



ST. LAWRENCE HIGH SCHOOL

A JESUIT CHRISTIAN MINORITY INSTITUTION

CLASS - XI

STUDY MATERIAL

TOPIC: THE CONSTITUTION

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Classification of Constitution

Constitutions are widely classified into two categories, firstly written and unwritten ; and secondly, rigid and flexible.

Written and Unwritten constitution

A written constitution is one in which the fundamental principles concerning state administration are embodied and which has, as a specific document, been passed by a specific body. So a written constitution can be produced and shown as a single document. The US constitution, Indian Constitution, Bangladesh Constitution provide examples of written Constitution. On the other hand, where the constitution has not been passed formally as a specific document by a specific body and the fundamental principles concerning state administration exist in political customs, Judicial decisions and in some scattered documents, the constitution is an unwritten one. The British Constitution provides the glaring example of unwritten constitution. Views, of course are expressed by different writers that this classification of Constitution (written and unwritten) is not a scientific one since no Constitution can, in practice, be fully written or unwritten, An unwritten Constitution must have some written elements. Likewise, a written constitution cannot be fully written , some elements of it exists in unwritten form. For example, British Constitution is unwritten but some important elements of it are contained in written documents like Magna Carta, Bill of Rights, Petition of Rights, Act of settlement etc. On the other hand , the US constitution is written but some important Constitutional subjects like political party organization, cabinet, committee of the Congress, working procedure of the Congress etc. are not written they are largely based on political custom or convention. Likewise Bangladesh Constitution is a written one but political party organization, appointment of Chief Justice, formation of coalition government etc. are not written ; these are based on convention. This is why it is said that the distinction between written and unwritten Constitution is one of degree rather than of form. C.F. Strong comments that a classification of Constitutions' on the basis of whether they are written or unwritten is illusory. It is, of course, sometimes necessary to distinguish between the so-called written and so-called unwritten Constitution, and whenever we needed to do so, we shall refer to the former as a documentary and to the later as a non-documentary Constitution.

(1) Evolved and Enacted Constitution:

Many writers are of the view that there are two types of Constitutions-evolved and enacted. An evolved constitution is the result of the historical development. It is not framed at a particular time. For example, the British Constitution has neither been enacted by any special Constituent Assembly at a particular time nor has the Monarch given it to the people. Constitutionally, England is still an absolute kingship, but in practice her position is different. In practice all the powers are in the hands of the Cabinet and the Monarch has only nominal powers. This is the result of the centuries' long struggle of the British people against their Monarchs. For example, till Tudor period, the British Monarchs were quite absolute.

2) Legal and Real Constitution:

Sometimes the constitutions are classified in this way also. The written elements of the constitution constitute legal constitution and when the conventions and decisions of the courts are added to it, it becomes the real constitution. For example, the Constitution of America can be read in a few hours, but one cannot get real and complete information about the constitution in this way. Real knowledge can only be acquired when besides the constitution; we study the decisions of the judges, and also customs and conventions. The Constitution of America was very rigid, but because of conventions and a liberal interpretation of the constitution by the judges, it has become quite viable.

Differences between written and unwritten constitutions

Architecture

First, it can be helpful to think of constitutions in architectural terms. A written constitution focuses on the things it can describe, which tend to be the formal features of law and government. It tells you where the foundations are, and what they're made of. It tells you where the walls go (because it's important to keep the kitchen and the wash room separate). And it tells you how the roof should be constructed, to protect the entire edifice. These are all important things, and an unwritten constitution must deal with them, too. But an unwritten constitution approaches things differently. Instead of focusing on the floors, walls and ceilings, its primary interest might be described as the spaces in between those structures. It is concerned with how people interact within the constitutional spaces we create, and the things they want to get done. Trying to write down what a "space for interaction" looks like is understandably a bit challenging, which is probably why

written constitutions focus on tangible things like walls and floors. But in doing so they might risk overlooking something vital. Maps v guide books second way to think about constitutions is in terms of their informational dimension. It is instructive to think of written constitutions as a kind of map. If you are exploring a foreign city, a good map will set out the key features in a visual way that helps you navigate strange streets and find unfamiliar buildings. Maps help us get where we want to go by following a definite path. And while all maps abstract from reality to some extent, they are a very accurate way of understanding the terrain. If written constitutions are like maps, unwritten constitutions might be more like guide books. A guide book won't tell you where every street is, but it will provide a good indication of the major ones. They are also very good if you want to pick up a few tips and tricks to navigate your interactions with the locals.

Extrovert v introvert

A third way to think about constitutions is in terms of personalities. A written constitution might be understood as an extroverted constitution. It can be assertive, and obvious, and it signals loud and clear what's going on and what will happen as a result. An unwritten constitution is more like an introverted constitution. It is reflective, and perhaps a bit enigmatic. It considers the consequences of actions carefully. It doesn't signal its inner workings as clearly, so you might need to ask it what it's thinking. But if you do, and you're patient enough, you are likely to get a satisfying response.

Operation in practice

From these three analogies we can get a bit of a sense of how written and unwritten constitutions operate in practice. A written constitution is structured; an unwritten constitution is organic. A written constitution is an abstraction; an unwritten constitution is abstract. A written constitution is definitive; an unwritten constitution is adaptable and nuanced. And I would argue that these differences have an impact in practice. At the very least, they change the way that legal and political actors – judges, politicians, ministers – think about the power they have and what they can do. The obvious caveat is that this type of binary comparison tends towards caricature. To be sure, every real-world constitution needs to balance these aspects of written or unwritten constitutions carefully to try and maximise the benefits of both. That's why we write down our Bill of Rights in statutory form, for example, even where we manifestly rely on unwritten conventions in so many areas.

Distinction between Rigid and Flexible Constitution :-

Rigid constitution: If there is a special provision (different from the ordinary laws) for the amendment for the constitution, it is called a Rigid constitution. For ex: USA Constitution. Process of amendment of USA constitution-

An amendment may be proposed and sent to the states for ratification by either:

The United States Congress, whenever a two-thirds majority in both the Senate and the House of Representatives deem it necessary; OR A national convention, called by Congress for this purpose, on the application of the legislatures of two-thirds (presently 34) of the states. To become part of the Constitution, an amendment must be ratified by either (as determined by Congress):

The legislatures of three-fourths (presently 38) of the states, within the stipulated time period—if any; OR

State ratifying conventions in three-fourths (presently 38) of the states, within the stipulated time period—if any.

Upon being properly ratified, an amendment becomes an operative addition to the Constitution.

Flexible constitution: The constitution in the same fashion as the ordinary laws. Ex: British constitution. Indian constitution: Both elements are present i.e. rigid as well as flexible. Article 368 provides for multiple ways for amending the constitution. Federal features need a special kind of amendment process where ratification from more than 1/2 half states is a must (Rigid). There are certain amendments which can be made via simple majority (outside Art. 368) (Flexible).

A. Important questions :-

1. Define the term constitution.
2. Discuss the utility of a constitution.
3. Classify a constitution.
4. Discuss the merits and demerits of a written constitution.
5. Discuss the merits and demerits of a unwritten constitution.
6. Distinguish between written and unwritten constitution
7. Discuss the merits and demerits of rigid and flexible constitution.
8. Distinguish between rigid and flexible constitution.
9. What are the qualities of a good constitution.
10. Discuss the events that led to the formation of Constituent assembly.
11. Discuss the following :-
 - a. Objectives of the constituent assembly
 - b. Drafting Committee

- c. A Congress Body and a congress document
- 12. Discuss the features of the constituent assembly
- 13. List the criticisms against constituent assembly.
- 14. Discuss the following :-
 - a. Sources of the authority
 - b. Nature of State
 - c. Ideals of the constitution
- 15. What is the importance and significance of the preamble.
- 16. Analyse the salient features of the Constitution of India.

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