

## **Second Stage**

### **Lecture 1**

#### **Chapter One: Nature of Constitutional Law: Definition**

This lecture is concerned with the concept of constitution and its characteristics. First, the term 'constitution' can be defined in three different senses. Firstly, it could be used to denote the collection of rules which establish and regulate the government of a country. Secondly, it could mean a document having a special legal sanctity which sets out the framework and principal functions of organs of the government of the state. Thirdly, the term is understood as the fundamental law of a state establishing the basic principles and forms of social and state structure.

#### **The Constitution Characteristics**

##### **1-The constitution is a universal phenomenon**

Whatever may be the precise definition of the term 'constitution', the latter is considered a world-wide phenomenon. Nearly every state has its constitution which may be of one kind or another. A state may not have a constitution as a single coherent document, yet it has an aggregate of rules establishing the principles of the social state structure. These rules form its constitution.

##### **2-The essence of constitutional rules**

The constitutional rules are not merely legal formal 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 and they do not operate in a vacuum or isolation. They are part of the whole socio-political system.

## **Lecture 2**

### **3-The constitutional law is changing**

As a reflection to the changing society and in order for a constitution to be more responsive to the new political, social, and economic needs, it is changed or replaced by a new one. This constitutional change may be brought about through amendment or abrogation, which is an echo of the social and political change.

### **4-The constitutional law is programmatic law**

The constitution usually confirms 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 this sense it deals with the future.

### **5-The constitutional law is the fundamental law**

The constitutional law constitutes the fundamental law of the state. It is the supreme law in the state. This constitutional supremacy has several important effects. No act whether executive, judicial or legislative contrary to the constitution can stand. It cannot be overridden by any governmental organ. Another effect of the constitutional supremacy is that a written constitution cannot be changed by ordinary process. It can be amended only by special process and special procedure.

## **Lecture 3**

### **Chapter Two**

#### **Sources of Constitutional Law**

As mentioned earlier, the constitution means a selection of rules which define the framework of government and postulate how it should operate. These rules must reflect the socio-political aims of the state and society. These rules are the sources of the constitution and consist of legislation, judicial interpretation and conventions.

##### **1-Legislation**

Legislation is the formulation of laws by the legislature and is the first and foremost source of the constitution. Such laws are as important as the rules enshrined in the constitution. They give effect to the constitutional rules and perhaps modify them. In certain countries, particularly those which don't have written constitutions as Britain, law are important and part of the constitution.

A constitution does not necessarily contain detailed rules governing the institutions of the government such as the rules of elections, the establishment of departments, or the organizations of the judiciary etc. they are found in ordinary laws made by legislature.

## **Lecture 4**

### **2-Judicial Interpretation**

The second source of the constitution is judicial interpretation. In certain countries courts and judges are empowered to interpret the law to expose its meaning in disputed cases. As part of the law the constitution may be interpreted by them too. The importance of constitutional interpretation lies in the fact that an interpretation which usually takes the form of a decision, will be binding to all state organs.

### **3-Conventions**

The third source of the constitution is convention. It can be defined as a mixture of rules based on customs and expediency. Their existence is justified by the need for rules to supplement the legal framework of the constitution. The constitutional conventions arise from two main sources:

- 1-A course of conduct may continue over a long period of time and ultimately become obligatory.
- 2-People may agree among themselves to adopt a particular rule of conduct, such a rule is a convention.

The constitutional conventions have been described to be non-legal rules because courts do not apply them. But they are rules because they are regarded as binding and observed in practice.

