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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE CONSTITUTION AND ITS RELATIONSHIP WITH STATEHOOD, TERRITORIALITY AND CITIZENSHIP**

AUTHORED BY - MANISHA PRIYA, LL.M.

Chanakya National Law University, Patna

## **Abstract**

The constitution is a cornerstone in shaping the fundamental concepts of statehood, territoriality, and citizenship within a nation, creating a comprehensive legal framework that intricately defines and regulates their interrelationships. Each of these elements is vital, and the constitution plays a pivotal role in their intricate dynamics. Firstly, concerning statehood, the constitution acts as a guiding document defining the state's structure, governance principles, and the intricate balance of powers among government branches. It often explicitly articulates the form of government, such as democratic, federal, or unitary, establishing the state's sovereignty. Secondly, in terms of territoriality, the constitution delineates precise territorial boundaries, addressing geographical extensions and internal divisions like states or provinces. It provides guidelines for addressing issues related to territorial changes, the creation of administrative units, and principles governing interstate relations. Thirdly, citizenship criteria are outlined in the constitution, determining who qualifies as a citizen and stipulating their associated rights and responsibilities. The constitution may also address aspects like dual citizenship, naturalization, and the rights of citizens residing abroad. Fundamental rights, enshrined in many constitutions, contribute significantly to the definition of citizenship and the relationship between the state and its populace. Constitutional amendments further impact statehood, territoriality, and citizenship, providing a mechanism to adapt to evolving societal needs. In federal structures, the constitution outlines power distribution between the central government and sub national entities, defining their territorial scope and autonomy. Additionally, the constitution may grant powers for international relations, influencing issues of territoriality, statehood, and citizenship concerning treaties, diplomatic relations, and borders.

**Keywords:** Rights and responsibilities, Federal structures, statehood, Fundamental rights, Constitutional amendments, territoriality, and citizenship.

## **Introduction**

The constitution typically includes provisions that define the state and its essential characteristics. It outlines the territory, population, government structure, and sovereignty, contributing to the conceptualization of statehood. The terms 'citizenship' and 'nationality' have both been used and mostly as interchangeable notions, as is often done in international legal studies on nationality and citizenship. However, the two terms cannot just be treated as synonyms depending on the discipline, legal tradition and language, the two terms represent different concepts. The constitution of a country plays a pivotal role in defining and governing the concepts of territoriality and citizenship. The relationship between the constitution and these elements is critical in shaping the identity, governance, and legal framework of a nation. Hence, the question of how the terms are to be used in this study deserves some discussion. For the purposes of this study, the terms nationality and citizenship will both be used to refer to full membership to a state in the legal sense of a bond between an individual and a state. In principle, the two terms will be used interchangeably. However, the term 'nationality' is mainly used to quote or refer to sources of international law using this terminology. The constitution of a country is a fundamental legal document that serves as the supreme law, laying out the principles, structures, and functions of the government. It establishes the framework within which a nation is governed and provides the basis for the creation and exercise of state authority. The relationship between the constitution and statehood is crucial in defining the nature and identity of a political entity. Here's an exploration of how the constitution relates to statehood:

### **Principles of Governance:**

Constitutions articulate the principles that govern the state. They define the form of government (e.g., democratic, authoritarian, parliamentary) and establish the distribution of powers among different branches of government. These principles shape the state's identity and its mode of operation.

### **Distribution of Powers:**

Constitutions allocate powers and responsibilities among various governmental entities. They delineate the authority of the executive, legislative, and judicial branches, ensuring a system of checks and balances. This distribution is integral to the statehood structure.

### **Sovereignty:**

The concept of statehood involves sovereignty, and the constitution often explicitly declares and



safeguards the state's sovereignty. It outlines the extent of the state's authority and its ability to make and enforce laws within its borders.

### **Legal Status and Recognition:**

The constitution establishes the legal status of the state, defining its rights and obligations in the international community. It contributes to the recognition of statehood by other nations and international entities, emphasizing the importance of the constitution in shaping the state's standing in the global arena.

### **Citizenship:**

Constitutions commonly address the criteria for acquiring and losing citizenship. The definition of citizenship is crucial in determining who belongs to the political community, reinforcing the state's identity and the relationship between individuals and the state.

### **The Concept of Citizenship**

The concepts of citizenship and nationality are anything but straightforward. Depending on one's perspective, the understandings of citizenship and its legal qualification and political significance vary.

### **Historical Traces of the Concept of Citizenship**

Alexander Makarov's assertion in 1947 that the concept of citizenship is as ancient as the state itself underscores the historical roots of citizenship, often traced back to classical antiquity. In Greek city-states, citizenship bestowed privileged rights upon individuals, granting them the active participation in governing the city. Citizens convened in the polis to engage in discussions on matters of public life, embodying Aristotle's vision of a citizen as both ruler and ruled. However, this concept was exclusionary, limiting citizenship to free adult males based on descent and excluding women, children, slaves, foreigners, metics, and other minority groups from collective self-rule.

The Roman Empire expanded the concept of citizenship beyond city-states to governed territories, shifting its focus from political participation to a legal status based on social standing, property, and the legal system. Like the Greek system, Roman citizenship excluded individuals based on birth, class, race, and gender. Both Greek and Roman models contribute to contemporary discussions on

citizenship. The Greek model emphasizes equality among citizens as rulers, while the Roman model focuses on legal status and equality under the law. Citizenship evolved from political rights to membership in a legal community, shaping the contemporary understanding of inclusive and equal citizenship. During the feudal societies of the European Middle Ages, citizenship lost its political meaning and was replaced by allegiance to the king or local ruler and religious affiliation. Citizenship appeared at the local level in towns and cities, connected to descent, naturalization, and guild membership.

The rise of sovereign nation-states after the Peace of Westphalia in 1648 marked the emergence of citizenship as membership in a sovereign state. The French and American Revolutions solidified the role of free and equal citizens as the basis of popular sovereignty, replacing feudal structures. However, citizenship remained exclusive, limited to adult free men. The 19th and 20th centuries saw the pre-eminence of nation-states and the strengthening of nationalism. Citizenship became intertwined with the idea of a homogenous nation, emphasizing exclusionary forces. The right to control entry and stay on national territory became a manifestation of state sovereignty, further contributing to exclusionary and racialized regimes of citizenship during European colonialism and decolonization.

### **Theoretical Conceptualizations of Citizenship**

The contemporary conceptualization of citizenship draws from the historical roots in Greek and Roman traditions, where it is often seen as either political membership, reflecting Aristotle's vision, or a legal status with specific rights and obligations, following the Roman tradition. However, modern discourse explores diverse dimensions of citizenship, encompassing legal status, political membership, rights, identity, belonging, civic virtues, and engagement. Scholars have identified key dimensions of citizenship, such as legal status, rights, identity, and political activity. These dimensions, theoretically distinct, often overlap and depend on each other in practice. The location of citizenship is generally associated with the nation-state, but alternative views consider local, regional, global, or supranational levels, challenging the traditional focus on the state. Citizenship has also been expanded to include social and private domains, extending beyond the political sphere.

The question of who qualifies as a citizen elicits two perspectives: one that views citizenship as a universal concept inclusive of everyone, and another that scrutinizes exclusionary mechanisms

inherent in citizenship. Citizenship, be it in terms of rights, status, membership, or identity, implies both inclusion and exclusion, reflecting internal inclusivity and external exclusivity. The borders of citizenship are not binary; rather, there are degrees and gradients of citizenship and alienage. These borders extend beyond state boundaries and manifest in physical boundaries, political practices, social norms, and individual embodiment. Citizenship, often linked with the principle of equality, becomes a significant cause of global inequality. Citizenship is a relative and evolving concept, shaped by societal interactions and subject to change. Different forms of citizenship emerge, disappear, and undergo transformations. The concept of citizenship is constructed by law and politics, determining who falls within its realm. Citizens and non-citizens are not inherent entities but are made and unmade by legal and political processes.

### **The Concept of Citizenship in International Law**

Citizenship, as defined by Makarov, establishes a legal relationship between an individual and the state, giving rise to a specific legal status. This status serves as the formal foundation for an individual's rights and duties within their state of nationality. The International Court of Justice (ICJ), in the *Nottebohm* case, characterizes nationality as a legal bond rooted in a social attachment, encompassing existence, interests, and sentiments. Recent international standards further emphasize nationality as a political and legal bond connecting a person to a state, involving ties of loyalty and fidelity. In the realm of international law, citizenship is construed as a legal status that designates individuals to a specific state, defining the state's populace and shaping its body politic. While it provides full membership with specific rights domestically, the concept is considered somewhat hollow, lacking precise content in terms of rights or political participation. International citizenship law encompasses regulations governing the acquisition and loss of nationality, establishing limits on state discretion in managing citizenship matters. The interconnection between citizenship and statehood is pivotal in international law. States, functioning as communities overseeing a territory and its inhabitants, regard citizenship as a defining element of their collective identity. Simultaneously, citizenship is reliant on the existence of a state, forging a reciprocal relationship between the two entities. This nexus influences society, impacting collective identity, membership criteria, and conceptions of identity and belonging. The threefold linkage between individuals and the state through citizenship serves to tether a population to a territory and political governance, delineate statehood, and facilitate a nation-state system. Citizenship, characterized by its relative stability and security, is typically acquired at birth, with the majority of individuals maintaining the same

citizenship throughout their lives. The modes of acquiring and losing citizenship involve various mechanisms, with state discretion playing a pivotal role in determining access to or loss of membership.

### **Territoriality:**

The territorial boundaries of the state are often outlined in the constitution. It may specify internal divisions such as states or provinces. The constitution provides the legal basis for addressing issues related to territorial changes, the creation of administrative units, and interstate relations.

### **International Relations:**

Constitutions may grant powers to the government regarding international relations. This includes the negotiation and ratification of treaties, diplomatic relations, and the delineation of borders. The constitution shapes the state's role and conduct in the international arena.

### **Constitutional Amendments:**

The process of amending the constitution can impact statehood. Amendments may modify the structure of the state, redefine territorial boundaries, or alter the criteria for citizenship. The flexibility of the constitution allows the statehood framework to adapt to changing circumstances.

### **Protection of Fundamental Rights:**

Many constitutions include a bill of rights or a chapter on fundamental rights. These rights protect individuals from government infringement and contribute to the definition of citizenship and the state's commitment to certain values.

### **Constitution and Territoriality:**

The constitution of a country plays a pivotal role in defining and governing the concepts of territoriality and citizenship. The relationship between the constitution and these elements is critical in shaping the identity, governance, and legal framework of a nation. Constitutions serve as foundational legal documents that intricately define and regulate both territoriality and citizenship within a nation. Regarding territoriality, constitutions explicitly delineate the state's territorial boundaries, specifying geographical extents, internal divisions like states or provinces, and addressing issues of territorial changes or acquisitions. These constitutional provisions extend to internal

administrative divisions, providing the legal framework for creating, altering, or dissolving states or provinces, ensuring a cohesive governance structure. Moreover, constitutions may contain provisions on interstate relations, defining legal parameters for interactions between territorial units and emphasizing the protection of the state's territorial integrity and sovereignty. In the realm of citizenship, constitutions play a pivotal role in shaping the criteria for acquiring citizenship, covering birthright, descent, naturalization, and other qualifying factors. They also define the rights and responsibilities associated with citizenship, enunciating fundamental rights and civic duties that contribute to the legal and civic identity of citizens. Addressing contemporary issues, constitutions may tackle dual citizenship, specifying conditions and procedures for individuals holding citizenship in multiple countries, as well as addressing naturalization for non-citizens. Moreover, constitutions often include a bill of rights safeguarding citizens from government infringement, ensuring their freedoms, liberties, and equality before the law. The constitutional amendment process holds significance for citizenship, allowing alterations to criteria, provisions related to dual citizenship, or modifications to citizens' rights and responsibilities. Ultimately, the constitution's role extends beyond the legal realm, contributing significantly to shaping national identity by defining who qualifies as a citizen a defining aspect of the broader cultural, social, and political identity of the nation.

### **Summary**

The constitution and statehood are closely interlinked, with the constitution serving as the foundational legal instrument that defines, organizes, and sustains the state. It plays a crucial role in shaping the identity, structure, and interactions of the state, both domestically and internationally. The study delves into citizenship in a legal sense, examining it as a relationship between individuals and the state, securing rights and imposing obligations. Focusing on the nation-state, its citizens, and non-citizens, the analysis explores how international human rights law influences this relationship, impacting access to or exclusion from legal status. The study critically reflects on the concept of citizenship in international human rights law, considering diverse conceptions of citizenship. Citizenship emerges as a legal status with profound implications for individuals and states, shaping their relationships, collective identities, and governance structures. The intricate interplay between citizenship and statehood underscores the complex nature of this legal concept, exerting influence on society across multiple dimensions. The constitution, as the foundational legal document, defines and regulates the concepts of territoriality and citizenship within a nation, establishing the legal framework for organizing territory, protecting borders, and determining criteria for political

community membership. The constitution's interplay with these elements shapes the governance, identity, and legal structure of the country.

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