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The institutions necessary for carrying out the functions of government emerged as the need arose. “ Formed to meet immediate requirements they were then adapted to exercise more extensive and sometimes different functions. From time to time political and economic circumstances have called for reforms. There has been a constant process of invention, reform and amended distribution of powers. The building has been constantly added to, patched, and partially reconstructed so that it has been renewed from century to century; but it has never been razed to the ground and rebuilt on new foundations.” An unwritten constitution is, accordingly, the child of wisdom and chance; the product of history and the example of Sir James Macintosh’s dictum that constitution grow instead of being made.

It is the result of a process in which many elements, like statutes, judicial decisions, precedents, usages and traditions have entered, piling themselves one upon the other from age to age and shaping the political institutions of the country according to the wants of the people and needs of various times. There is no single document or documents which contain it, though many sources may be found which describe it. There may be some enactments of a fundamental character which make the constitution, but this kind of written element is in a much smaller proportion than the unwritten element, and it does not, at the same time, bear one single date.

These laws were made as and when they were needed. The most important part of an unwritten constitution is just what is kept out of the written law and given over to the sole guardianship of custom. The best and the only example of an unwritten constitution, as said before, is that of Britain. The fundamental political institutions of that country, which are the basis of all

governmental authority, are not set down in writing in any formally accepted document or documents. They are regulated by first, judicial decisions; sometimes founded on more or less vague “ immemorial rights and liberties”, and sometimes founded on agreements, resolutions and laws made by rebellious parliaments. Then, secondly, there are a number of statutes dealing with separate parts of government like the Act of Settlement, the Franchise Acts, the Parliament Act of 1911 as amended in 1949, and the Crown Proceedings Act of 1947. Thirdly the major part of what forms the soul of the British Constitution is regulated by simple customs or conventions.

Britain is something more than the “ mother of parliaments”, and its growth was more or less spontaneous, slow and sometimes haphazard. It took eight centuries to transform parliament into a governing body resting on the suffrage of all adult persons in the country and the process has only been completed in our own times. The (Glorious) Revolution of 1688, settled once for all that Parliament had supreme power and it could control every aspect of national life. The powers of the King were limited and the constitutional result was the emergence of the cabinet.

Conventions alone provide for the essential rules of Cabinet government. They demand that Ministers of the King must be members of Parliament they should belong to the majority party in the House of Commons and function under the party leader, the Prime Minister. Convention further demands that the Cabinet is responsible to Parliament for all its acts and it remains in office so long as it retains the confidence of the House of Commons. That Parliament meets annually and that it consists of two Houses rest on custom.

Then, there are many conventions regulating parliamentary procedure. The principle that no Peer other than a Law Lord sits when the House of Lords is acting as a court of appeal is also customary. It will, thus, be clear that so firmly is the mechanism of government erected on the foundation of conventions that without them the constitution becomes maimed, if not absolutely unworkable. It does not, however, mean that the written element in the British Constitution is negligible.

Judicial decisions form a body of written constitutional law and the statutes certainly do. The utterances of Parliament on various supreme occasions list in the constitutional documents of the country and are “authentically existent.” These taken together, are, Herman Finer says, as explicit as and usually more explicit than the “written constitutions” of other countries. The conventions, he adds, are not so recorded by an institution with such authority as the courts of law or Parliament.

“Nevertheless, they are understood with fair exactness, and have been recorded by ministers in their correspondence and political speeches, accepted with inappreciable dissent by politicians and scholars, and even written down in great detail by such authorities as Hearn, Bagehot, Dicey, May, Anson and Jennings.” Finer, accordingly, poses the question: where is the difference between the unwritten Constitution of Britain and the written Constitutions of other countries? He himself answers that the difference is two-fold. First, the major part of the British Constitution consists of conventions “which are taken for granted but not formulated, save occasionally by individuals. Second, and more important, is that nobody of

people was deliberately called together and entrusted with the establishment of a constitution, as in other countries.”