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Exam Date: Jan-01-2022

Max . Marks: 30

REG: BA(LLB) /3-20/M01021

SEMESTER SPRING 2021

Constitution Law-1 UK

Q.1. Explain the difference between a flexible and a rigid constitution.

Kinds of Constitutions:

Constitutions are two kinds (1) Flexible and (2) Rigid.

(1) Flexible :

A flexible Constitution is one under which every law of every description can legally be changed with the same ease and in the same manner by one and the same body.

A flexible constitution is likely to be unstable due to its capacity to undergo constant changes. But at the same time there is this advantage that it facilitates all necessary changes required by the changing political and economic ideas and circumstances, and secures the growth of the constitution without the possibility of any revolution. The English Constitution, with the supremacy of Parliament is an Instance of a flexible constitution.

The British Constitution is ever flexible and never rigid. The flexibility. of the British Constitution consists In the right of the Crown and both Houses of Parliament to repeal or modify any law whatever. The British Constitution has always been held to be flexible. Every part of it can be curtailed, expanded, amended or abolished with signs of equal ease. In so far as it consists of rules of law, it is liable to modification to any extent by an Act of Parliament passed in the ordinary way without any special formalities or any referendum to a popular vote. In so far as it is dependent on convention, it can be altered by the adoption of new usages. It is thus the most flexible polity In existence and is therefore utterly different in character from the written constitutions (such as that of the United States of America), which are said to be rigid and can be modified only by some extraordinary method or process of legislation laid down in the constitution itself.

(2) Rigid:

A rigid constitution on the other hand is one under which certain laws (ordinarily known as constitutional or fundamental laws) cannot be changed in the same manner as ordinary laws. They can be altered or amended by the special machinery provided in the constitution itself. By fundamental laws we mean those laws which affect framework the

constitution. Ordinary laws can be altered by the ordinary powers of legislation. Thus the rigidity of a constitution consists in the absence of any right on the part of the legislature to modify or repeal certain laws termed as constitutional or fundamental. A rigid constitution is likely to be stable. But it may prevent even necessary changes and may, lead to a revolution. The Constitutions of France, the United States and Belgium are instances of rigid constitution.

Difference between flexible and rigid constitutions:

Following are the main points of distinction between the two. These are..

(1) As to possibility of changing it: "A flexible constitution is one under which every law of every description can legally be changed with the same ease and in the same manner by one and the same body," while a rigid constitution is one under which certain laws, generally known as constitutional or fundamental laws, cannot be changed in the same manner as ordinary laws.

(2) **As to fundamental' and 'ordinary' laws:** In a rigid constitution, there is a distinction between fundamental and ordinary laws. The fundamental or constitutional laws are laws which deal with the framework of the constitution, and these cannot be changed or amended in the ordinary process of law-making. In other words, a "rigid constitution is one which is founded on fundamental written laws a "flexible constitution is in which all laws can be altered by the same machinery. Laws are said one in to be fundamental which deal with the framework of the constitution, and which can be altered only by a special machinery, provided by the constitution for that purpose. The English Constitution is flexible any constitutional law, as for example, the law governing the succession to the throne, can be and has been altered by Parliament by the ordinary legislative process. The American Constitution is rigid changes in the constitution can be effected only by the motion of two-thirds of each House of Congress, with the ratification of the legislatures of three-fourths of the States comprising the Union.

(3) **As to the sovereignty of the Legislature:** In a rigid constitution, the Legislature is a non-sovereign law-making body, its powers being defined by the fundamental law embodied in the constitution which it cannot alter. In a flexible constitution, on the other hand, the Legislature is sovereign inasmuch as it has the power of making altering or repealing laws of any description including the constitution itself, it is a legislative as well as constituent body.

(4) **As to power of Court to pronounce on validity, etc., of laws:** In a rigid constitution, laws passed by the Legislature may be declared ultra vires or invalid by the Courts if they are repugnant to the constitution. In a flexible constitution there is no authority, judicial or otherwise, which can declare laws passed by the Legislature as ultra vires or unconstitutional. Thus, in the USA, if an Act of the Congress contravenes any provisions of the Federal Constitution, the Supreme Court may declare it ultra vires. In England, no Court possesses any power to question the validity of an Act of Parliament.

(5) **As to rights of individuals:** Lastly in a rigid constitution (such as the U.S.A.) the rights of individuals as against the State are defined by and follow from the written constitutional document, while in a flexible constitution the constitution itself is based upon individuals rights as defined by the ordinary law of the land.

Q 2 What do you understand by the term “Constitutional Law”?

Sources of the English Constitutional Law:

The English Constitutional Law is not to be found in one document. It can only be understood by reference to long series of acts, traditions and judicial decisions. In the United States, there is only one source of constitutional law-namely, the Article of the Constitution. Such is not the case in England. There are five main sources of the English Constitutional Law. These are-

(1) Conventions:

Firstly, there are some principles of the Constitution which are based on what Dicey has called, "the conventions of the Constitution." In fact, the workability of the English Constitution is based upon conventions without which it would become unworkable. These conventions are regarded as sacred as laws of the Constitution. Their importance

lies in the fact that fundamental principles of the English Constitution like the sovereignty of Parliament and ministerial responsibility to the Parliament upon which the successful working of democracy depends are regulated by conventions. The most important conventions in England are the following –

- (1) The Queen or King must accept the advice of the Cabinet!
- (2) No tax can be levied without the sanction of Parliament.
- (3) The Parliament must meet at least once a year.
- (4) The leader of the majority party in the House of Commons must be appointed as the Prime Minister.
- (5) The Cabinet is collectively responsible to Parliament.
- (6) The Parliament shall consist of two chambers.
- (7) Only the law-lords shall attend the meetings of the House of Lords for deciding judicial cases. A detailed discussion of these conventions we shall make elsewhere.

(2) Charters:

The second important source of the English Constitution is the great Charters and Agreements which define and regulate the powers of the Crown and the rights of citizens, etc. Such charters have become historic documents and, therefore, an important part of the British Constitution. Among these documents the important ones are the following

(3) Statutes: The third important source of the English Constitution is the Statutes (Laws) passed by the Parliament from time to time. It may be noted that the British Parliament is fully empowered to change these statutes whenever it likes. The following are the important statutes of the British Parliament :--

(4) Judicial Decisions: Judicial decisions are the judgments and interpretations of the British Courts which define the scope and limitations of the different charters, statutes and Common Law of England. So great is the importance of judicial decisions that Dicey termed the British Constitution as a judge-made Constitution. Good illustrations are the decisions in the Bushell's case (1670), establishing the independence of juries, and that in Howell's case (1678), vindicating the immunity of judges.

(5) Eminent Works: Some of the eminent works written by authorities on the subject also form a part and parcel of the Constitution. May's Parliament Practice, Dicey's Law and Constitution, Blackston's

Principles of British Constitution on English Constitution, are some of the notable Commentaries examples.

(6) Common Law

Common law may be defined as an "assemblage of all those rules and important principles, which are the product of slow process of long historical growth, being based upon the customs and traditions of the English Society, and later on recognized by the Courts of the country." Such rules are apart altogether from any action of Parliament and include many of the most important features of the governmental and legal systems and are fully accepted and enforced as law. The prerogatives of the Crown, the right of trial by jury, the right of freedom of speech and of assembly, the right of redress for tortuous acts of governmental officers rest almost entirely on common law.

(7) Conventions of the Constitution:

The last and the most important source is the conventions of the Constitution. The law as to conventions of the Constitution is so important that a separate Part (Part VIII) is devoted for it. To repeat, the conventions of the Constitution are rules consisting of conventions, understandings, usages, habits or practices, which, though they may regulate the conduct of the several members of the Sovereign Power, of the ministry and of other officials, are not, in reality, laws, since they are not enforced by the Courts. They are also known as Rules of Constitutional Morality. Through continual usage these rules have acquired the force of law. A substantial portion of the English Constitutional Law is based on conventions. These, again, are founded partly upon precedents and partly upon the needs of the time.

Main characteristics of the English Constitution:

There are two characteristics peculiar to the English Constitution alone. These are-

(1) As to its creation:

(1) The first peculiarity or feature of the English Constitution is that no precise date can be named as the day of the birth of the English Constitution; no definite body of persons can claim to be its creators. One cannot point out to a single document which contains the articles of the Constitution. The English Constitution is not the fruit of abstract theories. The English instinct alone has built up this huge structure without understanding its underlying principles, just as bees construct a honey-comb. It has undergone various changes necessitated by the changing economic and political ideas and circumstances. The English Constitution may very well be compared to a house which many successive owners have altered just so far as suited their immediate wants or fashions of the time; it bears the marks of many hands and yet nobody can claim to be its creator. Hence we say that "the English Constitution has not been made but has grown."

(2) Moreover, the Law of the English Constitution is, at bottom, a Judge-made law. The main body of English legal doctrine has been and is still being made by means of the decisions of the Courts. The general principles of the constitution, e.g., 'the right to personal liberty' and 'the right to public meeting' are the results of judicial decisions determining the rights of private individuals. In particular cases brought, assembly or the Question Time, the right of public meeting, right of self have been raised and made before the Courts. may, any day, be raised before the Courts.

(2) As to its existence:

Countries like France, Belgium or the United States, are endowed with Constitutions of which the terms are to be found in printed documents known and accessible to all citizens. Each of the Constitutions contains in a clear and intelligible form, the fundamental law of the country. Unlike the Constitutions of those countries, the English Constitutional Law, is not to be found in any one document. One may search the statute-book from beginning to end, but he will not find any enactment which purports to contain the Articles of the Constitution. He will not be able to discriminate laws which are constitutional or fundamental from ordinary enactments. Hence it is that de Tocqueville says that "the English Constitution has no real existence." Dicey uses this statement of de Tocqueville to express the view that what passes as constitutional law in England is in reality no more than a mixture of history and customs. But if we accept the statement that constitutional law "includes all rules which directly or indirectly affect the distribution and exercise of the sovereign power in the State," it is obvious that such a body of laws does exist in England. There is, however, justification for de Tocqueville's view, in the fact

that no one express legislative Act can be put forward as containing these rules. Some of them are to be found in statutes and other instruments, e.g. The Act of Settlement, the Bill of Rights; others are the result of long accepted practice or convention.

De Tocqueville remarked that the English people had no constitution. This saying of a great political and constitutional expert is quoted very often, but only to be refuted. England has a constitution, although it is not written in a single document. The British Constitution is found in statutes, customs and conventions. De Tocqueville probably understood that a constitution meant only a written, precise and one comprehensive.

Q3 What is the nature of Parliamentary Sovereignty in England?

Ans)

SOVEREIGNTY OF PARLIAMENT

Theory of Parliamentary Sovereignty: To understand the theory of Parliamentary Sovereignty properly one must know the three guiding principles of the English Constitution. These are..

- (1) The Legislative Sovereignty of Parliament;
- (2) The complete supremacy of ordinary law throughout the Constitution and lastly
- (3) The dependence of the conventions upon the law of the Constitution, f.e, the law being used as the ultimate sanction for the due observance of the conventions.

'Parliament':

Parliament means the King (or Queen), the House of Lords and the House of Commons. These three bodies, acting together, may be aptly described as the 'King (or Queen) in Parliament, and constitute 'Parliament'.

Parliamentary Sovereignty:

The King (or Queen), the House of Lords and the House of Commons together constitute Parliament. Now Parliamentary Sovereignty means the supremacy of Parliament and this supremacy implies two things

- (1) The unlimited Legislative Sovereignty of Parliament, and
- (2) The absence of any competing power in the State capable of overriding Acts of Parliament.

The expression "Parliamentary sovereignty" means that the Queen, the House of Lords, and the House of Commons can pass, amend, or repeal laws to any extent, and that there are no fundamental laws with which Parliament cannot interfere. This outstanding characteristic of the English Constitution has been described by Coke in these words "the power and jurisdiction of Parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds".

From a positive point of view, the principle of Parliamentary Sovereignty has this result, the Courts will obey any new law made by Parliament, and similarly, any Act of Parliament which annuls or modified existing law will be obeyed by the Courts. From a negative point of view it has this result: no rules made by any person or body under the English Constitution in Contravention of an Act of Parliament will be enforced by the Courts.

Some statutes may be mentioned which clearly illustrate the Sovereignty of Parliament. The Act of Settlement is one, by virtue of the Importance of its subject matter. Still more striking is the Septennial Act, 1715. for by this Parliament of its won authority prolonged its own existence. But it is, perhaps; in Acts of Indemnity that Parliament shows the clearest evidence of its sovereignty, for in these it legalises actions which were illegal when they occurred, and it frees individuals from the consequences of breaking the law.

The legislative power and jurisdiction of Parliament is transcendent and absolute. It cannot be confined either for causes or persons, within any bound. Short of the physically impossible there is no law which it cannot make. "It is a fundamental principle of English Law that Parliament can do every thing but make a woman a man, and a man a woman" Here we must remember that though Parliament cannot alter the physical nature of things, for the purpose of legal relations, their nature can be altered; e.g., it can bastardize a legally legitimate child and legitimate an illegitimate child.

Parliament is the supreme authority in all matters concerning the State. There does not exist in any part of the British Empire any person, or body of persons, executive legislative or judicial which can pronounce void any enactment, passed by the British Parliament on the ground of such enactment being opposed to the Constitution or any ground whatever. except, of course it being repealed by the Parliament itself. Thus in the words of Blackstone. "What the Parliament doth no authority upon earth can undo". It can make, unmake, repeal, modify or vary all laws on all subjects. It can make law today and repeal the same tomorrow however important it may be from the point of view of Constitution. This right or powers is known as the Sovereignty of Parliament. This is known as the positive side of Parliamentary Sovereignty.

Principles of Parliamentary Sovereignty:

The principles of Parliamentary Sovereignty may be explained in three ways

(1) The right to make or unmake any law whatever and whenever and hence to alter any law, fundamental or otherwise as freely as any other law. Parliament is at once a legislative and constituent body, because there is no distinction between fundamental and ordinary laws "Parliament can do everything but make a woman a man and a man a woman", ie, can do whatever it likes except what is naturally impossible.

(2) No person or body of persons is recognized by the Law of

England as having right to override or set aside the legislation of Parliament. Le, the non-existence of judicial or other authority as having the right to **nullify the Act of Parliament.**

(3) That this authority of Parliament extends to every British Dominions. part of british Dominions