

## Constitutionalism - UPSC Notes

The concept of constitutionalism is an important one for the UPSC exam. It is important to know the difference between constitutionalism and constitution. In this article, you can learn all about the concept of constitutionalism for the [IAS exam](#).

### What is Constitutionalism?

The concept of constitutionalism is a mechanism that provides legitimacy to a democratic government. It cannot and should not be confused with the legality of the acts of the officials in a government setup. Constitutionalism is far more important than having a written Constitution. With some exceptions most of the countries have Constitutions but it in no way means that they practice constitutionalism. Some of the basic principles developed over time that embody the concept of constitutionalism are [separation of powers](#), judicial control and accountable government.

- In India, constitutionalism is considered to be a natural corollary to the fundamental governance of the country.
- The Constitution of India with the aid of various legislations has developed a detailed and robust mechanism to put into place administrative mechanisms for the smooth functioning of the machinery of governance.
- However, due to a variety of factors, the distance between the government and the governed has been growing with every passing year. The rich are getting richer and the poor have resigned to their fates, areas which were backward sixty years ago remain as such.

The concept of constitutionalism has been recognised by the Supreme Court in *Rameshwar Prasad v. Union of India*. The Court stated, “The constitutionalism or constitutional system of Government abhors absolutism - it is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself.”

In [IR Coelho v. State of Tamil Nadu](#), the Court held that Constitutionalism is a legal principle that requires control over the exercise of governmental power to ensure that the democratic principles on which the government is formed shall not be destroyed. Chandrachud, CJ, in *Minerva Mills* case observed, – “The Constitution is a precious heritage and, therefore, you cannot destroy its identity”.

### Principles in Constitutionalism

**Constitutionalism is an amalgamation of the following underlying principles:**

# Principles of Constitutionalism



#1 Separation of Powers  
#2 Responsible and  
Accountable Govt.

#5 Independent Judiciary  
#6 Individual Rights



#3 Popular Sovereignty  
#4 Rule of Law

#7 Civilian Control of  
Military  
#8 Police Accountability

## Separation of Powers

Separation of powers divides the mechanism of governance into three branches i.e., Legislature, Executive and the Judiciary. This not only prevents the monopolization of power, but also creates a system of checks and balances. As this division of powers is in the Constitution itself, this becomes an effective tool for ensuring Constitutionalism.

## Responsible and Accountable Government

In a democratic setup, the government is elected so that it can serve the people who help elect it. It is in this sense that the electors have a right to demand accountability and answers from their government. Therefore, when the government fails the expectations of the electorate, the authorization to govern is revoked by voting them out.

## Popular Sovereignty

The concept of popular sovereignty lays down that the government derives its legitimacy from the people. No corporate body, no individual may exercise any authority that does not expressly emanate from it. Even though there is a certain sovereign entity that is empowered to govern, ultimate sovereignty resides in the nation. The power of such a sovereign entity emanates from the public.

## Rule of Law

The presence of rule of law means that the government does not belong to men but to the laws. Dicey lays down three essential components of Rule of Law:

- Nobody is to be punished except for a specific breach of law that is established in an ordinary legal manner before ordinary courts of law.
- No one is above the law.
- Courts play a vital role in protecting the rights and freedoms of an individual.

### **Independent Judiciary**

The independence of the Judiciary is the essence of any liberal democracy and the foundation of a free society. The Judiciary is the upholder of Rule of law and if its independence is taken away, it puts the entire rule of law in jeopardy. The Constitution also envisages the separation of the judiciary from the Executive under Article 50.

### **Individual Rights**

The rights of the individual shall be at the highest pedestal for constitutionalism to thrive. The constitutional setup in India gives these rights the importance that they deserve by engraving them in Part III of the Constitution. These individual rights have not only been protected by the courts but have also been interpreted in a manner where their effect and implementation has broadened. The enforcement of these rights is ensured by the Constitutional Courts i.e. the [Supreme Court](#) and the High Courts.

### **Civilian control of the military**

Apart from these features, constitutionalism envisages that the control of the military should be in the hands of a civilian government so that the military does not interfere in the democratic decision making or attempt a military coup.

### **Police Accountability**

Constitutionalism also envisages that police while performing its duties shall uphold the rights, freedoms and dignity of the individuals, the same can be ensured by bringing the police under the control of laws and courts.

### **Conclusion**

The concept of constitutionalism has existed and thrives in all functioning democracies. However, over the years the Governments have learned to use government apparatus for their own benefits instead of benefitting the citizens. The government by giving backdoor entries to corporate interests in policy-making has vitiated the policymaking process whose primary aim is the welfare of the larger population. The very document that was adopted to ensure the rights of individuals is being used to suppress and disenfranchise them. The problem is that the Constitution cannot interpret itself and has to be interpreted by the men who hold power. The institutions that were the bulwark of Constitutionalism are either crumbling or have been effectively rendered weak and incapable. Checks and balances have been diluted to a point where their importance is merely academic. The criminalisation and influence of money power into the corridors of politics and governance have worsened an already volatile system. The frustrations that are building up due to the apathy of the government in utter disregard of constitutionalism are extremely dangerous and this slide needs to be stopped.

