

# CONSTITUTIONALISM

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# INTRODUCTION:

- Constitutionalism is a modern concept which is associated with a political order governed by laws and regulations.
- In other words it stands for the existence of a constitution within the state.
- Constitutionalism is a political philosophy according to which the functions of the government of a state must be in accordance with the provisions of the constitution.
- It stands for the principle of a limited government.
- Constitutionalism thus stands for the supremacy of law and not of individuals.

# History of constitutionalism:

- The history of constitutionalism probably began with the ancient Greeks as they had autonomy and democracy based on the constitution.
- Later Romans codified their laws and laid down the principle of representative government which was one of the important principle of constitutionalism.
- Later on under feudalism the idea of constitutionalism was undermined.
- In England, after the Glorious revolution of 1688 the era of constitutionalism emerged. The idea of rule of law made Britain a constitutional state.
- The American and the French Revolution also helped in the development of constitutional state.

# History of constitutionalism...

- The Declaration of Independence & the enactment of the American constitution resulted in the establishment of constitutionalism.
- The 'Declaration of the Rights of man and citizen' of 1789 is also another important milestone in the development of the constitutionalism.
- The idea of limited government of John Locke has greatly influenced the idea of modern constitutionalism.
- The Covenant of the League of Nations & The UN Charter gave a boost to the idea of constitutionalism in the 20<sup>th</sup> century.

# Definitions of constitutionalism:

- Some definitions of constitutionalism are given below –
- “It means a government according to rule as opposed to arbitrary government, it means government limited by the terms of a constitution, not government limited only by the desires and capacities of those who exercise power” **K.C. Wheare**.
- “Constitutionalism by dividing powers provides a system of effective restraints upon governmental action. In studying it one has to explore the methods and techniques by which such restraints are established and maintained. It is a body of rules ensuring fair play thus rendering the government responsible” – **Carl J. Fredrick**
- “Under constitutionalism, two types of limitations impinge on Government. Powers prescribed and procedure prescribed that is, there are liberation and procedural aspects of constitutionalism” – **W.G. Andrews**

# Nature of constitutionalism:

- Constitutionalism is a political order. And it is contrary to non-constitutional systems such as dictatorship.
- General characteristics of constitutionalism are given below –
  1. Constitution based concept
  2. Restraint upon political power,
  3. Protection of individual rights and liberty,
  4. Rule of law,
  5. Separation of powers/ division of powers,
  6. A dynamic concept,
  7. Connected with democracy,
  8. Constitutionalism leads to progress,
  9. Consensus required for constitutionalism,
  10. Three varieties of constitutionalism

# 1. Constitution based concept:

- Constitutionalism is generally based on constitution.
- The constitution plays an important role in organizing the political authority
- This political authority has limited powers.
- The government enjoys only such powers which are granted to it under the constitution.

## 2. Restraint on political power:

- According to Pinnock and Smith the main characteristics of constitutionalism is the existence of restraint on political power.
- These restraints on political power are as follow –
  - a. Rule of Law,
  - b. Provision of Fundamental rights,
  - c. Separation of powers,
  - d. Social pluralism,
  - e. Decentralization of powers,
  - f. Provision for conventions,



# 3. Protection of Individual Rights & liberty:

- Constitutional governments aims at ensuring liberties to the citizens.
- The rights given to citizens are in a sense limitations on the powers of the government.
- Thus, constitutional governments means limited governments.

## 4. Rule of Law:

- A.V. Dicey identified rule of law with constitutionalism.
- Constitutionalism implies a limited government operating under the rule of law.
- Constitutionalism requires a strict adherence to the principle of rule of law.

# 5. Separation of powers/Division of powers:

- Separation of powers & Division of powers are other important elements of a limited government.
- It restricts the discretionary authority of public officers and institutions.
- Its main purpose is to check and restrain the persons who hold public office and exercise political authority.

## 6. A constitution based concept:

- Constitutionalism is a constitution based concept.
- It stands for a polity governed under a constitution as opposed to arbitrary rule.
- It stands for a constitutional government which is based on democracy and not on totalitarian or authoritarian rule with absolute powers.

# 7. A dynamic concept:

- Constitutionalism is a dynamic concept.
- It is a dynamic concept in the sense that it has been the result of a continuous development.
- The dynamic nature of constitutionalism brings the changes in society.
- Thus constitutionalism is a process of growth promoting social development.

## 8. Connected with democracy:

- Constitutionalism is connected with the ideal of democracy.
- It is the government with limited powers and where people are supreme and enjoys the power to effect changes within the government

# 9. Constitutionalism leads to progress:

- Constitutionalism considers the constitution as essential for the progress of mankind.
- The constitution achieves development through peaceful means.
- Any change required to be achieved are effected through constitutional amendments.

# 10. Consensus required for constitutionalism:

- Constitutionalism requires consensus among the people of the nation to establish democratic institutions and procedures necessary public good.
- The political system should have common goals for its realization through constitutional means.



# 11. Three varieties of constitutionalism:

- There are mainly three varieties of constitutionalism like –
  - a. Western concept of constitutionalism,
  - b. Communist concept of constitutionalism &
  - c. Constitutionalism in third world countries.