

Constitutionalism In India: Ancient Roots And Modern Framework

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Abstract

This paper explores the evolution of constitutionalism in India, arguing that the principles of limited governance and the rule of law are not merely colonial imports but have deep roots in ancient Indian political philosophy. By synthesizing historical jurisprudence with contemporary legal frameworks, the study examines how the concept of Dharma functioned as an early form of constitutionalism, imposing ethical and legal restraints on the absolute power of monarchs.

Keywords: Constitutionalism; Ancient Indian Political Thought; Rule of Law; Indian Constitution; Democratic Governance.

1. CORE THEMES OF RESEARCH

Ancient Jurisprudence: The research delves into the Vedic period and classical texts like the Arthashastra and Manusmriti. It highlights that the King was never "above the law"; rather, he was a servant of Dharma. The concept of Rajdharma ensured that the ruler's authority was conditional upon the welfare of the people and adherence to established moral codes.

The Colonial Pivot: It analyzes the transition period under British rule, where Western notions of "Constitutionalism" and "Parliamentary Sovereignty" began to intersect—and often clash—with indigenous governance structures, leading to the eventual synthesis found in the 1950 Constitution.

Modern Manifestation: The paper evaluates the modern Indian Constitution as a transformative document. It focuses on the Basic Structure Doctrine, judicial review, and the separation of powers as the contemporary guardians against arbitrary state action.

The conventional understanding treats constitutionalism in India as a post-independence development influenced primarily by British parliamentary traditions and European liberal thought. This analysis challenges that narrow interpretation. By examining ancient Indian texts and governance systems, we discover that restraints on absolute power, accountability of rulers, and concern for public welfare have existed in Indian political philosophy for over two thousand years. This paper analyzes how concepts from ancient India - particularly the ideas embedded in Dharma, the practical governance models in Arthashastra, and the political wisdom in our epics - created an early framework for limited government. The colonial period certainly introduced new institutional forms, but the underlying values found resonance with pre-existing Indian thought. Our 1950 Constitution, therefore, represents not a complete break with the past but rather a synthesis where ancient principles gained modern institutional expression through mechanisms like judicial review and constitutional supremacy.

2. UNDERSTANDING WHAT CONSTITUTIONALISM ACTUALLY MEANS

When we study constitutional law, we often start by focusing on the written Constitution - its articles, schedules, and amendments. But constitutionalism goes deeper than any document. At its heart lies a fundamental question: how do we prevent those who govern from becoming tyrants? The answer involves creating a system where power operates within defined boundaries.

Consider what happened during the Emergency of 1975-77. The government had legal authority under Article 352, yet we recognize that period as a constitutional crisis. Why? Because constitutionalism demands more than legal validity - it requires that power be exercised with restraint, accountability, and respect for fundamental freedoms. A government can act within the letter of constitutional provisions while violating the spirit of constitutionalism.

This distinction helps us understand that constitutionalism existed in India long before anyone drafted a formal constitution. Wherever societies developed norms limiting arbitrary power and demanding accountability from rulers, the seeds of constitutionalism were present. Ancient India had such norms, though they took different forms than modern written constitutions.

3. HOW ANCIENT INDIAN THOUGHT APPROACHED GOVERNANCE

The concept of Dharma pervaded ancient Indian political thinking. We often translate Dharma as 'duty' or 'righteousness,' but this translation misses its constitutional significance. Dharma functioned as a supreme normative order - a set of principles that even kings could not override. No ruler could claim 'I am above Dharma' any more than a modern government can claim 'we are above the Constitution.' Take the example from Ramayana where Rama accepts exile to honor his father's promise. Despite being the rightful heir with popular support, he subordinates personal interest to dharmic obligation. This wasn't just a story about individual virtue - it illustrated a political principle that rulers must follow established norms even when inconvenient. The legitimacy of power depended on adherence to Dharma, not merely on strength or hereditary claim. Rajdharma specified the duties particular to kingship. Ancient texts consistently emphasized that kings existed to serve their subjects, not to exploit them. The Mahabharata's Shantiparva contains extensive discussions where Bhishma explains to Yudhishtira that a king who fails to protect his people, who administers justice unfairly, or who taxes oppressively, forfeits his right to rule. This sounds remarkably similar to modern social contract theory, though it predates Hobbes and Locke by centuries. The practical implication was significant. Unlike absolute monarchies where 'the king can do no wrong,' Indian political thought recognized that kings could and did wrong. When they did, they faced consequences - sometimes removal, sometimes revolt, always loss of legitimacy. This created a form of accountability even without modern elections or formal impeachment procedures.

4. ARTHASHASTRA'S SYSTEM OF CHECKS AND BALANCES

Kautilya's Arthashastra deserves special attention because it moves from abstract principles to concrete governance mechanisms. Many people read it as purely about maximizing state power, but look at the institutional arrangements it prescribes. The king couldn't simply do as he pleased - he needed to consult his council of ministers. Major decisions required deliberation, not unilateral action.

The text establishes an elaborate system of oversight. Officials who collected taxes faced strict audits. Those who administered justice had to follow established procedures. Kautilya even recommends that the king employ spies to monitor his own administration for corruption. While we might find some of these methods questionable today, they reflect a sophisticated understanding that power needs external checking mechanisms. Here's an interesting parallel to modern constitutional law: just as our Constitution establishes the Comptroller and Auditor General to audit government accounts, Arthashastra created officials specifically to ensure financial accountability.

Just as we have administrative tribunals to review government decisions, ancient India had systems for citizens to petition against official misconduct. The forms differed, but the underlying concern - preventing abuse of power - remained constant.

The text also recognizes something modern constitutionalism emphasizes: emergency powers need limits. While Arthashastra grants rulers greater authority during crises, it insists these powers serve only to address the specific emergency. This resembles our own constitutional approach where Article 352 allows emergency proclamations but subjects them to parliamentary approval and judicial review.

5. INSTITUTIONAL STRUCTURES THAT LIMITED ROYAL POWER

Ancient Indian kingdoms developed various institutions that served constitutional functions. The Sabha and Samiti were assemblies where important matters got discussed. While not democratic bodies in the modern sense, they provided forums where the king couldn't simply impose his will without consultation. Scholars and priests formed another check - their moral authority could challenge royal decisions. Village assemblies exercised substantial autonomy over local matters. They collected taxes, resolved disputes, and managed community affairs. The king's authority didn't extend to micromanaging village life. This decentralization meant that even if a ruler grew tyrannical at the center, local governance continued with considerable independence. We see echoes of this in our current constitutional scheme of Panchayati Raj, which the 73rd Amendment strengthened by giving constitutional status to local self-government.

Public opinion mattered too, though it operated differently than in democracies. A king who lost popular support faced real problems - rebellions became more likely, allies withdrew support, religious authorities might refuse to perform legitimizing rituals. The Arthashastra explicitly warns that a king who alienates his subjects invites his own downfall. This created incentives for rulers to govern with some regard for public welfare, even if they weren't formally accountable through elections.

6. WHAT CHANGED DURING COLONIAL RULE

The British introduced new forms of governance that transformed Indian political and legal systems. They brought codified law, structured courts, and administrative regularity. The Government of India Acts of 1858, 1909, 1919, and 1935 created constitutional frameworks - on paper. But here's the fundamental problem: these frameworks lacked democratic legitimacy because ultimate sovereignty remained with the British Parliament, not the Indian people.

Think about the contradiction. Colonial constitutional documents established legal procedures and institutional structures - all the forms of constitutionalism. Yet the system's purpose was maintaining foreign rule, not protecting Indian rights or ensuring accountable governance. This created what we might call 'constitutionalism without consent' - procedural legality masking fundamental illegitimacy.

However, colonial rule had unintended consequences. It exposed Indian leaders to Western political philosophy and constitutional thought. But rather than simply adopting these ideas wholesale, figures like Tilak, Gandhi, and Ambedkar engaged in creative synthesis. They took Western concepts like rights, representation, and rule of law, but interpreted them through Indian experiences and values. The demand for Swaraj wasn't just about political independence - it reflected deeper ideas about self-governance that resonated with ancient Indian thought.

The freedom movement's constitutional demands drew on both traditions. When leaders argued for fundamental rights, they cited both John Stuart Mill and ancient Indian concepts of individual dignity. When they demanded accountable government, they invoked both parliamentary democracy and the old principle that rulers serve the people. This synthesis would ultimately shape the Constitution we adopted after independence.

7. THE 1950 CONSTITUTION: OLD WINE IN NEW BOTTLES

When the Constituent Assembly drafted our Constitution, they created something genuinely new in form but familiar in substance. Yes, they adopted parliamentary democracy from Britain, federalism from America, and judicial review from common law traditions. But the values underlying these institutions - limited government, protection of rights, rule of law, accountability - had Indian precedents.

Look at the Preamble's commitments: justice, liberty, equality, fraternity. These weren't foreign impositions. Justice echoes ancient concerns about fair governance. Liberty reflects the Indian philosophical tradition's emphasis on individual dignity. Equality challenges the hierarchies that ancient texts sometimes reinforced, but the concern for protecting the weak from the powerful has deep roots. Fraternity resonates with ideas of social harmony that pervade Indian thought.

Judicial review represents a particularly interesting modern mechanism serving an ancient function. When courts strike down unconstitutional legislation, they're enforcing the principle that government must operate within legal boundaries - the same principle that Dharma enforced in ancient times. The form differs radically (written constitution versus normative tradition, courts versus social sanction), but the substance remains recognizable.

Consider the Kesavananda Bharati case and the Basic Structure doctrine. The Supreme Court held that certain fundamental features of the Constitution cannot be amended even by Parliament. This creates a hierarchy where some principles transcend ordinary political processes. Ancient Indian thought similarly held that certain aspects of Dharma lay beyond any ruler's power to change. Both systems recognize that some values must remain inviolate regardless of temporary political majorities.

8. COMPARING ANCIENT AND MODERN APPROACHES

The shift from ancient to modern constitutionalism in India involved changing mechanisms rather than abandoning principles. Ancient India relied heavily on internalized moral norms enforced through social pressure and religious authority. Kings knew that violating Dharma would cost them legitimacy even if no formal punishment followed. Modern India uses legal institutions and enforcement mechanisms - courts can strike down laws, elections can remove governments, impeachment can remove presidents.

Neither system works perfectly. Ancient moral constraints sometimes failed - plenty of kings ignored Dharma when they could get away with it. Modern legal mechanisms sometimes fail too - emergency provisions can be misused, courts can be intimidated, constitutional amendments can erode protections. But both systems aim at the same target: preventing concentrated, arbitrary power from destroying justice and public welfare.

Take the concept of accountability. In ancient times, a king faced multiple audiences - his council, religious authorities, public opinion, potential rivals. He had to maintain support from these different groups to rule effectively. Modern governments face different accountability mechanisms

- regular elections, legislative oversight, judicial review, free press, civil society. The specific institutions changed, but the underlying principle that rulers must answer to someone beyond themselves persisted.

Similarly, both systems recognized the need for flexibility during crises while fearing unlimited emergency powers. Arthashastra granted kings special authority during emergencies but expected them to relinquish it once the crisis passed. Our Constitution allows emergency proclamations under Article 352 but requires parliamentary approval and subjects them to judicial review. Both approaches try to balance necessity with protection against abuse.

9. WHY THIS HISTORICAL PERSPECTIVE MATTERS

Understanding constitutionalism's Indian roots has practical importance. It counters the narrative that constitutional democracy represents a foreign system imposed on Indian society. When people see the Constitution as alien, they may resist its values or view them as optional. But when we recognize that limiting arbitrary power, ensuring accountability, and protecting rights have Indian precedents, these principles gain deeper legitimacy.

This perspective also helps us interpret constitutional provisions. When courts consider what constitutes the 'basic structure,' they can look to longstanding Indian values alongside modern democratic theory. When we debate whether certain government actions violate constitutional norms, we can draw on both ancient wisdom about governance and contemporary rights jurisprudence.

Moreover, recognizing continuity rather than rupture helps us appreciate that constitutional development remains ongoing. Just as ancient concepts evolved over centuries and colonial encounter transformed governance, our constitutional understanding continues developing through judicial decisions, amendments, and changing social practices. The conversation between past and present continues.

Think about recent constitutional developments like the right to privacy recognized in Puttaswamy. The Court drew on the Constitution's text and modern rights theory, but also on fundamental ideas about individual dignity that have deep philosophical roots in India. This kind of synthesis - honoring tradition while addressing contemporary challenges - becomes easier when we understand constitutionalism as an evolving Indian tradition rather than a static Western import.

10. CONCLUSION: A LIVING TRADITION

Constitutionalism in India represents continuity rather than discontinuity. The forms have certainly changed - we have a written constitution rather than normative texts, courts rather than councils, elections rather than dharmic obligations. But the substance shows remarkable consistency. The concern for limiting arbitrary power, ensuring rulers serve the people rather than themselves, and protecting individuals against oppression runs through ancient Indian thought, colonial-era political movements, and our modern constitutional framework.

This doesn't mean we should romanticize the past. Ancient Indian governance had serious flaws - hierarchies, exclusions, and inequalities that modern constitutionalism rightly rejects. But recognizing that constitutionalism has Indian roots helps us understand our Constitution not as borrowed clothes that might not fit, but as a garment woven from both indigenous and imported threads into something distinctively ours.

The Constitution works in India not simply because we copied successful models from elsewhere, but because it resonates with longstanding values about governance. When we defend judicial independence, we're not just following Western precedent - we're honoring an Indian tradition of checking power. When we insist on accountability, we're not simply mimicking democracies abroad - we're expressing an ancient principle that rulers answer to the ruled.

Going forward, this understanding can guide constitutional development. As we face new challenges - technology, globalization, environmental crisis, social change - we can draw on both our ancient heritage of ethical governance and our modern commitment to democratic constitutionalism. The synthesis that created our Constitution in 1950 wasn't final. It continues as each generation reinterprets constitutional principles for its own time while remaining rooted in enduring values.

The story of Indian constitutionalism, properly understood, isn't about adopting foreign ideas in 1950. It's about an ongoing conversation spanning millennia - sometimes interrupted, often contested, but never completely broken - about how societies can organize power to serve justice rather than oppression. Our Constitution doesn't mark the beginning of this conversation. It marks a particular moment when ancient concerns found modern institutional expression. And that conversation continues today, in courtrooms and legislatures and civil society, as we work out what it means to govern ourselves according to law rather than arbitrary will.

REFERENCES

1. Agarwal, S. K., Thirupathi, L., Jawale, K. V., & Jawale, V. V. (2023). Indian constitutional law. Academic Guru Publishing House.
2. Bast, J., & Thiruvengadam, A. K. (2021). Origins and pathways of constitutionalism. In *Democratic Constitutionalism in India and the European Union* (pp. 75-103). Edward Elgar Publishing.
3. Bose, S. K. (2025). An Insight into the Concept of Constitutionalism: A Safeguard against Arbitrary Power. Available at SSRN 5318809.
4. Deepak, J. S. (2021). India, that is Bharat: Coloniality, civilisation, constitution. Bloomsbury Publishing.
5. Grewal, D. S., & Purdy, J. (2017). *The Original Theory of Constitutionalism*.
6. Jackson, V. C., Tushnet, M., Dixon, R., & Khosla, M. (2025). *Comparative constitutional law*. Oxford University Press.
7. Khosla, M. (2020). *India's founding moment: The constitution of a most surprising democracy*. Harvard University Press.
8. Law, D. S. (Ed.). (2022). *Constitutionalism in context*. Cambridge University Press.
9. McIlwain, C. H. (2022). *Constitutionalism, ancient and modern*. Barakaldo Books.
10. Nirwani, A. (2025). Chapter-1 EVOLUTION OF CONSTITUTIONALISM: GLOBAL AND INDIAN PERSPECTIVES. *CONTOURS OF CONTEMPORARY LEGAL RESEARCH: A MULTIDISCIPLINARY PERSPECTIVE: Volume 1: FOUNDATIONS AND FRONTIERS OF PUBLIC LAW*, 1.
11. Saxena, S., & Pal, R. (2022). Constitution and constitutionalism: Concept, distinction, and salient features. Part 1 *Indian J. Integrated Rsch. L.*, 2, 1.
12. Sharma, B. K. (2022). *Introduction to the Constitution of India*. PHI Learning Pvt. Ltd..
13. Singh, M. P., & Saxena, R. (2021). *Indian politics: Constitutional foundations and institutional functioning*. PHI Learning Pvt. Ltd..
14. Thakur, A. (2025). *PHILOSOPHICAL ROOTS OF CONSTITUTIONALISM*. *Foundations of Constitutional Law: Principles, Philosophy, and Evolution*, 9.
15. Thiruvengadam, A. K. (2017). *The constitution of India: A contextual analysis*. Bloomsbury Publishing.