

## CONCEPTION OF CONSTITUTIONAL CULTURE

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### ABSTRACT

*Having a Constitution will not lead to establishment of a constitutional regime. For it, constitutionalism and constitutional culture plays a pivotal role. Very often, in different juristic writings, the words 'constitutional culture' is used without describing what does it exactly mean. Here, an attempt is made to explain the conception of 'constitutional culture'. To develop an understanding on the said terms, it is imperative to explain the meaning of the terms, such as 'constitution', 'constitutional law' and 'constitutionalism'. All these terms have different connotations and all of them interplay with each other. All these terms were examined and explained with reference to the conception of 'Constitutional Culture' from the backdrop of Indian Constitutional regime.*

*Key words: Constitution, Constitutional Law, Constitutionalism, Constitutional Culture, India, Indian Constitutional Law*

### OBJECTIVE

The objective is to explain and develop an understanding on the conception of 'constitutional culture', in reference to Indian Constitutional regime.

### METHODOLOGY

The research methodology used for the present article is traditional Doctrinal research method. As most of the information can be sought from the available literatures by referring books, articles, journals, case laws websites etc. but supplemented by discussion with few academicians. In order to support the arguments made in the article, certain specific incidents and cases were considered.

### INTRODUCTION

With the framing or adoption of a Constitution, a successful constitutional regime cannot be set up in a political order. Justice Venkatchaliah, once opined, "Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture"<sup>1</sup>. Success of a Constitution depends upon not only on those who work the Constitution but also upon those for whom it is worked. Success of it does not lie on the text or language, rather on the spirit on which it works. This sermon was made long back during the drafting of Indian Constitution<sup>2</sup>. Hence, developing an understanding on the spirit of a Constitution is the stepping stone for the success or failure of a constitutional regime. Developing an understanding on 'constitutionalism' and on 'constitutional culture' of a nation is vital for the stability to a constitutional regime. On the matters relating to 'constitutionalism', plenty of juristic writings are available but that is not the case with regard to 'constitutional culture'. There are not much jurisprudential literatures in India explaining the terms from Indian standpoint. The words 'constitutional culture' have been used number of times in the various pronouncements of Supreme Court. But, none of those occasions, the concerned members of the Bench felt the need to explain the same. Probably, they thought it was too obvious. Justice Krishnan Iyer had used the words maximum numbers of times and most of the times he used it to protect the dignity of the individual on the constitutional platforms of India. Here, the author is making an attempt to explain the terms from an Indian perspective.

Before dwelling with the notion of 'constitutional culture', it is imperative to reiterate the rudimentary conceptions about 'constitution', 'constitutional law' and 'constitutionalism'.

### RUDIMENTS OF 'CONSTITUTION', 'CONSTITUTIONAL LAW AND 'CONSTITUTIONALISM':

There is two uses of the word 'constitution'. The first of these uses is 'constitution' in the sense of composition or fundamental make-up, the "constituent parts" of something and how they are put together, its characteristic frame or nature. It can be related to a tangible or intangible things. The second use of 'constitution' is a verbal noun pointing to the action of founding, framing, shaping something anew. It is an aspect of the human capacity to act, to innovate, to break the causal chain of process and launch something unprecedented. The later use of the word 'constitution' remind us that Constitutions are made, not found. They are human creations, product of conventions and historical struggle, and conscious choices made at a defining moment of history. This suggests

<sup>1</sup>R C Poudyal v. Union of India, AIR 1993 SC 1804

<sup>2</sup>Constituent Assembly Members Suresh Chandra Mazumdar, Jadubans Sahay and P T Chacko had made this kind of observation in the Constituent Assembly Debate.

that 'Constitution' is more something we do than something we make. We shape the 'Constitution' all the time through our activity. However, to constitute in this sense does not merely mean an activity as some point of time in the history. Rather, it is an activity to establish something that lasts and to be carried forward by others. That means in order to constitute a 'Constitution', it is to be created collectively and must be inclusive, lasting, fundamental and principled. What we constitute is profoundly tied to how we are already constituted by our own distinctive history. From the above, it can be affirmed that 'Constitution' is a fundamental ethos or temperament. Hence, we attach a sense of sanctity to our 'Constitution' and demands others respectful acknowledgement<sup>3</sup>.

Object of a Constitution is to establish the essential foundations and the general framework of government and governance. It is one of the principal functions of a Constitution is to provide directions of the State and nature of its development. Further, in case of any ambiguity, it adds clarity to the ideological vector of the system. Besides these, to control the organs of the government is also one of the primary functions of a written constitution<sup>4</sup>. It provides body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised<sup>5</sup>.

Constitution is generally visualized as a written text embodying the public accord of basic principles of socio-legal existence of a State. It is more than that. Constitution cannot be visualized as a law in any ordinary sense of the term; it is a set of rules of higher order with reference to which other law is identified. Constitution is not only a "declaration of country's supreme law"<sup>6</sup>, but also an assertive articulation of the aspiration of the Nation. To consider Constitution as a "mere document only of positive law" or "it is primarily a lawyer's contract"<sup>7</sup> would be a very constricted observation. Constitution is the expression of soul of a nation. A nation tangibly conveys its existence through its constitution. It is an offspring of values and ethos of a nation. It is an expression of the deepest beliefs and convictions of a nation, of their 'fundamental principles as they have been understood by the traditions of their people and their law'. Constitution represents the vision and values of a nation and that is based on the ethos, faith and will of people which ultimately guide the economic, social and political thinking of that nation. What makes a Constitution a higher order entity is that, it cannot be made or changed through normal law-making procedures of a popularly elected assembly. Besides that, a Constitution is far more deeply entrenched than an ordinary law. This deeper entrenchment protects constitutional rules from simple majoritarian procedures that govern ordinary legislation. Constitution represents a historic bridge between tormented past experiences and future aspirations and opportunities for recognition and protection of human rights and development<sup>8</sup>.

Understanding and explaining 'what is constitutional law' is not as easy as it appears. According to Sir John Salmond, constitutional law is 'body of those legal principles which determine the constitution of a State' which in return determines the essential and fundamental portions of the State's organisation. To this proposition of 'constitutional law' few obvious questions crop up. Can constitution of a State be determined by law, 'a law properly so called' (since there can be no law without having a State)? And can there be a State without a constitution? Salmond had opined that 'there can be no law unless there is already a State and there can be no State without a constitution'. From this, one can draw the necessary inference that State and its constitution are necessarily preceded to the law. If that is the case, then how is it viable that a set of law (i.e. Constitutional law) will determine the fundamental structure of a State? To these conspicuous queries, Salmond responded that 'constitution is both a matter of fact and a matter of law. This is so as the constitutional practices are logically prior to constitutional law. It is possible that there may a State and a constitution without any law,

<sup>3</sup>Hanna Fenichel Pitkin, (1987) "The Idea of a Constitution", *Journal of Legal Education*, Vol 37 Issue no. 2, pp.167 -169

<sup>4</sup>B R Kapoor vs State of Tamil Nadu (2001)7 SCC 231

<sup>5</sup>Samuel P. Weaver, *Constitutional Law and its Administration*, Chicago: Callaghan & Co, 1946, p.1; Thomas M Cooley, *Treaties on Constitutional Limitation* (6<sup>th</sup> Edition), Boston: Little Brown & Co. (1890), p.4

<sup>6</sup>Colin Turpin & Adam Tomkins: *British Government & the Constitution* (6<sup>th</sup> edition), (New York: Cambridge University Press 2007), p.3

<sup>7</sup>Franklin Delano Roosevelt, in his address to the nation on Constitutional Day made this observation: "The Constitution of the United State was a layman's document, not a Lawyer's Contract". (September 17, 1937)

<sup>8</sup>L M Singhvi, *The Making of the Constitution* in: N N Vohra & S Bhattacharyee, *Looking Back India in the Twentieth Century*, (New Delhi: National Book Trust, 2009) p.15



"Constitutionalism"<sup>18</sup>. Essence of constitutionalism lays in the accountability of public powers<sup>19</sup>; the power that the people delegate it to the organs of the State, and its agents. The said delegated power can only be used for promotion of constitutional values and vision. The constitutional value and vision demands that responsibility of every organ of the State is to function within the four corners of constitutional responsibility<sup>20</sup>. That is the ultimate 'Rule of Law'. A primary function that is assigned to the written Constitution is that of controlling the organs of the Government<sup>21</sup>. Constitutionalism is about limits and aspirations<sup>22</sup>. The Constitution, being a heritage, as eloquently described by Justice Chandrachud<sup>23</sup>, a pious solemn duty is cast on the subsequent generation that not to destroy the identity of the Constitution. Constitutionalism is the notion that government can and should be legally limited in its powers, and that its authority depends on its observing these limitations. Here, comes a riddle - how can a government be legally limited itself, if law is the creation of the government? One response could be, Constitution needs to permeate with constitutionalism, i.e. State should have some in-built restrictions on the powers of its organs. Let the Constitution expressly mention about such limitations. But, the problem does not end there. The texts of the Constitution need to be construed in practical circumstances. Interpretation of words cannot mean just anything that we say. That means the restriction or limitation that is imposed on the instrumentalities of the State is not confined to the textual exegesis of a Constitution. Constitutionalism has both backward and forward looking elements<sup>24</sup>. It looks backward in that it necessarily involves historical and cultural interpretation to construe the force of constitutional texts (whether they are thought to enhance or limit governmental authority). It looks forward in considering the effects of proposed laws on the functioning of our political system and public life. The backward-looking element is sometimes considered the province of justification and legality, whereas the forward-looking aspect is seen as the domain of the practical and useful. It is a requirement of a just legal order, having faith on constitutionalism, that it cannot run away from hearing and deciding only on the questions of legality, especially when authorities shape policies, change rules and make peace with the crisis of the hour, ignoring the parameters of the Constitutional Charter<sup>25</sup>.

#### THEORETICAL PERCEPTION OF "CONSTITUTIONAL CULTURE"

On the aforesaid understanding of Constitution, Constitutional Law and Constitutionalism, let's cull out the juristic explanation on 'constitutional culture'. According to Prof Reva B Siegel, 'Constitutional culture' is a specific subset of culture that encompasses extrajudicial beliefs about the substance of the Constitution<sup>26</sup>. It is a network of understandings and practices that structure our constitutional tradition, including those that shape law but would not be recognized as 'lawmaking' according to the legal system's own formative criteria.<sup>27</sup> It is

<sup>18</sup>M.N. Venkatachaliah in his foreword note to the "Constitution of Jammu & Kashmir - Its Development and Comments" (1998) said:"The mere existence of a Constitution, by itself, does not ensure constitutionalism.

<sup>19</sup> Nandini Sundar and Orsvrs. State of Chattisharh, (2011) 7 SCC 547

<sup>20</sup> Ram Jethmalani&orsvrs Union of India, (2011)8 SCC 1: Surinder Singh Nijjar J. observed that "Modern constitutionalism ... especially in terms of the basic structure doctrine, specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a constitution cannot change the identity of the Constitution."

<sup>21</sup> B.R. Kapoor vs. State of Tamil Nadu and anr AIR 2001 SC 3435

<sup>22</sup>M. Nagaraj & Others Vs. Union of India & Others (2006) 8 SCC 212; AIR 2007 SC 71

<sup>23</sup>Minerva Mills Ltd. &orsvrs Union of India AIR 1980 SC 1789. The same sentiments was reiterated in the case of M. Nagaraj & others Vrs Union of India (2006)8 SCC 212: "The Constitution is a special heritage and, therefore, you cannot destroy its identity"

<sup>24</sup>John Ferejohn, Jack N Rakove& Jonathan Riley, 'Constitutional Culture & Democratic Rule', Cambridge : Cambridge University Press, 2001), p.9

<sup>25</sup>K. Skaria Vs. Dr.C.Mathew , AIR 1980 SC 1230

<sup>26</sup> Robert C. Post (2003), "The Supreme Court, 2002 Term-Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law", *Harvard Law Review*, Vol 117 Issue 1, pp. 4 -112 (p. 8); Matthew S.R. Palmer (2007), "New Zealand Constitutional Culture", *New Zealand Universities Law Review*, Vol. 22, pp. 565-597 (p.569)

<sup>27</sup> Reva B. Siegel (2001), "Text in Contest: Gender and the Constitution from a Social Movement Perspective", *University Pennsylvania law Review*, Vol 150, Issue 1 (November, 2001) , pp 297-351 (p.303)

historically formed sustainable value system<sup>28</sup> of conviction, perceptions and legal awareness, enriched by the experience of generations<sup>29</sup>.

A little elaboration will cause no harm here. As we know, culture grows in a society through ages, and in turn it sustains the society. It lets human community geared towards creative co-existence on the basis of common rules of social cohabitation acquired through mutual consent<sup>30</sup>. Culture signifies a "psychological orientation towards social objects"<sup>31</sup>. It sets the attitudes, beliefs and sentiments of the society and creates the structural base for its rules of governance and sustenance. Culture constitutes the basis for the social community in the process of establishing and guaranteeing the fundamental rules of governance as well as limitation on governance. This phenomenon is not uncommon in politics and law; there also develops a culture which could be pre-historic to formal adoption of a constitution. Fundamental assumptions and rules of the society are product of personal as well as collective experiences of components of socio-political society. Constitutional culture assumes that the governing charter is created by the citizenry and may be amended or abrogated by it under certain circumstances; but the people and the constitutional or governmental functionaries are bound by it until the charter is changed, though the citizens are free to disagree. It is pertinent to quote the observation of Karl N Llewelyn, considering the gradual and measured growth of fundamental norms of a constitution, "the basic postulates of a constitution run more deeply and change more slowly"<sup>32</sup> As we know, Constitution has an extra-legal origin<sup>33</sup> and this extra-legal origin of constitution is deeply influenced by the constitutional culture of that nation. It is very difficult to explain how the population at large comprehend and accept this constitutional culture and crystallize them as their law of the land. Drafting a constitution of a nation is a historical fact; but grafting a constitution and its norms in the collective as well as individual conscience of the people is a continuous process.

In the eyes of popular constitutionalists, constitutional law is the product of a "constitutional culture" in which judges are only one of many interpretive actors<sup>34</sup>. Constitutional culture is a specific subset of culture that encompasses extrajudicial beliefs about the substance of the Constitution<sup>35</sup>. According to DoniGwirtzman, "constitutional interpretation - in real or idealized form - is envisioned as the product of a constitutional culture ...". Constitutional culture is first and foremost incarnate and finalized in every legal system through the constitutional doctrine characteristic of that particular system. The doctrine includes an entirety of systematized knowledge, principles and approaches concerning the fundamental relations of being, as well as the content, legal nature, social mission and political significance of the Fundamental Law which is the result of the "formalization" of the constitutional culture. The clarification of value system guidelines for a social community is an inseparable component of constitutional doctrine, along with spelling out the rules of individual behaviour and restrictions on power. The constitutional doctrine includes theoretical and methodological foundations of the Constitution, the criteria for their implementation in social practice, standards for the determination of constitutionality, the nature and concrete specifics of constitutionalization of social relations. Constitutional culture acquires substance only in the event and to the extent, when and to which extent the Constitution or constitutional norms become actuality. Constitution and constitutional norms represent two different things, like the body and the spirit; though both are separate, yet they cannot be separated from each other (Otherwise both would mean zilch). Hence for greater and higher accomplishment of existence harmony between body and soul or so to say constitution and constitutional norms

<sup>28</sup> Constitutional culture is a certain system of values of the human community geared towards creative co-existence on the basis of common rules of social cohabitation acquired through mutual consent.

<sup>29</sup> DoniGwirtzman (2005), "Glory Days : Popular Constitutionalism, Nostalgia and the True Nature of Constitutional Culture", *The Georgetown Law Journal* Vol.93, pp. 897 - 938

<sup>30</sup> GagikHarutyunian, 'Constitutional Culture : the lessons of history and the challenges of time' (2009) p.19  
"Constitutional culture is a certain system of values of the human community geared toward creative co-existence on the basis of common rules of social cohabitation acquired through mutual consent."

<sup>31</sup> Almond and Verba, "Civic Culture: Political Attitudes and Democracy in five Nations", Princeton University Press(1963), p. 13

<sup>32</sup> Karl N Llewelyn (1934), "The Constitution as an Institution", *Colombia Law Review*, Vol 34 Issue 1, pp. 1-41

<sup>33</sup> Sir John Salmond, 'Jurisprudence', (London: Sweet and Maxwell Ltd., 1930), p.154

<sup>34</sup> Ibid as note 29, p.899

<sup>35</sup> Robert C. Post (2003), "The Supreme Court, 2002 Term-Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law", *Harvard Law Review*, Vol 117 Issue 1, pp. 4 -112 (p. 8)

becomes imperative. There must be a certain harmony between constitutional perceptions and social realities. Constitutional culture characterizes that harmony. It is important to note that a commitment to constitutionalism is product of constitutional culture. Constitutionalism is the practice of constitutional culture which put limits on the public power of constitutional authority which is enforced in the name of constitutional norms.

#### ELUCIDATION OF 'CONSTITUTIONALISM' & CONSTITUTIONAL CULTURE'

To have a better grasp of over the notion of constitutional law, constitutionalism and constitutional culture, the author has taken of three of factual events to illustrate the same.

The constitutional texts of India have made it clear that a non-elected member of a legislative body can become a Minister, Chief-Minister or Prime Minister. And there are number of instances when these things had happened in India. Article 75(5) and Article 164(4)<sup>36</sup> of Indian Constitution are the corresponding provisions for Central and State Council of Ministers, respectively. SC<sup>37</sup> has clarified the position of the law that if the Governor of a State appoints a Chief Minister and Council of Ministers, none of whom are members of the State Legislature, and the Legislative Assembly of the State to whom the Council of Ministers would be responsible endorses this unlikely Council of Ministers, there is nothing in the Constitution which would make this appointment illegal. That means a person, not being a Member of either House of Legislature could be appointed a Minister, but he could continue as a Minister for a period of six consecutive months only during which period he should get himself elected to the Legislature or else he must cease to be a Minister after expiry of that period.

This aforesaid constitutional law of India is a typical example of how the text of the constitutional law allow the relaxation in the form of limited privilege to the non-elected member to become a minister in a Council of Ministry. Now, let's examine a typical actual situation. Shri TejParkash Singh, was appointed as a Minister in the State of Punjab on the advice of the Chief Minister, Sardar Harcharan Singh Barar on 09.09.1995. At the time of his appointment as a Minister, he was not a Member of Legislative Assembly in Punjab. He failed to get himself elected as a Member of the Legislature of the State of Punjab within a period of six months and submitted his resignation from the council of Ministers on 8.3.1996. During the term of the same Legislative Assembly, there was a change in the leadership of the ruling party. Smt. Rajinder Kaur Bhattal, was, on her election as Leader of the Ruling Party, appointed Chief Minister of the State of Punjab on 21.11.1996. Shri TejParkash Singh, who had not been elected as a Member of the Legislature even till then, was once again appointed as a Minister w.e.f. 23.11.1996. This particular appointment of Shri Tej Prakash Singh was questioned before the Supreme Court of India. The SC<sup>38</sup> has declared this kind of appointment unconstitutional.

The text of either Article 75 or Article 164 do not prescribe any restriction for reappointment of person as Minister in a Council without becoming a member of the Constituent Member Legislative Assembly or Parliament. The framers of the Constitution did not visualizethat a non-legislator can be repeatedly appointed as a Minister for a turn of six months each time, without getting elected. There is no bar to this course being adopted on the text of the Constitution. Article 75 or Article 164 do not expressly prohibit reappointment of the Minister, without being elected, even repeatedly. But, reappointment of such person as in the case of Shri Tej Prakash Singh will be a blatant violation of the spirit and values of representative democracy. In S R Choudhury v. State of Punjab case it was argued, and rightly so as it struck at the very root of Indian parliamentary democracy.

India is a Democratic Republic and opted for responsible Government. The very concept of representative democracy and responsible Government signifies Government by the People. In constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their chosen representatives and for exercise of those powers, the representatives are necessarily accountable to the people for what they do. The Members of the Legislature, thus, must owe their power directly or indirectly to the people. Indian Constitution has chosen a system of political organisation, which is articulated in the Preamble. It is also apposite to note that Preamble indicates the source from which the Constitution comes, viz., "We, the People of India". It is needless to mention that in Indian parliamentary form of democracy; the Members of the State Assemblies or Lok Sabha trace their power directly as elected by the people while the Members of the Council of State or Rajya Sabha owe it to the people indirectly since they are chosen by the representative of the people.

<sup>36</sup>Article 75 (5) and 164(4) say: "A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

<sup>37</sup>Har Sharan Verma v. TribhubanNarain Singh, Chief Minister, UP, AIR 1971 SC 1331

<sup>38</sup> S R Choudhury v. State of Punjab, AIR 2001 SC 2707

On the aforesaid understanding, the Honble SC observed that " By permitting a non-legislator Minister to be reappointed, without getting elected within the period prescribed by Article 164(4), would amount to ignoring the electorate in having its say as to who should represent it - a position which is wholly unacceptable. The seductive temptations to cling to office regardless of constitutional restraint must be totally eschewed. Will of the people cannot be permitted to be subordinated to political expediency of the Prime Minister or the Chief Minister as the case may be, to have in his cabinet a non-legislator as a Minister for an indefinite period by repeated reappointments without the individual seeking popular mandate of the electorate." Indeed, reappointment of such a person, who fails to get elected as a member within the period of grace of six consecutive months, will not only disrupt the sequence and scheme of Article 75 and 164 but will also defeat and subvert the basic principle of representative and responsible Government.

Let's take up another incident where Judiciary rose to the occasion to uphold the constitutional values. In an ambiance of widespread violation of human rights due to ongoing armed insurgency and counter action in the State of Chhattisgarh, the State had actively promoted the activities of a group called 'SalwaJudum', an armed civilian vigilante group, as one of the counter insurgency measures. The State (the State of Chhattisgarh and Union of India) had claimed that employing the young local people in the counter-insurgency activities was vital and necessary to provide security to the people affected by Maoist violence and to fight the treat of Maoist extremism. In the case of Nandini Sundar v. State of Chhattisgarh<sup>39</sup>, Hon'ble Supreme Court clarified that it did not seek to interfere in security considerations for which the expertise and responsibility lie with the executive, directed and controlled by the legislature. But, Judiciary tends to intervene in such matters in order to safeguard constitutional values and goals. JusticeSudarshan Reddy and Justice S.S. Nijjar in this case observed that the fight against extremism cannot be effectuated by constitutional democracies by whatever means that are deemed to be efficient. Efficiencies is not the sole arbiter of all values and goals that constitutional democracies seek to be achieved. All efficient means are, not necessarily, legal means, supported by constitutional frameworks. Finally, it was observed by the SC that protection of civil liberties is far more sacred value than efficiency of a means and declared the act of the State of arming the civil vigilante is unconstitutional. In case, though the executive has the prerogative to opt for an effective mechanism to deter the security threat on the State, but it cannot be done at the cost of the fundamental values of the Constitution.

The forerunners of constitutional institutions face a typical challenge. At one hand, they are urged to promote the constitutional norms that they are sought to protect and defend. On the other hand, they are also under the temptation to advance the policies they favour; they have strong incentives to treat other constitutional instruments to their interests or most amenable to their influence. Let's take the example of amendment of section 3 of Representation of People Act, 1951 (RPA). Section3 of RPA originally provided that the qualification for being chosen as a representative of State in the Council of State in India was that the candidate be 'an elector for a Parliamentary constituency in that State or territory'. A controversy erupted in December 1993, when T N Seshan, the then Chief Election Commissioner, prepared a list of twenty Members of Parliament (MPs) holding membership since January 1988 who appeared 'prima facie not to be ordinarily resident in the States from which they were elected'. Seven out of those 20 MPs were Union Ministers. Legally, section 3 of RPA became an area of inconvenience for the political parties. This provision was amended in 2003. The amendment removed the provision requirement of an ' identifiable nexus' with the State. In effect, this was a major change in the character of the composition of the Rajya Sabha. It had virtually obliterated the distinction between the two houses of Parliament. This amendment was challenged in the *KuldipNayar v. Union of India*<sup>40</sup> and the Hon'ble SC upheld the said amendment. Dr Subhas C Kashyap resented the conclusion drawn by the SC and wished the matters may be reviewed at the earliest<sup>41</sup>. The Rajya Sabha is constituted to provide representation to the people of the various constituent States of the Indian Union and a representative of with no domicile in a particular State cannot be effectively represent the people of the State. Unfortunately, because of the 2003 amendment of the RPA and subsequent endorsement of its constitutional validity by the Hon'ble SC, political party in power using the said constitutional institution a place of accommodation for their prominent party members. This is a very typical incident where the political and personal convenience got better of constitutional norms. In fact, there are glaring instances where a particular a particular candidate lost general election ( Lok Sabha ), but in order to accommodate such persons in the cabinet, they were elected as Rajya

<sup>39</sup>(2011) 7 SCC 547

<sup>40</sup>(2006) 7 SCC 1

<sup>41</sup> Dr Subhas C Kashyap (2008), *Constitutional Law of India* (vol 1), New Delhi, Universal Law Publication, p.1056-1058

Member from other than their own State. And thereof, the very representative character of Indian democracy as envisaged under the Constitution is negated. Hon'ble SC, which is the conscience keeper of Constitution, had lost a chance in the case of *KuldipNayar v. Union of India* to restore the infraction of constitutional culture of representative democracy of India.

#### CONCLUSION

The answer to the challenges of choosing between the convenience and constitutional norm lies in having a stubborn constitutional culture. A constitutional culture guides and goads the State as well as non-State actor for attainment of constitutional objectives. A constitutional culture is a web of interpretative norms, canons and practices which most members of a particular community accept and employ at least implicitly to identify and maintain themselves within the demands of the Constitution. The concept of constitutional culture is to include norms and rules of interpretation as well as the institutions and practices of the government. It seeks to identify the higher-level norms and rules (separating itself from other ordinary law) as accepted as constitutional norms and, further, provides insights into the various mechanisms that are employed to limit the State actors as well as non-State actors. Constitutional culture is a practice that people follow in instituting and constraining their government and governance.

At the cost of repetition, let's reiterate the rudiments of constitutional law. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. It is a fact that much of the action in creating the structures of government and governance takes place outside constitutional texts conceived. Normally, government and governance is conceived and run under statute law, as interpreted by the functionaries of the State and by establishment of informal conventions or understandings. A Constitution should operate to constrain conflict by fostering fundamental confidence in its institutions and procedures true to its spirit. It is an important facet of constitutionalism. Constitutionalism does not suggest only a commitment to textual construction of the Constitution. Interpretation of constitutional texts is only a part of constitutionalism. It involves historical and cultural interpretation in understanding the application of the texts of a Constitution. It is not that texts are unimportant. Texts can constrain plausible interpretation. Words, if they are to retain any useful social purpose, we must intrinsically follow the meaning which is construed from its practical circumstances.

Constitution represents a nation's philosophy, politics, society and law. For the accomplishment of constitutional objectives, functionaries and instrumentalities of the State and of the Constitution must forever remain conscious of their constitutional obligations and not sacrifice either political responsibility or legislative conventions at the altar of 'political expediency'. The successful working of any constitution depends upon a spirit of fair play of self-restraint and of mutual accommodation of differing interests and opinions. There can be no constitutional government unless the wielders of power are prepared to observe the limits upon governmental powers. This is possible only when all the stakeholders of States, including 'the People' understand and nurture 'Constitutional Culture'.