



COMPARATIVE STUDY OF CONSTITUTIONAL STATUS OF INDIAN PRESIDENT AND KING OF BRITAIN

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ABSTRACT

Law is the best law of any country; it forms the basis of all other laws and protects the spirit of freedom and human rights. The Constitution of India is a written document consisting of several Articles and Articles. On the other hand, English law is the set of laws and regulations that establish the institutions of the country and the rules regarding the relations between these institutions.

English law is not sealed in any way. In this study, human rights dimensions related to law are discussed. Unlike many countries in the 19th century, Britain did not always have a revolutionary interest.

As a result, Britain's democracy was reformed over the years, not overnight. Civil rights and political organizations law is an important step towards freedom for new countries like the United States and Australia. Surprisingly, since the UK did not write a constitution, some countries have written model laws.

A constitution is necessary for the administration of the law and the administration of the principles on which the law is based. The law of a country is the best law of that country, so no other law can violate the principles of law. 2 It gives confidence to the principles of law and guarantees the rights of the citizens of the country. people. It is based on the protection of people's human rights and reduces the risk of government action.

This article aims to examine whether unwritten laws are more effective in promoting human rights through a comparative analysis of British and Indian laws.

In this study, the structure of the law in the two countries, its principles, judicial review, separation of powers were examined, and a comparative Scan was made from the human rights resources specified in India and Indian written law. The unwritten law of Great Britain was given.

Keywords: Unwritten/Constitution/UK/India/Human Right.

INTRODUCTION

Indian Independence Act 1947 is a law passed by the British Parliament which legally established two independent territories, India and Pakistan. The constitution provided for the withdrawal of British troops from India and the partition of India. In 1950, the Constitution of India was enacted and India transformed from an independent sovereign into an independent republic.

On February 20, 1947, the British made it clear that they would leave India through their Prime Minister, Clement Attlee. The two major political parties of the period, the Indian National Congress and the Muslim League, welcomed the move. But Congress wanted Britain to live with a separate country, India, while the League of Nations wanted two countries: India and Pakistan. The British government sent the last prime minister, Lord Mountbatten, to India to resolve the political crisis and facilitate the withdrawal of British troops. It decided to refer the partition issue to the state legislatures of Bangladesh, Punjab and Sindh.

These councils decided to divide their Muslim-majority districts. With this in mind, the British decided to leave India provided by the Indian Independence Act of 1947.

Rasul is written in the form of a constitution, that is, 22 pages long and consists of about 20 chapters and three parts. August 15, 1947 was designated as the founding day of the two independent countries, India and Pakistan. Bengal divided the states of Punjab and Sind, made the necessary changes in the Government of India Act of 1935 and replaced the constitution with the constitutions of India and Pakistan.

This bill was a turning point in the Indian independence movement, the culmination of decades of independence struggle and also a turning point in Indian history. It is suppressing the Pakistani issue, which has been stirring up Indian politics for nearly a decade.

More importantly, while the Act severed relations between India and Great Britain, India continued to be ruled under the governor, who was the representative of the British throne. Also, members of the League of Nations were dissatisfied with the fact that India's independence could be traced back to the Constitution. So, they did two things: First, Parliament did not complete the final bill it had written for the British Parliament to approve, as required by the Act.

Second, it removes the Law itself from Article 395 of the Constitution.

After the Constitution came into force on 26 January 1950, India severed all ties with Britain.

VARIOUS SALIENT FEATURES

1. *The Unwritten*

The unwritten is one of the most important parts of the British Constitution. There is no written, clear, concise document that could be called the British Constitution. The main reason for this is that it is based on unwritten traditions and political culture, unlike writing, which is often the product of legal contracts.

By comparison, the Indian constitution is the longest written constitution in the world. In contrast, the Indian Constitution is the longest written constitution in the globe.

2. *Evolutionary*

The British Constitution is an example of an evolutionary system. It was never created by the Constitution. For more than a thousand years, its development has never stopped. English law is said to be the product of creativity and chance. In this respect, the Indian Constitution has both similarities and differences with the US Constitution. It differs from the British Constitution in that it is a written document with clearly defined provisions.

But it is also responsible for the amendment, because the provisions to amend the Constitution remain as they are, thus amending the Constitution according to the needs and desires of the time.

3. *Flexibility*

The British Constitution is a classic example of a flexible government. Since there is no difference between the constitution and the law, it can be accepted, amended and cancelled by a simple majority (50% of those present and voting) in the Assembly. Everyone is treated the same. The basis of the revolution is attributed to the British Constitution, with its amendments and reforms. This feature allows it to adapt to changing times.

Indian law, on the other hand, is both flexible and rigid. This is largely in line with the principles of the Constitution of India where certain features such as sovereignty, secularism and republic are considered inviolable but the bridge of law is changed in all other respects.

4. *Unitary vs. Federal Features*

The British constitution has a unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. Executive organs of the state are subordinate to the Parliament, exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not politically autonomous units. The Indian Constitution, on the other hand, is federal.

Unitary	Federal	Confederation
Units come together and form the state.	All power lies with the Centre Powers for Provincial	Government comes from the Constitution.
		Centre delegates power to the provincial government.
Example: India Real power with the units.	Example: Britain Opposite to Unitary	Example: EU, USA

5. *Parliamentary Executive*

This is an important similarity between the British Constitution and the Indian Constitution. (Except for the sovereignty of the parliament). The UK has a parliamentary government.

All power and authority of the supreme king was taken away. Politicians are real civil servants because they are members of the majority in parliament and will remain in office as long as they hold the trust of parliament. The Prime Minister and his ministers are accountable to the legislature for their policies and actions. Similar to the presidential government, in this system the executive and the legislature are not separated.

6. *Parliament Sovereignty*

Supreme power is the essence of sovereignty. Control of the British Parliament is an integral part of the British Constitution (no written law). The UK Parliament is the only legislature in the country that does not limit laws. Can create, edit and cancel any policy. Although there are still state legislatures in India, the Indian parliament has almost as much legislative power as the British Parliament.

Laws made by the UK Parliament cannot be challenged by the courts. The UK Parliament can change the law ex officio as if it were ordinary law. It can enact criminal and illegal laws. There is a significant gap in the ability of the Indian judiciary to monitor the effectiveness of newly enacted laws. Also, given that the Supreme Court of India is the highest interpreter of the Constitution of India, the doctrine of "foundational structure" provides the judiciary. The Indian side added the power to challenge the validity of the law.

7. *Role of Conventions*

Conventions are referred to as unwritten Constitutional maxims (rules). They are flexible and prevent changes. Most international laws have conventions. As part of the unwritten British Constitution, the Convention plays an important role in British politics.

For example, the Queen has the right to object to laws made by the British Parliament, but the Lij Choj Act is not from the meeting that becomes law.

However, the Contract is governed by law according to its legal status.

8. *Rule of Law*

Law is another important part of the UK Constitution. Constitutionalism or limited government is the definition of constitutionalism.

This limits the manager's decision making.

According to Daisy, English law has three principles:

1. The right of self-defense and protection from arrest.
2. Equality in rights: All people are equal in rights, regardless of their status.

The rule of law, which provides various protections to public officials, is different from the principle of equality before the law. In the absence of laws and regulations, English courts upheld the law. Hence the system is known as the constitutional law doctrine (in the United States it is called the constitutional law doctrine, in India it is called the Maneka Gandhi case).

3. British judges recognized the rights of British citizens.

The court recognized the law. So, the British people still have rights without a bill of rights or fundamental rights.

However, it has been observed that the law is not implemented in its real form.

has many interpretations:

- (i) continuation of the administration of law
- (ii) continuation of legislation (iii) internal and external issues.
- (iii) The term "Neo-Despotism" is used for these conditions.

9. *Independence of Judiciary*

In England, law is guaranteed by ensuring that judges can only be removed from office for serious crimes and only go through a process approved by both houses of Parliament. Therefore, judges can pass judgment without fear or favour. The same approach was followed in India, where judicial independence was hailed as part of the unlimited rule of law (one of the hallmarks of "critical thinking").

Organs of the State

Executive:

The Executive in Britain is called as Crown. Earlier, the Crown symbolized King. Now, the King is part of the Crown.

The Crown, as an institution, consists of the following:

1. **King**
2. **Prime Minister**
3. **Council of Ministers (CoM)**
4. **Permanent Executive, the Civil Servants**
5. **Privy Council**

1. **Royal Family:** Long live the King. In Britain, initially all power lied with the King. Later on, power shifted out of the institution of the King to the institution of CoM headed by the P.M., Permanent Executive and the Privy Council etc. Today, the Crown comprises of all these institutions. Hence, the

first part of the statement describes the King as a person, while the second part describes the King or Crown as an institution.

2. **The Nature of Monarchy:** The nature of monarchy: Britain uses monarchy and monarchy does not interfere with freedom. Therefore, the king - now Queen II. Elizabeth - her power as head of state is ceremonial in nature. The most important authority is to appoint the deputies to form the government, but the king always follows tradition by giving this opportunity to the leader of the party or group that holds the majority in the Parliamentary Representative. Despite having no real power, the king still plays many important roles in England today.

- Representing UK at home and abroad
- Settings standards of citizenship and family life
- Uniting people despite differences
- Allegiance of the armed forces
- Maintaining continuity of British traditions
- Preserving a Christian morality

In addition, consider the following:

Parliamentary system requires two heads:

- First head, as head of the state. He represents the nation and provides continuity to the administration.
- Second head is the head of the government. He has real powers because the house has confidence in the Prime Minister. The P.M. is the leader of the House. He represents the majority of the House.

The institution of kingship is a source of psychological satisfaction. It is said that, “with the King in the Buckingham Palace, the Englishmen sleep peacefully in their houses”. The King is of great help in critical times. He usually has a very long experience and can give valuable advice in the interest of the country.

According to Bagehot, the King has three rights:

- (I). Right to warn.
- (II). Right to encourage.
- (III). Right to be informed.

Abolishing the kingship will require an elected head. An elected head, with no real powers, will have its own set of problems. In contrast, no provision of Monarchy exists in case of Indian Constitution. Indeed, holding of titles like King etc. are forbidden as per Article 18, a Fundamental Right, thus emphasizing Equality of all Indian citizens.

3. **British Prime Minister and the Council of Ministers:** Britain has a Cabinet form of government. A cabinet is a plural or collegiate form of government. The power doesn't lie in one person, but the entire Council of Ministers. The principle is, "all Ministers sink and swim together".

It is asked on collective responsibility towards the Lower House. The Cabinet has its origins in the Privy Council set up to advise the King. The roles of cabinet include the following:

- Resolving disputes
- Constraining the Prime Minister
- Unifying government
- Unifying the parliamentary party

Moreover, the Cabinet is the ultimate body of law making in the Parliamentary system. It is formed out of the party/group, which enjoys majority in the House. The cabinet meetings are held in private.

4. British Prime Minister

Position of the Prime Minister.

- M. is the captain of the ship of the state
- M. is the head of the Cabinet.
- The party of the P.M. enjoys majority in the House.
- He is the connecting link between the King and the Cabinet as well as the King and the Parliament.
- The life of the House depends on the P.M. He may advise the dissolution of the House.
- The other Ministers are appointed on the advice of the P.M.
- The term of the other Ministers also depends on the P.M.

The P.M. as first among equals

This is also called as Primus Inter Pares or Inter Stella Luna Minores. This explains the P.M.'s position w.r.t. other ministers. In the cabinet system, there is a principle of collective responsibility; hence other ministers are also important. The relative position of the P.M. and other ministers in a Parliamentary system can be compared to the relative position of the President and his secretaries in the Presidential system. In the Presidential system, members of the Cabinet are chosen by the President. In USA, spoils system exists.

The Secretaries are not members of the Congress. In the Parliamentary system, ministers are also the members of either House. The P.M. cannot treat them as his subordinates.

Theoretically, the P.M. should consider himself as only first among equals, must give due respect to other members of the Cabinet and should take decisions in consultation with them. However, the P.M. is first because:

- He is the one who is appointed first, since he is the leader of the House of Commons.
- Other ministers are appointed on his advice.
- Other ministers can be removed on his advice.

P.M. as moon among stars

This statement gives a more realistic view of the position of P.M. In practice, the P.M. gains prominence and he is not simply the first among equals. Both formal and informal factors are responsible for this.

Formal Factors: He is the link between the Parliament and the King, and ministers are appointed/removed on his advice etc.

Informal Factors: Personality factors, position of his party, external/internal emergency like situation

Difference between the British and Indian PM

Constitutional position of the Indian P.M. is modelled on the British P.M., with one difference. In India, the PM can be a member of either House of Parliament, i.e., Lok Sabha or Rajya Sabha. However, this is not so in Britain. It is a convention in Britain that the P.M. will always be a member of the Lower House (House of Commons) only.

Privy Council

It has been one of the advisory bodies to the King. It has lost relevance because of the emergence of the Cabinet. Cabinet decisions are the decisions of the Privy Council. It has some supervisory role w.r.t. University of Oxford, Cambridge etc. It also has some role in resolution of disputes related to the Church as well as a Court of Appeal in some admiralty cases.

Permanent Civil Servants/British Bureaucrats, Indian bureaucracy is modeled on the British bureaucracy. Some features:

- Bureaucracy in Britain is generalist
- They are expected to be politically neutral
- Recruited through competitive exams
- Enjoy a lot of immunities
- It is said that the British bureaucracy is not representative. It is still elitist
- Bureaucrats are known as New Despots
- It is said that the Bureaucracy thrives behind the cloak of ministerial responsibility
- It has also been compared with Frankenstein's monster (overpowering the Ministers)

Legislature

Essential differences between the two systems

There is a natural tendency to compare the Parliament of India with the British Parliament. But our Parliament and Parliamentary Institutions and procedures are not a copy of the Westminster system. There are fundamental differences between their system and ours. British Parliament has grown through some three hundred years of history. In Britain, the Parliament can say to be the only institution, which exercises sovereign powers and on which there are no limits because there is no written constitution. India, on the other hand, has a written constitution. Powers and authorities of every organ of the Government and every functionary are only as defined and delimited by the constitutional document.

The power of Parliament itself is also clearly defined and delimited by the Constitution. However, within its own sphere, the Parliament is supreme. Also, Parliament is a representative institution of the people. But it is not sovereign in the sense in which the British Parliament is sovereign and can do or undo anything. The point is that in the sense of constitutional sovereignty, their powers are not limited by a constitutional document.

Moreover, our constitutional document provides for fundamental rights of the individual, which are justiciable in courts of law. And any law passed by the Parliament, which abridges any of the fundamental rights can be declared ultra vires by the courts.

The courts adjudicate the disputes and while doing so, they can interpret the constitution and the laws. Also, Parliament has the constituent powers and within certain limitations it can suitably amend the constitution.

The British Parliament is bicameral, that is there are two houses or chambers – The House of Lords (strength not fixed) and The House of Commons (strength fixed at 650 members). The House of Lords has hereditary members. Moreover, it has the largest number of Life Peers, Church/Religious peers (Ecclesiastical Peers) and Law Lords.

The House of Lords

The House of Lords is the second chamber, or upper house, of the United Kingdom's bi-cameral (two chamber) Parliament. Together with the House of Commons and the Crown, the House of Lords form the UK Parliament. There are four types of members of the house:

1. **Life Peers:** These make up the majority of the membership. The power to appoint belongs formally to the Crown, but members are essentially created by the Queen on the advice of the Prime Minister. Life peers' titles cease on death.
2. **Law lords:** Up to 12 Lords of Appeal in Ordinary are specially appointed to hear appeals from the lower courts. They are salaried and can continue to hear appeals until they are 70 years of age.
3. **Bishops:** The Anglican Archbishops of Canterbury and York, the Bishops of Durham, London and Winchester and the 21 senior Diocesan Bishops from other dioceses of the Church of England hold seats in the House. This is because the Church of England is the 'established' Church of the State. When they retire the bishops, stop being members of the House.

4. **Elected Hereditary peers:** The House of Lords Act, 1999 ended the right of hereditary peers to sit and vote in the House of Lords. Until then there had been about 700 hereditary members. While the Bill was being considered, an amendment was passed (known as the Wetherill amendment after Lord Weatherall who proposed it), which enabled 92 of the existing hereditary peers to remain as members.

The House of Lords can propose and make changes, known as amendments. However, its powers are limited; if it doesn't approve of a piece of legislation, it can only delay its passage into law for up to a year. After that, there are rules to ensure that the wishes of the House of Commons and the Government of the day prevail.

In fact, the House of Lords could be labelled as one of the weakest upper house in the world. Since the passage of the Act of 1919 and 1949, the House of Lords has lost all real legislative powers. It is simply a delaying chamber now. It can delay an ordinary bill for a maximum period of one year and money bill for a maximum period of one month.

In comparison to Rajya Sabha, the House of Lords is a weak house. Rajya Sabha has equal powers with Lok Sabha, as far as an ordinary bill is concerned (though, there is provision of a joint session, but it is an extraordinary device).

Rajya Sabha has equal power with Lok Sabha as far as the amendment of the Constitution is concerned. Rajya Sabha is also a delaying chamber, like the House of Lords, as far as a Money Bill is concerned. Rajya Sabha can delay the bill for a maximum of fourteen days. Rajya Sabha does have some special powers, which are not available to Lok Sabha; for example: Articles 249 and 312.

Comparison between the House of Lords and Senate of USA

Senate is called as the strongest Upper House. It enjoys equal power with the House of Representative in the context of an Ordinary Bill, a Constitutional Bill and even in passage of a Money Bill. It is customary to introduce Money Bill in the Lower House.

The Senate also enjoys some special powers not available to the House of Representatives. For example, ratification of international treaties, ratification of higher appointments. The House of Lords did enjoy a privilege that it used to be the highest Court of Appeal in Britain. But this has now ceased to exist, as the Supreme Court has been created by the Constitutional Reform Act, 2005 (SC established in 2009).

The House of Commons

This is the lower chamber, but the one with most authority. It is chaired by the Speaker.

Unlike the Speaker in the US House of Representatives, the post is non-political and indeed, by convention, the political parties do not contest the Parliamentary constituency held by the Speaker. The number of members varies slightly from time to time to reflect population change.

In modern practice, the Prime Minister is the head of the Government and is always a member of the majority party or coalition in the House of Commons.

The Cabinet comprises primarily leading House of Commons Members of the majority, although Members of the House of Lords have served as Cabinet ministers. In fact, designating someone outside Parliament as a "life peer" has been one recent means of bringing someone essentially from private life into the Government.

The Prime Minister, although head of the Government and an MP, is now not usually the Leader of the House of Commons. The Leader of the House of Commons, a member of the Government, is the chief spokesman for the majority party on matters of the internal operation of the House of Commons.

The Office of the Leader issues announcements of the impending House of Commons schedule, and a routine inquiry from the Opposition's counterpart serves as an occasion for the Leader to announce the business for the next two weeks of session.

In the House of Commons, party organizations (akin to the Republican Conference or Democratic Caucus) meet regularly to discuss policy, and to provide an opportunity for backbench party members to voice their views to ministers or shadow cabinet members in a private forum.

The Position of Speaker of the House of Commons and its Comparison with the Indian and American Speaker

Features of British Speaker

The position of the Speaker is a position of great prestige and dignity. In UK, there is a convention that once a speaker, always a speaker. It means that a speaker's constituency is unchallenged. Once a person is appointed as a speaker, he gives formal resignation from his political parties. He has a casting vote and ultimate disciplinary powers with respect to the conduct of the House and MPs.

US Speaker (Speaker of House of Representatives)

He is expected to be a party man, not expected to be neutral; instead he favours his party. He does not have final disciplinary powers, which lie with the House itself. In USA, the Speaker can vote in the beginning.

Speaker of Lok Sabha

Though our position is midway between the British and the US model, it is theoretically closer to the British model. But similar conventions do not exist. For instance:

It is not necessary for the Speaker to resign from his party

If he decides to resign, he will not be disqualified under the Anti-defection law. No convention in India that he will be elected uncontested.

Judiciary

Under the doctrine of Parliamentary sovereignty, the judiciary lacks the intrinsic power to strike down an Act of Parliament. However, the subordination of common law to statute law does not mean the subordination of the Judiciary to the executive. Courts in Britain retain certain powers:

- Of interpreting the precise meaning of a statute.
- Of reviewing the actions of ministers and other public officials by applying the doctrine of ultra vires (beyond powers).
- Of applying the concept of natural justice to the actions of ministers and others.

Because Parliament is sovereign, the government can seek to overturn the decisions of the courts by passing amendment legislation. The power of judicial review provides the judiciary with a potentially significant role in the policy process.

In recent decades, there has been an upsurge in judicial activism for several reasons:

- Judges have been more willing to review and quash ministerial action.
- British membership of the EU
- The incorporation of the ECHR (European Convention on Human Rights) into domestic law
- Devolution of powers to elected assemblies in Scotland, Wales and Northern Ireland
- The creation of a Supreme Court in 2009.

Comparison between the Indian and British Judiciary

➤ *Differences*

1. In case of British system, the lack of concept of 'Basic Structure' makes amending power of the Parliament supersede any judicial pronouncement. Whereas, in case of the Indian Judiciary system, the concept of 'Basic Structure' has provided a potent tool to Judiciary by which it can scuttle down any Executive or Legislative action, which it deems as against the basic spirit of the Constitution.
2. British legal system is completely based on 'Common Law System'. Common Law System implies that law is developed by the judges through their decisions, orders, or judgments (also referred to as precedents). However, unlike the British system, which is entirely based on the Common Law System, where it had originated from, the Indian system incorporates the Common Law System along with the statutory and regulatory laws.

➤ *Similarities*

1. The actions of Executive can be declared ultra vires in both the systems.
2. The judiciary is considered the highest interpreter of the Constitution.
3. Off late, there has been a splurge in judicial activism in Britain and judiciary is becoming re and more active. A similar evolution of judiciary has been noticeable in the Indian case too.

Brief Synopsis of comparison drawn above

British Constitution:

- (i) Product of history and the result of evolution.
- (ii) There is a difference between theory and practice
- (iii) Flexible and unitary constitution
- (iv) Parliamentary government
- (v) Rule of law and civil liberties applicable.

Indian Constitution

Written

Federal

Power is divided between Centre and States

No Monarchy/ Republic

British Constitution

Unwritten

Unitary

Power is with the centre.

Has king Or Queen

CONCLUSION:

The Indian Constitution has given many provisions, which clearly states that the President of India is not merely a figure head. True, the President has not done enough what he should have done. The President, like the King, has not merely been constitutionally romanticized but actually vested with a pervasive and persuasive role. *Indian President* lies somewhere between *British Crown* the President under the Indian Constitution” has said that the President is not only the biggest dignitary of our realm but the embodiment of the unity of our country. The principal role of the President is to prevent a parliamentary government from becoming a parliamentary anarchy and it is the Presidential authority that keeps the country and the people bond together.

