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Parliamentary And Presidential Systems: A Special Analysis Of The UK

By : Arushi Sharma

Abstract

Analysing how a government functions is crucial in today's era, more so because of the rapidly changing times that have affected everyone hugely. Be it the political systems or the economical aspects, we as law students, have a lot to keep a tab on. While on one hand, functions, features, merits and disadvantages of the parliamentary and presidential systems are taught in most schools, the real applicability and the extent to which each system benefits the country it has been applied to, still remains a different subject to be studied.

In this paper, we'll discuss some of the key features and concepts of democracy, and its branches of parliamentary and presidential forms of governance. As the research topic deals with the country of the United Kingdom mainly, first we'll discuss the country's geographical aspect in brief.

Moving on, we'll then look into the major landmarks that have helped build the system of the UK as we see today. This involves studying about Magna Carta 1215, Bill of Rights 1689 and Act of Settlement 1701 as they highlight the main path that paved the way for the Parliamentary form of government in the United Kingdom.

Further, the chronology focusing on the country's history has a few landmark cases. We'll also discuss the facts, arguments and judgements as mentioned in the case.

Lastly, concluding with a hint of the present scenario of the country and highlighting the main problem areas that may appear to be chaotic from

outside but are still making it work for the nation shall be discussed in this paper.

Keywords: Presidential System, Parliamentary System, Comparative analysis, United Kingdom, Constitution, Constitutional supremacy

Chapter 1

Introduction

Some definitions are closely related to our topic 'Presidential and Parliamentary Forms of Government: A UK Specific Analysis'. This includes the meaning of "democracy". As the Merriam-Webster dictionary says, "a democracy means a government of the people" or "a government in which the supreme power belongs to the people and is exercised, directly or indirectly, through a system of representation in which the archive is normally involved. Choice of people. "¹

The term "democracy" is said to be derived from the Greek word "dēmokratiā", which is a combination of "demos" for people and "kratia" for government. As we now know, the true meaning and true reference of the term is none other than the government of the people. In a democracy, the people have the power to choose their representatives. It also implies a free and fair election and is characterised by the fact that a vote corresponds to a value.

Democratic government can be divided into two main categories, namely the parliamentary form and the president's form of government. As the terms themselves suggest, the first refers to the parliament, while the second includes the main role of the country's president. This classification of government, which belongs to the parliamentary or presidential forms, is determined from the relationship between the political executive and the legislative one.

¹"Democracy." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/democracy>. (Visited on October 20, 2020)

As a law student, it is very important to study these systems of government and how they work. This not only helps us better understand the system, which helps us improve our approach to legal analysis and analogies in solving problems with society at large, but it also helps us understand our rights and obligations- towards others and society.

Chapter 2

Concept of parliamentary and presidential forms of government

In a parliamentary system, the head of state can be a monarch or a president, but both functions are ceremonial. The head of government, commonly known as the prime minister, is the real controller. Therefore, all royal executive powers belong to the Prime Minister.

Parliamentary government is also called cabinet government because of the concentration of executive powers within the cabinet. Some of the fundamental characteristics of the parliamentary system are the following:

- 1. Nominal and real head:** The head of state occupies a ceremonial position and is the nominal executive. For example the president. The head of government, that is, the prime minister, has the real power.
- 2. Government of the majority party:** The party that obtains the most seats in the general elections forms the government. In India, the president invites the president of the majority party, Lok Sabha, to form a government. The president appoints the chief prime minister and the other ministers are appointed by the president on the advice of the prime minister. The president can invite a coalition of parties to form a government if neither party obtains a clear majority.

3. Collective responsibility: the Council of Ministers have a collective responsibility before Parliament. The lower house of parliament has the power to remove a government by passing the motion of no confidence against the party/members. In India, for example, the government survives until it receives the support of the majority of the Lok Sabha members. Therefore, Lok Sabha has the right to vote censorship in the government.

4. Bicameral legislation: Most of the countries that follow the parliamentary system, including India, have bicameral legislation. The members of the lower house of all these countries are elected by the people. The lower house can be dissolved if the term ends or if there is no place for the formation of a government due to the lack of a majority in the house.

5. Confidentiality: The members of the Executive Power of this system must respect the principle of confidentiality in areas such as procedures, board meetings, policy formulation, etc.

In contrast, in a presidential system, the three pillars of governance, namely the legislative, the executive, and the judiciary, are found in narrow departments. Unlike a parliamentary system, there is a complete separation between the executive and legislative branches. For example, in the United States, Congress (made up of elected members of the House and Senate) represents the legislature, while the executive is represented by the president, who is elected independently. These are the characteristics that form the basis of a presidential government:

1. True Head of State: In this system, the Head of State is the true head of the executive, that is, the head of government who won the elections has all the real powers. . be the leader, as in the case of a prime minister in the case of a parliamentary system.

2. Separation of powers: the president's form of government is based on the principle of separation of powers between the three governing bodies. The executive branch is not accountable to the legislature. The executive

cannot dissolve the legislature. And the judiciary is independent of the executive and legislative branches.

3. Principle of mutual control: The three governing bodies are separated from each other, but all control each other and are limited to any type of violation of their powers and functions.

4. Duration of the fixed term: The president has a fixed term. Elections are held regularly and cannot be called by a vote of confidence or other parliamentary procedure, although there is an exception in some countries that provides for the removal of a president who violates a law.

5. Stability: This type of government is stable. With the president's tenure fixed and without the backing of a majority in the legislature, you don't have to worry about losing your government. There is no danger of the government falling suddenly. There is no political pressure on the president to make decisions.

Chapter 3

Background of United Kingdom

The United Kingdom — an island country along the northwest coast of continental Europe—comprises Great Britain, including England, Wales, and Scotland, as well as the northern part of the island of Ireland.

The origins of the United Kingdom date back to the time of the Anglo-Saxon king Athelstan in the early 10th century AD. He secured the loyalty of neighboring Celtic kingdoms and became "the first to rule the names that the kings previously shared among themselves." In the words of a contemporary chronicle. Thanks to the subsequent conquest in successive centuries, the other kingdoms were brought under English rule.

Britain has made a significant contribution to the world economy,

particularly in technology and industry. However, after World War II, Britain's main exports are cultural goods such as literature, theater, film, television and pop music that are of interest to the country's regions.

Parliament is the legal body of the United Kingdom and the main legislative body of the constitutional monarchy of the United Kingdom. The history of the legislative organization that met at the Palace of Westminster in London commented on the development of the almost organic type, partly in response to the best of the country's monarchy. Parliament has its roots in the first meetings between barons and English citizens in the 8th century.

The current parliament is a bicameral law, a law that evokes the name of "two houses" with an upper house and a lower house. However, these two houses were not always united and had their origin in the governments of the Anglo-Saxon councils of the 8th century. The Witan is a small council of clergymen, landlord barons, and other advisers chosen by the king to discuss state, tax, and other political matters. With the addition of more consultants, The Witan becomes a Magnum Concilium or Great Council. At the local level, the "moots" are the assemblies of bishops, lords, bailiffs and, above all, citizens who are representatives of their counties or "counties".

These institutions functioned as legal and law enforcement agencies throughout England during the Middle Ages with varying degrees of success. The other bodies meet by regulation, but pave the way for the current bicameral law.

Magna Carta

The first English parliament, which I convened in 1215 with the creation and signing of the Magna Carta, which has the right of barons (landowners)

to advise the king on large-scale governmental matters. As in the early Witans, these barons were chosen but chosen and appointed by the king. The Great Council was first called "Parliament" in 1236.

In 1254 the bailiffs of the various counties of England were ordered to send elected representatives of their counties, the so-called "Knights of the County", to consult the King on fiscal matters. Four years later, the nobles of the English university town of Oxford followed Parliament when they reformulated the "Oxford Provisions", which prevailed over the regular meetings of the legal entity composed of representatives of the individual districts.

In 1295 Parliament became nobles and bishops, even representing the counts and cities of England and, from 1282, of Wales. This will become the model for the composition of all future parliaments. Over the years, the House of Commons plays and cashes in most of the king's advisers. And in 1399, after years of internal struggle for power between the monarchy and parliament, the legal entity voted to remove King Richard II, allowing Henry IV to ascend to the throne. During Henry IV's reign on the throne, Parliament's role went beyond setting fiscal policy, including the "duel adjustment" that essentially allowed English citizens to turn to the panel to handle complaints in their local cities and counties. . At that time citizens had the right to vote to elect them to the lower house from among their representatives, the bourgeoisie.

During the unification of the 17th century, the UK went through many political changes and unrest. The only constant was undoubtedly Parliament.

Bill of Rights (English)

The Bill of Rights, as passed by the English, was a law passed in 1689 by two people namely, William III and Mary II, who later ruled together in England after meeting James II. The draft decree on constitutional rights and certain civilities, as well as the final donation of the parliament, will be the responsibility of the monarchy. According to experts, the English Bill of Rights is the main element that laid the foundations of a unique constitutional kind of monarchy in the country of England. This is also considered the major sample for the United States Bill of Rights. In 1688-1689 King James II was overthrown following the events of the Glorious Revolution. Reasons revolving around religious as well as political agendas provoked the revolution. Several citizens of the country distrust the King and disapprove of the absolute power of the monarchy. There was a lot of friction between the King and the Parliament, and there was a great divide between the Protestants and the Catholics. James II was eventually replaced or succeeded by his own daughter Mary belonging to the Protestant ideologies and her husband, namely William of Orange. The two successors then created a common monarchical rule at the same time, agreeing to give the parliament more future power and rights.

A portion of this agreement was the signing of the Bill of Rights of England, formerly known as "A law declaring the rights and freedoms of the subject and governing the succession to the crown." Among its various provisos, the Bill of Rights expressly mentioned that King James II was wrong for abusing his power and also declared that the monarchy could not function without the approval of parliament.

The UK Bill of Rights contains the following:

- 13 articles containing certain freedoms

- A clear declaration confirming that Mary and William were the rightful heirs to the English throne.
- A brief catalogue of King James's misdeeds

In general, the Bill of Rights restricted the power of the monarchy, increased the status of parliament, and formulated specific rights for individuals.

A few of the main freedoms and concepts set forth in the above mentioned articles are:

- Freedom to vote for deputies without interference from the King or Queen.
- Freedom of expression in parliament
- The right not to really intervene in the law.
- Freedom to petition the king
- Freedom to bear arms in self-defence.
- Lack of cruel and unusual penalties and excessive bail.
- Tax-free by royal prerogative, without the consent of Parliament
- Absence of fines and forfeiture without trial.
- Stay safe from armies that rise up in peacetime.

Other noteworthy conditions laid hereunder were that Catholics could not be kings or queens, parliament had to be called frequently, and the next in line to the throne will be Mary's sister, namely Princess Anne of Denmark, and after her, her heirs (later Williams' heirs by subsequent marriage). The English Bill of Rights had established a constitutional monarchy in England, which means that the king or queen would act as head of state, but their

powers will be limited by the law.² Under this regime, the said monarchy could not rule without getting the approval of the parliament and the people had specific individual rights. The British constitutional monarchy, as we know today, consists of the king or queen playing an essentially ceremonial role.

The Act of Settlement

The Settlement law of 1701 was intended to ensure Protestant succession to the throne and strengthen guarantees for a parliamentary system of government. This Law strengthened the Bill of Rights by affirming the principle that the government was taken over by the sovereign and her constitutional advisers (i.e., her ministers), rather than the sovereign and personal advisers to whom it succeeded. The law also establishes the conditions under which the crown can be displayed. No Catholic, or someone married to a Catholic, can wear the crown. The sovereign should now swear to support the Church of England (and after 1707 the Church of Scotland).

The Settlement Law not only dealt with the dynastic and religious aspects of the succession, but also further restricted the powers and prerogatives of the crown. According to the law, parliamentary approval must be given so that the sovereign can participate in the war or leave the country, and the judges

²English Bill of Rights, by History.com Editors, available at <https://www.history.com/topics/british-history/english-bill-of-rights> (Visited on October 17, 2020)

must fulfil their functions by good behaviour and not by real will to guarantee the independence of the judiciary.

Chapter 4

Present Status of the United Kingdom's Parliamentary System

During the 18th, 19th and 20th centuries, Parliament and its powers developed as did the United Kingdom itself. Scotland officially became part of the United Kingdom in 1707 and therefore sent representatives to Parliament at Westminster. In the late 1700s, Ireland was also part of the United Kingdom (the six northern counties of the island, collectively known as Ulster, are still part of the United Kingdom today) and the owners of the land in the region elected their own representatives from both Parliament houses.

Various changes have been made to the composition and legislative process of Parliament through a series of legislative acts known as "Reform Laws". The Reform Act of 1918 gave women the right to vote and the first woman was elected to the body that same year. However, the Irish Countess Constance Markievicz was a member of Sinn Fein, the political party that sought the independence of the island nation, and therefore refused to serve. Meanwhile, the Parliamentary Acts of 1911 and 1949 have given the House of Commons, with 650 elected members, greater powers than the House of Lords, which has 90 members appointed by the nobility (a title system for nobles).

House of Lords

Today, the two Houses of Parliament, the House of Lords and the House of Commons, meet at the Palace of Westminster in London and are the only governing body of the British constitutional monarchy with legislative power. and make laws. The current monarch, Queen Elizabeth II, continues to play a ceremonial role as head of state, and the executive power of the country is vested in the prime minister. While the House of Lords can debate any bill that does not directly address the financial affairs of the country, the House of Commons has the most influence over whether the law eventually becomes law. However, the House of Lords plays a role in government accountability by interviewing cabinet ministers and establishing special committees to deal with important state affairs. Members are now largely appointed and do not even inherit their seats in the House of Lords.

House of Commons

Today, all laws must be passed in the House of Commons for them to become law. The House of Commons also controls taxes and public finances.³ The UK public elects each of the 650 members of the House of Commons. And in a different system than the United States, government ministers (including the prime minister) must regularly respond to questions from the lower house.

³ Legislative Procedure in the House of Commons. University of Leeds, available at <https://essl.leeds.ac.uk/law> (Visited on October 18, 2020)

Chapter 5

Case Laws

R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland ([2019] UKSC 41), also known as Miller II and Miller / Cherry, were joint landmark constitutional cases poised to extend royal power to the Parliament of the United Kingdom. The case debated in the UK High Court in September 2019 concerned whether Prime Minister Boris Johnson's advice to Queen Elizabeth II to expand Parliament before the UK's departure was to be extended to the European Union, which it was legal.

On September 24, 2019, the court decided in a unanimous decision of eleven judges that the matter was justified and that Johnson's advice was illegal. This confirmed the decision of the Internal Chamber of the Court of Justice in Cherry and overturned the decision of the Supreme Court in Miller. As a result, the Council regulation allowing the extension was void and, in fact, Parliament had not been extended.

Background: Although it is usually a routine process, there have been several historical cases in which expansion has been controversial. The English Civil War, in particular, broke out amid tensions between Charles I, who would convene Parliament only to pass controversial taxes on ships, and Parliament, which sought more powers to control the king and even passed laws that prevented their own extension or dissolution.⁴ Finally Parliament went to war and then executed Charles I for the crime of tyranny; His successor as head of state, Oliver Cromwell, also had tension with

⁴ Bennett, Martyn (29 August 2019). "The historical precedent for resisting the proroguing of parliament". *New Statesman*, available at <https://www.britannica.com/event/English-Civil-Wars> (Last Modified at October 23, 2020)

Parliament and eventually erased and expelled the "Long Parliament" in favor of someone else.

On the last day of the case's hearing, other interest groups intervened: the Mayor's former attorney general, that is, Lord Garnier, argued that the extension was "motivated by a desire to prevent Parliament from interfering in the Prime Minister's policies at this time"; The government of Scotland, argued that the extension had a "profound effect" on Parliament. McCord's defense attorney Ronan Lavery QC countered that the extension was designed for "duration" to declare a Brexit with no prior conditions, which in turn would lead to border checks with Ireland. Attorney General Shami Chakrabarti stated that if the power of extension was not controlled, Parliament would not have the function of constitutionality. The hearing concluded with both the parties summing up their arguments: Keen tried to establish the argument on a firm footing that the courts were not adequate constitutionally to rule on highly political matters; and Pannick asked the court to declare that the renewal was illegal and that Parliament had been withdrawn as a possible outcome to the whole matter.⁵

Argued in the cases: In these aforementioned joint constitutional cases, the UK Supreme Court debated whether Prime Minister Boris Johnson's advice to Queen Elizabeth II should be expanded to expand Parliament before the UK's departure from the European Union and whether it was legal or not.

Held by the court: The court determined that the government was not justified in such an extension. The government had merely presented as evidence the Nikki da Costa memorandum, which justified the opening of

⁵ Supreme Court: Ex-PM's lawyer argues against prorogation". *BBC News*. 19 September 2019.

the state on October 14, not the extension date. The court also found that the government could not justify the five-week prorogation when the usual period of preparation for a State Opening was 4 to 6 days, and that the da Costa memorandum did not take into consideration how the necessary scrutiny of any withdrawal agreement under the terms of the European Union (Withdrawal) Act 2018 could be scheduled.⁶

At last, the court had to "find" that the renewal council was illegal because it was responsible for frustrating the constitutional functions of parliament. The court did not agree with the government's claim that the extension of the 1689 Bill of Rights could not be challenged as "Parliamentary Procedures." it decided that the claim to the contrary - that the extension is imposed by parliament and therefore not controversial and that it ends activity of the Parliament protected by the Bill of Rights - was the right interpretation of the current law. As a consequence, the Court of Justice was in agreement with the Internal Chamber of the Court of Hearing that the resulting extension was null and void and revoked the corresponding order in the Council, implying that the proclamation of the extension itself would have the legal effect of " a blank paper". As a result, the court ruled that "the parliament was not approved" and repealed the parliament in 2017-2019.

⁶ Bowcott, Owen (24 September 2019). "Boris Johnson's suspension of parliament unlawful, supreme court rules". *The Guardian*, available at <https://www.theguardian.com/law/2019/sep/24/boris-johnsons-suspension-of-parliament-unlawful-supreme-court-rules-prorogue> (Visited on October 16, 2020)

Chapter 6

Conclusion

“Freedom once given cannot be taken away. Legal theory must give way to practical politics”. - Lord Denning in *Blackburn v Attorney-General*⁷

Britain's active participation in the United Nations, NATO, the World Trade Organization and the IMF (International Monetary Fund), to name a few, compels the state to do so and therefore, in turn, influencing the orthodox concept of absolute sovereignty.

Absolute and theoretical sovereignty must now give way to a realistic and pragmatic view of sovereignty, which includes the recognition of the restriction on parliamentary sovereignty that has emerged after decades of active participation in the world community. This could be seen as the development of the ideas Lord Denning spoke of during his trial in the Blackburn case.

When analysing the system used in the UK, the country has its roots in such foundational documents that are known for marking major controversies in the following years. The Bill of Rights of 1689 established parliamentary supremacy over the crown following the overthrow of King James II by the glorious revolution. (Along with this and several other reasons, it is absurdly failing to consider its own history, to speak of Britain or, more specifically, England, which is somehow more relaxed and has a certain conservative approach than other countries: It is also to be noted that

⁷ [1971] 1 WLR 1037 , available at <https://www.oxfordlawtrove.com/view/10.1093/he/9780191868306.001.0001/he-9780191868306-chapter-7>, (Visited on October 21, 2020)

England had executed its monarch, that is, King Charles I, more than a century before the French folks.)

The basic principle of the British Constitution is therefore that Parliament is the supreme-most power and that no Parliament can therefore restrict the successive ones. The parliament, which is said to be elected by the people, can change its mind, reverse the direction that it takes or double down into whatever way it deems fit. It is true that the present Queen or the head of the monarchical traces in the UK system, could be tried if Parliament tried to charge Oliver Cromwell at present. But more importantly, this constitutional rule remains unchanged: the sovereign power of parliament remains the central principle that presides over Great Britain.

Consider a law which at first glance seems to edit or modify the very core of this constitutional agreement: the European Communities Act of 1972. This made Great Britain part of the EU and had European law enacted in Brussels, becoming supreme over the British law, enacted in Parliament. But that too, as we see at present can be reversed. Parliament remains what it always has: sovereign.

There are certain other factors that complicate the situation: the human rights law, the Good Friday agreement and the return. Britain is also theoretically subject to international law, although Parliament can still make a law to become a European version of North Korea if it wishes. It is the supreme law of the land, after all.

Much of what constitutes the remaining of the UK Constitution is made up of laws, case laws and conventions. This means that the UK, at least

traditionally, has been extremely flexible in its governance. For example, during World War II, the two main parties had agreed to postpone the general elections until the end of the havoc that was wreaking at the time. This meant that even though elections were to be held every 5 years, no elections were held for a decade (1935-45). During this time, the Prime Minister's office changed hands to two. revivals: in 1937 from Stanley Baldwin to the renowned Neville Chamberlain and in 1940 from Chamberlain to the famous Winston Churchill. Everything was completely constitutional.

In the end, the central convention is that whosoever has a major say in the Parliament has the power. This again, leads us back to the topic of Brexit. The main issue is, no one has been able to actually control parliament since 2016. In a historic and controversial debate in September 2019 that focused largely on this issue, formerly from the Conservative party- Attorney General Dominic Grieve, who was removed from the party for having voted against the then government, exposed the essentials. "Our constitution is adaptable," he told MPs. "And I'm afraid he has to adapt to the reality that our government doesn't have a majority and hasn't been for a long time."

Previously, prime ministers could turn any law into a confidence-building measure, which meant the proposal was so important to the government that if rejected by the House of Commons, they would step down to allow a new prime minister to take over. Possession. on - or organize an election to obtain a majority to pass the law. As a result, heads became focused and would-be rebels were forced to potentially lose their seats in an election if they decided to reject the government. The law on the length of the fixed mandate of parliaments changed this calculation overnight. Parliamentarians can now vote against the government without it

collapsing. Lawmakers took a frank kick and repeatedly took it against the government during Brexit.

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