

Research Paper

A Constitution without Constitutionalism: A Gambian Paradox

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Abstract: Constitutionalism and democratization are the current governance trends in Africa, and these are complemented with new constitutions. The Gambia is not an exception as it transcends from dictatorship. However, the country faces a paradoxical menace of a constitution without constitutionalism as it faces deficit of constitutionalism in praxis despite its theoretical deliberation in the State's 1997 Constitution. This research uses doctrinal or normative legal research with focus on provisions of laws, books, journal articles and other secondary materials that speak to the facts in issue. This Africa's smallest mainland country is a victim of the 1884 – 1885 Berlin Conference as it still tries to give much premium to foreign legal systems over customary practices of the people before this Berlin project. While constitutionalism seeks to limit the power of the government, its most critical constituent as regards the concept of constitution without constitutionalism is the rule of law. The rule of law premises on the ground that all state's constituents must be subject to the law. Therefore, the metaphor of a saviour, savage, and victim as the 1997 Constitution, the State and freedom of expression respectively suggests the totality of the complexity of a constitution without constitutionalism.

Keywords: Constitution without Constitutionalism, Constitutional Limits, Living Constitution, Rule by Law, Rule of Law.



1. Introduction

The Gambia is a home to multiples of ethnicities with features and vestiges of successful projects of slavery, colonialism and neocolonialism. It is the smallest mainland country in Africa and also, a country that has borrowed literally all the elements of governance from its erstwhile colonizer. This has an impact on its governance system, and it continues to bewilder it for decades. It is part of a continent that is linguistically partitioned by dint of the Berlin Conference of 1884 – 1885 thereby presented with new governance style that it still struggles to make a reality, notwithstanding the fact that prior to the projects of slavery and colonialism the country has its unique governance styles with kingship and chieftaincy as animated by customary laws of the indigenous people of the land. In the African setting, constitutionalism is based on the notion that authority must have well-defined boundaries and well-established procedures for enforcing them. According to Nabaneh, it is a “three-faceted notion” centred on the protection of human rights, respect for the rule of law, and limitation on the use of governmental power [1]. In constitutional law, after the World War II, its theory and practice have taken a paradigm shift. The paradigm entails, inter alia, a valid and legitimate conditions and limits for a state’s exercise of its power, and a bill of rights established by the constitution that outlines each person’s entitlement to just governance based on their inherent dignity.

After the end of colonialism and the reemergence of independence in The Gambia as it did in other African states, constitutionality becomes the basis upon which the conducts and acts of the people are measured. In other words, act of the people in line with the constitution became the blueprint of governance in The Gambia. This is evident in the amalgamation of the Westminster constitutional model with elements of parliamentary government until the Republican state was attained on 24 April 1970. The laws of The Gambia, a former British colony, are based on English common law principles of equity and statute law, which are complemented by regional customary law and sharia law [2]. To properly understand how the governance framework functions in its surroundings, one must first understand the constitution and other pertinent laws which are the essential sources of the legal system in the country. Crucially, The Gambia’s 1997 Constitution lays out specifics about the country’s political structure.

From Africa’s perspective, African Charter on Democracy, Election and Governance provides that state parties shall endeavour to establish good political governance through eight principles. They must be, inter alia, “accountable, efficient and effective public administration; strengthening the functioning and effectiveness of parliaments; an independent judiciary; relevant reforms of public institutions including the security sector; and entrenching and respecting the principle of the rule of law”. Good governance denotes an administration that rigorously upholds and puts into practice democratic values, is attentive to the demands of the people, and is successful in addressing new social issues [3]. These democratic values and other social issues are addressed by state laws to ensure that countries are ruled by laws and not men, hence the term “rule of law”.

Commitment against “constitution without constitutionalism” is an endeavour towards securing and protecting the rights of the people in a civilized state. While a constitution is a sociopolitical and legal document agreed upon by the people to be the principal tool in determining their rights, responsibilities and obligations within the state, constitutionalism entails placing restrictions on the authority of the state and government and defining the boundaries that reliably protect citizens’ rights. Preventing misuse by any component of the system and making sure that power is used in line with certain ideals are the goals of constitutionalism [4]. It portrays legal enforcement of constitutional limits on a state. Wherever legal enforcement is necessary the position of institutions in realizing this cannot be left in the periphery of discourse. Despite constitutional theory, the constitution serves as a tool to create the country as well as a platform for the expression of public ideals and the articulation and defence of global human rights norms. These many goals may not always be compatible with one another. Constitutions may disregard well-established constitutional design principles or universal human rights rules when they function as distinctive and defining declarations of national goals and values [5]. When a constitution is found short of such protection it is now limited by the government whose acts it ought to have limited hence propagating a constitution without constitutionalism.

In the context of The Gambia, while constitutionalism in totality seeks to limit the power of the government, its constituent elements are sovereignty, separation of power, accountability of government and rule of law, the most critical constituent as regards the concept of constitution without constitutionalism is the rule of law. The rule of law is a concept premised on the ground that all state’s constituents must be subject to the law. In other words, it promotes the supremacy of law in a state. The issue of rule of law is very important to the current governance dispensation in The

Gambia because according to World Justice Project (WJP) Rule of Law Index 2023, the country ranks 85th out of 142 [6], signifying the urgency push further. Although The Gambia is one of the few countries that record an improvement in their Rule of Law Index, there are still unaccomplished tasks that ought to be done.

Most scholars and academics focus their acumen on state's providence in terms of constitutionality, but little did they consider that constitutionality cannot be subbed for constitutionalism and therefore, the two constitutional issues need not to be juxtaposed. The novelty of this research is on constitutionalism which is one of the least discussed ideas in Constitutional Law and State Administrative Law and yet, an emerging issue of concern in Africa's political terrain.

2. Literature Review

The Constitution of The Gambia, 1997 is the edict of governance tools with details of constitutionality and constitutionalism. The concept of constitutionality is articulated in its provisions on what ought to be done and what ought not to be done. Constitutionalism, on the other hand, is recognized through separation of power, provision of the Bill of Rights in Chapter IV, and recognition of this Constitution as the supreme law of the country (Section 4).

In the context of contemporary politics, it is impossible to refute the claim that democracy is a good form of governance. Even while it increases the range of political engagement, its expansion cannot be ensured in a state where the rule of law is lagging. The rule of law encourages investment and economic expansion while bolstering public confidence. When citizens assume responsibility for defending democracy and upholding the rule of law beyond the rhetoric offered by domestic and international laws, these aims can be accomplished. Failing to do so would, as was demonstrated under the Yahya Jammeh administration, have detrimental effects on leadership, good governance, and enthrone authoritarianism [7]. Many African countries seemed to have experienced a resurgence of the rule of law following the wave of democratic and constitutional reforms in the 1990s. These countries appear to have made substantial constitutional commitments to upholding the rule of law, as evidenced by their signature and ratification of regional and international treaties enforcing the same requirement. But over the past 20 years, this dedication has steadily waned. It is maintained that comprehending the scope and nature of the problem is necessary in order to design a suitable response to the ongoing, systemic, and systematic challenges to the rule of law in Africa [8]. Through the coup d'état of 22nd July 1994, The Gambia took a different trajectory resulting in the suspension of the 1970 Constitution and introduction of decrees while transitioning from military to civilian rule.

One of the most remarkable stories in the history of The Gambia is the intriguing ascent of Yahya Jammeh from a junior army commander to president, dictator, and head of state. In the early hours of the 22 July 1994 coup d'état, Yahya Jammeh as the Chairman of Armed Forces and Provisional Ruling Council (AFPRC) portrayed his council as a corrective government that had come to eradicate widespread corruption, ethnic discrimination, and suffering in the eyes of Gambians. At the outset of his military rule on 26 July 1994, Jammeh stated that military rule did not imply the end of democracy. He said that since the democracy is still developing, most positions will be held by civilians. He pointed that there would be transfer of power to the elected individual as soon as a constitution that is acceptable to all Gambians is put in place and guarantees that the current government cannot waste the country's resources and escape punishment. He averred that the process of adopting a new constitution would get underway right away. Yahya Jammeh's reign in The Gambia was marked by flagrant abuses of human rights against opposition leaders, journalists, and Gambian dissidents abroad [9].

After 22 years of Yahya Jammeh's rule, The Gambia called for a presidential election in 2016, which he lost to the opposition coalition party. The need and urgency to put an end to violations of human rights by Jammeh's regime was a crucial element in the decisions made by the majority of Gambians, even though there is evidence of some ethnic groupings voting [10]. While this phase of decision-making in the country was faced by stiff challenges considering Yahya Jammeh's dominance of the political space for more than two decades, the formulation of coalition as a merger of several political parties brought smiles to the faces of millions of Gambians both in the country and in the diaspora.

After The Gambia's contentious presidential election in December 2016, ECOWAS was able to "restore democracy" in the country by threatening to use force but refraining from actually deploying physical force. In addition to providing legitimacy to ECOWAS, the support of the African Union and the UN Security Council meant that the organization was fundamentally an African answer to African

problems and that its policies were African in nature. The Jammeh leadership did not concede defeat until the military invasion scenario was proven plausible [11]. As the hope of Gambians got ignited, the existential threats continue to manifest in terms of ensuring that the people are governed under the mask of constitutionality, but the ideology and practice of constitutionalism continue to be stunted. Constitutionalism is also a concept in praxis and not only in theory. Absence of constitutional governance is not limited to suspension of a state's constitution and introduction of military decrees as it was in The Gambia between 22 July 1994 and 16 January 1997 when the Constitution of the Republic of The Gambia 1997 was promulgated. In fact, a constitution can be used by a government to subvert the rule of law.

Subversion of constitutional governance is an attempt by government to achieve via covert action the weakening or destruction of a legal regime. The Technique of subversions is what makes it so essential. Subversion is hidden, subversive, and clandestine. It is to be compared with an outright attack [12]. Conjunctural use of the law for authoritarian ends uses legal provisions to weaken rivals' and opponents' political strength, erode institutional checks, and most importantly, impede civil liberties. Utilizing constitutional provisions that enable institutional subversion from inside also known as "Constitutional Trojan Horses", a structural application of legal statutes reallocates decision-making rights, so rearranging the power structure. Law is used as a weapon of rule by law against the rule of law in both situations [13]. These factors make one wonders what criteria should be used to determine whether such behaviours are lawful.

Throughout his presidential campaign and administration, Adama Barrow, the incumbent President of The Gambia, made numerous promises to strengthen the rule of law. But he has not yet fulfilled a lot of them. Political and social space have significantly expanded during his leadership. In addition to restoring judicial independence, human rights, media independence, and genuine democracy, he promised to amend the constitution. Under this current administration, basic liberties like the freedom of speech and the press have been reinstated to certain extent and journalists now feel secure. After being exiled, they have returned, and the private media industry has expanded [14]. International human rights norms and values are particularly crucial in African states with severely dysfunctional constitutions, where sectarian violence is still rampant and local legal systems are unable to end the crises and bring about peace and security [15]. This is reflexive of the long tenure of ECOMIG (ECOWAS Military Intervention in The Gambia) in the country in the aftermath of 2016 presidential election upheaval that ousted the authoritarian government of Yahya Jammeh.

Governance was once synonymous with government since it could be described as the direction and control of actions to produce socially acceptable results. However, the problematization of the state's position and function gave rise to the theory of governance. The rule of law has been essential to the concept of limited government since the emergence of liberal constitutionalism. The government can only operate within the bounds of its constitutional authority and in accordance with domestic legislation [16]. This significant part of governance – constitutionalism – is yet to be embraced fully in many African countries to which The Gambia is not an exception.

3. Methodology

Considering the socio-legal structure of The Gambia, this research uses a doctrinal research method. When conducting legal research, the most popular methodology used is doctrinal or library-based research. What is the law in a given circumstance is the question posed by doctrinal study. It is focused on analyzing the legal theory and the processes involved in its creation and implementation [17]. The data used are secondary in the form of books, journal articles, thesis and conference papers. To put it another way, secondary data is any dataset that the author did not collect, or more precisely, "the analysis of data gathered by someone else". Secondary data can be information that has already been obtained and is being considered for use in answering new inquiries for which it was not originally intended [18]. These data are collected through library research to support the findings in this work. Analysis method used is qualitative based on concepts and theories that are germane to the issues of constitutionalism in The Gambia.

4. Findings and Discussion

4.1. Constitution of The Gambia, 1997: A Saviour, A Savage and A Victim

This section focuses on three key attributes of a constitution with metaphorical terms of a saviour, savage and victim. It examines the paradoxical nature of 1997 Constitution of The Gambia as both a saviour and a savage. It also examines the victimized people as an absolute concept of constitution as

a complete state of political unity and order [19]. It is important to incorporate these into this research because the dichotomic and digressive act from democracy to dictatorship to the current seemingly emerging democracy in this current government needs to be delved into in order to appreciate the state of the country in propagating the ideals and praxis of constitutionalism against the long-standing challenge of “constitution without constitutionalism”.

A state’s constitution serves as a social contract for the creation of that state. As such, collaboration is what precedes the formation or creation of a state internationally. This collaboration is then taken into consideration while creating the state’s constitution. In actuality, the agreements made by the countries that decided to become sovereign states following World War II are enshrined in a fundamental contract called the “Constitution”. The Constitution is a fundamental legal document that outlines the fundamental framework for a country to be formed and subsequently enacted into law in order to organize its affairs. The highest legal authority that can serve as a guide for future laws passed in the course of governing a nation is considered to be basic law [20]. In The Gambian context, Section 4 of the Constitution of The Gambia, 1997 recognizes this same constitution as the supreme law of the country upon which other laws in the country draw inspiration and authority. In other words, all other laws of the country must not be repugnant to the ideals and norms of this constitution.

A constitution offers a dependable and steady foundation for government. It lays forth the guidelines and processes for making decisions, settling disputes, and upholding social order. Constitutions are subject to interpretation and amendment in order to reflect evolving ideals of the society. A constitution offers a framework for social and legal development, enabling communities to respond to changing circumstances and tackle problems like inequality, discrimination, and social injustice. It necessitates finding a careful balance between advancing the common good and defending individual liberties. Courts frequently have difficulties in defining the boundaries of individual liberties when those boundaries clash with more general societal objectives, such public health or national security. Since they are living documents, constitutions must change to reflect shifting social, cultural, and technical realities. It can be difficult, though, to interpret constitutional clauses in the context of current events [21].

The metaphorical term of the constitution as a saviour is derived from the notion that a constitution as an embodiment of laws is designed to, inter alia, protect the rights of the people from abuse of the ruling class. Protection of human rights as a component of constitutionalism is an issue that is of global trend. The Gambia has recorded human rights abuses by the government and state agencies over the 22 years of Yahya Jammeh’s autocracy and the vestiges of those atrocities still live with many Gambians thereby, questioning the practical meaning of constitutionalism in the country. These issues have a direct bearing on government and governance, and it must be addressed or else a well-functioning state risks degenerating into anarchy, which would mean the loss of public safety, law and order. Plato asserted in his “Republic” and other places that a state’s primary duty is to uphold law and order and safeguard its citizens [22]. With a view to achieving this, certain brakes must be applied by both the government and the governed. A good constitution must have in practice legal protection of the rights of the people and derogation and limitation power.

Legal protection is the bedrock of the ‘saving grace’ of a living constitution. A living constitution is a viewpoint that the constitution holds dynamic meanings, and it is said to develop together with the society it is created to regulate and provide the necessities of that society. A living constitution has attributes of a flexible constitution as against a rigid constitution. Therefore, an evolving interpretation of a constitution with respect to the current state of the society is necessary. It is argued that framers of the constitution write it in a wide and flexible intent in order to produce a document that is “living” and therefore, can change. Acts of constitutional amendments are animated by the fact that certain constitutions lack the elasticity to meet up with the emerging issues in the societies they regulate. In The Gambia, Section 6 (2) of the 1997 Constitution enjoins all citizens the right and obligation to defend this constitution. While it is the duty of the people to give life to the constitution by living according to the norms therein, the institutions created by this supreme law ought to be at the forefront of giving it meaning.

One of the constitutional institutions in The Gambia is the executive as found in Chapter VI of the Constitution of The Gambia, 1997. First of all, The Gambia’s foreign policy was firmly based on respect for human rights. Beneath a rhetoric of idealism, the administration of President Dawda Jawara leveraged the nation’s stellar human rights record to secure support, legitimacy, and respect abroad. For a state that was both economically and strategically fragile, a commitment to human rights was more of a survival strategy than an idealistic goal. Despite its seeming serious appeal for

action, The Gambia never missed a chance to demonstrate that human rights were part of the national identity [23]. However, with the change of government, the threats on the rights and security of the people became not only conspicuous but also a strategy of dictatorship to maim the political power and will of the people thereby established a seemingly “perennial throne”. The longest-serving democratic government and head of state in Africa ended abruptly with a coup d’état. This one-million-person ministate as of then, gained international recognition for its peace during a period of political unrest throughout the rest of the continent. The young Gambian officers’ general sense of relative deprivation, their animosity toward the senior Nigerian officers in charge of the army, and their perception of civilian government weakness all contributed to the coup. The instability in the subregion of West Africa and the strained ties between the overthrown government of The Gambia, and the government of Senegal gave the younger officers the confidence to step in. Although there is a lot of public support for the new administration, there is growing pressure both domestically and internationally to revert to civilian control [24].

However, holding the rights of the people hostage, which is evident in a lack of interest in securing the socioeconomic rights of the people, was no less serious than the transition programme back to civilian rule in 1996, the presidential elections, and the aftermath of growing authoritarianism and economic crisis. Expectations for a new political order were raised in 2005 with the founding of the National Alliance for Democracy and Development, a coalition of five political parties [25]. But hopes of this materializing were shattered by its dissolution in 2006. In the midst of crippling national and international debt, diminishing exports, subpar economic performance, and pervasive corruption, President Jammeh was elected to a fourth five-year term. Extreme poverty, countercoups, instability, and violence are likely to get worse if bad leadership and policy decisions are made going forward.

The Jammeh administration had the proclivity to go against court’s constitutional rulings that are not in its favour. This is manifest in many court cases involving individuals and the state as a savage in this context. While a government is established to secure the rights of the people, the antithesis is often the experience. It is correct to point out that during the 22 years of former President Jammeh’s leadership, freedom of expression suffered more than any other victimization. Numerous arbitrary detentions and arrests during this time violated their constitutional rights. Section 25 (1) (a) of the 1997 Constitution of The Gambia guarantees this right. After the military takeover of the First Republic in 1994, the environment for free expression declined sharply. The junta began limiting constitutional rights and liberties as soon as they took over the State House. Professionals and people from all areas of life in The Gambia eventually faced repercussions for exercising their right to free speech [26].

If one finds it difficult to understand in theory the concept of “a constitution without constitutionalism”, a glimpse into the 1994 – 2016 rule of Jammeh will give a clear image of what it upholds. Foreign judges – especially from Nigeria and Cameroon – have historically served on the judiciary in The Gambia due to the underdeveloped indigenous legal system and the lack of funding for the judiciary’s complete equipment [27]. The rule of law was under compromised as most of these foreign judges became mercenaries and succumbed to the biddings of their boss, Yahya Jammeh.

While the saviour and savage have their places in the governance system of the country, freedom of expression was the main victim of the conspiracy theory of this savage (dictatorial regime) and the weakness of the saviour (the 1997 Constitution). Established in 1979, Gambia Press Union (GPU) serves as the premier trade union and professional association for media professionals operating in The Gambia. GPU advocates for access to information rights, media development, freedom of expression, and the welfare of media professionals. In its many years of existence, GPU has developed into a well-known national media and labour rights organization with a global reputation. With over 500 media professionals as members, the union is seeing growth in both its national and worldwide network of affiliates and partners. However, this expansion and advancement was stunted by dint of an iron-fist rule.

Press freedom, also known as media freedom, is the bedrock for every free and democratic society and is a crucial part of the right to freedom of speech. However, The Gambia has not received sufficient constitutional protection for fundamental human rights from the country’s independence through the dictatorship era to the present although certain improvements are currently registered. Broad constitutional guarantees for freedom of speech and the press have not been adequately provided by post-independence constitutions, such as the Republican Constitution of 1970. In an effort to thwart transparent and responsible governance founded on the rule of law, participatory democracy, human rights, and justice, laws and practices have curtailed certain rights [28]. The

regulations that made speech illegal and were carried over from the colonial age of repression and subjugation were still applied to the populace. Particularly journalists and political and human rights activists faced legal action and, in some cases, jail time for speech-related offenses that ordinarily fell outside the purview of exercising one's civic rights. Perhaps the most brutalized and first victim of former President Jammeh's 22-year rule was freedom of expression. Over 100 instances of arbitrary journalist arrests and incarceration occurred throughout his 22 years [29].

In 2012, ARTICLE 19's conclusion provides that "the laws governing The Gambian media, reviewed in this analysis, are fundamentally flawed and incompatible with The Gambia's obligations under international and regional standards on freedom of expression. The most problematic features of these laws include: the registration requirements for newspapers under the Newspaper Act 1944; a number of speech-related offences (including seditious libel, criminal defamation, and publication of false news) in the Criminal Code in clear breach of international standards for the protection of freedom of expression; and the fact that the regulation of broadcasting is ultimately entrusted to the executive rather than an independent body, as required under international law. In addition, the Information and Communications Act 2009 contains a number of overly broad provisions in relation to intercept (section 138) and the publication of information which is obscene in electronic form (section 170)" [30]. These laws were purposefully enacted or inherited as tools with a view to suppressing freedom of the people and this has worked successfully in no small measure.

4.2. The Future of Constitutionalism in The Gambia

The one-billion-dollar question that worth asking as regards the future of constitutionalism in The Gambia is: 'Is there hope for constitutionalism in The Gambia?' This question is important as it connects the past, present and a hypothetical future of the country to make an informed verdict on the question. Having emerged from a subterranean "rule by law" in the form of dictatorship for more than two decades, the current state of the rule of law still needs to rise above the parapet. Recall that the African Commission on Human and Peoples' Rights, based in the Republic of The Gambia, was formed by the African Charter, also referred to as the Banjul Charter on Human and Peoples' Rights. As of 2018, the government of The Gambia is prepared to assist this union in its endeavours and to further its status as Africa's Human Rights Capital. The government largely relies on the rule of law as the means of promoting, defending, and upholding the ideals of human rights because we are mindful of the values entrusted to us [31]. The rule of law offers a framework that subjects the use of authority to established guidelines that ensure the preservation of all human rights. Thus, in order to maintain the rule of law, legal procedures, organizations, and substantive human rights are upheld by norms that uphold the fundamental ideas of justice, accountability, and equality before the law in the defence and upholding of rights.

The Index scores for Civil Justice fell for two thirds of the countries (66 percent) in 2023, compared to 61 percent of the countries (including The Gambia) previous year. The main causes are longer court cases and weaker enforcement [32]. The current trajectory is not an encouraging one after seven years of annihilation of dictatorship in the country. With regard to constraint on government power, The Gambia ranks 57/142 and 8/34 globally and regionally respectively while in terms of human rights, it is ranked 79/142 and 11/34 globally and regionally respectively. The rule of law is premised on the following foundations [33]:

- 1) The Magna Carta of 1215 which upholds the liberty of the people against the arbitrary authority of the ruler, supremacy of the law irrespective of whether it is a government or the ruled;
- 2) Habeas Corpus Act of 1640; 1679; 1803; 1804; and 1862 (as amended) which authorized the court to check and stop unlawful arrest, detention and imprisonment except for cases of treason and felonies;
- 3) The Bill of Rights of 1688 limits the power of the King, stipulates the rights of parliament, freedom of speech in parliament, free and fair elections, rights of individuals, representatives; and prohibits cruel and unjust punishment, taxation without the approval of parliament and promises of fines and forfeitures before conviction.
- 4) Universal Declaration of Human Rights (1948);
- 5) The French Declaration of the Rights of Man and of the Citizens of 1789;
- 6) United Nations Charter (1945).

The rule of law anchors on Responsibility to Protect (R2P) in Article 4(h) of the Constitutive Act of the African Union as an atonement of the failure of the international community to prevent the Rwandan genocide of 1994 amongst many other conflicts in the continent. Government impunity, in particular the abuse of authority by the president and other high-ranking public servants and politicians, is one of the biggest challenges to the rule of law in the African countries. In every African country, impunity typically results from the inability of the appropriate public authorities to bring criminals to justice, either due to a lack of ability or political will. According to international law, impunity frequently refers to a state's inability to hold those who violate human rights or carry out crimes that jeopardize global peace and security accountable as well as its failure to compensate victims for their suffering [34]. Considering the state of the country and where it is arising from, there is a glimmer of hope that the remaining vestiges of impunity by the government will soon fade away. However, there is also a tendency for constitutionalism not to see the light of the day if the people are not vigilant and strive towards holding their leaders accountable.

5. Conclusion

It is sufficient to conclude that a constitution without constitutionalism depicts the totality of the debacles faced in The Gambia's governance terrain. Impunity for the rule of law, the inability of the 1997 Constitution to salvage the people it ought to, the proclivity of the parameters of the state to act as a savage to certain extent and the victimization of citizens is an epitome of a constitution without constitutionalism in praxis. While the government hides behind the theoretical veil of constitutionalism (das sein), what constitutionalism ought to be (das sollen) in terms of protection of human rights, limitation of the power of the government and riding on the crest of the rule of law are not given much premium in national political engagements.

It is obvious that the 1997 Constitution is a document that gave hope to Gambians in the mid-1990s when it was promulgated but the ingenuity with which it is designed to perpetuate complete dominance of the political space by the dictatorial regime ought to be the intensity with which it is empowered to showcase the supremacy of the law. Therefore, to go beyond constitutionality to constitutionalism in a constitution in The Gambia, the idea of the rule of law which holds that the power of the state is always overcome by the authority of the law must be an issue of much consideration. The law should, therefore, govern politics; and not vice versa. Furthermore, the constitution ought to guarantee citizens' civil rights and subdue governmental authority – even though the constitution may be the only source of legitimacy for that power.

The right to freedom of expression needs to be revisited and this research is not oblivious of the need to prohibit hate speech as a mean of promoting peace and social cohesion. In the words of Roscoe Pound, law is a tool of social engineering and control. Therefore, the constitution should be structured to ensure the advancement of the state towards the practical realization of constitutionalism, and simultaneously a brake by ensuring social control of the people without violating their rights and freedom.

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