

UNIT - I

**1. MEANING & DEFINITION OF
CONSTITUTION**

**(NATURE OF CONSTITUTIONAL LAW
AND DIFFERENCE BETWEEN CONSTITUTIONAL
LAW AND ADMINISTRATIVE LAW)**

SYNOPSIS:

A. Definition of Constitutional Law

***B. Nature of Constitutional Law - Austin's View
and Salmond's View***

***C. Constitutional law - Matter of Fact and
Matter of Law***

***D. Difference between Constitutional Law and
Administrative Law.***

A. DEFINITION OF CONSTITUTIONAL LAW:

- 1. Hibbert** defines Constitutional Law as “the body of rules governing the relationship between the Sovereign and his subjects and the different parts of the Sovereign body”.

Constitutional Law deals with the fundamentals governing the structure of the State, comprising of Executive, Legislature and Judiciary.

2. Constitution is a body of 'fundamental principles' or 'established precedents' according to which a state or other organization is acknowledged to be governed.
3. Constitution is the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people living in it.
4. Constitution is a set of political principles by which a state or organization is governed, especially in relation to the rights of the people it governs.
5. Constitution is a written instrument embodying the rules of a political or social organization.
6. Constitution is the mode in which a state or society is organized especially the manner in which sovereign power is distributed.
7. A constitution is an aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organisation or other type of entity, and commonly determine how that entity is to be governed.

When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution.

- If they are written down in a single comprehensive document, it is said to embody a *codified constitution*. Some constitutions (such as that of the United Kingdom) are uncodified, but written in numerous fundamental Acts of a legislature, court cases or treaties.
8. Constitution is the basic **law** or laws of a **nation** or a **state** which sets out how that state will be organized by deciding the powers and authorities of government between different political units, and by stating the basic law-making and structural principles of society.
 9. Constitution is the primary contract or law by which the government of a nation or state is set out and organized.
 10. The constitution is colloquially referred to as the "law of the land" to which all of government, citizens, corporate persons and other laws must defer in the event of any conflict.
 11. Constitution is the way in which a government, state, society, etc. is organized.
 12. Constitution is a decree, regulation, or custom or system of fundamental laws and principles of a government, state, society, corporation, etc., written or unwritten.
 13. Constitution is a document or set of documents in which these laws and principles are written down.

B. NATURE OF CONSTITUTIONAL LAW - AUSTIN'S VIEW AND SALMOND'S VIEW:

Regarding the nature of Constitutional Law, there are **three** views.

I. AUSTIN'S VIEW:

According to Austin, "Law is a command of the Sovereign" and the Sovereign himself is not bound by law, as one cannot be bound by one's own command. But Constitutional law controls the Sovereign.

Austin concludes that Constitutional law is not a positive law, but is merely a positive morality. It derives its force from public opinion, because of its expediency and morality.

Criticism:

Willoughby is of the opinion that Constitutional provisions do not bind the State, but the Government - the executive wing of the Constitution. So Austin is wrong to conclude that Constitutional law is only rules of positive morality.

II. SALMOND'S VIEW:

According to Salmond, "Law is the body of principles applied by the Court in the administration of justice". The Court may apply certain principles regarding the structure and functions of Sovereign power also. Thus Constitutional Law is a law according to Salmond.

Further, he criticises Austin's definition of law as defective, because it has excluded Constitutional Law from its ambit.

C. CONSTITUTIONAL LAW - MATTER OF FACT AND MATTER OF LAW:

According to Salmond, Constitutional structure namely the '**State**' must be existing before laws came into existence. So whether rules regarding the Constitutional structure is a law or merely a fact, has to be decided.

Salmond answers his own query as follows:

Constitutional structure first started as a fact. Thus it had extra legal origin or sometimes illegal origin like U.S.A. which was formed after rebellious American civil war of independence with the Parent State namely United Kingdom.

On this fact of a 'State', the principles of distribution of exercise of powers by the Sovereign started. These principles became to be known as Constitutional Law, when they were enforced by Courts of justice. Thus according to Salmond, Constitution is both a fact and a law and as 'fact', it is anterior to 'Law'.

D. DIFFERENCE BETWEEN CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW.

In the earlier days, administrative law was studied as part of Constitutional law. With the increase of functions of the Government, the need for separate study of Administrative Law was felt necessary.

Constitutional Law deals with the three wings of the Constitution namely Executive, Judiciary and Legislature. It deals with their organisation, functions, powers, etc. In addition, it confers fundamental rights on all citizens. Thus, the scope of Constitutional law is very wide. It also prescribes guidelines to the Administrator for efficient administration as per Directive Principles of State Policy.

It gives elaborate provisions about judicial system also. It also deals with powers and functions of Member of Legislative Assembly, Member of Parliament, President, Prime Minister, Chief Minister, Governor and others.

On the other hand, Administrative Law is narrow in scope. It deals with the Executive alone. It deals with the powers, functions and the organisation of administrative authorities. It gives constitutional and other statutory remedies to the affected parties by way of writs, damages, injunction, etc., thus establishing judicial control over administrative actions.

Constitutional Law and Administrative Law overlap each other and defy clear distinction. A critic observes Administrative Law as a specialised branch of Constitutional Law.

Philips observes that Constitutional Law is concerned with the organisation and functions of the Government at rest while Administrative Law is concerned with the organisation and functions in motion.

Maitland observes Constitutional Law deals with structure and broader rules regulating executive,

whereas the administrative law deals with the minute details of the functions of the executive.

A **Critic** observes 'Constitutional Law' deals with the structure and rules of Government which regulate its function, while Administrative Law deals with the details of such functions. Thus the difference between Constitutional law and Administrative law is one of convenience rather than of logic.

In conflicts between Constitutional law and Administrative law, Constitutional law will prevail. So, the administrative actions must be in conformity with the Constitution. The rules enacted by administrative authorities must not violate the Parent Legislation and the Constitution.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Discuss whether Constitutional Law is a true law or not.*
2. *Explain the nature of Constitutional law.*
3. *"The Constitution is both a matter of fact and a matter of law" - Salmond. Comment.*
4. *What do you mean by Constitutional law? How is it distinguished from ordinary legislation?*

