



CONSTITUTIONAL LAW-I (UK)

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Q.1.What is the present-day Constitutional position of the British Sovereign?

Answer:

BRITISH SOVEREIGN/ MONARCHY

Monarchy is the oldest form of government in the United Kingdom. In a monarchy, a king or queen is Head of State. The British Monarchy is known as a constitutional monarchy. This means that, while the sovereign is head of state, the ability to make and passed legislation resides with an elected parliament.

Powers of British Sovereign:

In theory, there is absolute monarchy in U.K. It means all powers belong to king. But in part UK has limited Monarchy system. Therefore the powers of king are limited and these are king's formal powers which in practice are exercised by the crown i.e. the sovereign, the cabinet and the parliament.

The powers of king are as follows:

1. Legislative powers:

The king summons prorogues and dissolves parliament. He opens the new sessions with a speech from the throne. He must give royal assent to the bills, passed by the Parliament in order to give these the status of Laws.

2. Executive powers:

To run the government, The king appoints all important officials of the State, like judges, officers of the armed forces, governors and diplomats etc. the king's consent and approval are required before a minister can be take up office or a cabinet is formed. He enforces national laws.

3. Judicial powers:

King is called the fountain of justice. In theory king can make any decision, but in practical the law is independent. The king has the power to pardon and reprieve. He appoints judges. The king is not subject to any law.

4. **Foreign and international powers:**

King is the head of the state and he has the power to declare war and to make peace. King has the right of treaties with foreign countries and he has power to recognition of a country and appointment of ambassadors.

5. **Military powers:**

King is the supreme commander of the three Armed forces. He has the power to appoint military officers.

6. **Ecclesiastical powers:**

The king is the head of church. He appoints all the bishops. He has the power of summons the church conventions.

7. **Conferment of awards powers:**

King is the fountain of Honor. He has the power to give honor to any person. He alone can create peers and confer honors and decorations.

Constitutional position of the British Sovereign in present:

In British there was a time when the king of British could do whatever he pleased. He was absolutely free in managing the affairs of the state. His will was law. However with the passing time the power of the parliament began to increase. The position of King became sub ordinate to that of parliament. After that there was growth of the Cabinet system which was responsible for

reducing the position of the king to a mere figurehead. No worries he was sometimes called a rubber stamp.

It is well known that the king of England can act only on the advice of his ministers and every act of the king requires to be counter signed by some ministers and nothing order by him alone is likely to be acted upon. But it does not mean that the King of England is a superfluous entity. It was rightly pointed out by Walter Bagehot in his famous book “the English Constitution” that the king of England has three powers and a wise king need not have any more. These powers are:

1. Right to advise:

As regard to right to advise, the king is ordinarily consulted on all important matters of the state by the ministry in power. Either the prime minister and other ministers seek the advice of the king and usually that advice has considerable influence in determining the final decision. There are many reasons why considerable weight is given the advice of the king. Undoubtedly, the king is above any political party. He has no axe to grind. All his actions are actuated by the highest interests of the country as a whole and no wonder it is expected that his advice has due weight.

2. The right to warn:

The king has also the power to warn the ministry. If the king honestly feels that the particular policy followed by the ministry in power is likely to land the country in trouble, he can give a warning and that warning cannot be ignored by the ministry.

3. Right to encourage the Ministers:

The king of England also has the power to encourage the ministry. If he finds that the policy followed by the ministry is in the interest of the country, he can encourage it to pursue

the same. The feeling that their policy has the full support of the king must be a source of great strength to the ministry.

Conclusion:

Although the British sovereign no longer has a political or executive role, he or she continues to play an important part in the life of the nation. As head of the State, The Monarch undertakes constitutional and representational duties which have developed over one thousand years of history. In addition to these state duties, The British Sovereign has a less formal role as Head of Nation. The British sovereign acts as a focus for national identity, unity and pride gives a sense of stability and continuity. Officially recognizes success and excellence and supports the ideal of voluntary service.

Q.2. Describe the salient characteristics of the Cabinet Government of England.

Answer:

CABINET GOVERNMENT OF ENGLAND

The cabinet of the United Kingdom is the senior decision making body of the government of the UK. It is the core of the British constitutional system. It is the supreme directing authority which coordinates and controls the whole of the executive government, and integrates and guides the work of the legislatures. Cabinet is a body of ministers belonging to majority party; these are selected by Prime Minister and appointed by King. It is collectively responsible to the House of Common.

Cabinet government means that the King is no longer the directing and deciding factor responsible before the nation for the measures taken. The whole of the political and executive power of the crown is exercised in the King's name by political men who belong normally to the

majority party in Parliament. These Political men can be criticized, attacked and compelled to his answer questions, and they are liable to be turned out of office, if their policy is not approved by and Parliament.

Nature of Cabinet of England:

The cabinet is a body unrecognized by law. Its existence is only customary i.e based on customs and conventions.

Composition of Cabinet of England:

The cabinet is the driving force of the administration. The end of the general elections the king or queen invites the leader of the majority party in the house of common who then become the prime minister and crown asks him to form the cabinet. He then submits the list of the ministers to the king or queen who formally approves it and then the cabinet personnel is announced in the gazette.

Characteristics of the Cabinet of England:

England has got a parliamentary government where the king is a normal and constitutional head of the executive. The real powers are exercised by the parliament. There are certain characteristics according to which the cabinet system is being carried on.

The important features of the cabinet system of UK are:

i) **Exclusion of the king from cabinet:**

The queen of the King does not attend the cabinet meeting. It has become constitutional convention.

ii) **Leadership of the Prime Minister:**

The prime minister plays dominant role in Cabinet. The cabinet is formed by the prime minister. He is the keystone of the cabinet arch.

iii) **Secrecy:**

The meetings of the cabinet are secret and private. Every member of cabinet takes the oath of secrecy. The discussion is not disclosed in the public.

iv) **No legal Status:**

The British cabinet has no legal status. There is no mention of cabinet in the written part of the constitution. The cabinet is called the child of the convention.

v) **Ministerial Responsibility:**

The cabinet members are responsible to the House of Commons individually as well as collectively and they are liable to law for their acts.

vi) **Unity of Cabinet:**

Unity of cabinet is the outstanding feature of British cabinet system. The cabinet always acts as unit. They are supposed to face the House with one voice.

vii) **Collective responsibility:**

The members are collectively responsible. The result is that all the member's works as a team. The cabinet stands or falls together as a unit.

Functions of Cabinet of England:

The important functions of the Cabinet of England are as follows:

i) **Policy Determining (Shaping, formative) functions:**

The cabinet is policy formulating body. The cabinet discusses and decides all sort of national and international problems. The cabinet decides the measures which are to receive priority.

ii) **Executive functions:**

In British cabinet is real executive. The cabinet formulates the general policy of the government. It determines the foreign policy of the government and decides measures for the war and peace. All important appointments are made by the cabinet.

iii) **Legislative functions:**

The cabinet controls the legislative activities. Following are the main legislative functions:

- a) The parliament is summoned on the advice of the cabinet by the King.
- b) The speech of the king in Parliament is prepared by the Cabinet.
- c) The cabinet explains all bills which are to be passed in the Parliament.
- d) The cabinet guides the leader of house in the parliament.

iv) **Financial functions:**

The cabinet plays important role in this regard. It prepares the budget for the country and is responsible for the whole expenditure of the stock.

v) **Judicial Functions:**

Following are the judicial function of the British Cabinet.

- a) The judges of important courts are appointed on the advice of cabinet by the king.
- b) The rules and regulation for judiciary are prepared by the cabinet.
- c) The power of pardon, reprieve and respite is exercised by the King on the advise of the cabinet.

Q.3. What is meant by the term “Rule of Law”? Examine the relation between Parliamentary Sovereignty and rule of law.

Answer:

RULE OF LAW

Introduction:

The British people strongly believed in the Divine Theory of State. The king was given the power to govern the people by the Divine Authority (God). This theory propagates that, “king can do no wrong, and king is above law.”

The rule of law was first originated by Sir Edward Coke; the chief Justice in England at the time of King James I. Coke was the first person to criticize the maxims of Divine Concept. He strongly believed that the king should also be under the Rule of Law.

The Rule of Law doctrine was later developed by A.V. Dicey in his book, “Introduction to the Law of Constitution (1885).”

The rule of Law according to Dicey means that “No man is punishable or can be lawfully made to suffer in body or goods except for distinct breach of law and no man is above the law”. The term rule of law thus, means the paramount of law over government.

Rule of law is the basic principle of the English constitution. The entire basis of administrative law is the rule of law and delegated legislation is the backbone of administrative law.

Meaning of rule of law:

Rule of law is a product of struggle by the people from centuries for recognition of their inherent rights and the concept of a rule is very ancient and old. During the ancient times, the

concept of rule of law was discussed by the Greek philosopher Aristotle and Plato at the time of 350BC so now you can imagine how old this concept.

Plato has written that if rule of law under the supervision of any law than it does not have any value and the concept of state will get collapsed and if the law is master of government and government work as a slave for law then the concept of state will work effectively and humans can enjoy their rights.

According to Plato the meaning of rule of law is that it is supreme in nature and nobody is above law.

According to Aristotle has written that law should be the final sovereign of the state.

According to Sir Edward Coke “Rule of law” means the absence of arbitrary power on the part of government.

This phrase was derived from the French phrase “la Principe de legality” which means that the principle of legality whatever the legal system principle is called a rule of law. Which refers to government is based on the principles not on any individuals and according to the law everything will move.

Basic feature of rule of law as per Dicey:

According to Dicey following are the basic features of Rule of Law.

- i) Law does not recognize any special rights for any individual or group of individuals.
- ii) Law does not recognize any distinction between one individual and the other on the basis of religion, race, sex etc.
- iii) None is punished without proper trial.
- iv) All will be tried by the same court under the same law.
- v) The rule of law does not give scope to absolute and arbitrary powers to the executive.

Relationship between parliamentary sovereignty and rule of law:

Parliamentary sovereignty and rule of law are both concepts that are key to shaping the British constitution; however there is ambiguity as to which concept is the heart of the British constitutional arrangement in the recent years.

Britain to begin with has no written constitution due to the country's own constitutional structure's stability. It remains uncodified, yet its legal sources stem from Acts of Parliament, European Union Law, equity and common law. Therefore the varying powers of parliamentary sovereignty and the rule of law will be considered against these sources.

Parliamentary sovereignty has no set definition, but in Dicey's view it means that parliament is the supreme law making body, able to amend or repeals any legislation it wishes without its legal validity being questioned by any other body, including the executive or judicial bodies. It also cannot bind the preceding parliament or the future parliament.

To consider each principles power and their own basis within British constitution, the rule of law needs to be defined too, but this is somewhat harder to do as it has no set definition. Different theories have attempted to define it though, and most agree with the Diceyan definition. It states that the rule of law contains three core elements one the law is absolutely supreme, two, everyone is equal before law, and three, the constitution may be found in the ordinary law.

In British Constitution Parliament plays a central role in upholding the rule of law. Scrutiny by both Houses is a key element in holding the government account over rule of law issues and ensuring that proposed legislation does not offend rule of law principle.

Q.4. Explain briefly the true nature and the functions of the conventions of the Constitution.

Answer:

CONVENTIONS

Conventions are long established, informal and uncodified procedural agreement followed by the institutions of state. Conventions are particularly important in countries like UK which lack a written constitution. Conventions are not made, rather they just come into existence and no punishment is given for violating these. However in spite of that these are obeyed like laws and sometimes they are given more respect than to the laws. Being an unwritten, most of the part of British constitution is based on conventions.

Convention plays a vital role in the making of British constitution. It is

Nature of Conventions:

1. Conventions are uncodified does not have sections and articles.
2. Conventions are unwritten and there is no authoritative written source for it.
3. Conventions are not enforceable by law. Rather they were put the constitutional morality of British constitution.
4. Its growth is evolutionary. Conventions can be changed with time and according to the wish of common man.
5. Conventions are organic in nature.

Functions of conventions:

1. It ensures the supremacy of House of Commons.
2. It provides rules of corporation's among different government institutions.
3. It provides guidelines most of government functions.

4. Administration according to the wishes of people.
5. It provides guidelines to run constitution smoothly.
6. It provides help to understand how state function.