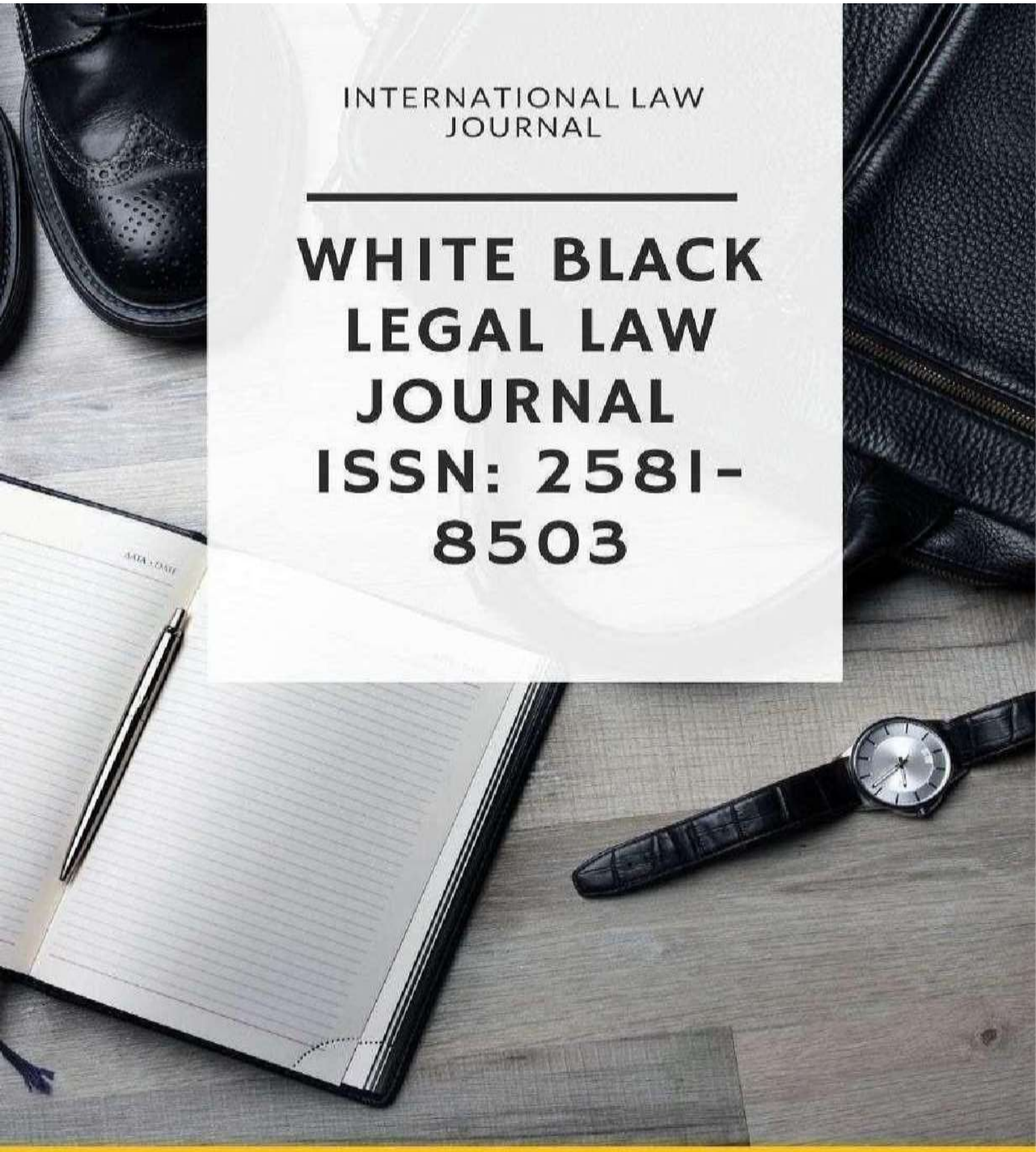

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E.MBA, LL.M, Ph.D, PGDSAPM
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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“THE WRITTEN CONSTITUTION AS LIMITATION UNDERDIFFERENT CONSTITUTIONS”

AUTHORED BY - ADV. SNEHA SITARAM BODAKE,
LLM Law College Pune

ABSTRACT

The constitution protects our rights all day and night. A constitution refers to a system of laws and principles that act as a basis for governance in a country. There are two types of the constitution one is written and the other is unwritten constitution The general idea of a constitution and of constitutionalism originated with the ancient Greeks and especially in the systematic, theoretical, normative, and descriptive writings of Aristotle. The Constitution of San Marino might be the world's oldest active written constitution since some of its core documents have been in operationsince 1600, while the Constitution of the United States is the oldest active codified constitution. The first country to make a constitution is the USA India, the USA, France, Australia, Denmark, New Zealand, and Brazil is some of the countries that practice written constitutions. A written constitution has been written and contains all the facts in a book form that can be consulted at anytime. It includes government and citizen responsibilities and rights, the type of constitutional order,and the laws governing and controlling the system. These constitutions are adaptable, which meansthey can be altered over time. The judiciary has more power and can use judicial review to upholdthe Constitution. written constitutions are difficult to amend, thus introducing rigidity and conservatism. In a written constitution judiciary is quite conservative interpretations are merely tosee whether a law conforms to the constitution or not. A written constitution is rigid and inelastic.It does not allow full scope for growth and development. A written constitution is not adaptable tothe changing social and economic conditions**.** written constitutions are lengthy and complex and hence more challenging to design and implement. Constitutional Reform should be encouraged every ten or twenty years as the Constitutions are the product of a time and thinking of the existingpeople. Time changes as well as people. Anything with a rigid posture about the Constitution will be harmful to Constitutional Democracy. According to George Kousoulas. "The alternative to Constitutional change is revolution. An unalterable Constitution is the worst form of Tyranny. Theaim of doing the research on this topic is to do a detailed study on written constitutions’ merits, demerits, and limitations created because of the written constitution

Key Words: Amend, Conservatism, Government, Judiciary, Rigid, Written Constitution

INTRODUCTION:

A Written Constitution is a Constitution that has been systematically and thoroughly written down and contained in a single text. A written constitution has been written and contains all of the facts in a book form that can be consulted at any time. It includes government and citizenresponsibilities and rights, the type of constitutional order, and the laws governing and controllingthe system. These constitutions are adaptable, which means they can be altered over time. The judiciary has more power and can use judicial review to uphold the Constitution

Though the motive forces which led to the adoption of a written constitution have varied in different parts of the world, the basic assumption underlying them broadly is the same (being derived from the American constitution), namely that a written constitution is a legal instrument, which sets up and limits the powers and functions of the different organs of the state. Since the organs of the state including the legislature or the ordinary law making body itself are thus set upby the constitution, it is a natural to regard the written constitution as a higher law, with referenceto which the powers of the different branches of the body politic have to be tested, or circumscribed.[1]

Under unwritten constitution a court or a lawyer would have nothing to do with the rules of morality, whether founded on the unwritten constitution or usage or otherwise. It follows that there is no legal limitation to the sovereignty of the legislature even though a parliament may not,in practice, intend to violate these rules of constitutional morality. In the words of Dicey[2]

"A modern judge would never listen to a barrister who argued that an act of parliament wasinvalid because it was immoral, or because it went beyond the limits of parliamentary authority.""If a legislature decide that all blue eyed babies should be murdered, the preservation of blue eyedbabies would be illegal but the legislators must go mad before they could pass such a law"[3] underwritten constitution since the powers of all the organs of the states are defined by the constitution

[1] Dr Durga Das Basu ,Comparitive constitutional law , 355(3rd edition, 2014)

[2] AV Dicey , Law of Constitution P.63(10th Edn)

[3] Quoted in Dicey, Leslie Stephens Science of Erhics, p. 81(10th edn)

it follows that under a written constitution no organ or branch of the government can claim omnipotence or sovereignty[4] in the English sense. Under a written constitution healthy organs arenon sovereign to borrow Diceys[6] language. It means that none of them can exercise unlimited power but is limited and restrained by a superior law and that if any of those constitutional limits are transgressed, the relevant act of the government weather executive legislative or judicial, shallbe ultra virus or unconstitutional.

Most modern states have written constitutions, and it is usually not difficult to recognise them. For a large number of research problems (but not all), these two characteristics offer significant analytical leverage. Identifying a state's constitution is a relevant issue. The Comparative Constitutions Project (CCP) uses a single operational definition in which we use a trio of criteria to determine whether a piece of legislation qualifies as a constitution.1 When determining whether a document is a constitution, the first criterion must be satisfied in order for it to be considered such. If the first criterion is not satisfied, the second and third criterion are usedas backup criteria. Documents that are specifically referred to as a country's constitution, fundamental law, or basic law are considered to be constitutional.

CONSTITUTION AND CODIFICATION

Constitution making is a political act. Choosing the basic principles of constitutional design, endowing the document with legitimacy and ensuring its utility as a political artefact combines 'science, art and craft'.[5]But constitution making, especially in a country like the UK, would necessitate deep changes for the legal and political culture,[6] especially if the constitution replacedActs of Parliament as the highest source of law. The doctrine of parliamentary supremacy, togetherwith the rule of law and conventions, forms the backbone of the UK's unwritten constitution. It has always been and remains a totemic issue in constitutional debates. As the highest source of

[4] Kilbourn v. Thompson, (1880) 103 US 168 (199); powell v. McCormack, (1969) 395 US 486. [6]
Dicey , Introduction to theLaw of constitution10th Edn. 92et seq.

[5] Daniel Elazar, 'Constitution-Making: The Pre-eminently Political Act' in KG Banting and R Simeon (eds), Redesigning the State: The Politics of Constitutional Change in Industrial Nations (Macmillan 1985) 233.

[6] Sotirios A Barber, Constitutional Failure (University Press of Kansas 2014) xvii: 'constitutional reform musttherefore be nothing short of cultural reform'.

law, Acts of Parliament may violate international law and fundamental rights and repeal constitutional statutes at will. The UK Supreme Court may have attempted to disaggregate parliamentary supremacy by intimating that, in the context of rights, the doctrine is 'no longer ... absolute',[7] but in the context of the devolved governance structures, the same court has deemed Westminster's power to legislate for Scotland and Wales to be 'undiminished'.[8] Martin Loughlinand Stephen Tierney argue that this dominant institutional conception of absolute legislative authority is a 'primitive view' that 'rests on an inchoate appeal to the need for Westminster to holdon to untrammelled power [which] is inadequate and must be jettisoned'.[9]This primitive view is most incompatible with, and therefore most threatened by, the adoption of a written constitution. If it is retained, the UK will remain 'incapable of being constitutionalised'.If it is repudiated, the culture of the matchless, flexible, political constitution will have been corrupted. Rooted in conservatism and anti-rationalism, and sceptical of the constitutional responsibilities of courts, opponents view the idea of a written constitution as 'unnecessary,undesirable and un-British'.

As Roger Scruton has observed:

Conservatives in the British tradition are heirs to an island culture, in which custom prevails over reason as the final court of appeal ... When interrogated as to the just- ice or reasonablenessof any particular part of their inheritance—be it the common law, the monarchy, the nature andworkings of parliament, the Anglican Church and its nonconformist offshoots they tend eitherto shrug their shoulders, asserting that this is how things are because that is how they were, orelse they take refuge in irony and self-mockery, confessing to the absurdity of a system whoseprincipal merit is that nobody knows why it exists, and hence nobody quite knows why it shouldn't.

Kinds of limitation:

Different kinds of limitation may be imposed upon the organs of the state by written Constitutionwhile creating them.

[7] R (Jackson) v Attorney General [2005] UKHL 56, [2005] 1 AC 262 [104]; also [107] (Lord Hope), [102] (Lord Steyn), [159] (Lady Hale). See also Axa General Insurance Ltd and Others v The Lord Advocate [2011]UKSC 46,[2012] AC 868.

[8] The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill [2018] UKSC 64, [2019]AC 1022 [41].

[9] Martin Loughlin and Stephen Tierney, 'The Shibboleth of Sovereignty' (2018) 81 MLR 986, 1015–16.

An overall limitation may be imposed in (substantive as well as procedural) in the matter of amending the constitution itself. we have already noticed the main features of such limitation.

Limitations may be imposed upon all the organs of the state by guaranteeing certain rights of the individual in a Bill of Rights or a list of fundamental rights, which when violated would render therelevant state act null and void

Limitations may be imposed upon the legislative body in the matter of enacting ordinary legislation. Such limitations may be-

1. procedural i.e as to the mode of making a law. such limitations may be exist not only in a federal but also in unitary constitutions.
2. substantive i.e, as to the subject matter regarding which a law may be made. such limitations existin a federal constitution which distribute legislative powers between the federal and state legislatures since the states are territorial units the jurisdiction of the various state legislatures under federal constitution are also limited within their respective territories substantive or procedural limitations may also be imposed upon the various organs of the state by author mandatory provisions of the constitution which stand apart from the fundamental rights or the distribution of legislative powers bootstrap such provisions either exclude certain matters other than human rights from the powers of the legislature or other specified organ or subject it to certainrestrictions the essence of different kind of limitation as efforts said is the same, namely that the provision of the constitution in regard to this entrenched or excluded matters are intended to be mandatory or legally binding agent limitations upon the legislatures or some other organs which is sought to be limited by the provision concerned[10]
3.

Limitations imposed by the constitution of India:

1. The Written Constitution's Limitations

Written constitutions are frequently strict, with time-consuming modification procedures, which beg how to adapt them to changing demands and circumstances easily

[10] Dr. Durga das basu,comparitive constitutional law ,3rd edition ,357.

· When its rules are insufficient, it may not benefit some sections of the country, leading to unhappiness and violent outbursts since its provisions may not be altered quickly enough to address problems

· People can quickly discover when their rights have been violated; hence it is frequently litigated

· This slows down the government's work and may lead to inefficiency because it must respond to any acts taken against it by the state's citizens

All state organs are subject to restrictions imposed by the written constitution, which is a law. It only follows when a constitution is regarded as a legal document of a higher order than common law and serves as a formal restriction on the authority of all state organs established by the constitution, as in the US and India. Among the nations with written constitutions are Brazil, NewZealand, Australia, Denmark, India, the United States, and France. The Indian Constitution went into effect on January 26, 1950. The Constitution was the longest national constitution ever approved at the time of its ratification. It had 395 Articles, 8 Schedules, and was about 145,000 words long. The United States Constitution is the oldest continuously existing written charter of government in the world. It was drafted in 1787, ratified in 1788, and has been in effect since 1789.

The constitution is a set of regulations and laws that are controlled by the governmental bodies (judiciary, legislature, and executive) in order to safeguard and uphold individual liberties. It has to do with freedom and basic rights. A constitution can be defined in many ways. It is defined asthe system of government. The constitution is a set of rules and laws governed by the governmentinstitutions(judiciary, legislature, executive) to protect the liberty of people and to respect them. Itrelates to fundamental rights and freedom.

According to K.C. Wheare, a constitution is "the whole system of government of a country, the collection of rules which established and regulates or govern to government". Thomas Payne stated that "a constitution is not the act of government, but of people constituting a government withouta constitution is a power without right. The constitution is a thing antecedent to a government andthe government is only a creature of the constitution. Sir Ivor Jennings defines it as "if a constitution means a written document, the obviously Great Britain has no constitution. In

countries where such a document exists, the word has that meaning. But the document itself merelysets out rules determining the creation and the operation of government institutions, obviously, Great Britain has such institutions and rules. The phrase “British constitution is used to describethose rules”.

Everything that a government does is either lawful or unlawful dependent on the constitution. There are different classifications of the constitution. One way to classify it is written and unwritten. A written constitution is one that can be contained in either one or more documents withor without amendment, defining the basic rules of the state. It represents a codified constitution. USA, Ireland, India countries have a written constitution. On the contrary under an unwritten constitution, no constitution as such exists, only the law of the land. For example, UK has a writtenconstitution

Separation of Powers:

In the present environment, we're examining how courts in the U.S.A. and countries which havefollowed the American indigenous pattern, have applied the principle of Separation of Powers asa limitation upon the powers of the different organs of
Government as if it was written on the body of the Constitution as an express limitation.

The expression' Separation of Powers' is used in different senses, but in the realm of

indigenous Law, in ultramodern times," it means' separation of functions, and it's in that sense thatwe shall bandy its operation under the present caption. In short. the doctrine of separation of' functions' means that none of the three organs of the State- legislative, administrative and judicial,can convert or exercise any power which duly belongs to either of the other two," according to its Constitution Written or verbal Chapter 161

The Written Constitution as a Limitation

But before we launch upon that inquiry, it would be useful to refer to some contrary instances which illustrate what would happen if this principle is altogether ignored by a Constitutional system.

Instances of a complete absence of separation of powers are offered by the Socialist Constitutionsof the U.S.S.R. (Now Russian Federation) and China. the **U.S.S.R.**

The Constitution of 1977 unequivocally declares that "all power under Constitution belongs to theSoviets of People's Deputies, who exercise such power on behalf of the people. As per art -2

"All power in the USSR belongs to the people. The people exercise state power through Soviets ofPeople's Deputies, which constitute the political foundation of the U.S.S.R.
All other state bodies are under the control of, and accountable to, the Soviets of People's Deputies."

China

The 1982-Constitution of China similarly declares (Art. 2)-

"All power in the People's Republic of China belongs to the people. The organs through which thepeople exercise state power are the National People's Congress and the local people's congresses at various levels. "

Even the Supreme Court (the highest court of the Republic) is "responsible and accountable to theNational People's Congress and its Standing Committee" [Art. 128]. The National People's Congress is thus competent to exercise all powers of the Statelegislative, executive or judicial.

In sum, in the U.S.S.R. and China, the powers of the party in power are unlimited and if any of their acts be tyrannical, there is no prospect of getting relief from an independent judiciary.

UK

The Constitution of the U.K. being unwritten, there are no constitutional limitations upon the plenary powers of the Legislature, which go by the name of 'Sovereignty of Parliament'. It is. therefore, competent for the Legislature to exercise executive or judicial functions of particular kinds, and if the Legislature so usurps or encroaches upon the functions 'properly' belonging to theother organs, there is no authority, including the Judiciary, to declare such act of the Legislature asviolative of the doctrine of Separation of Functions, and hence, void.

Some scholars," following the observations of LORD PEARCE in Liyanage v. R. 12that for practical purposes, the principle of independence of the Judiciary, which dates from the Act of Settlement, 1701 guaranteeing security of tenure to the Judges of the superior courts, suggest thatjudicial power should be exercised by the Judges, independent of legislative or executive control.

In this sense. it may be said that the principle of judicial independence serves as an implied limitation upon the omnipotence of Parliament

India: Distribution System is Three-fold

The system of distribution of legislative powers between the Union and State Legislatures under the Indian Constitution is unique in so far as the enumeration of subjects in the 7th Schedule is three-fold- List I specifies the exclusive powers of the
Union Legislature; List II similarly gives an exclusive jurisdiction Legislature over the subjects enumerated in that List; List III, on the other hand, specifies certain subjects as concurrent. Most countries having a written Constitution provide immunity against self- incrimination, by laying down that no person accused of an offence shall be compelled to be a witness against himself [Art. 20(3) of the Indian Constitution]. With more or less similar phraseology, this right is guaranteed by the Fifth Amendment to the Constitution of the U.S.A.; Art. 38 of the Constitution of Japan.

In England, there was a time when an accused could be questioned to incriminate himself, under the inquisitorial methods adopted by the Star Chamber. It is against such methods that Judges evolved the

U.K. maxim of common law that "no man is bound to accuse himself" and that the court would protect him if he is compelled to do so.[11] In course of time, the principle has been codified in somestatutes, such as the Criminal Evidence Act, 1898, the Civil Evidence Act, 1968. But even in the absence of such statutory protection, the court would offer its protection against violation of this common law principle." so long as there is no statute to the contrary. But the Court would be powerless against any unfortunate invasion by the Legislature itself.

[11] Triplex Co. V. Glass, (1939) 2 All ER 613 : Rio Corp. V. WEC (1978) 1 All ER 434 (HL R V. Coote: LR4PC 599, [14] Elaboratory deals with in Authors limited Government and judicial review.

In a country like the U.S.A. or India, on the other hand, which has adopted a U.S.A. constitutionalBill of Rights, these 'fundamental' rights cannot be transgressed by any of the organs of the State,including the Legislature. If it does, the resultant act will be void, because the constitutional guarantee of these rights operates as limitations upon any form of state action. Thus, where a courtconvicts an accused upon his forced confession or compels him to make an incriminatingstatement, the order of the court would be quashed."

The very object of guaranteeing such rights is to place them beyond the majority for the time beingin the Legislature" or the Executive" or even the Judiciary itself, and to enforce them as legal principles, through the Courts, against any of the organs of the State. i.e.. any official authority,[12]"which may violate these rights."

Supremacy of Constitution Means

In India, as pointed out earlier, 'supremacy' of the Constitution has been described as a 'basic feature' of the Constitutional system."[13]

It means several things:

It means 'limited government', namely, that all the organs set up by the Constitution are vested withlimited powers by the Constitution, so that none can claim unlimited power or legal omnipotence.

In other words

a) the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislatore in India in the literal absolute sense"

[12] Board of Education v. Barnette, (1943) 319 US 624 (637-38), Ex parte Virginia, (1880) 100 US 339 (347), Hurtado
v. California, (1884) 110 US 516, Twining. NJ, (1908) 211 US 78: Sterlingv Constantin, (1932) 287 US 378; OhioBell Co. Public Unities Commr (1938) 301 US 292 (304)

[13] Indira Gandhi Raj Narain, AIR 1975 SC 2299 (paras 564, 575) BEG, 1: Kesavananda Sar ofKerala, AIR 1973 SC 1461, State of Rajasthan Union of India, AIR 1977 SC 1361 (paras. 35,44)

(b) In other words, 'sovereignty, under the Indian Constitution, is not vested in any body of men, but in the fundamental law laid down in the Constitution. That is what the Americans mean by the expression Government of laws, not of men'

(c) Neither of the three organs set up by the Constitution can take over the function assigned by the Constitution to the other. To this extent, the doctrine of separation of powers follows fromthe principle of supremacy of the Constitution." "Neither of the three constitutionally separate organs of State can leap outside the boundaries of its own constitutionally assigned sphere or orbitof authority into that of the other"[14]

(d) The courts have no general authority to interfere with the acts done by the Legislature or the Executive within the orbit of authority, merely on the ground that their action has been erroneous or because the courts do not agree with their decision on a matter of policy (see pp. 170,228, 240, ante). But if the Legislature or the Executive exceeds the scope of its powers as limitedby the Constitution, it is the duty of the courts, if the wrong is capable of being judicially redressed,to redress the wrong when properly brought before it. This is what is meant by saying that the courtis concerned with legal, not political or moral issues."

(e) In short, the Judiciary comes in "only when any question of ultra vires action is involved, because questions relating to vires appertain to its domain".

In the arena of constitutional law, the question of vires comes in because the Constitution, as the higher law, sets forth the limits of the powers of the different organs of the State. Any action of any of these organs becomes ultra vires or unconstitutional as soon as any of the limitations imposed by the Constitution upon that organ is transgressed.

Judicial review thus follows from the concept of the Constitution as a legal instrument, and that of a 'higher' order, as we have explained earlier. Under this system the Judiciary becomes: "the final judge of all acts purported to be done under the authority of the Constitution".

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[14] Indira Gandhi v. Raj Narain, AIR 1975 SC 2299 (paras. 564, 575) BEG, J. 3. Indira Gandhi v. Raj Narain, AIR1975 SC 2299, (BEG, J.): State of Rajasthan v. Union of India, AIR 1977 SC 1361 (para. 44, BEG, C.J.); Kesavananda v. State of Kerala, AIR 1973 SC 1461

As pointed out by GAJENDRAGADKAR, C.J., in the Reference case, all the foregoing categoriesof legal limitations, following from the express provisions of the Constitution, are present in our Constitution. Thus, though the "Legislatures have plenary powers, they function within the limitsprescribed by the material and relevant provisions of the Constitution", and if any of these limits is transgressed by a law, the law must be struck down by the courts as void[15]

Written Constitution of different countries:

India

- The written Constitution has been completely written and passed, and the writtenConstitution's major goal is to put it into action
- A specific group is charged with drafting and adopting the written Constitution, which specifies the essential organs and institutions of government
- Even though India has a written constitution, it is not as rigid as the American

Constitution • Therefore, the system's flexibility has been included in the modification methods

- It's the biggest on the planet. It consists of 385 items, 12 schedules, and 22 parts
- All provisions are written down and carefully spelt out not to be bent or changed based on circumstances or emotions, maintaining consistency in choices [19]

India have its own constitution which is in written form Written constitutions are frequently strict,with time-consuming modification procedures, which beg how to adapt them to changing demands and circumstances easily

United state of America :

The United States of America has the oldest written Constitution. It was written on September 17,1787, approved on June 21, 1788, and signed on March 4, 1789. James Madison wrote the paper

[15] Dr Durga Das Basu ,Comparitive constitutional law , 373(3rd edition, 2014) [19] Difference between written and unwritten, Unacademy, Available at- https://unacademy.com/content/upsc/difference-between/written-and- unwritten-constitution/, last seen on- 5/05/23.

that served as a model for the US Constitution. He is regarded as one of America's Founding Fathers.

The Magna Carta is thought to be the world's oldest unwritten Constitution. On June 15, 1215, King John of

England signed a Bill of Rights for Nobles, which went into effect. It vowed to defend the nobility'rights against the crown's intervention. Later, the Magna Carta evolved into the United Kingdom'sunwritten Constitution.

A written constitution is one in which the duties and rights of governments and citizens, the structure of the constitutional arrangement, and the laws that regulate the entire system are all contained in a formal and legal book or a series of documents bound together as a book.

The essential objective of a written constitution is for it to be enacted and is perfectly framed andduly passed. Therefore, a specialized body is charged with drafting and adopting the written Constitution, which specifies the government's fundamental organs and bodies.

Austrelia:

The Indian and Australian constitutions drew on the US Constitution's lessons and examples. Similar to the Australian constitution, the Indian Constitution established a judicial branch that was completely independent of the legislative and executive branches.

They Faithfully imitated The judicial review process to keep all public authority recipients withinthe constitution and other applicable laws in the Australian constitution. However, the Indian Constitution went far further. It included a Bill of Rights until recently seen as a notion alien to thesovereignty of Parliament, which was so important to the United Kingdom's constitutional ideals. Despite these fundamental differences, India's and Australia's governments and judicial systems are quite similar.

About the Australian and Indian constitutions

The country's supreme law is the Australian constitution, and it establishes the powers and structure of Australia's three government pillars: judiciary, executive, and legislature.

Australia's six self-governing British colonies held several conventions between 1891 and 1898, during which they drafted the constitution. Final approval came in a series of referendums between1898 and 1900. A slightly modified version of the final draft, on the other hand, enacts section 9 of the Commonwealth of Australia Constitution Act 1900, a British Parliament act. On 9th July 1900, the act received royal assent; on 17th September 1900 proclaimed and came into force on 1st January 1901. The constitution made the six colonies states within the new federation.[16]

The High Court's constitutional interpretation shaped Australian law. There are many unwritten constitutional conventions and ideas from the Westminster system incorporated into the constitution, and the textual provisions and concept of responsible government are one of these. Although the High Court and some academics believe that the 1900 act derived its legal power initially from the UK Parliament, the High Court and several academics now believe that it derivesits legal authority from the Australian people. The Statute of Westminster and Australia Act 1986are key constitutional documents.

The referendum can only amend the constitution, as per section 128. According to this, a "double majority" — a majority of state and national voters – is required to make amendments. There haveonly been eight amendments passed, with the most recent in 1977, contributing to the low numberof successful amendments. Replacement of the monarchy with a republic, the inclusion of a preamble, and the inclusion of an Indigenous voice in the government are just some of the ongoing debates regarding further amendments.

[16] Unacademy, The Australian constitution, Available at - https://unacademy.com/content/bpsc/studymaterial/polity/the-australian-constitution-and-the-indian-constitution/, last seen on – 15/05/23

The Indian constitution is the supreme law. It establishes powers, fundamental principles, procedures, and duties of government, as well as duties, rights, and directive principles of citizens.It's the world's longest written constitution. Rather than parliament, a constituent assembly createdit, and its people adopted it in its preamble, giving it constitutional supremacy. Parliament cannot amend the constitution.

In 1949, the Indian Constituent Assembly passed it, and it took effect on 26th January 1950. The replacement of the Government of India Act of 1935 with the Indian Constitution made India a Republic. According to the Constitution, Article 395 repealed prior British parliament acts. India's constitution day is 26th January.

The Indian constitution provides equality, citizens justice, and liberty while promoting fraternity.A helium-filled container in New Delhi's Parliament contains the original 1950 constitution, and the 42nd amendment act in 1976 added the Preamble words
"secular" and "socialist" during the Emergency.

Conclusion

A Written Constitution is a Constitution that has been totally and completely written down and contained in a single textbook. A written constitution has been written and contains all of the datain a book form that can be consulted at any time. It includes government and citizen liabilities andrights, the type of indigenous order, and the laws governing and controlling the system. These constitutions are adaptable, which means they can be altered over time. The bar has further powerand can use judicial review to uphold the Constitution Though the motive forces which led to therelinquishment of a written constitution have varied in different corridor of the world, the introductory supposition underpinning them astronomically is the same(being deduced from the American constitution), videlicet that a written constitution is a legal instrument, which sets up and limits the powers and functions of the different organs of the state. Since the organs of the stateincluding the council or the ordinary law making body itself are therefore set up by the constitution, it's a natural to regard the written constitution as a advanced law, with reference to which the powers of the different branches of the body politic have to be tested, or circumscribed.Overall we can say that The American

Constitution is the base for the written constitution, whichis a legal instrument that limits the powers and functions of the different organs of the state. It's seen as a advanced law, as it allows for the testing of the powers of the body politic. Under verbalconstitution, a court or a counsel would have nothing to do with the rules of morality, whether innovated on the verbal constitution or operation or else. It follows that there's no legal limitationto the sovereignty of the council indeed though a congress may not, in practice, intend to violate these rules of indigenous morality. In the words of Dicey " A ultramodern judge would noway hear to a 6barrister who argued that an act of congress was invalid because it was immoral, or because it went beyond the limits of administrative authority. " still, the preservation of blue eyedbabies would be illegal but the lawmakers must go frenetic before they could pass such a law ""‘ If a council decide that all blue eyed babies should be boggled.It follows only when such constitution is treated as a legal instrument of a higher order than ordinary law, and acts as a legallimitation upon the powers of all the organs of State which are setup by the Constitution, as in the U.S and India

REFERENCES

Books Referable:

a) Dr. Durga Das Basu – Comparitive Constitutional Law

b) J.N. Pandey – Constitutional law of India

Articles Referable:

1. https://unacademy.com/content/upsc/difference-between/written-andunwrittenconstitution/,

2. https://www.legalserviceindia.com/legal/article-371-powers-functionsandlimitations-of-legislativ

3. https://www.legalservicesindia.com/article/786/Can-aLegislature-supplement-thepowers- of-Courts-given-by-awritten-Constitution,-through-a-SubConstitutionalLegislationhtml

Websites:

a. https://blog.ipleaders.in/

b. https://www.livelaw.in/

c. https://indiankanoon.org/

d. https://www.manupatrafast.com/

e. https://shodhganga.inflibnet.ac.in/

f. https://www.lawctopus.com/academike/dharma-and-law

g. https://pscnotes.in/