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**Disputed Points in British Constitution and Bill of Rights
An Analysis**

Vibha Dwivedi, LL.B.

Dr. Sandeep Mishra, Assistant Professor

Amity Law School

Uttar Pradesh Lucknow Campus

Amity University

Abstract

The British constitution, characterized by its unwritten nature and reliance on historical documents, encompasses a multitude of disputed points that have shaped its development and interpretation. Within this intricate framework, the Bill of Rights stands as a cornerstone document, embodying fundamental principles and liberties. This abstract delves into some of the most contentious aspects within the British constitution and the Bill of Rights, offering a comprehensive overview of the legal, historical, and constitutional dimensions of these disputes. The idea of parliamentary sovereignty is one of the main issues of contention in the British constitution. Another contentious issue lies in the protection of individual rights and liberties, particularly those enshrined in the Bill of Rights.

Keywords: *British Constitution, Bill of Rights, parliamentary sovereignty, individual rights and liberties*

Introduction

The interpretation of rights such as freedom of speech, the right to bear arms, and the prohibition of cruel and unusual punishment has sparked significant legal and philosophical debates. Courts have grappled with balancing the exercise of individual liberties against competing interests, such as public safety and the prevention of harm. Landmark case laws, including *Entick v. Carrington (1765)* and *R. v. Brown (1993)*, have played a pivotal role in shaping the contours of these rights, demonstrating the evolving nature of constitutional interpretation in response to societal changes and moral values.

Rather than being a single written text, the British Constitution is a distinctive and dynamic framework that governs the United Kingdom. It is made up of numerous legislation, conventions, and historical documents. Fundamental to it all is the Bill of Rights of 1689, a foundational text outlining important ideas and restraints on the authority of the state. This introduction emphasizes the importance and salient characteristics of the British Constitution and the Bill of Rights while offering a condensed summary of each document.

The British Constitution

In contrast to numerous other nations that possess a solitary, standardized constitution, the British Constitution lacks writing and comprises a collection of laws, conventions, and historical documents. This flexible and adaptable framework has evolved over centuries, shaped by historical events, legal precedents, and political developments. Key components of the British Constitution include statutes such as the Magna Carta, constitutional conventions, common law principles, and treaties.

The Bill of Rights of 1689

An important piece of British constitutional history, the Bill of Rights of 1689 was created as a result of the Glorious Revolution and the toppling of King James II. It was passed by Parliament in order to define specific rights and restrictions on the power of the monarchy, establishing significant precedents for both government and individual liberty. Key provisions of the Bill of Rights include:

Limitations on Royal Authority: The Bill of Rights limited the monarchy's authority by upholding the rule that the king could not impose taxes or suspend laws without the approval of parliament. In peacetime, it also forbade the upkeep of a standing army without parliamentary consent.

Freedom of Speech: The Bill of Rights enshrined the principle of freedom of speech and debates in Parliament, ensuring that members of Parliament could express their views without fear of retribution.

Right to Bear Arms: It recognized the right of subjects to have arms for their defence, subject to lawful regulations.

Prohibition of Cruel and Unusual Punishment: The Bill of Rights prohibited the imposition of excessive fines or cruel and unusual punishment, safeguarding individuals' rights against arbitrary state action.

Significance of the British Constitution and Bill of Rights:

The British Constitution and Bill of Rights serve as foundational documents that establish fundamental principles of governance, individual rights, and the rule of law in the United Kingdom. They reflect a commitment to democratic principles, limited government, and the protection of individual liberties. Despite being unwritten, the British Constitution provides a framework for stable and accountable government, ensuring that power is exercised lawfully and in accordance with established norms and principles.

Historical Background of British Constitution and Bill of Rights

The British Constitution doesn't have a single, written document like many other nations do. Instead, it consists of different laws, traditions, court rulings, and historical papers. One important element is the Bill of Rights of 1689, which emerged from the Glorious Revolution. Its goal was to restrict the authority of the monarchy and set forth specific rights for Parliament and citizens.

A contentious issue within the British Constitution concerns the supremacy of Parliament. Although generally agreed that Parliament holds ultimate authority in the British system, this notion has faced challenges in recent times, notably during the UK's EU membership. The concept of parliamentary sovereignty clashed with EU law, sparking discussions over the extent to which EU laws could override domestic statutes. Brexit has altered this dynamic, yet uncertainties persist regarding the distribution of power between Parliament and international accords.

Another source of disagreement concerns the monarchy's role. Despite the Bill of Rights limiting royal power and setting boundaries on monarchical authority, the monarch still holds a significant symbolic and ceremonial position in the British system. However, discussions persist regarding the extent of the monarch's authority, particularly regarding the royal prerogative – the discretionary powers historically held by the Crown. Matters such as royal approval of legislation and the dissolution of Parliament have prompted inquiries into the monarch's role in modern governance.

The structure and authority of the House of Lords represent another area of contention within the British Constitution. Although the House of Lords Act 1999 reduced the number of hereditary peers and introduced life peers, debates endure regarding the chamber's legitimacy and effectiveness as a revising body. Calls for further changes, such as the implementation of an elected or entirely appointed chamber, underscore ongoing disagreements regarding the upper house's role in the legislative process.

Additionally, the lack of a codified constitution has led to disputes over individual rights and liberties. While the Bill of Rights of 1689 enshrined certain rights, such as freedom of speech and protection from excessive bail, subsequent legal developments and social changes have raised questions about the adequacy of these protections. Issues such as privacy rights, freedom of expression, and the balance between security and civil liberties have sparked debates in both legal and political spheres.

Moreover, the delegation of authority to Scotland, Wales, and Northern Ireland has introduced complexity to the British constitutional structure. Although the Scotland Act 1998 and subsequent laws conferred varying levels of self-governance to these regions, tensions persist regarding the allocation of powers between the devolved administrations and the UK government. Conflicts concerning issues such as taxation, welfare, and constitutional reform underscore the continuous evolution of the British nation.

The British Constitution and Bill of Rights have encountered numerous disagreements and challenges throughout their history. From discussions concerning parliamentary supremacy and the monarchy's role to inquiries about individual liberties, the absence of a codified constitution has contributed to ongoing strains and ambiguity within the UK's constitutional framework.

Disputed points in British constitution and bill of rights

Right to Bear Arms

The part of the Bill of Rights of 1689 saying people have the right to have weapons for defence has caused arguments about how much people can have guns. Some say it means everyone can have guns for self-defence, while others say it depends on the laws about guns. People debate what "suitable to their conditions" means and if it means some guns or people shouldn't have guns. This leads to ongoing disagreements over laws about guns and personal freedoms.

Freedom of Speech and Parliamentary Privilege

The Bill of Rights guarantees "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." While this provision protects parliamentary privilege and legislative autonomy, debates persist over the scope of freedom of speech outside of Parliament. Issues such as hate speech laws, defamation, and censorship prompt discussions about the limits of free expression in the UK. Disputes also arise regarding the balance between protecting individuals' right to speech and preventing harm or discrimination, highlighting the complexities of modern communication and societal norms.

Habeas Corpus and Civil Liberties

Habeas corpus, a fundamental legal principle enshrined in the Bill of Rights, guarantees the right to challenge unlawful detention and requires authorities to justify holding individuals in custody. Despite its importance in safeguarding individual liberty, debates emerge over its application in cases involving national security, terrorism, and immigration. Concerns about the erosion of habeas corpus rights lead to discussions about balancing security measures with civil liberties. Disputes over the scope of government surveillance, detention without trial, and the rights of detainees highlight tensions between security imperatives and human rights protections.

Prohibition of Cruel and Unusual Punishment

The Bill of Rights prohibits cruel and unusual punishment, raising questions about the treatment of prisoners and the use of capital punishment. Although the UK abolished the death penalty for most offenses in 1965 and fully abolished it in 1998, debates over the morality and efficacy of capital punishment persist. The use of life imprisonment without the possibility of parole also sparks discussions about the humanitarian implications of long-term incarceration. Disputes over prison conditions, rehabilitation programs, and sentencing policies reflect ongoing debates about punishment, deterrence, and rehabilitation within the criminal justice system.

Right to Petition the Monarch

The affirmation of the right to petition the monarch without fear of retribution has been a point of contention regarding the modern monarchy's role and influence. While the monarchy is largely ceremonial and apolitical in contemporary UK governance, questions arise about the efficacy of petitioning the monarch in an age of democratic representation and accountability through elected officials and institutions. Disputes over the relevance and significance of petitioning the monarch highlight broader discussions about the role of the monarchy in modern society and its relationship to democratic governance. The Bill of Rights of the United Kingdom contains several provisions that have been subject to interpretation and dispute over time. Issues such as the right to bear arms, freedom of speech, habeas corpus, punishment, and the role of the monarchy continue to shape debates about individual rights, governance, and the rule of law in the UK. As the country grapples with evolving social, political, and legal challenges, the legacy of the Bill of Rights remains a key point of reference in shaping the future of British constitutionalism.

Parliamentary Sovereignty

One of the main tenets of the British Constitution is parliamentary sovereignty, which states that Parliament has the ultimate power to enact and repeal laws. But over time, this theory has been contested and reinterpreted, especially in light of the UK's changing international duties and legal environment. The relationship between parliamentary sovereignty and international law is a key source of debate. Ordinarily, Parliament's legislative authority allowed it to enact legislation that violated international treaties. This notion was called into question, nonetheless, by the UK's adoption of EU legislation and membership in the EU. There were debates regarding the extent to which international agreements impacted the authority of Parliament because EU legislation was deemed to be more significant than competing UK laws. The significant legal dispute involving the important court case of *Factortame Ltd v Secretary of State for Transport [1991] UKHL 13* showed how EU law was supreme and what this meant for parliamentary sovereignty, sparking further talks about balancing domestic and international legal rules. Furthermore, the concept of parliamentary sovereignty became more intricate with the devolution of powers to Scotland, Wales, and Northern Ireland. Devolution accords provide some autonomy to the devolved governments, even though the UK Parliament still has the majority of legislative authority. This calls into question the extent of parliamentary sovereignty and its potential for

limitation or modification by devolved legislatures. Parliamentary sovereignty and devolution are complementary, as demonstrated by the *Miller v. Secretary of State* for exiting the European Union [2017] UKSC 5 case, which discussed the necessity of parliament's assent to initiate Article 50 of the Treaty on European Union. Furthermore, constitutional amendments such as the Human Rights Act of 1998, which incorporates the European Convention on Human Rights into UK law, have cast doubt on the concept of parliamentary sovereignty. Although Parliament can amend or repeal this Act, some argue that parliamentary sovereignty is limited since judges must adhere to human rights norms when interpreting laws. Discussions on the distribution of power between Parliament and the courts have arisen as a result of cases such as *Jackson v. Attorney General* [2005] UKHL 56, which demonstrate how the courts assess whether laws adhere to human rights standards.

Parliamentary sovereignty is still very important in the British Constitution, but its use and meaning have been argued about and understood differently because of changes in the constitution and international commitments. What domestic laws, international laws, devolution, and human rights rules all work together shows how complicated parliamentary sovereignty is in today's UK government. As the country deals with legal and political problems, debates about the nature and extent of parliamentary sovereignty will keep going, shaping how the British Constitution evolves.

Judicial Review

Judicial review is a key part of the British legal system, ensuring that the law is followed and holding the government accountable. It lets the courts check if what the government and Parliament do follows the rules and laws. But there are arguments about how much the courts should get involved in decisions about policies and running the country, shown in important cases like *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (No 2) [2008] UKHL 61.

In the **Bancoult** case, the Supreme Court looked at whether it was legal for the British government to force the Chagos Islanders off their land for a US military base without Parliament's approval. The court said the government's actions were illegal, showing how the courts can check the government's power to make sure it follows the rules and doesn't violate people's rights.

The case also showed that while the courts can review what the government does, they have to be careful not to interfere too much in politics. The House of Lords said the government can make decisions about foreign affairs, but those decisions still have to follow the law and can't be unfair.

Bancoult raised big questions about how much power the courts should have compared to the government. Some say that judges shouldn't get involved in foreign policy and national security because it could make it harder for the government to do its job. But others say that judicial review is important for making sure the government follows the rules and protects people's rights.

In conclusion, **R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (No 2)* exemplifies the importance of judicial review in scrutinizing executive actions and holding the government accountable for decisions that may impact individual rights and the rule of law. While judicial intervention must be exercised judiciously and with deference to the elected branches of government, it

serves as a vital safeguard against executive overreach and arbitrary exercise of power. As the UK continues to grapple with complex legal and political challenges, the role of judicial review remains a crucial aspect of the country's constitutional framework.

Conclusion

In summary, the British Constitution and Bill of Rights have faced many disagreements and changes over time, showing how society and rules evolve. A big argument is about parliamentary sovereignty, meaning parliament has the most power to make laws. But this idea has been challenged, especially when the UK was in the European Union and when Scotland, Wales, and Northern Ireland got more power. People also debate how much international agreements affect UK laws. Adding EU laws into UK law and following human rights rules made it more complicated. Giving more power to Scotland, Wales, and Northern Ireland also made things harder, as it raised questions about how much power Parliament really has. Even though Parliament is supposed to be the highest authority, it sometimes has to follow what the devolved governments decide. The monarchy's role and the House of Lords have also caused arguments. Even though the Bill of Rights limited the monarchy's power, people still debate how much authority the monarch should have. And there are ongoing discussions about changing the House of Lords to make it fairer. Overall, while Parliament's power is a big deal in the British Constitution, it's not always clear how much power it really has. International agreements, devolution, and human rights rules make things more complicated. As the UK deals with legal and political problems, debates about Parliament's power will continue, shaping how the country's rules evolve.

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