

## BRIDGING THE DIVIDE: THE EVIDENT REGIONAL AND GLOBAL CONSTITUTIONALISM

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### ABSTRACT

*This paper efficiently and actively deals with the concepts of Regional and Global Constitutionalism with disparities, collaborations, and various evident insights. Constitutionalism, the principle that governance is determined by a body of laws or to be said the “Rule of Law”, serves as a fundamental mechanism to prevent arbitrary rule and ensure public rights. With the concept of domestic frontiers, the approaches and systems of Regional and Global Constitutionalism emerge. The idea of Regional constitutionalism emphasizes addressing local needs and geographic variations within specific areas, whereas Global constitutionalism relates to the application of principles like justice, equality, and liberty to mankind. Bridging the divide between these two significant frameworks involves addressing tensions, overlaps, and collaborations, which require innovative legal mechanisms, open discussions, and vigorously acting institutions. By setting up dialogues and conventions, aligning systems across the globe, and empowering the marginalized nation's voices, this paper advocates for a connected and just constitutional order that reflects the needs and rights of all individuals.*

**KEYWORDS:** Constitutionalism, Rule of Law, Uniform Governance, Legal Mechanisms, Global and Regional Institutions

### I. INTRODUCTION

Living in a modern era, nations governed by the “Rule of Law”, with no scope for any sort of “Arbitrary rule”. In the aspect of this form of governance prevailing in a nation, Constitutionalism plays a vital role in the assurance of public rights, more precisely this is an effort to prevent arbitrary government. Constitutionalism, the doctrine that a government's authority is determined by a body of laws or constitution, although sometimes regarded as a synonym for limited government.<sup>1638</sup> The roots traced back to ancient Greece some twenty-three centuries ago, with Aristotle's contribution.<sup>1639</sup> And gained significant attention with the theories of John Locke and Montesquieu. Modern

constitutionalism has its political origins in the 18th century in the American, French, and Haitian Revolutions.<sup>1640</sup> Regional and Global Constitutionalism is the application of principles we usually associate with the nation's constitution, like the Rule of Law, or the ideas of Justice, Equality, Liberty, etc. to the regions or even the entire humankind. It is like pieces of a jigsaw brought and fitting together to create a fair, morally driven, just, and connected world. They most importantly ensure connected local and global efforts, a smaller nation's voice, and prevent conflicts. On the second side, they operate and focus at different levels and have distinctive strengths, while one at the smaller picture and one at an enlarged picture. Bridging the gap between regional and global constitutionalism is a theoretical as well as a

<sup>1638</sup> Richard Bellamy, Constitutionalism, BRITANNICA, <https://www.britannica.com/topic/constitutionalism>

<sup>1639</sup> C. Perry Patterson, The Evolution of Constitutionalism, MINNESOTA LAW REVIEW 934, 427-457 (1948), <https://scholarship.law.umn.edu/mlr/934>

<sup>1640</sup> Mattias Kumm, Global Constitutionalism: History, Theory and Contemporary Challenges, DOI: <https://doi.org/10.1590/2179-8966/2022/70784>

practical challenge. The process involves addressing tensions, overlaps, and collaborations between the constitutional principles that operate at different levels of governance among nations and worldwide. This attempt to be successful requires innovative legal mechanisms, vigorous institutions, and open discussions that promote alignment while respecting the unique contexts of regional legal systems and governance.

*“Constitutionalism morality is not a natural sentiment. It has to be cultivated.”<sup>1641</sup>*

- Dr. B.R. Ambedkar

## II. REGIONAL AND GLOBAL

### CONSTITUTIONALISM: COLLABORATIONS AND DISPARITIES IN CONDUCT

In the modern era's world, legal systems and governance operate at multiple levels, each aiming to address specific needs while contributing to a wider in order to make a just and equitable society for all individuals. Regional Constitutionalism and Global Constitutionalism are two prominent approaches to achieving this, each bringing its strengths and focus. Regional Constitutionalism is the idea of recognizing and executing constitutional principles within a state or nation. It is focused on creating rules and systems that are applied equally in the matter of their domestic frontier based on local needs and geographic variations. Global Constitutionalism operates in a wider scope. It endorses a multilevel constitutional order in which actors within domestic, regional, and international spheres are expected to give meaning to the moral value, agency, and rights of individuals across multiple levels and different contexts.<sup>1642</sup> Collaboration of both simultaneously could cultivate balance in the local needs with global responsibilities with some specific targets likewise:

#### A. Connected Local and Global Efforts

In recent decades, local and global efforts have been made to shape better governance for mankind and their overall growth. Today, most significantly, organizations like the WTO (World Trade Organisation), ILO (International Labour Organisation), EU (European Union), AU (African Union), etc., are working towards this effort. And, with the helping hand of participating states, they have increasingly taken effective enforcement action as well.<sup>1643</sup> E.g. The World Trade Organisation plays the most prominent role in shaping global trade between nations by setting rules, mediating disputes, and promoting open and fair-trade practices. These efforts have helped reduce trade barriers, enabling countries to access international markets and economic growth, and creating employment opportunities. The organization's dispute-resolution mechanisms also demonstrate the importance of legal frameworks in maintaining global trade stability which applies to all the participating nations.

#### B. Preventing Conflicts

The integration of these two thoughts ensures the prevention of conflicts at both the Global and Regional levels by making a system of governance accepted and to be applied universally like The Universal Declaration of Human Rights (UDHR), 1948". The UDHR, adopted by the United Nations General Assembly, set forth fundamental rights and freedoms that apply to all individuals, regardless of nationality, ethnicity, or culture. This particular document ensures the protection of basic human rights in both global and regional aspects. Although Regional and Global Constitutionalism work best as one team but there are numerous disparities in conduct which are hurdles to its teamwork, some aspects are:

#### A. Disparities in Scope and Focus

Regional Constitutionalism focuses on specific geographical areas where countries share

<sup>1641</sup> Sudhir Chandra, Ambedkar and Constitutional Morality, THE HINDU, at 3 (Nov. 26, 2018), <https://www.thehindu.com>

<sup>1642</sup> Çalı, Başak, Global Constitutionalism and the Individual, in Anne Peters, and Tom Sparks (eds), The Individual in International Law, The History and Theory of International Law (Oxford, 2024; online edn, Oxford Academic, 30 Apr. 2024), <https://doi.org/10.1093/oso/9780198898917.003.0015>

<sup>1643</sup> Gráinne de Búrca & Joseph H. H. Weiler, Local, Global and Plural Constitutionalism: Europe Meets the World, in The Worlds of European Constitutionalism 150 (Gráinne de Búrca & Joseph H. H. Weiler eds., Cambridge Univ. Press 2012), <https://doi.org/10.1017/CBO9781139026734.006>.

similar histories, cultures, or challenges. This tailors governance and cooperation to local needs. E.g., the European Union (EU), a supranational political union of European countries. This unites its member states under shared values and policies, promoting regional integration among the nations.

Whereas Global Constitutionalism excels at a large geographical area, setting universal principles and standards within national and regional boundaries. E.g., the United Nations (UN), an intergovernmental organization at the international level uniting all the nations worldwide. It works to promote global peace, security, and human rights, setting standards that apply to all nations.

### B. Disparities in Governance Structures

Regional Constitutionalism operates through regional organizations, treaties, or courts that operate within the country or manage cooperation among neighbouring countries. E.g., the African Union (AU) has its own legal framework, which includes the African Court on Human and Peoples' Rights, to handle regional matters regarding the people's basic constitutional rights.<sup>1644</sup>

On the other hand, Global Constitutionalism relies on international institutions, treaties, conventions, etc. to establish a common framework for all nations. E.g., The World Trade Organization (WTO) provides a global trade platform for regulating trade and resolving disputes arising due to trade under common rules for its member nations allowing a free flow of trade between nations.

## III. CHALLENGES TO SIGHT: BRIDGING

### REGIONAL AND GLOBAL CONSTITUTIONALISM

#### A. Legal and Cultural Diversity in Billions of Peoples

The world has a population of 8.1 billion people and all those living in different nations across

with diverse Legal frameworks and Cultural practices. Regional constitutional systems are much influenced by local legal traditions, making it challenging to align them with global norms that may lack culture very particularly. The UDHR, 1948<sup>1645</sup> emphasizes principles like gender equality and freedom of speech. In contrast, Saudi Arabia's interpretation of Sharia law has historically imposed restrictions in these areas. For instance, women have faced several limitations in personal freedoms and legal rights, and their voices have been suppressed over a long period. Many prominent published reports indicate that individuals exercising their rights to freedom of expression or association have been targeted, with some sentenced to lengthy prison terms following unfair trials violating basic human rights.<sup>1646</sup> This is the most crucial challenge that must be given importance while bridging the gap of Regional and Global Constitutionalism.

#### B. Disparities in Institutional Framework Across Borders

The coexistence of regional courts and global judicial institutions can lead to conflicting interpretations of constitutional principles, creating disparities within the institutional framework and leading to a disrupted justice system. E.g. tensions between the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) have occasionally resulted in differing rulings and interpretations on very basic human rights issues. Such inconsistencies in a legal system can create confusion for countries bound by the rulings of both courts, complicating efforts to maintain their coherent legal standards.<sup>1647</sup>

#### C. Political and Diplomatic Imbalances

Global constitutionalism is often shaped by powerful and wealthy states or regions with

<sup>1644</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 10, 1998, <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf>.

<sup>1645</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948).

<sup>1646</sup> Amnesty Int'l, Saudi Arabia 2022 Report, <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/saudi-arabia/report-saudi-arabia/>

<sup>1647</sup> Doreen Lustig, J H H Weiler, Judicial review in the contemporary world—Retrospective and prospective, International Journal of Constitutional Law, Volume 16, Issue 2, April 2018, Pages 315–372, <https://doi.org/10.1093/icon/moy057>



powerful leadership like the USA (United States of America), Russia, and Arab countries. This concerns about the marginalization of smaller nations or less influential regions. When economic or legal policymaking is being transferred or a part of it from nation's governments to international institutions and summits, smaller nations often have very limited influence over the decision-making process. This can leave their specific needs and perspectives not or underrepresented, creating a sense of exclusion. Critics and individuals can easily observe and point out that powerful and wealthier nations sometimes use the principles of global constitutionalism to constitute policies that primarily serve their interests, sidelining other countries.<sup>1648</sup>

#### IV. PERKS TO RECEIVE: BRIDGING REGIONAL AND GLOBAL CONSTITUTIONALISM

##### A. Integration and Representation on the International Stage

Amplifying the voices of these smaller nations and marginalized communities ensures that global constitutionalism reflects diverse perspectives on the International stage. In order to create a truly equitable and inclusive global constitutional framework, it's essential to include all the smaller nations and marginalized communities in the conversation and conventions at this stage. When representatives from these nations and marginalized communities are part of the constitution-making, and policy formulation processes, the resulting laws, and policies are more likely to reflect their individual challenges, aspirations, perspectives, and the development of all.<sup>1649</sup>

##### B. Open Discussions and Cooperation Among the Nations

Encouraging open communication between regional organizations and global institutions is

essential. International platforms can facilitate discussions to align regional frameworks with global and universal norms. Collaboration between regional organizations and global institutions is critical for aligning local needs with universal principles. Conventions organised by this International Organisation like the United Nations (UN) and the World Trade Organization (WTO) provide a platform for these discussions, allowing nations to interact on policy-making and negotiate, and find common ground to interact. By encouraging open dialogue, these institutions help ensure that regional frameworks complement, rather than conflict with, global norms.

##### C. Global Judicial Interactions

Judicial courts play a pivotal role in bridging this divide of these two constitutionalism. Judicial associations considering two separate constitutionalism in path is hard to achieve but although it plays a vital role in protecting the independence of court of justice and upholding the rule of law. By resisting undue influence, these judicial bodies maintain the integrity of the judiciary in both aspects, which is essential for the fair and consistent application of constitutional principles in specific regions as well as worldwide.<sup>1650</sup> This all leads to a better legal system upholding the Idea of Justice.

#### V. THE MOST SIGNIFICANT COLLABORATING JUDICIAL EVIDENCE

##### A. The Vishakha Case: Judgement and Guidelines Tracing Global Constitutionalism

*Vishakha and others v. State of Rajasthan, 1997*<sup>1651</sup>, A landmark case in the Indian Judiciary identified the sexual harassment of women at the workplace as a form of discrimination against them and a violation of their fundamental rights under Arts. 14<sup>1652</sup>, 15<sup>1653</sup>, 19 (1) (g)<sup>1654</sup> and 21<sup>1655</sup> of the Indian Constitution. *The*

<sup>1648</sup> Mattias Kumm, Global Constitutionalism: History, Theory and Contemporary Challenges, DOI: <https://doi.org/10.1590/2179-8966/2022/70784>

<sup>1649</sup> NOREF - Norwegian Centre for Conflict Resolution, Inclusive Constitution-Making in Fragile and Conflict-Affected States, NOREF Insights (Dec. 13, 2022), <https://noref.no/insights/publications/themes/peacebuilding-and-mediation/inclusive-constitution-making-in-fragile-and-conflict-affected-states>

<sup>1650</sup> Gyöngyi P., The Role of Judicial Associations in Resisting Rule of Law Backsliding: Hidden Pathways of Protecting Judicial Independence Amidst Rule of Law Decay, International Journal of Law in Context. 2024;20(2):166-183. DOI: <https://doi.org/10.1017/S1744552324000107>

<sup>1651</sup> MANU/SC/0746/1997

<sup>1652</sup> India Const. Art. 14.

<sup>1653</sup> India Const. Art. 15.

<sup>1654</sup> India Const. Art. 19, cl. 1(g).

<sup>1655</sup> India Const. Art. 21.

POSH Act, 2013<sup>1656</sup> was brought after this case, and originated from “Vishakha Guidelines”<sup>1657</sup>. This set of guidelines issued by the Supreme Court of India for the safety of women at workplaces references several International Conventions including “CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women, 1979)”<sup>1658</sup>, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear.<sup>1659</sup> It also includes “The Universal Declaration of Human Rights (UDHR), 1948.”<sup>1660</sup> This ensures the protection of human rights in both global and regional aspects and emphasizes principles like gender equality and freedom of speech. This clearly shows the collaboration of Global Constitutionalism with Regional Constitutionalism in framing a better system to ensure the dignity and safety of women in Indian society.

### B. The M.S.S. Case in the European Court of Human Rights

In *M.S.S. v. Belgium and Greece, the European Court of Human Rights (ECHR), 2011*<sup>1661</sup>, demonstrated how international human rights principles can shape regional laws like the EU’s Dublin Regulation<sup>1662</sup>. The Court held that agreements between countries cannot override basic human rights protections, such as the right to be free from inhumane treatment. This landmark judgement emphasized the need to collaborate the regional policies with global human rights standards, ensuring asylum seekers are treated with dignity and not subjected to degrading conditions. This advocates the application of international

human rights to shape regional constitutionalism.

### VI. CONCLUSION

The initiation of the “Rule of Law” in worldwide governance has given birth to the idea of “Constitutionalism”, roots traced back to ancient Greece with Aristotle’s contribution and further significant contributions by John Locke and Montesquieu. The doctrine is that a government’s authority is determined by a body of laws or constitution.<sup>1663</sup> This idea is essentially and most importantly public driven. Regional constitutionalism tailors the local needs and governance, whereas global constitutionalism excels in the entire world, setting universal principles and standards that excel national and regional boundaries. Despite disparities in scope and governance of both, their collaboration promotes principles like justice to all, equality among all, and availing basic human rights. Empowering the marginalized nation’s voices, fostering dialogue and conventions, and aligning legal systems will contribute to building a more fair and more unified global constitutional order that reflects the needs and aspirations of all individuals. Landmark cases like *Vishakha and others v. State of Rajasthan, 1997*<sup>1664</sup> and *M.S.S. v. Belgium and Greece, 2011*<sup>1665</sup> illustrate how global principles shape regional frameworks, ensuring individual dignity and fairness. By bridging these divides, Constitutionalism upholds the “Rule of Law”, empowering governance to be public-driven and making a balanced, just, and interconnected global society for the collective welfare of all.

<sup>1656</sup> Protection of Women from Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013, No. 14 of 2013, India Code.

<sup>1657</sup> MANU/SC/0746/1997

<sup>1658</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>1659</sup> MANU/SC/0746/1997

<sup>1660</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948).

<sup>1661</sup> *M.S.S. v. Belgium & Greece*, App. No. 30696/09, 53 Eur. H.R. Rep. 2 (2011).

<sup>1662</sup> Council Regulation 343/2003, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National, 2003 O.J. (L 50) 1.

<sup>1663</sup> Richard Bellamy, Constitutionalism, BRITANNICA, <https://www.britannica.com/topic/constitutionalism>

<sup>1664</sup> MANU/SC/0746/1997

<sup>1665</sup> *M.S.S. v. Belgium & Greece*, App. No. 30696/09, 53 Eur. H.R. Rep. 2 (2011).