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The Form and Formation of Constitutionalism in India

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Abstract: To allow for the effective functioning of a state, measures are necessary to limit the power of government, securing to the people certain fundamental human rights. These limitations are frequently referred to as ‘constitutionalism’. This essay explores the nature of constitutionalism found in India, and specifically as it has evolved through judicial interpretation—the process whereby judicial decisions have given meaning and content to the written constitution. In this way, the judiciary has balanced the power of government with the rights of the people. Constitutionalism is indispensable to effective governance, balancing power with right.

Keywords: We the People; constitutionalism; power with right; government; limitation on power

1. Introduction

A persistent question for a nation with a constitution—written or unwritten—involves the shape which government takes pursuant to that framework. Frequently referred to as ‘constitutionalism’, the nature of any nation’s government is, of course, a matter dealt with by a constitution; yet, the simple existence of a constitution is no guarantee that constitutionalism will follow. It is entirely possible for a nation to have a constitution but not constitutionalism in the sense of limited government. A dictatorship, for instance, may subsist pursuant to a constitution, but depend more on the dictator’s edict than on the constitutional framework for its laws. While there may be other means of establishing the relationship between the state and its citizens, constitutionalism—being, in essence, limited government or the existence of legal limitations on government—represents the antithesis of the arbitrary powers exercised by a dictator.¹

Understanding the meaning of constitutionalism begins with the nature of the state itself. A society seeks to place its values at the heart of its polity, and most see a government with attendant powers as necessary to attaining that objective. Yet, the existence of a government may just as easily result in the destruction of those values. A tension therefore exists between orderly process of law and those circumstances in which the state may, with the stated aim of ensuring the orderly development of values within the legal structure, nonetheless engage in an unjustifiable exertion of force. Thus, ‘government[al] power, which is essential to realization of the values of their societies, should be controlled in order that it should not itself be destructive of the values it was intended to promote.’² As such, the paradoxical necessity of governmental power to realize societal values along with its potential for the destruction of those very values has been explicitly embedded in political thought at least since Hobbes, if not implicitly much longer.³ How can a state curtail such power so to ensure its exercise only for the welfare of the people?⁴ This is the concern of



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¹ C.H. McILWAIN, CONSTITUTIONALISM: ANCIENT AND MODERN 21 (McIlwain [1940] 2008); S.A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 34 (De Smith 1977).

² M.J.C. VILE, CONSTITUTIONALISM AND THE SEPARATION POWERS 2 (2nd ed., Vile 1967).

³ McILWAIN, *supra* note 1.

⁴ See *State of Karnataka v. Dr. Praveen Bhai Thogadia*, A.I.R. 2004 S.C. 2081.

constitutionalism. And as a general question, natural law philosophers including Aquinas, Paine, Locke, Grotius, and Rousseau have grappled with the ways in which the common welfare might be promoted;⁵ the great instruments of liberty dating to *Magna Carta* (1215) represent attempts to strengthen the limitations upon the power of government later the focus of constitutionalism.⁶

Constitutionalism in those polities which adopt it shares a common essential quality: the legal limitation upon government power. Constitutionalism represents the antithesis of arbitrary rule, the opposite of despotic government found in the raw will of an individual or a limited group rather than the rule of law.⁷ It is the limitation of government by law. All modern constitutions, from the unwritten British to the written American give space to essentials of constitutionalism; indeed, their very existence is the attempt to limit government. Yet, while it is possible to identify the essentials, constitutionalism remains in a constant state of flux, dynamic, progressive, adding strength to limited government from within a constitutional framework.⁸

The Indian Constitution, which came of age in the era of modern written constitutions, makes constitutionalism a pre-condition of Indian limited government, or a government of law.⁹ As such, the written Indian Constitution, in addition to its express provisions for the existence and operation of government, also incorporates well-known principles of constitutionalism which bolster limited government: federalism; secularism; reasonableness; an independent judiciary with powers of judicial review; the doctrine of the rule of law and the separation of powers; free and fair elections; decentralized, accountable, and transparent democratic government; fundamental rights; a welfare state; as well as some not as well-known but equally valid principles, most notably socialism. These are systematic and structural principles underlying and connecting various provisions of the written constitution. They give coherence to the constitution. They make it an organic whole. Though they are not expressly stated in written provisions, they nonetheless form a part of the government established by the Indian constitution.¹⁰

The Indian constitution offers a paradigmatic example of the dynamism of the principles of constitutionalism. While we claim nothing novel in our account, the Indian story presented in this essay serves two purposes. First, it provides an introductory overview of the Indian approach for those not familiar with that history.¹¹ Second, and more importantly, drawing methodologically on the work of the judicial branch, this essay explores the dominant themes of constitutionalism as they are found in the Indian polity; in that sense, it serves as a unique example of constitutionalism for many readers. It contains three parts. The first considers the power established in the federal government, which is limited by an understanding of rights and duties. The second part examines the movement of constitutionalism from duties to fundamental rights. The final part offers brief concluding reflections on the dynamism of constitutionalism as found in the Indian constitution.

2. Power with Right and Duty

Following its long struggle for independence, India enacted its constitution with an emphasis on orderly process of law. The framers set out the objectives of government in the Preamble, with the constitution itself establishing an orderly process of law to which the state must adhere in the exercise of governance. The words of Thomas Paine mirror

⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 6 (5th ed., Jain 2007).

⁶ *Ibid.*

⁷ MCILWAIN, *supra* note 1, at 21.

⁸ See generally, BRUCE ACKERMAN, REVOLUTIONARY CONSTITUTIONS: CHARISMATIC LEADERSHIP AND THE RULE OF LAW (Ackerman 2019).

⁹ State of Karnataka v. Dr. Praveen Bhai Thogadia, A.I.R. 2004 S.C. 2081 (“Welfare of the people is the ultimate goal of the Constitution”).

¹⁰ D.D. BASU, SHORTER CONSTITUTION OF INDIA 17 (14th ed., 2011); see also M. Nagraj v. Union of India, A.I.R. 2007 S.C. 71.

¹¹ While our intention is to be introductory and general, for those seeking a detailed account, see MCILWAIN, *supra* note 1 and ACKERMAN, *supra* note 8.

the principle of constitutionalism envisioned by the framers and established in the Indian constitution:

A constitution is not the act of a government, but of a people constituting a government and a government without a constitution is power without right. A constitution is a thing antecedent to a government; and a government is only the creature of a constitution.¹²

Constitutionalism gives meaning to the constitutional text so as to ensure that government is 'legally limited' and that the government's authority is dependent on the enforcement of such limitations against itself. As such, the state itself is bound to enforce limitations upon its own authority.

Consistent with Paine's view of a constitution, and notwithstanding the conception of government found in the colonial era, the written Indian constitution is *antecedent* to the system of government which it established, with the former controlling the latter's power through enumerated rights of the people and its duty to bring welfare for the people. The Indian constitution does this through the protection of fundamental rights in Part Three—mirroring the traditional civil and political rights enumerated in Articles 2 to 21 of the Universal Declaration of Human Rights—and non-justiciable directive principles of State policy found in Part Four. Both derive their force from the Preamble and, taken together, they proclaim the fundamental values and constitute the fundamental principles of the Indian constitution. The Supreme Court of India affirmed this in *Maneka Gandhi*, in which Justice Bhagwati wrote that:

These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a "pattern of guarantees on the basic-structure of human rights" and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.¹³

Part Three contains the fundamental rights protected by the written constitution. Two key provisions form the core of this protection. Article 13 declares that all laws and executive orders are void if inconsistent with the rights provided under Part Three. Article 32 provides a remedial power vested in the Supreme Court which may be invoked against the government's attempt to violate Article 13. The potential for this remedial power to provide for the enforcement of the fundamental rights in Part Three serves, in effect, as another dimension of those rights held by the people. While not itself a representative body, the Supreme Court holds the power to act so as to allow citizens whose rights have been infringed to obtain redress.

Part Four completes the protection of fundamental rights through a set of non-justiciable directive principles or positive duties (Articles 36–51) imposed upon the government drawn from the concept of a welfare state and the ideal of socio-economic justice;¹⁴ these comprise the duties of the state in the making and the administration of laws. The Supreme Court has said that Part Four supplements the fundamental rights of Part Three to further the objective of a welfare state¹⁵ and, in doing so, seeks to achieve the objectives

¹² MCILWAIN, *supra* note 1, at 21, paraphrasing THOMAS PAINE, DEFINITION OF A CONSTITUTION 3 (Paine 1791), who wrote in the original: 'A Constitution is a Thing antecedent to Government, and a Government is only the Creature of a Constitution. The Constitution of a Country is not the act of its Government, but of the People constituting a Government. It is the Body of Elements to which you can refer and quote article by article; and which contains the principles upon which the Government shall be established, the manner in which it shall be organized, the powers it shall have, the Mode of Elections, the Duration of Parliaments, or by what other name such Bodies may be called; the powers which the executive.'

¹³ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

¹⁴ *Kesavananda Bharti v. State of Kerala* A.I.R. 1973 S.C. 146; BASU, *supra* note 10, at 629. *See also* *Union of India v. Hindustan Development Cooperation*, A.I.R. 1994 S.C. 988.

¹⁵ *State of Kerala v. Thomas*, A.I.R. 1976 S.C. 496; *Mehta v. Union of India*, (1992) Supp. (2) S.C.C. 85.

set out in the Preamble. Article 37¹⁶ declares the non-justiciability of these positive duties, making it clear that the judiciary cannot compel the state to perform a duty under the directives. Nonetheless, these directive principles form a key component of governance; Dr Ambedkar has said that ‘a state just awakened from freedom with its many pre-occupations, might be crushed under the burden unless it was left free to decide the order, the time, the place and the mode of fulfilling them.’¹⁷ These positive duties are not mere moral precepts but Constitutional obligations—they act as a set of instructions which must be respected by the state, with neither the legislature nor the executive paying lip service to them but rather forming the basis of all executive and legislative action.¹⁸ Article 38 of the constitution forms the keystone of the directive principles; it provides that the state shall strive to promote the welfare of the people by securing and protecting a social order in which justice—social, economic, and political—informs all institutions of national life.

Of course, as we noted above, the directive principles are non-justiciable. Still, some enforceability is possible, in three ways. First, if the state fails to conform with the directive principles, the protection of free speech found in Article 19 offers some redress in that the people may oppose the offending government action. Second, a form of constructive constitutionalism has emerged from amendment. Thus, Articles 41¹⁹, 45²⁰, and 46²¹ of the constitution prescribe a positive duty of the state towards citizens for education and this has been moved to Part Three, as a negative right, to take on a new form as a positive right under Article 21-A²² (the right to education). The Supreme Court, in *Unni Krishnan, J.P. v. State of Andhra Pradesh*²³ outlined the process by which the judicial shift of education to Part Three took place. The court observed that education is a basic right implied in the fundamental right to life under Article 21 when read in conjunction with the directive principle on education and the directives in Article 45 providing that the state is to endeavor to provide free education. This movement has brought about a change from a positive duty of the state to a negative right enjoyed by the people—in the sense employed by Isaiah Berlin, as ‘liberty from; absence of interference beyond the shifting, but always recognizable, frontier [between positive and negative liberty]’²⁴. Finally, the true enforceability of these positive duties imposed upon government is found at the ballot box, with the ultimate sanction being held by the voters, the people. A disliked government can be rejected at the next election.

More importantly for the concept of constitutionalism in the Indian context, though, is the important role played by judicial interpretation of the written text by the Supreme Court.²⁵ Here the court has worked its own form of constructive constitutionalism through its approach to the directive principles.

¹⁶ *Constitution of India*, Article 37, provides: “The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in governance of the Country and it shall be the duty of the State to apply these principles in making the laws”.

¹⁷ SUBHASH C. KASHYAP, *OUR CONSTITUTION: AN INTRODUCTION TO INDIA’S CONSTITUTION AND CONSTITUTIONAL LAW* 153 (5th rev’d. ed., [Kashyap 2015](#)).

¹⁸ *Ibid.*

¹⁹ *Constitution of India*, Article 41, provides: “The State shall, within the limits of its economic capacity and development, make effective provision for securing the . . . right to education . . .”.

²⁰ *Constitution of India*, Article 45, provides: “The State shall endeavor to provide early childhood care and education for children until they complete the age of six”.

²¹ *Constitution of India*, Article 46, provides: “The State shall promote with special care the educational and economic interests of the weaker sections of the people . . .”.

²² *Constitution of India*, Article 21-A, provides: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.

²³ *Unni Krishnan, J.P. v. State of Andhra Pradesh* 1993 AIR 217.

²⁴ ISAIAH BERLIN, *FOUR ESSAYS ON LIBERTY* 127 ([Berlin 1969](#)).

²⁵ On the important role played by judicial interpretation in the development of constitutionalism, see Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 ([Cover 1983](#)); John V. Orth, John Gava, Arvind P. Bhanu, and Paul T. Babie, *No Amendment? No Problem: Judges, “Informal Amendment,” and the Evolution of Constitutional Meaning in the Federal Democracies of Australia, Canada, India, and the United States*, 48 PEPP. L. REV. 341 ([Orth et al. 2021](#)).

3. From Duty to Right

In 1950, *A.K. Gopalan*²⁶ gave the Supreme Court the opportunity to scrutinize the inadequacy of procedural fairness with reference to the expression ‘procedure established by law’ in Article 21²⁷ of the constitution. Asked to equate the expression to ‘due process of law’ as found in American constitutional jurisprudence, the Court was faced with determining whether tests of reasonableness, fairness, and justice were necessary to meet the strictures of Article 21. Rather than expand Article 21, the court narrowly construed it as providing only a guarantee against executive action unsupported by law. The court reached this conclusion through an interpretation of Articles 14,²⁸ 19²⁹, and 21, finding that each must be treated as exclusive of the others. Thus, ‘due process of law’, having been rejected by the framers for ‘procedure established by law’—a doctrine of British origin—could not support the broader, substantive interpretation which the court was asked to adopt.

The court returned to this interpretation of Article 21 in subsequent cases, most notably *R.C. Cooper*⁽³⁰⁾ and *Maneka Gandhi*⁽³¹⁾, finding that ‘procedure established by law’ could include justice, fairness, and reasonableness. Moreover, this constitutionalism⁽³²⁾ extended to encompass Articles 14, 19, and 21, with exclusivity having no place in the interpretation of these provisions. Rather, the law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article 19. Thus, a law depriving a person of ‘personal liberty’ has not only to stand the test of Article 21 but it must stand the test of Article 19 and Article 14 of the Constitution.⁽³³⁾

These decisions form the backdrop to the sea-change that came in the 1973 decision in *Kesavanada Bharati*; the Supreme Court, in a judgment written by Justice Matthew, found that the fundamental rights contained in Part Three are mere ‘empty vessels’ into which each generation must pour its content in the light of its experience.³⁴ This has operated in conjunction with Parliament, in its capacity as an amending body, making changes to the constitution in such a way as to give value to the positive duties (also called moral claims) embodied in Part Four, effectively converting these duties into rights enjoyed by the people. Thus, following the judicial shift concerning education, Article 21-A was added to the constitution,³⁵ and the Parliament enacted the *Right to Education Act*³⁶ and the *Right*

²⁶ *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27.

²⁷ *Constitution of India*, Article 21, provides: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

²⁸ *Constitution of India*, Article 14, provides: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

²⁹ *Constitution of India*, Article 19, provides: “—(1) All citizens shall have the right—(a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions 2 [or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 3 [and] 4* * * * (g) to practise any profession, or to carry on any occupation, trade or business.”

³⁰ *R.C. Cooper v. Union of India*, A.I.R. 1970 S.C. 564.

³¹ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 594.

³² The framers of the UNITED STATES CONSTITUTION stressed the “necessity of auxiliary precautions”. See THE FEDERALIST NO. 51 (James Madison) (Clinton Rossiter ed., [Madison 1961](#)): “In framing government, which is to be administered by men over men, the greatest difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on government but experience has taught mankind the necessity of auxiliary precautions.”

³³ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 594; *Francis Coralie Mullin v. Union Territory Delhi, Administrator*, A.I.R. 1981 S.C. 746 (The procedure prescribed law must be reasonable, fair and just and not arbitrary, whimsical and fanciful).

³⁴ KASHYAP, *supra* note 17, at 162.

³⁵ The *Constitution (Eighty-sixth Amendment) Act, 2002* inserted Article 21-A of the *Constitution of India* to provide a Fundamental Right to free and compulsory education of all children ages six to fourteen.

³⁶ *Right of Children to Free and Compulsory Education Act, 2009*.

to *Information Act*.³⁷ This supports the movement towards enshrining power with right as a part of the basic structure of the written constitution.³⁸ Thus, on various occasions in its 73 year journey, the Indian constitution has witnessed these empty vessels being filled through judicial and legislative treatment of Part Four.

Discarding the mutual exclusivity between the Third and Fourth Parts, the court has held that the directives contained in Part Four supplement the fundamental rights in order to bring about social revolution and the establishment of a welfare state as envisaged in the Preamble.³⁹ The two parts are treated as two wheels of a chariot to aid in social and economic democracy.⁴⁰ Through moral claims or positive duties, as dealt with by the court, the fundamental rights of Part Three provide space for their operation so as to realize constitutional goals. This movement of constructive constitutionalism thus forms a part of the structural fabric of the Indian constitution, itself part of the vision of the framers.

And the court has given concrete effect to this approach to constructive constitutionalism. One of the more noteworthy examples of this came in 1973, when the court in *Kesavananda* established the ‘basic structure theory’ which, building upon the amending power of Article 368, places a check on the amending power of the government so as to ensure the non-destructibility of the written Indian constitution. In this way, and in reliance upon the ‘identity test theory’⁴¹ by which the court assesses and allows for the evolution of a number of limitations, the court ensured that the Parliament cannot alter the basic structure or basic framework of the constitution. The court observed that ‘one cannot legally use the Constitution to destroy itself’ and that ‘the personality of the Constitution must remain unchanged.’⁴²

This post-*Kesavananda* approach might be referred to as judicial constitutionalism. Using its powers of construction and judicial review, and acting as protector of the constitution, the court has developed a number of the principles which today comprise the constitutionalism of the Indian constitution: the supremacy of the constitution,⁴³ the rule of law,⁴⁴ the principle of separation of powers,⁴⁵ the principles informing the enumerated fundamental rights,⁴⁶ objectives specified in the Preamble,⁴⁷ judicial review,⁴⁸ federalism,⁴⁹ secularism,⁵⁰ freedom and dignity of the individual,⁵¹ the principle of equality,⁵² the essence of other fundamental rights not otherwise enumerated,⁵³ the concept of social and economic justice in order to build a welfare state,⁵⁴ the balance between the fundamental rights and the directive principles,⁵⁵ the independence of the judiciary,⁵⁶ and parliamentary democracy.⁵⁷

³⁷ *Right to Information Act*, 2005.

³⁸ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461.

³⁹ *Constitution of India*, Preamble, establishes justice, liberty, equality, and fraternity, including social, economic and political justice, as the goals of the *Constitution*. See *P.A. Inamdar v. State of Maharashtra*, A.I.R. 2005 S.C. 3226.

⁴⁰ *Jilubhai Nanbhai Khachar v. State of Gujarat*, A.I.R. 1995 S.C. 142.

⁴¹ *BASU*, *supra* note 10, at 2235–36.

⁴² *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461.

⁴³ *Ibid.*

⁴⁴ *Indira Nehru Gandhi v. Rajnarain*, A.I.R. 1975 S.C. 2299; *Indra Sawhney v. Union of India*, A.I.R. 1993 S.C. 477; *I.R. Coelho v. State of T.N.*, A.I.R. 2007 S.C. 861.

⁴⁵ *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

⁴⁶ *I. R. Coelho v. State of T.N.*, A.I.R. 2007 S.C. 861.

⁴⁷ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

⁵¹ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461; *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

⁵² *Raghunathrao Ganpatrao v. Union of India*, A.I.R. 1993 S.C. 1267.

⁵³ *Waman Rao v. Union of India*, A.I.R. 1981 S.C. 271.

⁵⁴ *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461.

⁵⁵ *Minerva Mills v. Union of India*, A.I.R. 1980 S.C. 1789.

⁵⁶ *Shri Kumar Padma Prasad v. Union of India*, 2 S.C.C. 428 (1992).

⁵⁷ *Kuldeep Nayar v. Union of India*, 7 S.C.C. 1, 153 (2006).

In recognizing each of these components of constitutionalism, the written Indian constitution, as adopted by ‘We the People of India’, has moved towards a closer balance of power and right,⁵⁸ that ‘a constitution is not the act of a government.’⁵⁹ This continues, but does not complete, a long process characterized by what Professor Faizan Mustafa has said of the Indian Constitution: ‘India needs constitutionalism not constitution.’⁶⁰

4. Conclusions

The Preamble to the Indian constitution seeks ‘to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.’⁶¹ In furthering these objectives, the Constitution expressly and impliedly provides various provisions for an independent judiciary, judicial review, the rule of law, the separation of powers, free elections, accountability, transparency, fundamental rights, federalism, and the decentralization of power. Together, these values promote constitutionalism.

The role of the judiciary is central to this process. Indeed, it is indispensable. Of course, while the elected and therefore representative branches of government bear the greatest responsibility for the implementation of constitutionalism through self-limitation, the unelected judicial branch nonetheless plays a key role in ensuring that those two elected branches do not, in their ostensible efforts to advance the values of those they represent, violate the fundamental rights of those that find themselves part of the otherwise unrepresented minority. Judicial constitutionalism allows for rapid developments responding to the will and aspirations of the people, both majority and minority.⁶² Most importantly in this regard, the judiciary ensures limited and effective government,⁶³ and, above all, promotes the equality of all citizens enshrined in Article 14.⁶⁴ Quite apart from being a negative development, constitutionalism generally, and judicial constitutionalism specifically, allows for the Preamble to have concrete meaning in the lives of the Indian people.

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⁵⁸ MCILWAIN, *supra* note 1, at 129.

⁵⁹ *Ibid.* at 2.

⁶⁰ NDTV (2021).

⁶¹ *Constitution of India*, Preamble.

⁶² *The Constitution of India*, Preamble, establishes the source of the *Constitution* as “We the People of India”. See also S.R. Chaudhari v. State of Punjab, A.I.R. 2001 S.C. 2707.

⁶³ N.W. BARBER, THE PRINCIPLES OF CONSTITUTIONALISM (Barber 2018).

⁶⁴ Budhan Chowdhry v. State of Bihar, A.I.R. 1955 S.C. 191. See also Dharam Dutt v. Union of India, A.I.R. 2004 S.C. 1295.

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