

# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

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**SYLLABUS : Constitution and Constitutionalism: The distinctive features of the Constitution.**

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## Constitution and Constitutionalism: The distinctive features of the Constitution.

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## 1. CONCEPT ?

- Constitution is JUST a document - which has a set of rules or norms creating, structuring and defining the limits of, government power or authority.
- Even the dictatorial govt has - Constitution but NOT constitutionalism.
- *Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals R.C. Poudyal And Anr. Etc. Etc vs Union Of India- 1993 AIR 1804.*

## 2. COME ON! SO WHAT IS CONSTITUTIONALISM ?

- Constitutionalism means LIMITED GOVT ; it means that powers of executive & legislature are limited & not uncontrolled or arbitrary.

## 3. IS THIS CONCEPT APPLICABLE IN INDIA ?

- Modern constitutionalism, to which Germany is a major contributor too, especially in terms of the basic structure doctrine, specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a constitution cannot change the identity of the constitution itself. ; *PARA 64 Ram Jethmalani v. Union of India, (2011) 8 SCC 1.*
- Constitutionalism is the primary edifice on which the Indian democracy stands.

## 4. WHY NOT ABSOLUTE POWERS TO GOVT?

- Power corrupts AND Absolute power corrupts absolutely. If it is vested; then it will turn into authoritarian, oppressive govt. (DESPOTISM)
- jeopardise freedom of the ppl
- To preserve ppl dignity & personality.

## 5. MORE FODDER POINTS :

- A. Written COI embeds constitutionalism.<sup>1</sup>
- B. The constitutionalism or constitutional system of Government abhors absolutism. *Maru Ram v. Union of India & Ors. [(1981) 1 SCC 107].*
- C. no organ of the state may arrogate to itself powers beyond what is specified in the Constitution. *I.R.Coelho V. State of Tamil Nadu AIR 2007 SC 861*
- D. Protects FRs.
- E. Ensures the Doctrine of Separation of powers with check + balances.

THE END. MORE ON NOTES.

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<sup>1</sup> India has a written Constitution with constitutionalism firmly embedded in it. *M. Gopalan vs State Of Kerala 2002.*