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Meaning of the Constitution Law and Constitutionalism

Contents

1.1	Introduction	1.2
1.2	Meaning of Constitution	1.2
1.3	Meaning of Constitutionalism	1.2
1.4	Difference Between Constitution and Constitutionalism	1.3
1.5	References	1.3

1.1 Introduction

- ▶ The concepts of constitution and constitutionalism refer to the legal framework of a country.
- ▶ While the constitution is often defined as the supreme law of country constitutionalism is a system of governance under which the power of the government is limited by the rule of law.
- ▶ Constitutionalism recognizes the need for limiting the concentration of power in order to protect the rights of groups and individuals.
- ▶ In such a system, the power of the Government can be limited by the constitution and by the provisions and regulations contained in it but by other measures and norms.
- ▶ In order to understand the five concepts as well as their similarities and differences, it is important to understand their history and evolution.
- ▶ The idea of the constitution has changed significantly compare, to the first examples seen in ancient Greece, while the concept of constitutionalism has growl around the principle that the authority of the government is derived from and limited by a set of rules and laws.

1.2 Meaning of Constitution

- ▶ The definition of the constitution is quite complex and he significantly evolved during the last two centuries.
- ▶ According to the Western conception, the constitution is the document that contains the basic and fundamental law of the nation, setting out the organization of the Government and the principles of the society.
- ▶ Yet, although many countries have a written constitution, we continue to see the phenomenon of 'living constitution' in many parts of the world. As society change, so do laws and regulations.
- ▶ Furthermore, in some cases, there is no single document that defines all aspects of the state, but rather several different documents and agreements that define the power of the government and provide a comprehensive although not unitary legal framework. Constitution has also been defined as:
 - Basic norm (or law) of the state
 - System of integration and organization of norms and laws; and
 - Organization of the government.
- ▶ The Constitution provides the foundation of the government, structuring the political organization and guaranteeing individual and collective rights and freedoms.

1.3 Meaning of Constitutionalism

- ▶ Constitutionalism is a system of governance in which the power of the government is limited by laws. checks and balances. in order to reconcile authority with individual and collective freedoms.
- ▶ The principle of constitutionalism must be understood in opposition to non-constitutionalism. a system in which the government uses its powers in an arbitrary fashion. without respecting the citizen's rights.

- ▶ The idea of constitutionalism (and of the constitution) is strictly linked with the progress and spread of democracies.
- ▶ In monarchic, totalitarian and dictatorial sr.sreins there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that defines its limits.
- ▶ The concept of constitutionalism has evolved during the last few centuries thanks to political changes and the progress of democratic ideals.

1.4 Difference Between Constitution and Constitutionalism

- ▶ The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the Government.
- ▶ Most modern constitutions were written years ago, but laws and norms had already been evolving and mutating for centuries, and continue to do so.
- ▶ The constitution (and laws in general) is a living entity that should adapt to the changing features of the modern world and of modern societies. Failing to adopt the constitution without losing its core principles and values - may lead to an obsolete and unadapted governance system.
- ▶ The concepts of constitution and constitutionalism are strictly linked, but the second is much more than just the respect and enforcement of the national constitution (as the term might suggest).
- ▶ The creation of a constitution is the result of years of progress and evolution, but, in some cases like in Japan, the constitution can be imposed by invading or opposing forces, and may not embody the key values and principles that characterize a society.
- ▶ Building on the differences outlined in the previous section, we can identify, a few other aspects that differentiate the constitution and constitutionalism.

1.5 References

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