

Besides these important statutes, several others can also be included in this list. These measures have been the results of wisdom and design. These highlight the role of design in the evolution of the British Constitution.

*Conclusion.* The above analysis clearly shows that both accidents and design have played a role in the evolution of the British Constitution. Writing as early as 1884, *Freeman* described the British Constitution as the creation of "chance and wisdom." *Strachey* also observes, "British Constitution is the child of wisdom and chance".

### BRITISH POLITICAL SYSTEM : SALIENT FEATURES

The British Constitution offers a very interesting field of study to the students of comparative governments. It is a unique constitution in several ways. As an unwritten, evolved and most flexible constitution, which provides for the continuance of constitutional monarchy within a fully developed liberal democratic system of politics, it deserves a primary place in the study schedule of comparative politics and government. *Prof. Munro*, describes it as the Mother of all constitutions of the world.

The salient features of the British Constitution can be discussed as under :

**1. Unwritten Constitution.** The British Constitution is an unwritten constitution. It has never been made and codified in the form of a book. No constituent assembly has made it, and it has never been formally adopted by the British. Yet, it has been always present in their minds and has been successfully in operation since very ancient times. Its unwritten character has been the object of criticism by several scholars, particularly by *De Tocqueville* and *Paine* who deny its very existence. However, a very large majority of contemporary political scientists accept not only its existence but also its ability to operate very successfully. In fact, the history of its operation, which has also been the history of its evolution, has been a story of success. It has served well the interests of the British.

The unwritten character of the British Constitution however, does not mean that it is totally unwritten. Some of its very important parts, like the Magna Carta, the Petition of Right, the Bill of Rights and many other statutes of the British Parliament which relate to the constitutional system, are available in written form.

**2. Oldest and Evolved Constitution.** The British Constitution is an evolved constitution. It has been the product of a gradual and steady evolution. The process began in the Anglo-Saxon period and still continues to be there. In the words of *Ogg* : "The English Constitution is a living organism. It is always growing with a view to meeting the necessities of the people."

The British Constitution has been like a stream continuously flowing, changing its course, always incorporating new streams, always allowing new canals and yet remaining the same. It has been always growing to meet the necessities of the people. It has changed with the times and yet remained the same.

**3. Child of Accident and Design.** In the evolution of the British Constitution, two factors : (i) Accidents and (ii) Design—have indeed played a very important role. The origin and development of the Cabinet and Cabinet System was possible because of a series of accidents. The CABAL, the problem of succession in 1701, then the succession to the throne of a German George I, his successor's George II's unwillingness to participate in Cabinet meetings, the presence of a man like Walpole in the Cabinet,

nominal and constitutional head of the state; (ii) the real executive powers are in the hands of the British Cabinet headed by the Prime Minister; (iii) there is a close relationship between the executive and the Parliament as the ministers are essentially members of the Parliament. (No one can remain a minister without becoming a member of either of the House of Commons or the House of Lords; (iv) the ministers are individually responsible to the Parliament (the House of Commons) for the working of their respective departments; (v) the ministry is collectively responsible to the Parliament (the House of Commons) for all its policies; (vi) the ministry remains in office only so long as it enjoys the confidence of the majority in the House of Commons; (vii) the House of Commons can remove the ministry by passing a vote of no confidence or by rejecting any of its policies; (viii) the Cabinet can get the Parliament (H.O.C.) dissolved and seek a fresh mandate from the people; and (ix) the Prime Minister of England is the real and effective center of power in the British Constitution. All these features combine to give Britain a system of government which has come to be known as the parliamentary form of government. It is also known as Westminster model.

**8. Liberal Democratic Political System.** Britain has a liberal democratic political system. The struggle for power is open. All citizens of 18 years or more of age have the right to vote and if more than 21 years, the right to contest elections. Political parties directly and freely participate in the struggle for power. The political power is shared by the people through their political parties. A well-organised system of parties and pressure groups remains actively involved in the struggle for power. The right to vote, contest elections, criticise the government, free expression of public opinion, the right to form and work political associations, and orderly transfer of power from one political party to the other whenever the people may so decide, are its hall-marks.

**9. Sovereignty of the British Parliament.** Another salient feature of the British Constitution is that the British Parliament is a sovereign parliament. It has the power to make any law on any subject for all the people and places of Britain. Laws passed by the Parliament cannot be rejected or set aside by the King or the courts. The King's veto has become obsolete and the courts have no power to determine the validity of parliamentary statutes. The laws made by the British Parliament (statutes) can be changed or ended only by the Parliament itself. British Constitution can be amended only by the British Parliament and that too by a simple majority. It is both a legislature and a constituent assembly rolled into one. It has the final power to make laws and to change the British Constitution at will. Legally, there are no limits upon the Parliament's law-making and constituent powers.

**10. Bicameral Parliament.** Bicameralism had its origin in England. The division of the British Parliament into two houses, the House of Lords and the House of Commons, took place in the 14th century as a result of division among the representatives of the Nobility in which the higher nobility joined hands with the clergy to form the House of Lords and the lower nobility and the commonality combined to form the House of Commons. Since that time, the British Parliament has continued to be a bicameral legislature.

The House of Lords is historically the first house. It has a hereditary, nominated, permanent and class character. It has a now membership of 669. It is a permanent house which has never been, and which can never be dissolved. However, in respect of powers, it is almost a powerless house—a house which performs mostly revising and delaying functions.

opposition. The leader of the majority party becomes the Prime Minister and organises his ministry with some of the elected representatives of his party. The leader of the opposition gets a constitutional recognition, an office and a salary, and he organises his 'Shadow Cabinet' consisting of some of the elected representatives of his party. The Cabinet runs the administration, the 'Shadow Cabinet' takes up the role of criticising the policies and activities of the Cabinet. The game of politics between the majority party and the minority party is played in an organised manner and in accordance with rules based on conventions. The leader of the Opposition is always respected as an alternative prime minister.

**14. A large number of Conventions.** The unwritten and evolutionary character of the British Constitution has been responsible for the origin, growth and continuance of a large number of unwritten rules of political behaviour *i.e.* Conventions. Conventions form the warp and woof of the British Constitution. These regulate the working of all the offices and institutions of the constitution. These are rules of political morality which are followed by all as rules of law. These are backed by public opinion and their utility. Without them, the British Constitution cannot operate. The organisation and working of the British Cabinet, the constitutional and nominal role of the British Monarch, the working of the Parliament, the political neutrality of the Speaker, the Committee System of the Parliament etc. all rest upon conventions.

**15. Rule of Law.** Rule of Law is another distinctive feature of the British Constitution. It is the bed-rock of the rights and liberties enjoyed by the people of England. There is no formal bill of rights in the British Constitution and yet people enjoy all such rights and liberties which are enjoyed by the citizens of every democratic state. The credit for this goes to the concept of the Rule of Law which stands for, the absence of wide discretionary and arbitrary powers, predominance of regular law, equality before law and equal protection of rights and liberties of all under the common law of the land. The Rule of Law makes it certain that people, whether ordinary citizens or civil servants, are free to do whatever they like so long as they do not break any law. "No one is punished except for a distinct breach of law as proved in the common law courts." Arbitrary arrests and punishments cannot be inflicted upon anyone. All are equal before law. No one is above or beyond law. *F.A. Hayete* has rightly observed that rule of law means: "Government in all its actions is bound by rules, fixed and announced before hand, rules which make it possible to foresee with fair certainty how the authority will use its concise powers in given circumstances and to plan one's individual affairs on the basis of this knowledge."

**16. Gap between Theory and Practice.** In the British Constitution there is a great difference in the theory and practice. Theoretically, there is Monarchy in Britain, but in actual practice, a liberal democracy with the parliamentary form of government is at work. All the powers of the King are in reality exercised by the Crown and as a part of the Crown these are mostly exercised by the Cabinet. *Ogg* rightly explains the situation: "There have come to be, in a sense, two constitutions rather than one, a constitution that represents the system as it is supposed to be and a constitution that represents as it actually is."

**17. A Mixed Constitution.** British Constitution presents a unique example of a mixed constitution. It involves a mixture of Monarchy, Aristocracy and Democracy. The King represents the monarchy, the House of Lords and Privy Council the aristocracy, the House of Commons, Rule of Law, Parliamentary form of Government,

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responsible for operationalising the system or an institution. They adopt it either for the sake of convenience or for efficiency or as the best available method of accomplishing their tasks. The successful use of the practice makes possible its adoption by others. When it continues to be followed by others and gets an informal recognition as the way to do the task, it takes the form of a convention. We can describe the features of a convention as under :

- (1) It is an unwritten informal practice or rule of conduct.
- (2) It is not made and enacted, it grows.
- (3) It originates as a mode of doing a thing smoothly and efficiently.
- (4) Long usage and the acceptance that it is bound to be used in future leads to the recognition of a practice as a convention.
- (5) A convention is of the nature of a rule of political morality or expediency or efficiency.
- (6) A practice becomes a convention when it satisfies three tests.
  - (a) It has been followed in the past.
  - (b) It is being followed at present.
  - (c) It is expected to be followed in future also.

► (C) **DIFFERENCE BETWEEN CONVENTIONS AND LAWS**

In order to be more clear about the nature of conventions, we must analyse the difference between conventions and laws.

Conventions are laws or Statutes are the

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the rule of law as to mean the 'supremacy or predominance of law as distinguished from mere arbitrariness.'<sup>48</sup> In other words, as a fundamental principle of the British constitutional system, it signifies that the exercise of the powers of government "shall be conditioned by law and that the subjects shall not be exposed to the arbitrary will of their rulers."<sup>49</sup>

The essential principles of the rule of law may be pinpointed in the following manner :

1. The individual should be able, through his legal adviser, to ascertain the law fairly precisely so that he can plan his actions with some degree of certainty.
2. Encroachment on the freedom of the individual must be lawful. Hence :
  - (a) any act of the Government or its officials must be backed by law ;
  - (b) no authority can interfere arbitrarily in the individual's way of life ;
  - (c) a citizen can feel certain he will not be arrested unless he is charged with some definite breach of law.
3. Before the citizen can be punished, a breach of the law must be established in a lawful manner before an impartial tribunal.
4. Justice must be regarded as an end in itself, interpreting the law as it stands and uninfluenced outside the law by the wishes of the Parliament or the Government.<sup>50</sup>

The concept of the rule of law was given a classical formulation by Dicey in the form of following propositions :

First, the rule of law guarantees liberty of person and property by implying that no person can be arbitrarily deprived of his life, liberty or property by arrest or detention except for a definite breach of law tried in and held so by a court of competent jurisdiction. As Dicey says : "No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary courts of the land. In this sense, the rule of law is contrasted with every system of government based on the exercise by persons in authority, of wider arbitrary or discretionary powers of constraint." In simple words, it means that no person can be punished or made to suffer physically or economically until so established in the ordinary legal manner and before the ordinary courts of law proving his guilt of breach. Thus Dicey epitomises that a man "may be punished for the breach of law, but he cannot be punished for anything else."<sup>51</sup>

Second, the rule of law ensures equality. That is, all persons are equal in the eye of law and subject to ordinary courts of the country regardless of their private or public positions. Every individual is under the control of the law made by the Parliament or common law emanating

48. Lord Hewart : *New Despotism*, p. 23.

49. Wade and Phillips : *Constitutional Law*, p. 48.

50. Harvey and Bather : *The British Constitution*, p. 10.

51. Dicey : *The Law of the Constitution*, p. 202.

engaged the process of negotiations in the ground that by doing so the Government would irreversibly part of the sovereignty of the Crown-in-Parliament. Lord appreciated the argument of Blackburn, but he endorsed the of the European Court of Justice given in the *Costa v. ENEL Case*. Thus the British government went ahead and joined the European Economic Community in 1972. The law was made by the Parliament and the stand of the Court was endorsed by the majority of the people in a nation-wide referendum held in 1975. At present the people of Britain may seek relief in the view that the Parliament is still sovereign in the traditional sense in as much as it may terminate the membership of the Community (now Union) as per its will. Since it may not be possible, the enlightened people hope that in course of time the public opinion on the issue of sovereignty of Parliament would change. As judge de Smith observed in a case in 1971: "If, however with the passage of time, the Community develops characteristics of a political federation, and if the incongruity of the orthodox doctrine of Parliamentary sovereignty becomes increasingly apparent in a context of expanding community law, then a climate of opinion will doubtless develop in which heterodoxy will thrive and eventually prevail. The legal concept of parliamentary sovereignty may then drift away into the shadowy background from which it emerged."<sup>46</sup>

#### RULE OF LAW : PRINCIPLES OF A CONSTITUTIONAL ORDER

The constitutional government of Britain represents democratic way of the people without a declaration of independence and a written fundamental law of the land. It is, indeed, astonishing to see that the British people feel themselves securely free in the midst of an unwritten and evolved constitution the existence of which has been doubted by the protagonists of a written and enacted constitution. The reason for this lies in a constitutional government what the English writers, particularly Dicey, call by the name of 'rule of law'. It is based on the common law of the land and is the product of centuries of struggle between the *rex* or king determined to rule by the virtue of 'divine rights' and the *lex* or law made by the people to protect their inherent rights and privileges. Laski writes that it is through the rule of law that the Englishmen "have sought to avoid not merely the obvious dangers of unfettered executive discretion in administration ; we have sought also to assure that the citizen shall have his rights decided by a body of men whose tenure is safeguarded against the shifting currents of political opinion."<sup>47</sup>

The rule of law does not mean rule by super-men ; it definitely means rule by the super-science of law. As such, it represents the antithesis of the rule of lawlessness. It stands on the premise that the welfare of the people is the supreme law. It implies a constitutional form of government which exercises power in accordance with law denying any chance for the king or his ministers to identify themselves with the state in the fashion of King Louis XIV of France. Thus Lord Hewart of Bury defines

46. *Ibid.*, p. 283.

47. Laski : *Parliamentary Government in England*, p. 360.

The House of Commons, is the lower, democratic, representative, national and powerful house. It has 659 members. It is a directly elected house with a tenure of 5 years. It enjoys vast legislative, financial and executive powers. It is the custodian of the national purse and the controller of the executive. The ministers are individually and the Cabinet is collectively responsible to it. It can remove the ministry by passing a vote of no-confidence. The Prime Minister of England always belongs to this House. There is no exaggeration to state that the House of Commons is virtually the British Parliament.

Since 1999, separate parliaments are in existence in Wales and Scotland. But the laws of the British Parliament continue to enjoy pre-eminence over the laws of these legislatures. These have been given the power to legislate over subjects of local importance.

**11. House of Lords as the Highest Court of Appeal.** In the British Constitution, the House of Lords enjoys the unique distinction of being the highest court of appeal—a characteristic which virtually gives to the House the status of a supreme court. Lord Chancellor presides over the meetings of the House of Lords. He is a member of the Cabinet and his position is like that of the chief justice of the supreme court. All these features are indeed unique.

However, when the House of Lords sits as the highest court of appeal, only nine of its members—the nine Law Lords, attend the session and the other members, by a convention, abstain from the meeting. The nine Law Lords are men of high legal background, qualifications and experience. They decide all cases which come to the House of Lords as appeals against the decisions of the courts of the land, and their decisions are final. These cannot be challenged in any other court of the land. The House of Lords, as such, also works as the supreme court of England and indeed it is a unique feature of the British Constitution.

**12. Bi-party System.** The British political system is characterised by a bi-party system. There are several political parties in England but only two parties are real contenders for power. Initially, these two parties were the Conservative Party and the Liberal Party. In contemporary era, the Liberal Party (Now Liberal Democratic Party). In 1 June 2001 it again defeated the Conservative Party. It is now the ruling party has lost its influence and prestige and in the process the gainer has been the Labour Party; consequently, now the Conservative Party and the Labour Party are the two main political parties of England. The political power has been, since 1945, in the hands, of either of these two parties. It keeps on changing hands from the Labour to the Conservatives and again to the Labour, like the swing of the pendulum which keeps on moving from one end to the other. Between 1979-97, the Conservative Party ruled England but in 1997, the Labour Party came to power. In June 2001, it again defeated the Conservative Party and till today continues to be the ruling party. Since 1997, the Conservative Party has been playing the role of Her Majesty's Opposition. The existence of well-organised and a well-functioning bi-party system has played an important role in the successful operation of the British parliamentary democracy.

**13. Her Majesty's Opposition Organised Opposition.** Another salient feature of the British system of government is the existence of an organised opposition. The bi-party system has made it possible for the British to have an organised opposition continuously. In the elections, one party gets the majority and assumes the reigns of power, while the other, which gets a minority of seats, assumes the role of the

Besides these important statutes, several others can also be included in this list. These measures have been the results of wisdom and design. These highlight the role of design in the evolution of the British Constitution.

*Conclusion.* The above analysis clearly shows that both accidents and design have played a role in the evolution of the British Constitution. Writing as early as 1884, *Freeman* described the British Constitution as the creation of "chance and wisdom." *Strachey* also observes, "British Constitution is the child of wisdom and chance".

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the failure of George III to check the development of Cabinet System....., all combined to secure the development of the Cabinet System in England. Likewise, the development of bicameralism of the British Parliament and the emergence of two party system have both been largely the products of accidents. However, several other features of the Constitution came into existence as a result of well thought out and enacted measures like the Reforms Acts, the Parliament Acts, the Peoples Representation Acts etc. Analysing the role of accident and design in the evolution of the British Constitution, many constitutional pundits describe it as "the child of wisdom and chance whose course has sometimes been guided by accident and sometimes by high design."

**4. Unitary Constitution.** Britain has a unitary government. All powers are in the hands of the single central government. The laws made by the British Parliament apply to all the people and places. There are several well and systematically organised local governments which exercise civic powers in the local areas. These local governments derive their powers from the central government and are under it. They enjoy a large measure of autonomy within the parameters prescribed by the central government.

**5. Very Flexible Constitution.** The British Constitution is a very flexible constitution. It can be amended, partially or wholly by an ordinary law passed by the British Parliament. There is no distinction between constitutional laws and ordinary laws, both of which can be passed by the British Parliament. In practice, the law-making exercise involves a very major role on the part of a single house—the House of Commons, as the House of Lords plays only a second fiddle to it. The British Parliament can, by passing a law by a simple majority, bring forth any amendment in the British Constitution.

Flexibility has helped the British Constitution to keep pace with the changing socio-economic and political environment.

**6. Hereditary and Constitutional Monarchy.** Monarchy continues to survive in England. It has got transformed into a limited and constitutional monarchy and in this form has made itself a part of the liberal democratic political system of England. The King/Queen continues to be the head of the state in Britain. Succession to the throne passes from a father to the eldest son, and if he has no son, to his eldest daughter. Hereditary monarchy continues to be present in England. Since 1952, Queen Elizabeth II has been the Head of the State and after her, the throne is to go to the Prince of Wales—Prince Charles. There is, however, a proposal to change the succession law with a view to enable the first child male or female, of the ruling Queen/King, to be palced on the top of the line of succession.

However, Monarchy has lost almost all its powers. The present Monarch is only a ceremonial head of the state, who reigns but does not rule. The real powers are in the hands of the Prime Minister and the Cabinet. The monarch always acts upon the advice of his ministers. He can do no wrong because all his acts are not his acts. These are the acts of the ministers done in his name. The ministers are responsible for all the acts of the King. The Parliament is the sovereign law-making body, but it passes all acts in the name of the King. Thus, England has a hereditary and constitutional monarchy.

**7. Parliamentary Government.** Parliamentary form of government had its origin and development first in Britain and then it spread to other countries. The salient features of the British parliamentary system, are : (i) British king is the

and Supremacy of Parliament symbolising the sovereignty of the people, represent democracy. *Ogg* has explained the system by observing : "The Government of United Kingdom is in ultimate theory an absolute monarchy, in form a constitutional limited monarchy and in actual character a democratic republic."

*Conclusion.* With all these salient features, the British Constitution is a unique constitution in many ways. Its study involves the study of the working of a successful liberal democratic political system with an unwritten, evolved, flexible, unitary and mixed constitution. The British Political tradition has been the tradition of having and successfully working an unwritten, unitary, flexible and a convention-based liberal democratic system working through a constitutional monarchy and a parliamentary system of governance.

### CONVENTIONS OF THE BRITISH CONSTITUTION

Conventions constitute a large and important part of the British Political Tradition. British Constitution is a convention-ridden constitution. All political institutions of England are carrying out their activities with the help of several conventions. Being an unwritten and evolutionary constitution, a large number of conventions continue to guide and govern its working. A real understanding of the British Constitution can be achieved only by understanding the nature and scope of the conventions. *Ogg* and *Zink* have well observed : "England is the classic land of conventions, and no one can hope to understand the country's government without paying quite as much attention to customs and usages as to rules of law."

Conventions have been such unwritten rules of behaviour which have naturally grown and developed in the British constitution. These have been described by *Mill* as the "unwritten maxims of the constitution". *Anson* calls them "the customs of the constitution." However, the most celebrated name has come from *A.V. Dicey* who describes them as "the Conventions of the Constitution."

#### ► (A) CONVENTION : DEFINITION

(1) *Ogg* and *Zink* observe, "Conventions consists of understandings, habits or practices which though only rules of political morality regulate a large portion of the actual day to day relations and activities of even the most important of the public authorities."

(2) According to *A.V. Dicey*, Conventions are "rules for determining the mode in which the discretionary powers of the Crown (or ministers as the servants of the Crown) ought to be exercised."

(3) According to *Herman Finer*, "Conventions are rules of political behaviour not established in statutes, judicial decisions or parliamentary customs, but created outside these supplementing them in order to achieve objects they have not yet embodied."

In simple words, we can define conventions as unwritten rules of political behaviour, or as the political customs. Just as social relations are governed by customs of the society, political relations and activities are also governed by political customs *i.e.* conventions.

#### ► (B) NATURE OF CONVENTIONS

For understanding the nature of conventions, we must analyse their origin and need. Every convention originates as a practice which is adopted by the persons