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Topic: Constitution of UK and its salient Features

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Constitution of the United Kingdom

The **constitution of the United Kingdom** is the system of rules that shapes the political governance of the United Kingdom of Great Britain and Northern Ireland. The UK constitution is not contained in a single code, but principles have emerged over the centuries from statute, case law, political conventions and social consensus. In this sense, it can be said that the United Kingdom does not have a constitution or a basic law. In England in 1215, Magna Carta required the King to call "common counsel" or Parliament, hold courts in a fixed place, guarantee fair trials, guarantee free movement of people, free the church from the state, and enshrined the rights of "common" people to use the land.

Principles

The UK constitution has not been codified in one document, like the Constitution of South Africa or the Grundgesetz in Germany. However, general constitutional principles run through the law, and central statutes have been recognised as holding "constitutional" value. The main sources of law, which "constitute" the body politic of the UK, are Acts of Parliament, cases decided by courts, and conventions on how the Cabinet, the Prime Minister, Parliament and the Monarch conduct themselves. Through legislation, case law and conventions, at least four main principles are usually recognised. First, parliamentary sovereignty is a foundational principle. Through the English Reformation, the Civil War, the Glorious Revolution of 1688 and the Act of the Union 1707, Parliament became the dominant source of law, above the judiciary, executive, monarchy, and church. Parliamentary sovereignty means Parliament can make or unmake any law within its practical power to do so, a fact that is usually justified by Parliament upholding other principles, namely the rule of law, democracy, and internationalism. Second, the rule of law has run through the constitution since the Magna Carta 1215 and the Petition of Right 1628. This means the government may only conduct itself according to legal authority, including respect for human rights. Third, at least since 1928, democracy has become a fundamental constitutional principle. Originally only wealthy, property-owning men held rights to vote for the House of Commons, while the king or queen, and/or a hereditary House of Lords, dominated politics. But from 1832 adult citizens slowly won the right to universal suffrage.

Parliamentary sovereignty

Parliamentary sovereignty is often seen as a central element in the UK constitution, although its extent is contested. It means that an Act of Parliament is the highest form of law, but also that "Parliament cannot bind itself. Historically, Parliament became sovereign through a series of power struggles between the monarch, the church, the courts, and ordinary people. The Magna Carta 1215, which came from the conflict leading to the First Barons' War, granted the right of Parliament to exist for "common counsel" before any tax, against the supposedly "divine right of kings" to rule. Common land was also guaranteed to people to farm, graze, hunt or fish, though aristocrats continued to dominate politics. In the Act of Supremacy 1534, King Henry VIII asserted his divine right over the Catholic Church in Rome, declaring himself the supreme leader of the Church of England. Then in the Earl of Oxford's case in

1615,[15] the Lord Chancellor (both the King's representative and head of the judiciary) asserted the supremacy of the Court of Chancery over the common law courts, effectively nullifying Sir Edward Coke's assertion that judges could declare statutes void if they went "against common right and reason". Finally, after the Glorious Revolution of 1688, the Bill of Rights 1689 placed Parliament's power over the monarch (and therefore over the church and courts). Parliament became the "sovereign", and supreme. Power struggles within Parliament continued between the aristocracy and common people. Outside Parliament, people from the Chartists, to the trade unions fought for the vote in the House of Commons, and finally in the Parliament Act 1911 and Parliament Act 1949 for the Commons to prevail in any conflict over the unelected House of Lords: after 1949, the Lords could only delay legislation by one year, and not delay any budgetary measure over a month. In *R (Jackson) v Attorney General*, a group of pro-hunting protestors challenged the Hunting Act 2004's ban on fox hunting, arguing it was not a valid Act because it was passed avoiding the House of Lords under the Parliament Acts. The 1949 Act itself was passed using the 1911 Act's power to override the Lords in two years and limited the Lords' power of delay to one year. The claimants argued that this meant the 1949 Act should not be considered a valid law, because the 1911 Act was limited in scope and could not be used to amend its own limitation of the Lords' power. The House of Lords rejected this argument, holding both the Parliament Act 1949 and the Hunting Act 2004 to be completely valid. However, in obiter dicta Lord Hope did argue that Parliamentary sovereignty "is no longer, if it ever was, absolute", and that the "rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based", and cannot be used to defend unconstitutional Acts (as determined by the courts). There remains no settled meaning of "Parliamentary sovereignty", except that it crystallises around the principle of representative democracy, and that its legal force depends on its political legitimacy.

Mostly Unwritten and Partly Written

By far the most important feature of British constitution is its unwritten character. There is no such thing as written, precise and compact document, which may be called the British constitution. It was really this aspect of the British constitution that led De Tocqueville to remark that English constitution does not really exist. The main reason for this is that it is based on conventions and political traditions, which have not been laid down in any document. However, it has some written parts too which includes Historical Documents, Parliamentary Statutes, Judicial Decisions and Constitutional Characters, e.g. Magna Carta (1215), Petition of Rights (1628), Bill of Rights (1689), Parliamentary Act of 1911 & 1949 etc.

Flexible Constitution

The British constitution is a classic example of flexible constitution. It can be passed, amended and repealed by simple majority of Parliament since no distinction is made between a constitutional law and an ordinary law. Both are treated alike. The element of flexibility has length the virtue of adaptability and adjustability to the British constitution. This quality has enabled it to grow with the needs of time.

Unitary

The British constitution has unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. The executive organs of state are subordinate to it and exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not political autonomous units.

Parliamentary Executive

England has a Parliamentary form of government. The King who is sovereign has been deprived of all his powers and authority. The real functionaries are Ministers who belongs to the majority party in Parliament and remain in office so long as they retain its confidence. The Prime Minister and his Ministers are responsible to the legislature for their acts and policies. In this system the executive and legislature are not separated as in the federal form of government

Sovereignty of Parliament

A very important feature of the British constitution is sovereignty of Parliament. Parliament is the only legislative body in the country with unfettered powers of legislation can make, amend or repeal any law it likes. The courts have no power to question the validity of the laws passed by British Parliament. It can also amend constitution on its own authority like ordinary law of the land. It can make illegal what is legal and legalize what is illegal.

Rule of Law

Another important feature of the British constitution is the Rule of Law. It implies equality or all before supremacy, uniformity and universality. It has three implications:

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- All persons are equal before law irrespective of their position or rank.
 - This doctrine emphasizes the supremacy of the law and not of any individual.
 - No one can be detained or imprisoned without a fair and proper trial by a competent court of law. Nor can a person be punished or deprived of his life, liberty or property except for a specific breach of law proved in an ordinary court of law by an ordinary procedure. A corollary to this principle is the doctrine that, "the King/Queen can do no wrong".
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Gap between Theory and Practice

Unlike other constitutions there is a great gap between theory and practice in English political system. This fact results largely from the unwritten character of the Constitution, which is

mainly based on conventions. As for instance, in theory, it is the King and Queen who is sovereign, but in practice it is the Parliament, which is sovereign. The King and Queen cannot veto any bill passed by the Parliaments, although he/she has the right to do so in theory. The Queen in theory is the fountain-head or patronage but in practice all honors and titles are conferred by the Prime Minister. This also justifies the remarks of Lord Sankay that “theory has no relation to realities in British constitution”.

Mixed Constitution

The British constitution is a queer mixture of the monarchical, aristocratic and democratic principles. The institution of Kingship shows that there is monarchy in England. The existence of House of Lords gives an idea that .England has an aristocratic type of government. The House of Common reflects actual working of a Full-fledged democracy in this country. But all these diverse political elements have been beautifully welded together to produce the final effect of perfect representative democracy.

Role of Conventions

A necessary corollary to the unwritten character of the constitution is that the conventions play a vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure, passed by Parliament, but by convention, she cannot do so and the same has become a rigid principle of the constitution itself. By Convention, again, the Queen cannot go against the advice of the cabinet. Likewise, there are dozens of conventions, which do not have any force of law yet they are scrupulously adhered to and constitute the very blood and flesh of the constitution.

Independence of Judiciary

The Rule of Law is safeguarded by the provision that judges can only be removed from office for serious misbehavior and according to a procedure requiring the consent of both the houses of the Parliament. So, the judges are able to give their judgments without any fear or favor.

Besides these, there are some other features of the British constitution, which are as follows:

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- Constitutional Monarchy
 - Bi-Party System
 - Referendum etc.
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