

CONSTITUTIONALISM V. CONSTITUTIONAL QUESTIONS V. RELIGIOUS HERITAGE

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‘Vision is the art of seeing things invisible’

“We should not fret for what is past, nor should we be anxious about the future; men of discernment deal only with the present moment ...”

---- Chanakya

ABSTRACT

Present moment of the day is, how to identify the Constitutionalism: That is, **collective sovereign**, what powers the sovereign possessed, and how one recognized when that sovereign acted differently. This is because of human nature as quoted by Philosopher, John Locke”...all government in the world is merely the product of force and violence, and that men live together by no other rules than that of the beasts, where the strongest carries it...” In order to eliminate the abuse of power the constitution and the constitutionalism come into exist. Ananalyst could approach the study of historic events focusing on issues that entailed ‘constitutional questions’ as constitution and that this differs from a focus that involves ‘questions of constitutionalism’, which seeks accountability of government to the **‘popular will’** through a system of independent courts, judicial review & transparency.

It is true that the Constitution, as the foundational law of the land, is to enjoy a position of primacy over and above any and all other laws, offices, and authorities. Yet, the question may be asked, why is this so? The question may be answered by looking to founding ideas about natural law, from which then flows the idea of natural rights which every Constitution enshrines and affirms unlike the constitutionalism that merely talks about **ideas** while in the situation of conflict or in competing interests. Constitutionalism is a system of commitment to limitations on ordinary political power; it revolves around a political process, one that overlaps with democracy in **seeking to balance state power and individual and collective rights**; it draws on particular cultural and historical contexts from which it emanates; and it resides in public consciousness. Nevertheless, constitution is a charter of government deriving its whole authority from the governed, whereas, ‘constitutionalism’ means limited government or limitation on government. A constitution can be defined as the fundamental laws custom, conventions, rules and regulations, stipulating how a country is governed, while constitutionalism can be defined as a principle which is not just a constitution but put limitations to the activities of individuals and the government. Constitutionalism first found its expression in the Philadelphia Convention (USA). It was the first nation to experiment with a written constitution, and later, the American constitution laid the foundation to the art of constitutionalism. After the end of conflict between monarch and the feudal lords, and also the results of the revolutions of different kinds in France, USA, USSR, and the over throw of the colonial rule in the 3rd world countries, the concept of

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“constitutionalism” has taken deep roots.

From Cicero to Blackstone, natural law theory was perhaps the key concept in the thinking of the generation which fought the Revolution against Britain and then established the constitutional republican form of government. But what is natural law? Essentially, natural law theory embodies a set of related **ideas** about the fundamental originalism of "law" as an ordering principle in the universe, on which the religious law is an associate. This natural law is universal – it applies everywhere and at all times, explicitly rejecting the concept of "moral relativism". For Cicero and other pre-Christian pagan thinkers, *“law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity if contrary to this;... upon this foundation and more, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these”*, whatever may be the religious belief of different sects. This study, accordingly, traces and concludes that the origin of constitutional questions or question of constitutionalism goes to religious heritage- in fact; it goes to the moral basis of constitution in natural law.

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