

Module Name : 'Nature of the UK Constitution

Module No- 11

Paper Code: POD105

Paper Title: DSE Comparative Government

NATURE OF THE UK CONSTITUTION

Does Britain have a Constitution?

Thomas Paine and Alexis De Tocqueville are of the opinion that "England has no Constitution"

Thomas Paine declared " **where a Constitution cannot be produced in a visible form, there is none**".

De Tocqueville said that " **In England, the constitution may go on changing continually or rather it , does not exist.**"

- There can be no State without a Constitution- a body of fundamental rules and Principles , determining the structure of the State. Such rules or principles may be written or unwritten.
- **It is true that there is no single document intended to comprise the fundamental rules of constitutional practice to which a student of British Constitution may turn for reference as one does in India or US.**
- The constitution of Britain is unwritten as most of the rules and principles controlling the distribution and regulating the exercise of governmental power have never been reduced to writing in a single document.
- The British Constitution is a product of many centuries of political growth. It is not a handiwork of any Constituent Assembly and much of it is not formally adopted.
- There is a strong historical and political element involved in making of a country's Constitution. During the 19th century, in response to popular revolt or war, many European countries were forced to draw up Constitutions- this gave birth to Constitutions embodying the relationship between the citizen and the State.

Great Britain remained untouched by this revolutionary wave that affected much of the continent.

- The British Constitution is therefore to a large extent an **unwritten and flexible one**. It is a product of history and result of evolution. It has grown with the growth of English Nation. It may not however be presumed that the English Constitution is entirely unwritten. **There are Charters, Petitions and Statutes in which some of the principles of Constitution have been embodied in writing.**
- According to **Munro**, "The British Constitution, is a complex amalgam of institutions, principles and practices. It is a composite of Charters and Statutes, of judicial decisions, of common law, of precedence, usages and traditions. It is not one document but hundreds of them. It is derived from one source but from several.... It is a child of wisdom and chance"

Sources of the British Constitution

There are seven basic sources of British Constitution

Statute, Common law, Charters , Judicial decision, Eminent Works, Conventions and Royal Prerogatives

Statutes are Laws Passed by the British Parliament from time to time.

(It may be noted that British Parliament is fully empowered to repeal or amend these statutes).

Important Statutes

- **Parliament Act of 1911**(Curtailed the powers of the House of Lords and established the supremacy of the House of Commons)
- **Representation of peoples act of 1918 and 1928** (These acts the principle of Universal adult suffrage by guaranteeing the right to vote to women)
- **European communities Act 1972**(Act of Parliament which made legal provision for the accession of the UK to the EU)

Charters and Agreements define and regulate the powers of the Crown and the rights of the citizens. Such Charters have become historic documents and therefore constitute ,an important part of the Constitution.

Magna Carta (1215)- The great Charter of the liberties of England.

Bill of Rights (1689)- It made the Parliament supreme law making body and set out the foundations of constitutional monarchy.

Common law- 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 English society, and later on recognised by the courts of the country”.

- **The Principles of the Common law are not established by any law or passed by the parliament or ordained by the king.**
- Most of the original laws concerning civil rights began this way, such as freedom of speech and freedom of movement.

Eminent works

- These are the books written by eminent writers, which have come to be recognised as authoritative expression on the British Constitutional law.
- Examples are **Dicey’s The law of the Constitution** (Sovereignty of Parliament, the Rule of Law and the conventions of Constitution.)

The Royal Prerogatives consists of a number of powers and privileges performed by the monarch.

Examples of these powers are the **rights to declare war, make treaties, dissolve Parliament, appoint ministers and dispense honours.**

Conventions-There are some principles of the Constitution, which are based on what Dicey has called, **“the conventions of the Constitution”**. These conventions are set of rules established over time by custom and practice, which relate to the exercise of governmental powers.

Some important conventions

- The Queen or King must accept the advice of the Cabinet.
- The Leader of the majority party in the House of Commons must be appointed as the Prime Minister.
- Once a Speaker always a Speaker.

- **Judicial decisions- decision of Judges on the cases heard by them in law courts.**
- When judges decide cases, they interpret, define and develop the provisions of great Charters and Statutes. While doing so, their judgements create precedents which succeeding judges respect.