

# Constitutional Law-I

Part-I

**The  
British  
Constitution**

Q. EXPLAIN THE SALIENT FEATURES OF BRITISH CONSTITUTION (A2019).

Ans:

## **THE SALIENT FEATURES OF BRITISH CONSTITUTION**

The United Kingdom (UK) has a remarkable constitution with some important features. It is known as the oldest democratic system in the world and is often called the "**Mother Democracy**" and the "**Mother of Parliamentary System.**" The UK is a constitutional monarchy بادشاهت and a unitary state made up of four parts:

1. England
2. Northern Ireland
3. Scotland
4. Wales

Its government is based on a parliamentary system, with the main center of power in London and separate administrations in Belfast, Cardiff, and Edinburgh for Northern Ireland, Wales, and Scotland respectively. In the past, the UK was the largest empire globally, and today it is the sixth-largest economy in the world.

### **Government and Politics in the UK:**

The constitutional monarch and leader of the UK, along with 15 other Commonwealth countries, is King Charles III. The UK follows a parliamentary system inspired by the Westminster system. The parliament comprises two houses:

- The House of Commons
- The House of Lords

Consent from both houses is necessary for the passage of any bill, ensuring a system of checks and balances.

### **SALIENT FEATURES:**

The UK constitution has following salient features.

1. Unwritten Constitution
2. Flexible Constitution
3. Evolutionary Growth
4. Unitary
5. Bicameralism
6. Rule of Law
7. Supremacy of constitution
8. Independence of Judiciary
9. Collective Responsibility
10. Fundamental Rights
11. Conservativeness
12. Limited Separation of Power
13. Two Party System
14. Contrast Between Theory and Practice

### 1. Unwritten Constitution

The British Constitution doesn't exist as a single document or have a specific date when it was created. Unlike other countries, there isn't a written and concise document called the British Constitution. Instead, it is made up of different elements. One important part of the British Constitution is formed by judicial decisions, customs, and traditions that have been established over time. These unwritten rules guide how the government operates. However, there is also a portion of the British Constitution that comes from laws that have been passed by the government in a regular manner. So, while the British Constitution is not contained in a single document, it combines legal principles, customs, and enacted laws to govern the country.

### 2. Flexible Constitution

The British constitution is known for its flexibility, as it can be amended, replaced, or rejected with a simple majority. In comparison to other non-flexible constitutions, the process of amending the British constitution is relatively straightforward. This flexibility allows the constitution to adapt to changing circumstances and societal needs more easily.

### 3. Evolutionary Growth

The British constitution has experienced an evolutionary growth, continuously developing and expanding over time. As the years have passed, this constitution has grown and adapted to the changing needs and circumstances of the country. This evolution is a result of various factors, including social, political, and legal developments. Through this gradual process, the British constitution has been able to address new challenges, incorporate new rights and responsibilities, and respond to the evolving dynamics of society. This evolutionary growth reflects the ability of the constitution to remain relevant and effective in a changing world.

### 4. Unitary

Another important feature of the UK constitution is the centralization of power, where a single government oversees the functioning of the entire country. Unlike some other systems, there are no separate governments at different levels. Instead, one government is responsible for maintaining and operating the entire system. This centralized government holds the authority for enforcing laws and ensuring their implementation throughout the UK.

### 5. Bicameralism

The UK parliament is made up of two chambers:

- The House of Lords
- The House of Commons

The House of Commons is particularly notable because its representatives are elected by the citizens. On the other hand, the House of Lords is not elected but consists of members who have inherited their positions. The King has the responsibility of selecting these members of the House of Lords.

### 6. Rule of Law

The UK constitution upholds the principle of the rule of law, ensuring that all individuals are equal in the eyes of the law. If someone breaks the law, they must face a trial conducted by the government. No person can be imprisoned unless their offense is proven in a court of law. This emphasizes the importance of fair legal proceedings and the presumption مفروضہ of innocence until guilt is established through due process.

### **7. Supremacy of Constitution**

In the UK, the constitution holds supreme authority. It serves as the ultimate source of resolving any individual's issues or problems. The constitution provides a framework and set of rules that guide the legal and governance systems, ensuring fair and consistent treatment for all individuals.

### **8. Independence of Judiciary**

In the UK, an independent judiciary exists where judges are obligated to uphold and respect the constitution. They make impartial غیر جانبدار decisions within the court system and receive fair remuneration اجرت for their services. The principle of separation of powers ensures that no one is above the law.

### **9. Collective Responsibility**

Ministers in the UK are required to show collective responsibility, meaning they must support the government's policies and decisions. However, each minister also holds individual accountability to both the House of Commons and the monarch, ensuring a system of checks and balances within the government.

### **10. Fundamental Rights**

The English constitution does not have a specific list of fundamental rights for citizens. Instead, constitutional law in England has evolved ترقی یافتہ over time as a result of court decisions that have recognized and protected fundamental rights. The constitution is shaped by these rights rather than being their creator.

### **11. Conservativeness**

The British constitution is often associated with a sense of conservatism قدامت پسندی, as it reflects a prevailing trend among the people of the UK to favour traditional institutions. This concept embodies the existence and preservation of conservative values within the country.

### **12. Limited Separation of Power**

In the British system, there is a degree of limited separation of powers, with political power primarily concentrated in the parliament. However, several safeguards, particularly outlined in the *Act of Settlement of 1701*, have been implemented to ensure the judiciary's independence from undue influence by the other two branches of the government. These safeguards are in place to maintain the integrity and impartiality of the judiciary.

### **13. Two Party System**

## Constitutional Law-I (British & US)

A two-party system plays a crucial role in any democratic system, serving as a safeguard against dictatorship. The party that secures a majority of votes gets elected. In the British political system, two prominent parties are:

1. The Conservative Party
2. The Labour Party

These parties represent different political ideologies and compete for public support in elections, contributing to the vibrancy ارتعاش and pluralism كثرية of the democratic process.

### **14. Contrast Between Theory and Practice**

In Britain, there exists a significant gap between theory and practice. For instance, according to convention, the majority party in a newly elected parliament is expected to form the cabinet. However, in reality, all ministers are appointed by the Prime Minister. This disparity اختلاف highlights the variation between the established norms and the actual implementation of political processes in the country.

### **Conclusion:**

In conclusion, the UK constitution cannot be characterized as purely unwritten or purely written. It represents a unique blend of both elements, creating a distinct framework that has evolved over time. This hybrid nature of the constitution has allowed it to adapt to changing circumstances while retaining its core principles. It has become a significant asset for humanity as a whole, with its influence extending beyond national boundaries. The UK constitution, with its combination of unwritten conventions and written documents, stands as a valuable shared resource, contributing to the advancement of civilized societies worldwide.



Q. DISCUSS THE NATURE AND SOURCES OF BRITISH CONSTITUTION.

Ans:

## **THE NATURE AND SOURCES OF BRITISH CONSTITUTION**

According to *Sir Ivor Jennings*, who was a prominent British constitutional scholar and jurist:

*“The British constitution is the child of wisdom and chance.”*

A constitution is a vital component for the existence of any state. It comprises fundamental rules that establish and allocate functions and powers among different branches of the government, while also defining the relationship between governing authorities and the people. In contemporary times, the majority of constitutions are documented in written form, except for the British constitution, which stands as a unique example of an unwritten constitution.

Lord Bryce wrote:

*“British constitution works by understanding which no writer can formulate.”*

French writer *De Tocqueville* once remarked:

*“England has no constitution,”*

Because he did not find it in a written form. But the British constitution is the chief model for all the countries. It has shown a unique ability to adopt without violence.

### **Sources of British Constitution:**

The UK constitution is a blend of characteristics, statutes, judicial decisions, common law, precedents, usages, and traditions. It does not exist as a single document but rather as a vast collection of thousands of documents. The British Constitution draws from multiple sources, comprising various elements that contribute to its formation and evolution.

#### **1. Historical Documents:**

The historical constitutional documents hold significant importance as a source of the British constitution. Their significance is evident in the fact that these documents played a vital role in the transition from absolute monarchy to constitutional government in Britain. They served as catalysts for this transformative process. Examples of such documents include:

- **Magna Carta (1215)**

Magna Carta is a historic document signed in 1215 that established the principle of limited royal power and protection of individual liberties in England.

- **The Petition of Rights (1628)**

The Petition of Right was a historic constitutional document in England that established the rights and liberties of individuals, limited the king's power, and reinforced the principle of due process.

- **The Bill of Rights (1689)**

The Bill of Rights (1689) is an important constitutional document that established key principles, such as the supremacy of Parliament and the protection of individual rights, shaping the foundation of modern British constitutional law.

### **2. Statutes and Acts of Parliament:**

Statutes passed by Parliament at different times hold significant importance in the British constitution, addressing crucial constitutional matters. Examples of such statutes include

- **The Act Of Habeas Corpus (1679)**  
which ensures the release of individuals unjustly imprisoned,
- **The Act Of Settlement (1701)**  
which stipulates the requirement of a Protestant monarch.
- **Various Reform Acts (1832, 1867, 1884, 1918, 1928),**  
which determine voting rights and parliamentary representation. Additionally, the Parliament Act of 1911 and its amendment in 1949 deal with the powers of the House of Lords.
- **The Statute of Westminster (1931)**  
Defines the relationship between Britain and its Dominions.

### **3. Judicial Decisions:**

Judicial decisions serve as significant sources of the British constitution as they provide explanations and interpretations of the rules and statutes enacted by Parliament, while it is important to note that these decisions cannot be challenged by any court in Britain.

### **4. Commentaries of Eminent Jurists:**

Legal authorities and eminent jurists have written comments on constitutional law of England. *Arson's Law and Customs of Constitution*, *May's Parliamentary Practice* and *Dicey's Law of Constitution* are regarded to be authoritative comments on law and practice of English constitution.

### **5. Common Law:**

Common laws hold significant importance as a source of the British constitution, particularly in relation to the freedom and rights of individuals. Many fundamental rights of the people, such as jury trials, freedom of speech, and the right to assembly, are rooted in common law, which is applied by different courts throughout the country. These common laws play a crucial role in safeguarding the liberties and protections of the British subjects.

### **6. The Conventions:**

Conventions in the British constitution are not officially recognized or enforced by any court. However, they hold great respect and influence among the British electorate and leadership. These unwritten conventions are a crucial part of the constitution and have played a significant role in allowing the British political system to adapt to changing needs over time. Here are some examples of these conventions:

## Constitutional Law-I (British & US)

1. The British monarch cannot veto the bills passed by the parliament.
2. The sovereign invites the leader of the majority party in the House of Commons to form the cabinet.
3. The Prime Minister and Finance Minister both are taken from the House of commons.
4. The money bills originate in the House of Commons.
5. The cabinet remains in power as long as it enjoys the confidence of the majority party in the House of Commons, otherwise it has to resign.
6. All the civil servants are tried in the same court like any other citizen (Rule of Law)

### **Conclusion:**

By examining the sources of the British constitution, we discover that it comprises both written laws and unwritten conventions. This unique combination of elements, along with the evolutionary nature of the constitution, and the influence of constitutional conventions, has enabled it to effectively adapt to the evolving needs of the time. These factors have played a vital role in shaping the flexibility and resilience  $\mu$  of the British constitution.

### **Professor Munro writes:**

*“The British constitution is not to be found in a definite and precise document. It is a complex amalgam of institutions. It is a complex compendium of charters, statutes, decisions, precedents, usages and traditions. Some of them are living only in the understanding of the people.”*



- Q. EXPLAIN DICEY'S EXPOSITION ON RULE OF LAW AND CRITICISM RAISED AGAINST HIS THEORY AND ENUMERATE ITS IMPLICATION IN MODERN TIMES (S2019)
- Q. ELABORATE THE DOCTRINE OF RULE OF LAW IN THE LIGHT OF ITS HISTORICAL PERSPECTIVE AND DEVELOPMENT WITH REFERENCE TO DICEY'S EXPOSITION?(A2020)
- Q. DISCUSS IN DETAIL WHETHER THE PARLIAMENTARY SOVEREIGNTY AND RULE OF LAW OPPOSE EACH OTHER OR NOT?(A2021)
- Q. EXPLAIN DICEY'S EXPOSITION OF RULE OF LAW AND ITS PRESENT DAY APPLICATION IN MODERN WORLD.(A2021)

Ans:

## THE RULE OF LAW

The words "rule of law" are derived from the French words *la principe de legalite* (the principle of legality) which refers to a government based on the principles of law and not of men. Therefore, rule of law means that the law rules, using the word "law" in sense of both "jus" and 'lex'. Law may be taken to mean mainly a rule or principle which governs the external actions of human beings and which is recognised and applied by the state in the administration of justice.

The rule of law is a foundational principle that ensures both citizens and leaders are held accountable under a consistent application of the law. With deep historical roots, societies have long sought to establish and examine power structures in their pursuit of this concept.

### DEFINITIONS OF "RULE OF LAW"

Here are few definitions by famous jurists and law dictionaries.

#### Definition by Albert Venn Dicey:

"The rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government."

#### Definition by Lon L. Fuller:

"The rule of law requires that the law be general, public, prospective, clear, stable, and not retroactive; that it be applied equally and without bias; and that it be administered through a reliable and independent judiciary."

#### Definition by John Locke:

"Wherever law ends, tyranny begins."

#### Definition by Black's Law Dictionary (10th edition):

"The rule of law refers to a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated اعلان کیا گیا, equally enforced, and independently adjudicated فیصلہ سنایا گیا, and which are consistent with international human rights norms and standards."

**Definition by Oxford Dictionary of Law:**

"The rule of law is the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law."

**HISTORY OF THE RULE OF LAW**

**Ancient Greece and The Rule of Law**

The Ancient Greek philosopher Aristotle extensively discussed the advantages of well-crafted laws that can endure beyond the tenure of a virtuous ruler. In his work "Politics" Aristotle argued that while capable leadership is inherently transient, enduring laws have the capacity to outlast both favourable and unfavourable regimes.

**England and The Rule of Law**

The writing of the Constitution was notably influenced by the Magna Carta, a document drafted in 1215. The actions of the English barons who rose against King John set a crucial precedent, emphasizing that the rights of the governed, protected by the law, hold greater significance than the whims of rulers. When establishing the American model of government and its legal framework, the founders incorporated mechanisms to check the authority of elected leaders. This was done to prevent an excessive accumulation of power that could potentially infringe upon the rights of the citizens. The evident influence of the Magna Carta underscores its lasting impact on the shaping of American governance.

**Features of the Rule of Law**

The basic principle of rule of law includes the following:

- Citizens are accountable to the law.
- Leaders are accountable to the law.
- The law is universally applied and fair to all citizens and therefore, it is just.
- Transparency/open government allows citizens to see the operations of government and ensure leaders respect the law.
- Laws must be enforced equally and impartially.

**DICEY’S CONCEPT OF RULE OF LAW**

A.V. Dicey, an eminent British jurist and Constitutional law theorist highlighted the importance of Rule of Law in the following words:

“It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law and the law alone; a man may be punished for a breach of law, but he be punished for nothing else. It means, again, equality before the law, or the equal

## Constitutional Law-I (British & US)

subjection of all classes to the ordinary law courts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals."

Thus, Dicey attributed the following three meanings to Rule of Law:

- (i) Supremacy of Law,
- (ii) Equality before Law, and
- (iii) Predominance of Legal Spirit.

### (i) **Supremacy of Law:**

Dicey explains that the rule of law means the law has supreme power, and it is more important than the influence of arbitrary <sup>مربانی</sup> or wide discretionary power. This means that the government should not have the ability to act arbitrarily or make decisions based on personal preferences.

Dicey also emphasizes that the rule of law ensures that nobody can be punished unless they have broken a law. This is a crucial <sup>اہم</sup> aspect because it distinguishes between a government that follows rules and one that acts arbitrarily. For example, a government under the rule of law cannot punish a citizen simply because they disagree with their opinions or behaviour.

### (ii) **Equality Before Law:**

In simpler terms, Dicey explains that the second principle of the rule of law is about equality. He says that everyone should be treated equally by the law, regardless of their position or status. In other words, no matter how important or powerful you are, the law still applies to you.

Dicey criticizes the French legal system called '**Droit Administratif**' because it had special courts for cases involving government officials. He believes that this special treatment goes against the idea of equality. According to Dicey, the law should not discriminate <sup>امتیازی سلوک</sup> based on factors like race, gender, religion, social background, or any other personal characteristics. It should be the same for everyone, whether they are regular citizens or government officials.

### (iii) **Predominance of Legal Spirit:**

Dicey explains the third principle of the rule of law. He says that rights, like the right to personal freedom and protection from arrest, come from court decisions in specific cases that have happened between people. The constitution is not where these rights originate; instead, it reflects the rights that individuals already have.

Dicey emphasizes that the courts play a crucial role in safeguarding people's freedoms. He suggests that these rights are better protected when they can be enforced through the courts than just being mentioned in a document. Because if they are only written down without proper enforcement, they could be ignored, limited, or violated. So, having the courts ensure these rights makes them more secure.

## **Criticism of Dicey's Concept of Rule of Law**

Dicey's concept of Rule of Law has been subject to following criticism:-

### **1. Lack of Social Justice:**

One of the primary criticisms levelled against Dicey's concept of the rule of law is its narrow focus on formal legal equality and procedural aspects. Critics argue that by emphasizing the absence of arbitrary power and equal subjection to the law, Dicey's theory neglects the substantive dimension of justice. In reality, societies often face systemic inequalities and social injustices that cannot be adequately addressed solely through formal legal procedures. A strict adherence <sup>استقامت</sup> to Dicey's principles may fail to consider the need for affirmative action or specific legal protections to address historical disadvantages and promote social justice.

### **2. Disregard for Socioeconomic Factors:**

Dicey's theory does not explicitly address the influence of socioeconomic factors on individual's access to justice and legal remedies. Critics argue that the rule of law, in practice, may favour those with greater financial resources, resulting in unequal access to legal representation and due process. The absence of mechanisms to ensure equal access to justice can exacerbate <sup>شدت میں اضافہ</sup> existing inequalities and create a system that benefits the privileged and powerful.

### **3. Incomplete Understanding of Power:**

Critics contend that Dicey's concept of the rule of law does not sufficiently consider power imbalances within society. They argue that the rule of law can be used by those in authority to maintain their interests and suppress dissent, rather than ensuring equal protection and accountability. The concentration of power in certain institutions or individuals can undermine the rule of law's intended purpose, leading to the subversion of justice and the protection of vested interests.

### **4. Judicial Activism vs. Restraint:**

Dicey's emphasis on judicial independence and the judiciary's role as the guardian of the constitution has also been subject to criticism. Some argue that an overly activist judiciary may encroach <sup>قبضہ</sup> upon the powers of other branches of government, potentially undermining the democratic process and creating an imbalance of power. Striking the right balance between judicial activism and judicial restraint <sup>تخل</sup> is essential to ensure that the rule of law serves as a check on government power without impeding the functioning of the democratic system.

### **5. Cultural and Contextual Variations:**

Critics assert that Dicey's theory reflects a particular historical and cultural context, primarily rooted in British constitutional traditions. They argue that the universal application of his principles may not be suitable for all legal systems and may overlook the diverse cultural norms and values of different societies. The rule of law should be adaptable to different contexts, taking into account local traditions and needs, while still upholding core principles of justice and accountability.

**6. Technological and Global Challenges:**

Dicey's concept of the rule of law was developed in an era before the advent of advanced technology and global interconnectivity. Today, issues such as digital rights, cyber security, and transnational crime pose unique challenges to the rule of law. Critics argue that modern legal frameworks must be updated to address these complexities and protect individuals' rights in the digital age.

**DICEY'S RULE OF LAW IMPLICATION IN MODERN TIMES**

Dicey's Rule of Law Implications in Modern Times can be understood through following points.

**1. Technological Advancements and Digital Rights:**

In modern times, technological advancements have significantly influenced the application of the rule of law. With the rise of the digital age, new challenges have emerged, such as data privacy, cyber security, and digital rights. The rule of law must adapt to these changes by incorporating legal frameworks that protect individuals' digital rights, regulate data usage, and ensure accountability in cyberspace.

**2. Globalization and Transnational Issues:**

Globalization has interconnected nations and economies, creating a need for international cooperation in addressing transnational issues such as terrorism, money laundering, and human trafficking. The rule of law now extends beyond national boundaries, requiring collaboration among countries to establish legal frameworks that combat **میں** cross-border crimes and uphold justice on a global scale.

**3. Protection of Human Rights:**

The concept of human rights has gained prominence in modern times, emphasizing the need for the rule of law to protect and promote these rights. The rule of law serves as a safeguard against abuses of power and provides a legal framework to ensure the protection of individual liberties, non-discrimination, freedom of expression, and access to justice. It requires legal systems to uphold and enforce human rights principles in all aspects of governance.

**4. Accountability and Transparency:**

Modern societies place a greater emphasis on transparency and accountability in governance. The rule of law demands that those in power, including public officials and institutions, are held accountable for their actions. This includes mechanisms for transparency in decision-making, anti-corruption measures, and systems to ensure the accountability of public servants. The rule of law serves as a means to prevent abuses of power and maintain public trust in institutions.

**5. Environmental Protection and Sustainable Development:**

The rule of law has implications for environmental protection and sustainable development. As societies increasingly recognize the importance of environmental sustainability, legal frameworks must incorporate environmental laws and regulations. The rule of law ensures that environmental standards are upheld, responsible resource

management is practiced, and individuals and corporations are held accountable for their impact on the environment.

### **6. Access to Justice and Legal Empowerment:**

In modern times, there is a growing recognition of the importance of access to justice and legal empowerment. The rule of law necessitates that legal systems are accessible, affordable, and responsive to the needs of all individuals. It requires efforts to bridge gaps in legal services, promote legal literacy, and empower marginalized communities to access justice and exercise their rights.

### **7. Rule of Law in International Relations:**

The rule of law extends beyond domestic governance and plays a crucial role in international relations. Nations are expected to adhere to international law, respect treaties and agreements, and resolve disputes through peaceful means. The rule of law serves as a foundation for maintaining stability, promoting cooperation, and upholding justice in the international arena.

## **THE PARLIAMENTARY SOVEREIGNTY AND RULE OF LAW**

The relationship between parliamentary sovereignty and the rule of law has been a subject of debate and discussion within legal and constitutional theory. While some argue that these two concepts are complementary and reinforce each other, others contend that they can be in tension or even in opposition. Let's discuss both perspectives in detail:

### **Complementary Perspective:**

According to this perspective, parliamentary sovereignty and the rule of law are compatible and mutually reinforcing. Proponents argue that parliamentary sovereignty, which asserts that the legislative body has supreme authority to make laws, is essential for democratic governance. It ensures that elected representatives, who are accountable to the people, have the power to make and amend laws according to the changing needs and aspirations of society.

At the same time, the rule of law provides a framework that constrains and guides the exercise of legislative power. It ensures that laws are enacted within the limits set by the constitution and that they are applied equally and fairly to all individuals. The rule of law requires that laws be clear, predictable, and accessible to citizens, and that they protect fundamental rights and uphold principles of justice.

Advocates of this perspective argue that parliamentary sovereignty and the rule of law work together to maintain the legitimacy and effectiveness of the legal system. They contend that the rule of law provides a necessary check on potential abuses of power by the legislature, while parliamentary sovereignty allows for democratic decision-making and responsiveness to societal needs.

### **Tension or Opposition Perspective:**

Opponents of the complementary view argue that there can be tensions or even conflicts between parliamentary sovereignty and the rule of law. They highlight potential scenarios where the unfettered exercise of legislative power may undermine fundamental legal principles and constitutional protections.

## **Constitutional Law-I (British & US)**

One area of tension arises when a sovereign parliament enacts laws that violate individual rights or discriminate against certain groups. Critics argue that the rule of law requires the protection of fundamental rights as inherent limitations on legislative power. If parliament passes laws that infringe upon these rights, it can be seen as undermining the rule of law.

Additionally, concerns are raised when parliamentary sovereignty is used to shield legislation from judicial review. If the legislature has the power to pass laws that are immune from judicial scrutiny, it can be seen as a potential threat to the rule of law. Critics argue that an independent judiciary is necessary to ensure that laws comply with constitutional principles and protect individual rights.

Moreover, the tension between parliamentary sovereignty and the rule of law can arise when the executive branch interprets laws in a way that undermines their intended purpose or exceeds its constitutional authority. Critics contend that the rule of law requires not only legislative compliance but also executive adherence to legal limits and accountability.

### **Conclusion:**

The relationship between parliamentary sovereignty and the rule of law is complex and multifaceted. While some argue that these concepts are complementary and reinforce each other, others highlight potential tensions or conflicts. Ultimately, maintaining a delicate balance between the two is essential for a robust and legitimate legal system. It requires a recognition of the need for legislative authority, democratic decision-making, and responsiveness, while also ensuring that laws are subject to constitutional limits, protect fundamental rights, and are administered in a fair and just manner.



- Q. DISCUSS THE PRINCIPLE OF THE 'SUPREMACY' OF THE BRITISH PARLIAMENT' AND HIGHLIGHT THE FACTORS WHICH RESTRAINT THE LEGISLATIVE SUPREMACY OF PARLIAMENT(A2019)
- Q. EXPLAIN THE SUPREMACY OF BRITISH PARLIAMENT AND PRACTICAL LIMITATIONS ON ITS SOVEREIGNTY(S2019)
- Q. EXPLAIN THE CONCEPT OF "SUPREMACY OF BRITISH PARLIAMENT". (A2020)
- Q. DO YOU THINK THAT BRITISH PARLIAMENT HAS ABSOLUTE SUPREMACY? DISCUSS. (A2020)

Ans:

## **SUPREMACY OF BRITISH PARLIAMENT**

The supremacy of the British Parliament is a fundamental principle of the United Kingdom's constitutional framework. It's a famous saying that

**"British Parliament can do everything except make a woman a man and a man a woman."**

It refers to the ultimate authority and power that the Parliament possesses within the British political system. Parliament, which consists of the House of Commons, the House of Lords, and the monarch, is responsible for enacting قانون سازی laws, scrutinizing جانچ پڑتال the government, and representing the interests of the people.

The concept of parliamentary supremacy emerged over centuries of constitutional development in the United Kingdom. It gained significant prominence following the Glorious Revolution of 1688, which established parliamentary sovereignty and limited the powers of the monarchy.

The principle of parliamentary supremacy has been a subject of discussion and debate among jurists and legal scholars over the years. Different jurists have expressed their views on the supremacy of the British Parliament. Here are some notable sayings from various legal experts:

**Sir William Blackstone (1723-1780):**

"Parliament is not only the supreme power of the state but sovereign and uncontrollable; absolute, and without restraint, unless they see it good to impose upon themselves."

**A.V. Dicey (1835-1922):**

"The principle of Parliamentary sovereignty means...that Parliament has...the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament."

**Lord Steyn (1932-2017):**

"The bedrock of the British Constitution is the supremacy of the Crown in Parliament. Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The constraints upon its powers are ultimately political, not legal."

**Lord Hailsham (1907-2001):**

## **Constitutional Law-I (British & US)**

"Parliamentary sovereignty means Parliament can, if it chooses, legislate contrary to the fundamental principles of human rights."

### **Lord Justice Laws (1945-present):**

"Parliament can, by enactment, make anything it chooses to be law...[it] can, however, make a new law which alters or abolishes an old one."

Lord Justice Laws, a current British judge, affirmed Parliament's authority to pass legislation, even if it means altering or abolishing existing laws.

These sayings reflect the diverse perspectives on the supremacy of the British Parliament. While many jurists have supported the principle, some have also raised concerns about the potential consequences, particularly in cases where parliamentary legislation might conflict with fundamental rights or international obligations. Ultimately, the principle of parliamentary supremacy remains a foundational aspect of the UK's constitutional framework, shaping its legal and political landscape.

## **SUPREMACY PARLIAMENT IN UK**

The principle of parliamentary supremacy, also referred to as parliamentary sovereignty, is a foundational doctrine within the constitutional system of the United Kingdom. It firmly establishes that Parliament holds the ultimate authority in law-making and possesses the unrestricted power to create, modify, or abolish any legislation without constraint. This signifies that no other entity, including the judiciary or the executive branch, possesses the authority to invalidate or disregard a law enacted by Parliament. We can better understand the supremacy of parliament in United Kingdom through following headings.

### **1. Legislative Authority:**

The British Parliament possesses the exclusive power to make, amend, and repeal <sup>منسوخ</sup> laws. It is the supreme law-making body in the country. Acts of Parliament, known as statutes, are formal laws enacted by Parliament and hold the highest legal status.

Example: The Equality Act 2010 consolidated and updated existing anti-discrimination laws in the UK. It brought together various provisions related to discrimination on the grounds of race, gender, disability, age, religion, and more. This Act demonstrates Parliament's legislative authority to enact comprehensive legislation addressing important societal issues.

### **2. Unrestricted Lawmaking:**

Parliament has the authority to make or unmake any law without limitation. It is not bound by specific subject matters or constraints when enacting legislation.

Example: The Digital Economy Act 2017 introduced measures to address issues related to online copyright infringement, age verification for adult websites, and improved broadband connectivity. Parliament demonstrated its unrestricted lawmaking authority by addressing emerging challenges in the digital realm.

### **3. Judicial Non-interference:**

## **Constitutional Law-I (British & US)**

Courts do not have the authority to invalidate or strike down legislation enacted by Parliament. While the judiciary interprets and applies laws, they must defer to parliamentary statutes and cannot question their validity.

Example: In the case of *R (Miller) v. Secretary of State for Exiting the European Union* (2017), the UK Supreme Court ruled that triggering Article 50 of the Treaty on European Union, which initiated the process of the UK leaving the EU, required an act of Parliament. This decision affirmed the principle of parliamentary sovereignty by recognizing that only Parliament has the power to enact such significant constitutional changes.

### **4. No Future Parliaments Bound:**

Parliament is not bound by the actions or laws of past or future Parliaments. Each Parliament is considered sovereign and can enact or repeal laws, even if they contradict previous legislation or policies.

Example: The Fixed-term Parliaments Act 2011 introduced a fixed five-year term for UK Parliaments, which could only be altered by a two-thirds majority vote in Parliament. However, in 2021, Parliament repealed this act and returned to the previous practice of allowing the Prime Minister to call early general elections. This repeal illustrates the principle that a subsequent Parliament has the authority to change or reverse the laws made by a previous Parliament.

### **5. Absence of Constitutional Court:**

Unlike some countries with constitutional courts, the UK does not have a specific judicial body empowered to review the constitutionality of laws. The courts' role is primarily to interpret and apply legislation, rather than determine its constitutional validity.

Example: In the case of *A v. Secretary of State for the Home Department* (2004), the House of Lords (now the UK Supreme Court) held that the indefinite detention of foreign terrorism suspects without trial under the Anti-terrorism, Crime, and Security Act 2001 did not violate the Human Rights Act 1998. This case exemplifies how courts in the UK focus on interpreting and applying legislation, rather than assessing its constitutionality.

### **6. Executive Accountability:**

Parliament holds the government accountable for its actions. The executive, led by the Prime Minister and the Cabinet, is subject to scrutiny and questioning by Members of Parliament (MPs) through mechanisms such as parliamentary debates, questions, and committees.

Example: Prime Minister's Questions (PMQs) is a weekly session in the House of Commons where MPs have the opportunity to question the Prime Minister on various issues, including government policies, decisions, and actions. This session showcases the accountability of the executive to Parliament and allows MPs to raise concerns and seek clarifications.

### **7. Flexibility and Adaptability:**

## **Constitutional Law-I (British & US)**

Parliamentary supremacy allows the British Parliament to be flexible and adaptable in responding to changing circumstances, emerging issues, and societal needs. It empowers Parliament to introduce new laws, amend existing legislation, and address evolving challenges without significant obstacles.

Example: The introduction of the General Data Protection Regulation (GDPR) in the UK is a prime example of Parliament's adaptability. In response to the growing importance of data privacy and protection, Parliament enacted the Data Protection Act 2018 to implement the GDPR into UK law. This legislation enhanced individuals' rights over their personal data and imposed obligations on organizations to handle personal information responsibly. The adoption of the GDPR showcased Parliament's ability to respond to the evolving challenges posed by the digital age.

## **PRACTICAL LIMITATIONS ON SOVEREIGNTY OF BRITISH PARLIAMENT**

While the doctrine of parliamentary sovereignty establishes the British Parliament as the supreme law-making authority, there are practical limitations on its sovereignty. These limitations arise from various factors, including constitutional conventions, international obligations, devolution, and public opinion. Here are the key practical limitations on the sovereignty of the British Parliament:

### **1. Constitutional Conventions:**

Constitutional conventions are unwritten rules and practices that shape the functioning of the UK's political system. While not legally binding, they carry significant weight and can restrict the exercise of parliamentary sovereignty.

Example: The convention of collective ministerial responsibility holds that government ministers must publicly support government policies. This convention limits individual MPs' freedom to dissent from government positions, effectively curtailing **تخفيف** their ability to exercise parliamentary sovereignty in opposition to the government's stance.

### **2. International Obligations:**

Membership in international organizations and treaties imposes obligations that can limit the exercise of parliamentary sovereignty. EU membership, for example, involved accepting certain constraints on legislation to comply with EU law.

Example: Prior to the UK's withdrawal from the European Union (Brexit), EU law had precedence over conflicting UK legislation. This meant that Parliament could not unilaterally overturn EU laws, limiting its sovereignty in matters governed by EU regulations.

### **3. Devolution:**

The devolution of powers to regional legislatures in Scotland, Wales, and Northern Ireland limits the sovereignty of the UK Parliament in certain areas. Devolved legislatures have authority over specific policy domains, reducing the Parliament's control in those regions.

Example: The Scottish Parliament has devolved powers over areas such as education, health, and housing. While the UK Parliament retains ultimate authority, devolution restricts its sovereignty in those policy domains, as decisions in these areas are made by the Scottish Parliament.

#### **4. Human Rights and Judicial Review:**

The incorporation of the European Convention on Human Rights (ECHR) into UK law through the Human Rights Act 1998 enables courts to review the compatibility of legislation with human rights. This can limit the Parliament's sovereignty by subjecting its laws to judicial scrutiny چھان بین.

Example: If a law passed by Parliament is found to violate rights protected by the ECHR, the courts have the power to declare the legislation incompatible, potentially prompting reconsideration or amendment by Parliament.

#### **5. Public Opinion and Political Pressure:**

Public opinion and political pressure can exert practical limitations on parliamentary sovereignty. The views and preferences of the electorate can influence the decisions and actions of MPs, constraining their ability to exercise full sovereignty.

Example: In response to widespread public opposition, the government withdrew its proposal to increase the maximum tuition fees in 2010. The pressure exerted by public opinion influenced Parliament's decision-making, highlighting the impact of public sentiment on legislative outcomes.

#### **6. Judicial Activism:**

Judicial activism refers to courts taking an active role in shaping public policy by interpreting legislation broadly or challenging its constitutionality. This can indirectly limit parliamentary sovereignty by shaping the legal landscape and influencing future legislation.

Example: In the case of R (Miller) v. Secretary of State for Exiting the European Union (2017), the UK Supreme Court's ruling that an act of Parliament was required to trigger Brexit demonstrated the court's involvement in a matter that could have been considered within the purview of parliamentary sovereignty.

#### **Conclusion:**

In conclusion, while the doctrine of parliamentary sovereignty grants the British Parliament supreme law-making authority, there are practical limitations that affect its exercise. Constitutional conventions, international obligations, devolution, human rights considerations, public opinion, and judicial activism can all curtail the Parliament's sovereignty in various ways. These limitations reflect the dynamic nature of the UK's constitutional and political landscape and highlight the interplay of multiple factors in the exercise of parliamentary authority.



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Account No. : 03213614222



Account Title : Shahid Naeem  
Account No. : 2801 0100 317641  
IBAN :  
PK10 MEZN 0028 0101 0031 7641



Account Title :  
Aglow College of Science & Tech.  
Account No. : 0124 0010 1001 8144  
IBAN :  
PK48 MUJCB 0124 0010 8144