

Chapter one Nature of constitutional law

1- Definition:

The term " constitution" is used in three different senses (meanings).

First it is used to denote the collection of rules which establish and regulate the government of a country.

Second, it is used to mean a document having a special legal sanctity which sets out the framework and the principal functions of organs of government of a state.

Third, the word "constitution" is sometime understood as the fundamental law of a state establishing the basic principles and forms of social and state structure the basis of legal status of citizens and the system of state organs.

2- Universal phenomenon:

Whatever, may be the precise definition of the word " constitution", the latter is an almost a world-wide phenomenon nearly every state as has its constitution as which may be of one kind or another a state may not have a constitution as a single document, yet it has an aggregate of rules establishing the principles of the social and state system these rules form its constitution.

3- Essence of constitutional rules:

As we shall see later, these rules may be written or unwritten. But irrespective of the form they may take, they are not merely formal legal rules to a great degree, they reflect the

will, interests and aspirations of the dominant social and political forces.

Thus, in their essence, they are socio-political rules. This means that they do not operate in vacuum or isolation. They are part of the whole socio-political system.

In other words, they should be looked at in the context of the political system in which they are set and the politics in which they are operative.

This may well be shown by the fact that the constitution affects the interests of the whole society. It does so by defining the nature and aims of state power and the rights and duties of citizens in relation to it.

In addition the constitution determines the relations between the institutions of state power, and between the state as a whole and its component parts.

4- Changing law:

As a reflection of a changing society, the constitution cannot remain unchanged. A constitution change may be brought about through an amendment or abrogation. In either way, however, the constitutional standards change is an echo of a social or political change.

5- Programmatic law:

The constitution usually conforms the existing rules enshrined in it.

In this sense, it deals with "the present". It may, however, declare certain aims or stipulate standards that are for the time being unrealizable.

In doing so, it deals with "the future". It may be said in this connection that most constitutions in the developing countries are programmatic.

6- Fundamental law:

The constitution of a state constitutes the fundamental law of the land. It is supreme law in the country. This constitutional supremacy has several important effects. No act whether executive, judicial or legislative, contrary to the constitution, can stand. It is under this fundamental law that all laws are made and executed. The constitution thus conditions the whole governmental process in the country. It cannot be overridden (control) by any governmental organ.

Another effect of this supremacy is that a written constitution cannot be changed by ordinary process. It can be amended only by following a special process. It can be amended only by following a special procedure laid therein for this purpose.

7- Legislative and constitutional supremacy:

A distinction must be made between legislative supremacy and constitutional supremacy. The doctrine of legislative supremacy developed in countries which have no written constitution.

England is a case in point. Parliament established itself as the sole legislative authority there after a long struggle with the crown. It is supreme in that constitutional laws stand on no higher footing than other laws and parliament can enact, amend or repeal constitutional law in the same manner as ordinary legislation.

Usually, the principle of constitutional supremacy is expressly declared in the constitution. But it may be inferred from certain clauses which prohibit the legislature from making laws repugnant to the main principles of the constitution.

It may also be deduced from the relative difficulty of actual change in or of the constitution itself, an ordinary law can usually be changed or amended with less rigidity.

Chapter two: Sources of Constitutional Law

As we have already seen, in most countries, the term "constitution" means a selection of rules which define the framework of government and postulate how it ought to operate. These rules may also reflect the socio-political aims of the state and society.

These rules, however, are integral part of the whole constitutional structure of the country. They are the main part, but not the sole part, of this structure, in other words, they are supplemented by other rules, legal and non-legal (illegal).

These supplementary rules are the sources of constitutional law itself. The legal ones are the most important of these rules.

They consist of legislation, judicial interpretation, usages and convention.

1- Legislation

- (A) Legislation, i.e., laws made by the legislature, are the first and foremost source of the constitution.

A constitution does not necessarily or usually contain the detailed rules governing the working of the institutions of government.

For example, rules for election, the establishment of government departments or the organization of the judiciary may not be included in the constitution. They are usually found in ordinary laws made by the legislature within the limit fixed by the constitution itself.

- (B) Such rules are almost as important as the rules enshrined in the constitution. Indeed, they give effect to the constitutional rules and perhaps modify them.

In certain countries, and the particular in these which have no written constitution, laws are part of the constitution.

In Britain, for example, the Magna Carta (1215) and petition of rights (1628) are among the main laws which form part of the constitution.

2- Judicial interpretation

- (A) The second source of the constitution is judicial interpretation. In certain countries, Courts and judges are empowered to interpret the law, i.e, to expose its meaning, in disputed cases.

As part of the law, the constitution, too, may be in interpreted by them.

- (B) The aim of this interpretation is to expound the true meaning of constitutional provisions and to decide whether certain legislative enactments and executive acts are compatible with them.

In other words, the Courts will decide on the constitutionality of these laws and acts. This means that the judiciary may override or annul a laws or an executive act on the ground that it is unconstitutional.

- (C) The importance of the constitutional interpretation as a source of the constitution lies in the fact that in interpretation, which usually takes the form of a decision, will be binding to all the states organs.

A constitutional interpretation is regarded as a judicial precedent.

3- Convention

- (A) The third source of the constitution is conventions. The latter are defined as mixture of rules based on custom expediency.

Their existence is usually justified by the need for rule to supplement the legal framework of the constitution. It is generally agreed that no convention can be considered as part of the constitution unless it is regularly followed in practice.

- (B) Constitutional conventions are of great importance in countries which have no written constitutions.

England affords by far the best example of this where conventions play a very important role.