

## Constitutional Law and Constitutionalism

The concepts of constitutional law and constitutionalism basically refer to the legal framework of a country. At a time when the constitution is referred to as 'supreme law of land'; constitutional law is the study of rules, doctrines and principles related to the constitution; and constitutionalism is a system of governance under which the power of government is limited to rule of law.

As defined by Britannica, Constitutional law is the body of rules, doctrines and practices that govern the operation of political communities. It refers to rights carved out in the federal and state constitutions. This body of law is majorly developed from state and Supreme Court rulings along with the respective constitutions. In case of conflict between important functions of the state, the Supreme Court interpret their constitutions and come to a conclusion which ensures that the law passed by the legislature does not violate the Constitutional limits.

The term constitutional law is much more extensive in nature and includes the Constitution, judicial precedents, relevant statutory laws and conventions. Constitutional law outrights rights and powers of branches of the government at the central, state and local level and gives distinct responsibilities and functions to all three of them. It also defines the role, power and structure of different entities within the state namely, legislature, executive and judiciary. In countries like India, US, Singapore have their constitution defined in written form which consequentially means that the constitutional law of those countries is also subjective and can be ratified time to time, in case of need. Constitutional law regulates the government of a state and is the study of the set of rules which governs the relationship in a state between the ruler and the ruled.

Essentially, Constitutional law is the supreme law and all other laws have to conform to the Constitutional law, containing laws concerning the government and its people.

Whereas, Constitutionalism is a doctrine that means a government's authority is determined by a body of laws or constitution. Although some jurists take constitutionalism as a synonym of limited government, some refer to it as efforts to prevent arbitrariness of government. It is majorly regarded as a system of governance in which the power of government is limited by law, checks and balances to reconcile with the individual and collective freedoms.

Constitutionalism has a variety of meanings, most generally referred to as "a complex of ideas, attitudes and patterns of behaviour elaborating the principle that the authority of government derives from and is limited by a body of fundamental law". It is basically meant as the limited government of limitation of government. It does both, recognises the need for a government with adequate powers and at the same time, places limitations on those powers to prevent arbitrariness.

The Supreme Court in *I.R. Coelho v. State of Tamil Nadu*<sup>1</sup>, the Supreme Court regarded constitutionalism as a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. Also, in *Rameshwar Prasad and Ors. v. Union of India and Anr.*<sup>2</sup>, the Supreme Court stated- "The constitutionalism or constitutional system of Government abhors absolutism - it is premised on

---

<sup>1</sup> AIR 2007 SC 861

<sup>2</sup> (1994) 3 SCC 1

the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself.”

Various elements of Constitutionalism are:

- Written Constitution
- Independent judiciary
- Judicial review
- Rule of law
- Separation of powers
- Fundamental rights
- Federalism and many more.

Therefore, all the terms, constitution, Constitutional law and Constitutionalism are inter-related with each other with the linked idea of democracy and protection of rights of citizens through limited government. These concepts refer to a legal system of the country which grants collective rights and allows people to enjoy their freedom and promote the principle of “Rule of Law”.