

- I. **Over regulations-** The Digital Constitutionalism in future will regulate the individuals and the society that will make their working tough and untrusted.
- II. **Lack of Transparency -** Digital Constitutionalism in future will lead to frauds and misinterpretations which lead to lack of transparency and will not allow actual justice to prevail.
- III. **Lack Of Accountability -** Digital Constitutionalism Will lead to lack in accountability and trust on the information online.
- IV. **Hamper the evidences in the court-** Digital Constitutionalism will create a gap between the real evidences and the Digital Evidences which will hamper the real evidence and will not allow justice to prevail effectively.
- V. **Challenges in Learning and Installing same technology for all-** Digital Constitutionalism in the upcoming time lead to problems in way of handling the new technology because of lack of knowledge and affordability to access the technology.

9. How the courts and government are adapting the digital constitutionalism?

With the advancement in the technology the organs of the government also need to change and develop themselves in their working. The organs of the government also needs to develop the change in the environment.

The Digital Constitutionalism is recognised and made into working in almost all the courts and for all the governments in most of the countries.

I. Judicial Interpretation and Expansion of principles of Constitutionalism- The scope of judiciary has been increased in all the countries like E court websites, online case, online case filing.,etc.

II. Data Protection Laws- There are several legislations and programs that have been introduced in order to protect the data of individuals and subsequently the data privacy **III. Electronic Communications-** All the government and courts have started accepting the e-complaints and E-FIRs which lead to immediate complaints and speedy resolution of problems.

10. Case Studies

In 1976, during the Emergency imposed by Indira Gandhi's Congress government, the Supreme Court's decision in the case of **ADM Jabalpur v. S.S. Shukla**² controversially held that even the fundamental right to life under Article 21 of the Indian Constitution could be suspended during an Emergency. Four out of five judges supported this view, but Justice H.R. Khanna dissented, arguing that the right to life should remain inviolable. It indirectly depicted the danger of unmanaged state powers and the significance of Judicial Review in protection of Fundamental Rights of Human in all aspects whether Digital or otherwise. Decades later, in 2018, the Supreme Court in Justice **K.S. Puttaswamy (Retd.) v. Union of India**³ recognized the right to privacy as a fundamental right under Right to life and Personal liberty which can be only be snatched as per the procedure established by law. The apex court held that As Right to Privacy is included under Article 21 it should not be harmed even in digital spheres. However the court ratified The Aadhar Card Programme at certain domains especially in those which concern private corporations to avoid misuse of personal

information.

In the case of **National Legal Services Authority (NALSA) v. Union of India**⁴ it was held “The role of the Court is to understand the central purpose and theme of the Constitution for the welfare of the society. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social reality that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law is the result of social reality.”

The Supreme Court of India, in the case of **Anuradha Bhasin v. Union of India**⁵, dealt with the issue of internet shutdowns and restrictions under Section 144 of the Cr.P.C. in Jammu and Kashmir following the abrogation of Article 370. The Court held that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business, or occupation over the medium of the internet is constitutionally protected under Article 19(1)(a), which provide Freedom of Speech and Expression, and Article 19(1)(g), that allows citizens of the country to practice any profession or business or trade, of the Constitution. Any restriction on these rights must be in accordance with Article 19(2) and (6), including the test of proportionality.

² - AIR 1976 SC 1207

³ AIR 2017 SC 4161

⁴ 2014 INSC 275

⁵ AIR 2020 SC 1308

In the case of **Shreya Singhal v Union of India (2015)**, The Apex Court repealed Section 66A of IT Act, 2000 because it found that this section is vague, arbitrary, inappropriate, which breached Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Indian Constitution.

Further In The case of **Tahseen S. Poonawalla v. Union of India**, The court ordered the State to keep vigilance on the spread of Fake news and false defamatory statements in order to ensure transparency, reliability and accountability which will help in making best use of Virtual platforms. It also helps legislative bodies to reduce the number of evils and breach caused by online misrepresented information.

11. Conclusion

Constitutionalism plays a very vital role in order to gives life to the norms of the Constitution of a Particular Country. It helps in maintaining the government, limiting their power and

ensuring effective functioning. The Rise of Digital technological world has reformed the traditional constitutional landscape remarkably, which further let in adaptation of the modern techniques with blend of the old basic principles by the courts, government, administrative bodies and other official bodies working on behalf of the country. Digital Constitutionalism depicts the evolution of framework by adding online methods of applications in functioning of all the three organs i.e. Legislature, Executive, and Judiciary including all the lower bodies formed by them. It also expands the current fundamental rights like right of privacy, freedom of speech and expression, freedom to access information but additionally imposes certain restrictions so that it should not breach others freedom and maintains Privacy, Digital Surveillance, Accountability and Reliability.

Though Digital Constitutionalism imposes good impacts on the country's but also brings certain significant challenges like Managing Cross Border Relationships, Balancing Regulatory Control, which ensures accountability and reliability.

As India is a diverse country with differences in situations and living including Economic Divide, Capability and Choice division it becomes very tough to implement Digital Constitutionalism in its complete form. It still is processing to come into its real form, but administrative bodies, legislative bodies, and courts expanded its scope to digital domain. In The Future focus will be on Preparing properly crafted cyber security laws which could help in avoiding cyber problems, Allowing connection of all the remote areas to the pivotal of the country's development, Expanding the scope of Privacy, Being Globally Active, And Promote Innovation and Creativity, etc. Further, With Technological Evolution there is a need to amend

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the norms and principles of the Indian Constitution and other Constructions and transform the functioning of Constitution to a digitalised form i.e. Promote Digital Constitutionalism so that the individuals from different areas could reach to authorities for getting their issues resolved easily. This paper tends to impart knowledge and learning on The Meaning of Constitutionalism , The Importance of Digital Constitutionalism, Meaning of Digital Constitutionalism and its importance, Its future provides a detailed insight on Digital Constitutionalism which copes up with the present environment. It also provides what are the advantages and disadvantages of Digital Constitutionalism, challenges in transforming Constitutionalism to Digital Constitutionalism, And explains in brief how the organs of the government are accepting Digital Constitutionalism and are ensuring effective working.

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