

Limited Government and Constitutionalism in India: Balancing Power and Accountability

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ABSTRACT

Limited government is a constitutional principle rooted in the idea of restricting state power to protect individual liberties and prevent authoritarian rule. In India, this concept has been enshrined in the Constitution through the separation of powers, checks and balances, judicial review, and federalism. This paper argues that a re-evaluation of the balance between state intervention and individual freedoms is necessary to ensure that the principle of limited government continues to serve as a bulwark against authoritarian tendencies while adapting to India's socio-political realities. This research critically examines the evolution and operation of limited government in India, exploring how constitutional provisions, statutory frameworks, and judicial decisions have shaped its contours. Further, the research analyses the judiciary's role in maintaining the balance of power and enforcing the limits of government action, focusing on landmark Supreme Court judgments that have upheld constitutional checks on government authority. However, the application of limited government in India presents certain challenges. The article highlights key challenges that limit the effectiveness of this principle in India, such as the abuse of emergency power, money bills, colourable legislation and judicial overreach. Concerns about judicial overreach also raise questions about the judiciary's role in preserving limited government. This research aims to contribute to the discourse on constitutional governance in India. It offers recommendations for strengthening the principle of limited government in the face of evolving social, political and legal dynamics.

KEYWORDS: Constitutionalism, Limited Government, Fundamental Rights, Rule of Law, Judicial Review.

INTRODUCTION

The term *government* can be defined as the organised system through which a group of people in a defined territory exercise authority and control over the affairs of the society. It is responsible to legislate, execute the legislation and adjudicate the rights and liabilities of the people. There are many forms of government e.g. Democracy, Monarchy, Authoritarianism, Totalitarianism, Communism, Theocracy, Oligarchy etc. Diversity in the various countries' historical, social and political backgrounds is responsible for the different forms of government in different countries. While many countries choose different systems based on their histories and cultures, the fundamental question of how much power the government should wield remains vital. The form of government determines how power is apportioned and exercised within the state.

In this context, *limited government* becomes particularly significant, especially in democratic frameworks. It emphasizes the need for institutional checks and balances to prevent the concentration of power, ensuring that authority is exercised within the boundaries set by the Constitution. This concept leads us to the distinction between merely having a constitution and truly upholding constitutionalism. The distinction between having a constitution and upholding constitutionalism is crucial in understanding democratic governance. *Constitutionalism* refers to the practice of limiting government power to protect individual rights and prevent the abuse of authority. However, merely having a constitution does not guarantee constitutionalism. For example, a dictator may impose a constitution that reflects his will in the state but this does not mean constitutionalism exists there. A clear example of this is the *Weimar Constitution* in Germany and Adolf Hitler's rise to power. The Weimar Constitution, established in 1919, was a democratic document that aimed to ensure freedom, human rights, and the rule of law. However, through political manipulation, Hitler exploited loopholes in this constitution, especially the use of emergency powers under Article 48, which allowed him to bypass democratic processes. By 1933, with the passage of the Enabling Act, Hitler essentially dismantled the constitutional framework, concentrating absolute power in his hands. Though Germany had a constitution, constitutionalism ceased to exist under Hitler. The rule of law was subverted, civil liberties were crushed, and the government became authoritarian. It demonstrates that a constitution alone does not guarantee constitutionalism. Without the rule of law, limited government cannot be formed, and without a limited government, constitutionalism cannot thrive. Thus, while a constitution may exist in a dictatorial regime, constitutionalism cannot. True constitutionalism requires not just a written constitution but also an unwavering commitment to the fundamental rights, independence of the judiciary, and principles of justice and equality. Therefore, the limited form of government is necessary to secure constitutionalism in any country.

To understand the Concept of Limited Government, it becomes necessary to know the foundation of political philosophy, constitutional history and judicial pronouncements. *Thomas*

Hobbes (First Social Contractarian) gave a theory that people came into agreement with the state by delegating power to the state to make decisions on their behalf and surrendered their all rights (Hobbes, 1651). His idea about government is known as the *Theory of Absolute Sovereignty*. Later, *John Locke* stated that Humans are entitled to three rights from their birth: right to life, liberty and property. These are natural rights that cannot be violated by the state in any condition. Locke put these rights as restrictions upon the power of Government (Locke, 1999). In this way, he paved the foundation of Limited Government. After the enforcement of the Constitution of the USA in 1789 and the Constitution of France in 1793, The idea of *Limited Government* came into existence in the practical sense.

The idea of limited government came into existence in India with the enforcement of the Constitution of India in 1950. India follows the Constitutional Parliamentary form of Government. Here, people elect their representatives through election and empower them to legislate and form a government. Parliament can make laws and also amend the Constitution. While using legislative or amending power, Parliament cannot encroach, abridge or violate any fundamental right. Parliament can use its power but is subject to the basic structure of the Constitution of India. India follows the separation of power, but its nature is flexible due to the Limited form of Government. The government of India is responsible towards Lok Sabha. The judiciary is empowered under Article 13 of the Constitution of India to review whether parliament has used its power within or beyond the constitutional framework. Emergency provisions, colourable legislation and other political limitations are major challenges to the effective application of Limited Government. The provisions of the constitution that safeguard fundamental and constitutional rights, limit or restrict the powers of government, and enforce the principles of constitutionalism in India are, in theory, protected by the constitution itself, which can be amended subject to limitations imposed under Article 368 of the Constitution of India and in practice, by the judiciary, which acts as a *sentinel on the qui vive* in through judicial review.

CONSTITUTIONAL FRAMEWORK RELATED WITH LIMITED GOVERNMENT

The Constitution is a document that outlines guidelines for how a country is to be governed and how its government should be organised. The government is obligated to uphold the Constitution and is not permitted to do any act beyond the constitutional restrictions. These restrictions on the executive branch of government gradually contribute to the idea of constitutionalism. Fundamentally, constitutionalism holds that the scope of the government should be constrained and that its decisions should not be made arbitrarily. The idea of constitutionalism promotes the idea that a government should not supersede the Constitution, which is the supreme law of the state, much as in a democracy the people have the ultimate power rather than the governing power. The Preamble of the constitution of India states that the people of India have adopted, enacted, and given themselves this constitution. Also, in *Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461* case, the Supreme Court affirmed that legal sovereignty in India lies with the people of India and that the preamble is an integral part of the constitution. According to *Hans Kelsen*, no norm can violate its superior norm from which it derives its authority. The Constitution is like a *Grundnorm* and any legislative and executive action of the government must conform to the supreme norm (Kelsen, 1966). The Magna Carta (1215) limited the power of the king and established the rule of law by declaring that even the king was subject to the law and that the law was above the king. The concept of

Rule of Law is directly related to Limited Government and Constitutionalism. Rule of Law consists of three principles: (1) Equality before the Law. (2) Supremacy of Law. (3) Individual Liberty and independence of Judiciary. These principles are enshrined in Articles 13 and 14 of the Constitution of India. Article 13(1) declares the laws made before the commencement of the Constitution void to the extent of their inconsistency with the provisions of Part III (Fundamental Rights). Article 13(2) deals with the laws made after the commencement of the Constitution. If such laws are inconsistent with the fundamental rights, they will be declared void to the extent of inconsistency.

The Supreme Court is the guardian of the Constitution and the Supreme Court and High Courts are protectors of fundamental rights. If any fundamental right of a person guaranteed in Part III is violated by the state, he/she can approach the Supreme Court under Article 32 and the High Court under Article 226. The Supreme Court is empowered to interpret the dimensions of fundamental rights. We can say that the Judiciary plays a significant role in maintaining the Limited form of Government in India. Constitutional provisions related to Judicial Review are Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372. In *Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461*, it was pronounced by the Judiciary that the State can make any law even amend the fundamental rights but not violating the Basic Structure of the Constitution of India. If it is found that a state's act is inconsistent with the basic features interpreted by the Judiciary, then the judiciary can declare it unconstitutional and void. The principle given in this case is known as the *Doctrine of Basic Structure*. Values mentioned in the preamble along with some important ingredients of Indian Democracy have been declared by the Supreme Court as basic features of the Indian Constitution e.g. federalism, secularism, fair election etc. Not only fundamental rights and the doctrine of basic structure are restrictions upon the state but the distribution of power is also a limitation upon powers of the state. Generally, Parliament cannot make law on the state list's matter and the state cannot make law on the union list's matter. If there is any inconsistency between union law and state law on a particular subject matter under Articles 251 and 254, the Supreme Court may declare the state law void and union law will prevail. The Constitution was criticized for having provisions of judicial review by some members of the Constituent Assembly for being a potential *lawyer's paradise*. Dr. B.R. Ambedkar defended the provisions of judicial review and called them absolutely necessary. According to him, the provisions for judicial review and particularly for the writ jurisdiction that gave quick relief against the abridgement of fundamental rights constituted the heart of the constitution, the very soul of it (Constituent Assembly Debate, 1948).

ROLE OF THE JUDICIARY IN UPHOLDING LIMITED GOVERNMENT

The Concept of Limited Government is an antithesis of Absolutism. It is a significant form of government that maintains the form of democracy by protecting the fundamental rights of people. If there were no restrictions in the form of constitutionalism, the state may use its power arbitrarily and democracy will get defected. The role of the Supreme Court of India in upholding the philosophy of limited government can be traced back to the inception of the Constitution. The Supreme Court of India faced its first case of judicial review in *A.K. Gopalan v. State of Madras AIR 1950 SC 27*, the Court asserted that the power of judicial review was inherent in a written constitution and therefore the provision in Article 13(2) that a law inconsistent with fundamental rights would be void, was made by way of abundant caution (*ex*

abundanti cautela) and that the Court would have had such power even if that provision was absent (Sathe, 2003). The interpretation of the Constitution as a legal instrument and its obligation is the function of the courts. Gajendragadkar, C.J. said in the case of *In Re: Special Reference Case*, AIR 1965 SC 745 that “Though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. In a democratic country governed by a written Constitution, it is the Constitution that is supreme and sovereign. But it is the duty of this court to interpret the Constitution for the meaning of which this court is the final arbiter.” The judiciary takes on the role of the protector of the Constitution, whenever a constitution is justiciable. As Dicey says, “The system, which makes the judge the guardian of the Constitution, provides the only adequate safeguard which has hitherto been invented against unconstitutional legislation” (Dicey, 1959).

In the case of *I.C. Golaknath v. State of Punjab* AIR 1967 SC 1643, the Supreme Court considered the amending power as a legislative power by establishing that amendment by Article 368 falls under Article 13(2). The Apex Court said that Parliament cannot amend the provisions of fundamental rights. The Supreme Court, in the *Kesavananda Bharati case*, overruled the decision given in Golaknath’s Case and interpreted the clause “The Constitution will stand amended” given in Article 368 as Parliament can amend the Constitution including fundamental rights but the basic structure of the Constitution must not be defected. The Apex Court said that there is a clear demarcation between legislative power given in 13(2) and amending power given in Article 368. Amending power is the constituent power of the Parliament. What is the Basic Structure? This question will be interpreted by the Supreme Court whenever it is necessary.

Prof. Upendra Baxi wrote in an article that the constituent power was shared between Parliament and the Supreme Court (Baxi, 1978). In *Indira Nehru Gandhi v. Raj Narain* (1975) 2 SCC 159, the Supreme Court declared Judicial Review as a Basic Structure of the Constitution of India. Supreme Court, in the case of *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125, said that the power of judicial review vested in the Supreme Court and High Courts by Articles 32 and 226 respectively is a part of the basic structure of the Constitution and there is the supervision of the Supreme Court and High Court over the Administrative Tribunals (Articles 323 A and 323 B) is also part of the basic structure of the Constitution. The battle between the parliament and the judiciary intensified with the amendment in Article 368. Parliament attempted to curtail the powers of the judiciary by asserting that no constitutional amendment could be questioned in any court and also sought to place limitations on judicial review by insertion of clauses 4 and 5 in Article 368 through the 42nd Constitutional Amendment Act, 1976. The Supreme Court struck down these provisions of the 42nd Amendment in the case of *Minerva Mills v. Union of India* (1980)2 SCC 591, reaffirming the basic structure doctrine. The Supreme Court held that judicial review is an essential feature of the Constitution and cannot be taken away by Parliament. The Court held that amending power, which is treated as constituent power, is also subject to the basic structure of the Constitution of India. Therefore, it declared clauses 4 and 5 of Article 368 unconstitutional and invalid. By doing so, the judiciary protected itself as the interpreter of the Constitution and as the guardian of fundamental rights. Parliament tried to have absolute power by amending Article 368. This act was against the spirit of constitutionalism because parliament tried to become sovereign by doing so. Constitutional limitations maintain a balance between governance and individual

liberties, but, they were removed to give more power to the parliament. If the Court did not declare these provisions unconstitutional, parliament could supersede the constitution, fundamental rights would be unsecured, and such a scenario would effectively end the rule of law, leading to unchecked power, anarchy, and the collapse of democracy. In the case of *Wamanrao v. Union of India AIR 1981 SC 271*, the Supreme Court upheld the validity of constitutional amendments made before the *Kesavananda Bharati* case, which introduced the *Basic Structure Doctrine*. The Court ruled that while Parliament has wide powers to amend the Constitution, those powers are subject to the Basic Structure, which cannot be altered. This judgment reinforced the concept of a limited government by ensuring that certain fundamental constitutional principles, such as judicial review and the protection of fundamental rights, remain inviolable. The judiciary has been contributing to secure and strengthen the limited form of government since the late 1970s mainly by expanding the ambit of fundamental rights, positive interpretation of provisions of Part III and securing the independence of the judiciary. Various rights such as the right to equal pay for equal work, right against self-incrimination, right to free and fair procedure, right to speedy trial, right to livelihood, right to house, right to free legal aid, right to clean air and water, right to healthy environment, right to information, right to education, right to safety of women at workplace, right to dignity and equality for the LGBTQ+ community, free and fair election as the basic structure, passive euthanasia, right to privacy, right to compensation for custodial death etc., has been developed by the Supreme Court safeguarding different aspects of individual liberties and protecting against the arbitrary and uncontrolled powers of the government in the course of India's functional constitution. Through these judgments, the judiciary has actively protected the principles of constitutionalism and limited government by ensuring that the state's power is exercised within the bounds of law while securing citizens' fundamental rights. The progressive outlook of the apex court has served as a guiding force, making the constitution a living document that can be interpreted in the light of societal demands and needs.

CHALLENGES TO LIMITED GOVERNMENT

1. **Emergency Provisions:** According to Article 358, During the emergency period, nothing in Article 19 shall restrict the power of the state to make any law or take any executive action. Before the 44th Constitutional Amendment Act, 1978, Article 359 stated that the President may by order declare that the right to move court for the enforcement of any right conferred in Part III will remain suspended for the period of emergency. After the 44th Amendment, two rights (Article 20 and 21) were reserved and people may approach the court for the infringement of such rights, but they cannot go to the court for the enforcement of other rights. It means that legislature and executive can do any act which they want to do. There are restrictions of only two Fundamental Rights upon them.

There is one more problem that is attached to the provisions of emergency i.e. Misuse of these provisions. The Indian government's use of emergency powers has been controversial. The imposition of the Emergency in 1975 by the government is a glaring example of how these powers can be misused, effectively suspending fundamental rights and concentrating power in the executive. Later, it has been misused in the case of state emergency many times.

2. **Money Bill:** Article 110(3) of the constitution of India states that whenever a question arises for whether a bill is a money bill or not the decision of the speaker of Lok Sabha shall be final. The introduction of the Aadhaar Bill as a Money Bill in 2016 sparked a significant

legal and constitutional debate. The government made sure the legislation could avoid the Rajya Sabha, where it would encounter opposition, by presenting it as a Money Bill. This made it easier for the legislation to get through Parliament. This move was challenged in the landmark case *Justice K.S. Puttaswamy (Retd.) v. Union of India AIR 2017 SC 4161*, which raised crucial questions about the fundamental rights of citizens and the nature of the legislative process. The Supreme Court's majority ruling, led by Justice A.K. Sikri, upheld the Aadhaar Act but struck down certain provisions, notably agreeing that Aadhaar could be treated as a Money Bill. This perspective held that Aadhaar's provisions concerning subsidies, benefits, and services funded by the Consolidated Fund of India fell within the purview of a Money Bill under Article 110.

However, the minority opinion, led by Justice D.Y. Chandrachud, took a different view. Justice Chandrachud delved deeply into the historical context of Article 110, which defines what constitutes a Money Bill, and highlighted the importance of the Rajya Sabha in India's bicameral legislative system. He argued that classifying the Aadhaar Bill as a Money Bill undermined the role of the Rajya Sabha as a crucial check on the legislative power of the Lok Sabha. In his dissent, Justice Chandrachud also referred to the legislative history of the Aadhaar Act, noting that the National Identification Authority of India Bill, 2010, a precursor to the Aadhaar Act, had not been presented as a Money Bill and had even faced scrutiny from a parliamentary standing committee. He argued that despite the inclusion of Section 7, which links Aadhaar to subsidies, the Act as a whole did not meet the strict criteria to be considered a Money Bill under the Constitution. Justice Chandrachud's opinion, though a minority one, has been praised for its fidelity to constitutional principles. It emphasized the importance of upholding the spirit of bicameralism and ensuring that the Rajya Sabha remains an effective institution in checking the powers of the Lok Sabha, particularly in cases where the classification of a bill as a Money Bill could have far-reaching consequences.

3. **Judicial Overreach:** While judicial review is essential for limiting government power, there have been instances where the judiciary has been accused of overreach, stepping into the domain of the executive and legislature. This blurs the separation of powers and may lead to governance challenges, with courts making policy decisions rather than interpreting laws. The judiciary has changed its approach from *positive interpretation* to *judicial activism*. In the present era, *judicial overreach* has been observed many times which the judiciary does in the name of activism. In the case of *Anoop Baranwal v. Union of India (2023) 9 SCR 1*, the Supreme Court of India constituted a committee for the appointment of the Chief Election Commissioner and other Election Commissioners. The Apex Court nominated the Prime Minister, Opposition Leader of Lok Sabha and Chief Justice of India to advise the President for the appointment of Election Commissioners. Here, Article 324 provides that the President will appoint the Chief Election Commissioners and other Election Commissioners subject to the parliamentary rules (if it is made). Parliament did not make any rule regarding it till the date of this judgement. CEC and ECs were appointed by the President on the advice of the Council of Ministers. The Court made rules for the appointment in the name of enforcement of the fundamental right of fair election and empowered itself to take part in the appointment of CEC and ECs which is purely an executive responsibility. Appointment of election commissioners is an executive act and Article 32 empowers the Supreme Court in the judicial capacity and does not provide

functions of executive nature. It can be said that the Supreme Court transgressed its boundary. After this judgment, the Parliament passed *the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023* to remove the involvement of the Supreme Court from the appointment of CEC and ECs. To remove the tussle between the judiciary and parliament, both should use their power within their assigned purview. Like, absolutism of Parliament is unhealthy for democracy, the judicial overreach is also harmful to the sanctity of legal and political structure.

- 4. Other Political Limitations:** In *Indra Sawney v. Union of India* AIR 1993 SC 477, The Apex Court held that reservation for the public jobs given in Article 16(4) of the Constitution should never exceed fifty percent of the total no. of posts notified. The Court further held that there should not be reservation in the promotion. The parliament overruled both decisions of the Court by Constitutional Amendments. To give validity to more than fifty percent of reservations existing in Tamil Nadu state, the Tamil Nadu government organized a bandh protest throughout the state. Parliament under pressure put all reservation provisions of the State of Tamil Nadu in the Ninth Schedule of the Constitution of India. Before the judgment of *I. R. Coelho v. State of Tamil Nadu* AIR 2007 SC 861, putting any subject matter in the Ninth Schedule meant that the judiciary could not take it into account for the judicial review. This judgment restored judicial oversight, reinforcing the principle of limited government by ensuring that even laws in the Ninth Schedule must conform to the Constitution's basic structure.

Colourable Legislation is also a challenge to the limited form of government in India. It means misuse of legislative power where the legislature enacts laws indirectly to achieve something that it cannot do directly. Limited government works on the idea that every branch of government must operate within its constitutionally defined limits. Colourable legislation distorts this balance by giving the legislature undue power and degrading constitutionalism.

CONCLUSIONS

India has adopted a written Constitution with full deliberation and understanding of its preceding implications. It would be doing injustice to the Constitution and a perversion of Constitutionalism if for a moment it is forgotten that a written Constitution with Judicial Review means limited government- an antithesis of parliamentary sovereignty- in so far as limitations thereupon have been introduced by the Constitution. The superiority of the written Constitution as a fundamental law is due not merely to the nature of the principles embodied in it but because the Constitution is the expression of the popular will as expressly declared in the Preamble of the Constitution of India. The idea of limited government and judicial review might be said to be the foundation of our constitutional structure, which consists of three key components: (1) A written constitution that outlines and places restrictions on the various governmental bodies. (2) The Constitution serves as the supreme law by which the conduct of all organs of the government is to be judged. (3) A sanction by means of which any violation of the superior law by any of the organs of the government may be prevented or restrained and, if necessary, annulled. This sanction, in the modern constitutional world, is Judicial Review which means that a court of competent jurisdiction has the power to invalidate the act of any governmental agency, including the legislature on the ground that it is repugnant to the Constitution. India's model of limited government, grounded in constitutional principles and judicial oversight, is essential for the protection of democracy and individual freedoms.

However, the concentration of executive power, instances of judicial overreach, weakening federalism, and threats to civil liberties pose significant challenges to this framework. The resilience of India's limited government will depend on the continued vigilance of institutions, rule of law, federalism, separation of power with necessary checks and balances, independence of the judiciary (but subject to their prescribed functions), the role of a free press, and the strength of civil society in holding government accountable.

RECOMMENDATIONS

To strengthen the limited form of government in India, several important suggestions are recommended in this article. First among them is the independence of the Judiciary by which necessary checks and balances can be followed. The judiciary must function within its limits because it is also a part of limited government and cannot be authorised to use absolute power. Independence of the judiciary only ensures that legislative and executive branches of government cannot interfere with the functions of the judiciary, it does not provide absolute power to the judiciary encroaching constitutional limits. The protection of fundamental rights is vital in a limited form of government. The provisions related to fundamental rights must be interpreted following constitutional goals and development of the social standards and demands.

Furthermore, Transparency and accountability are fundamental to maintaining limited government. Government actions should be subject to scrutiny, and public officials must be held accountable for their decisions. The Right to Information needs more effective implementation. Government departments should ensure more timely and transparent responses to public queries. Institutions, like Lokpal and Lokayukta, should be given more resources and legal powers so that they can do their jobs effectively against corruption. Strengthening independent institutions such as the Election Commission, Comptroller and Auditor General (CAG), and the Central Vigilance Commission (CVC) can further safeguard against arbitrary power. Judicial reforms are also required to improve productivity, lower the backlog of cases, and expedite cases of constitutional rights. Parliamentary committees, like the Public Account Committee, must perform their responsibilities more actively. Educated and interested citizens of the country can also play their roles to cooperate in the good and limited governance individually or as pressure groups because a vibrant civil society is a cornerstone of a limited government.

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