



FEATURES OF ENGLISH CONSTITUTION

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Introduction:

- “British constitution is the mother of all constitutions and the British Parliament is the mother of all Parliaments.” – Munro.
- It is the only unwritten constitution in the world .
- It is not a deliberately created by any particular constituent assembly at any point of time .
- It is a product of a long process of evolution spread over a period of 1400 years.

Main features;

1. Oldest constitution,
2. Unwritten constitution,
3. Evolutionary nature of the constitution,
4. A Flexible constitution,
5. A Unitary constitution,
6. Sovereignty of the Parliament,
7. Unreality
8. A Judge-made constitution,
9. Rule of law,
10. Parliamentary form of government,
11. A Bicameral legislature,
12. Hereditary principle,
13. Absence of judicial review,
14. Independent & Impartial judiciary,
15. Fundamental rights
16. Fusion & not separation of powers, etc.

I. Oldest constitution:

- It is the oldest living constitution in the world.
- All other constitutions are based on it in some way or other.
- It has influenced the constitutions of other countries of the world.
- Hence, it has been called as the mother of all constitution, by Prof. Munro.

2. Unwritten constitution:

- It is the only unwritten constitution in the world.
- Major portion of it is in the unwritten form, even today.
- It is not a documentary constitution, which has been written down in black and white.
- Nobody knows the starting and ending parts of the constitution.

3. Evolutionary nature of constitution:

- It was not a deliberately created or enacted by any constituent assembly at any point of time.
- On the other hand, it is a product of slow and gradual process of evolution spread over a period of 1400 years.
- It is a child of wisdom and chance(Munro).

4. A Flexible constitution:

- It is the most flexible constitution in the world.
- the constitution can be amended in the same way as an ordinary law is changed.
- There is no difference between constitutional law and ordinary law.
- British constitution can be amended by the parliament according to the needs of the country.
- This flexibility saved the British constitution from many a revolutions.

5. A Unitary constitution:

- It provides for a unitary type of government.
- All powers are concentrated in a single government at London.
- No division of powers.
- Local governments derive their power from the central governments.
- These powers can be withdrawn by the central government whenever it desires.
- Local governments are the creations of central government & not the constitution.

6. Sovereignty of the Parliament:

- The Parliament is supreme in UK.
- It has unlimited law making power.
- There is no law that the parliament cannot make or unmake.
- It can dethrone a king or abolish even monarchy.
- The House of Lords is subservient to the will of the House of Commons.
- King cannot veto a bill passed by the Parliament (from the time of Queen Anne).
- There is no judicial review power over the laws passed by the Parliament.
- “Parliament can do everything but to make a woman a man and man a woman.” –De-Lome, a French writer.
- However, there are practical limitations like, public opinion, morality, international treaties and agreements, etc.

7. Unreality:

- There is a wide gap exist between theory and governmental practices.
- According to Ogg, “the government of UK is in ultimate theory, an absolute monarchy, in form a limited constitutional monarchy and in actual character a democratic republic.”
- In theory, monarchs powers are unlimited & absolute, but in reality, these powers are exercised by the Cabinet in his name.

8. A Judge-made constitution:

- Judgments of the courts helped in the process of constitutional growth.
- Most of the rights enjoyed by the citizens are the results of the decisions of the courts given from time to time.
- Hence, Prof. A.V. Dicey called English constitution as a judge-made constitution.

9. Rule of Law:

- It simply means, in England the laws are supreme and not the arbitrary will of any individual.
- To Prof. Dicey, it implies 3 things –
 - a. No man can be punished except for the breach of a distinct branch of law.
 - b. No man is above law & all are equal before law, &
 - c. The rights are the results of the judicial decisions.

10. Parliamentary form of government:

- The constitution of UK establishes a Parliamentary form of government which has the following features —
 1. Head of the State is a Nominal executive.
 2. The real executive which is the Cabinet consists of the leaders of the party that commands majority in the House of Commons.
 3. The Prime Minister is the leader of the majority party who is also the chairman of the Cabinet.
 4. Ministers are individually and collectively responsible to the House of Commons.
 5. Ministers are the members of the Parliament, absence of separation of the legislature and executive, etc.

11. A Bicameral Legislature:

- It is constituted of two houses.
- The House of Commons is the lower and popular house.
- House of Lords is the upper house, oldest house, Elders house with more than 1000 members.
- The lower house is more powerful than that of the upper house, since it is a popular chamber elected directly by the people of UK.

12. Hereditary Principle:

- In the political system of UK we find the existence of certain political institutions which are of hereditary nature.
- Monarchy under the British constitution is based on hereditary character.
- Majority of Peers in the House of Lords are hereditary Peers.
- Since the British people are conservative they respect and retain the age old institutions of such hereditary character.

13. Absence of Judicial Review:

- Since the English constitution is unwritten and the British Parliament is supreme, the judiciary in the country is denied the power of judicial review.

14. Independent & Impartial Judiciary:

- Judiciary is independent as the judges are appointed by the Queen and not elected – on the basis of merit.
- They enjoy the life tenure & hold office during good behaviour.
- Judges are paid well and their salaries are charged on the consolidated fund .
- They enjoy immunity from any civil or criminal proceedings within their jurisdiction.
- Their conduct cannot be questioned in the House of Commons.

15. Fundamental Rights:

- There is no separate provision for Fundamental Rights as we find in a written constitution.
- But written documents like Magna Carta, Petition of Rights are records of existence of rights.
- British citizens enjoy rights of personal liberty, of petitions, of the writ of Habeas corpus, of bearing arms, freedom of religion, speech & assembly, immunity from cruel or unusual punishments.
- these liberties are based on tradition of common law.

16. Fusion & not separation of powers:

- There is no rigid separation of powers.
- The Cabinet as Bagehot points out is a fusion of legislative and executive powers.
- Lord Chancellor performs judicial, legislative & executive powers.
- But the courts are independent of the executive.
- There is no rigid rule which says that these functions shall be performed by separate bodies.

Conclusion:

- From the above description of the salient features of the constitution it becomes clear that the principles which govern their working is scattered into the past & present.
- The various stages of evolution contributed to the development of many democratic political institutions – a transformation from an absolute monarchy to a real political democracy.