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3. Difference between fundamental state policy and fundamental rights.**

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Question-2

1. Define fundamental principles of state policy.

Fundamental principles of state policy:

- Modern states are welfare states and the principal purpose of such a state is public welfare. This trend of public welfare is being, to some extent, reflected in most of the written constitutions of states when they adopt some directive principles in their constitutions. The underlying philosophy behind the adoption of such principles is that they will obligate the state to take positive action in certain direction in order to promote the welfare of the people and achieve economic democracy.
- The idea of directive principles in the Constitution was first introduced in the Irish Constitution of 1937. Following this Irish example, the idea has got place in the Constitution of India in 1950, of Pakistan in 1956 and 1962. And so has been the case of the Bangladesh Constitution of 1972. The principles have been adopted under the heading of "Fundamental Principles of State Policy" in the **chapter-ii, articles 8 to 25** of Bangladesh constitution. The directive principles are termed as or Fundamental Principles of State Policy.
- "Directive or Fundamental Principles of State Policy" as a term of constitutional jurisprudence has not got any universal definition. But as the term indicates it means primarily those principles which are considered fundamental in the matters of policy formulating by the government. From the view point of Bangladesh Constitution, it may be said that Fundamental Principles of State policy are those principles which act as fundamental guide to the policy making, be it social, economic, administrative or international, governance of the country, making laws and interpreting the Constitution and laws.
- **According to M Raja Ram,** "The fundamental principles are the directives to the state to establish and maintain a new, social and economic order by implementing some ideals, directions and unenforceable rights of the citizens". **(Ref: Indian Constitution, P-21)**
- The expression 'fundamental principles of state policy' signifies the principles which strengthen and promote the concept of welfare state by seeking to lay down some socio-economic goals which the government has to strive to achieve.

The expression 'fundamental principles of state policy' signifies the principles which strengthen and promote the concept of welfare state by seeking to lay down some socio- economic goals which the government has to strive to achieve.

According to Article 8, The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.

So, The fundamental principles of state policy refer to the core guidelines and values that govern the functioning of a state. These principles often outline the vision for how the government should operate and serve its citizens.

2. Why economic, social and cultural rights are incorporated in the second part of our constitution?*

It has been almost a common feature of all the constitutions containing directive principles that the part of these directives of the Constitution contains economic, social and cultural rights whereas the part of fundamental rights contains civil and political rights. Economic, social and cultural rights have found their origin primarily in the Socialist and Marxist revolution of the early 20th century. Following the Socialist October revolution this new category of citizens' rights first got their constitutional recognition in the Soviet Constitution of 1918. Thenceforth they are being gradually included in most modern constitutions as 'programme' or 'manifesto' rights of a promotional nature.

The economic, social and cultural rights provided in our constitution are-

- ✓ Principles of ownership- art. 13
- ✓ Emancipation of peasants and workers- art. 14
- ✓ Provisions of basic necessities- art. 15
- ✓ Rural development and agricultural revolution- art. 16
- ✓ Free and compulsory education- art. 17
- ✓ Public health and morality- art-18
- ✓ Protection and improvement of environment and bio-diversity- art. 18A
- ✓ Works as a right and duty- art. 20
- ✓ National culture- art. 23
- ✓ The culture of tribes, minor races, ethnic sects and communities- art. 23A
- ✓ National monuments, etc- art. 24

1. For Socio-economic and cultural progress:

They are rights of promotional nature in the sense that their implementation and enforcement depends on the economic progress and availability of resources in the country.

2. To create legal bindings:

If these rights are placed in the part of fundamental rights of the Constitution, then the state would be legally bound to enforce. On the other hand the citizens would have a legal right to get them enforced through the courts and it would virtually lead a developing state with limited resources into a precarious problem.

3. Difference between fundamental state policy and fundamental rights.**

Aspect	Fundamental Rights	Fundamental State Policies
Nature	Individual rights	Guidelines for governance
Purpose	Protect individual freedoms and ensure equality	Guide the state in formulating laws and policies
Enforceability	Legally enforceable and justiciable	Not legally enforceable; merely guiding principles
Examples	Right to freedom of speech, right to equality, right to life	Policies promoting social justice, economic equity
Scope	Apply to individual liberties and rights	Apply to governance and legislative processes
Constitutional Status	Explicitly listed with defined status	Listed separately or as an appendix, providing a framework
Implementation	Implemented through specific laws and judicial review	Implemented based on government intent and policy-making
Flexibility	Generally rigid; requires significant amendments to change	More flexible; can be adapted to changing conditions
Focus	Protecting individual rights and freedoms	Shaping socio-economic and political policies
Judicial Review	Subject to judicial review and adjudication	Not subject to judicial review as they are non-justiciable
Origin	Often based on international human rights norms	Derived from national socio-economic and political philosophies
Role in Governance	Limit government power and protect individual autonomy	Guide government policy and legislative priorities
Personal vs. Collective Focus	Primarily personal rights	Primarily collective and national goals
Amendment Process	Requires a rigorous process for changes	Can be modified more readily according to changing priorities
Impact on Law	Directly influences the creation and interpretation of laws	Influences broader legislative agenda and policy formulation

- **There are some other fundamental distinctions between directives and fundamental rights.**

First, when certain human rights are written down in a Constitution, a supreme law, and are protected by constitutional guarantees they are called fundamental rights. Directive Principles, on the other hand, are policies relating to social, economic and cultural rights which are to be followed in governance of the country.

Second, fundamental rights are enforceable in a court of law and they create justifiable rights in favour of individuals. The directives, on the other hand, are not enforceable in a court of law and they do not create any justifiable rights in favour of individuals.

Third, fundamental rights are mandatory in nature whereas directives are declaratory in nature as they have expressly been excluded from the preview of the courts.

Fourth, the fundamental rights create negative obligation on the state, i.e., the state is required to refrain from doing something. The directives, on the other hand, impose positive obligation on the state i.e. to implement these principles the state will have to achieve certain ends by its actions.

Fifth, if there is any conflict between directives and fundamental rights, fundamental rights will prevail over the directives.

Sixth, the directive principles may be described as inchoate fundamental rights while the fundamental rights are full-fledged

Seventh, fundamental rights are primarily aimed at assuring political freedom to citizens by protecting them against excessive state action while directive principles are aimed at securing social and economic freedoms by appropriate state action.

Question-3

1. What are the rights of an arrested persons according to constitution?
2. Define Preventive detention and punitive detention.
3. Preventive detention and punitive detention contains the risk of the abuse of power. Explain the statement in the light of relevant article of the constitution.*

1. What are the rights of an arrested persons according to constitution?

Right of Persons under Arrest and Detention:

The right of persons under arrest and detention has been guaranteed in Article- 33(1-2) of the Constitution. There are, in fact, four fundamental rights guaranteed to the persons under arrest and detention. According to Art 33(1- 2) the rights of an arrested person are-

(a) will not be detained in custody without informing him/her of the grounds for such arrest;

(b) will not be denied the right to consult and be defended by a legal practitioner of his/her choice;

(c) will be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate; and

(d) will not be detained beyond twenty four hours without the authority of a magistrate.

- The rights guaranteed in Art 33(1-2) to the persons under arrest and detention are not available to any person-

(a) who for the time being is an enemy alien; and
(b) who is arrested or detained under a law providing for preventive detention (Art 33(3)).

In BLAST v Bangladesh (2003) the High Court Division has given an observation that "under Art 33(1) of the Constitution the person who is arrested must be informed, as soon as may be, of the grounds for such arrest. **(Ref: 55 DLR 363)**

- However, a person who is arrested or detained under a law providing for preventive detention, will not be entitled to enjoy the rights under Art 33(1-2).

2. Define Preventive detention and punitive detention.

- It may be said that 'detention' may be of two types-punitive detention and preventive detention.
- A person is punitively detained only after a trial for committing a crime and after his guilt has been established in a competent court of justice. Preventive detention, on the other hand, is not a punitive but a precautionary measure. The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it.

Preventive Detention:

- The term 'preventive detention' is used in contradistinction to the term 'punitive detention. Preventive detention means detention of a person without trial and conviction by a court, but merely on suspicion in the minds of the executive authority. It means detention of a person without trial.
- "Preventive detention is an abnormal measure whereby the executive is authorised to impose restraints upon the liberty of a man who may not have committed a crime but who, it is apprehended, is about to commit acts that are prejudicial to public safety etc'.
- **According to Chief Justice Badrul Haider Chowdhury,** preventive detention means detention the aim of which is to prevent a person from doing something which is likely to endanger the public peace or safety or causing public disorder.
- According to justice Vinan Bose, preventive detention has three special features.
  I. The first is that it is detention and not imprisonment;
  II. the second is that it is detention by the executive without trial or inquiry by a court;
  III. the third is that the object is preventive and not punitive.

Punitive detention:

- Punitive detention means the detention of a person only after trial for committing a crime and after his guilt has been established in a competent court of justice.
- A person is punitively detained only after a trial for committing a crime and after his guilt has been established in a competent court of justice.
- The object of punitive detention is to punish a person for what he/she has done and after he/she is tried in the courts for illegal act committed by him/her.

Distinction between Preventive Detention and Punitive Detention

- The distinction between preventive and punitive detention has beautifully been described by Mukharjee J. in the following words:

First, preventive detention is a detention by the executive authority whereas punitive detention is a detention by a court.

Second, the object of punitive detention is to punish a man for having committed a crime. The object of preventive detention is to prevent him from doing any injurious activities in future by him.

Third, preventive detention is a precautionary measure adopted by the executive in time of emergency for the greater interest of the nation and state, whereas punitive detention is an ordinary measure.

Fourth, in case of punitive detention the person under detention has committed a crime, whereas in case of preventive detention the person under detention has not committed any crime.

Fifth, Punitive detention comes after the illegal act is actually committed but preventive detention has reference to apprehension of wrong doing.

Sixth, In case of preventive detention, no offence is proved, nor any charge formulated and the justification is suspicion or reasonable probability but in case of, punitive detention, some offence has been done and the detention be gone through a prescribed procedure.

3. Preventive detention and punitive detention contains the risk of the abuse of power. Explain the statement.*

- The Power of Preventive Detention carries with it the Risk of Abuse of Power
- It is sometimes said that the power of preventive detention like that of emergency carries with it it the risk of abuse of power. This is true particularly in most developing countries where these special laws like emergency and preventive detention are used as necessary and ready weapons to crash down the opposition and to perpetuate rule rather than to meet real emergencies.
- The abuse of preventive detention law particularly in Bangladesh, India and Pakistan-three neighbouring countries is well enough to conclude that this power carries with it the risk of abuse of power.
- 32 years have passed since we achieved our independence. Since then there occurred no situation of war or external aggression; nor any civil war or internal disturbance threatening the security of the state has ever occurred. But this Special Powers Act, 1974 has, since its enactment, been used by every government as a brutal weapon to suppress anti-government movement, sometimes democratic movement and to perpetuate rule.
- Hundreds and thousands of political leaders and workers have been and are being detained under this law sometimes, for years together without any trial.

- The following statistics will necessarily give the idea that the democratic governments are in the competition to abuse of this law.

What should do to reduce the risk:

Of course, it is to be mentioned that power of preventive detention does not necessarily carry with it the risk of abuse of power if, the law dealing with the preventive detention or the Constitution allowing enactment of preventive detention law provides for stern safeguards against its abuse. For example, if it is specifically mentioned in the Constitution or law that preventive detention law cannot be used by the government except in times of emergency of war or external aggression and that the deteinee will have the right to apply for judicial review of the grounds of his detention, then it would be difficult to say that preventive detention power necessarily carries with it the risk of abuse of power. For instance, like the Special Powers Act in Bangladesh, there is a permanent preventive detention law in USA namely the Internal Security Act (Popularly Known as Mc Carron Act) 1950. The US Government has little scope to abuse the power given by this law. Because the safeguards provided for in it do not allow so. The safeguards of this law are following-

1. This law can be used only in war time emergency.

2. Only the Attorney General is empowered to issue warrant for the arrest of any person whom he believes to be dangerous.

3. The arrested person is brought before a preliminary hearing officer who issues a detention order if he finds that there is a probable cause for detention.

4. Against the order of detention the detenu has right to appear to the Detention Review Board and this Board has power

i) to confirm the detention order; or

ii) to modify the detention order; or

iii) to nullify the detention order; or iv) to indemnify the detention order.

5. Form the decision of the Board the detenee may, if he is still aggrieved, have a judicial review by way of appeal to the Federal Court of Appeal.

Thus even in war time emergency so many stern safeguards have been provided for against the abuse of power by the

Question-4

1. What is writ?
2. Types of writ contains in article 102? *
3. The types of writ found in article 104 but description is given in article 102-explain the statement.
4. Distinguish Between Writ and Public Internet litigation?**

1. What is writ? Types of writ contains in article 102?

Writ:

A

A writ is a formal written order issued by a court or other legal authority. Writ means a written document by which one is summoned or required to do or refrain from doing something. Historically writ originated and developed in British legal system.

As defined by Blackstone, 'writ is a mandatory letter from the king-in-parliament, sealed with his great seal, and directed to the Sheriff of the country wherein the injury is committed or supposed so to be, requiring him to command the wrongdoer or party caused either to do justice to the complainant, or else to appear in court and answer the accusation against him."

Initially writs were royal prerogatives. Since only the King or Queen as the fountain of justice could issue writs, they were called prerogative writs. "They were called prerogative writs because they were conceived as being intimately connected with the rights of the crown."

Under Art 102(2)(a) of the Constitution of Bangladesh, the High Court Division may issue certain directions, orders or declarations which actually bear the nature of the writs

The Constitution of Bangladesh **provides five types of writs** -

I. Writ of Habeas Corpus,
II. Writ of Certiorari,
III. Writ of Prohibition,
IV. Writ of mandamus, and
V. Writ of Quo-Warranto.

1. **Writ of Habeas Corpus**

The word 'Habeas Corpus' means 'have his body' ie. to have the body before the court. So it is a kind of order of the court that commands the authorities holding an individual in custody to bring that person into court. The authorities must then explain in the court why the person is being held. The court can order the release of the individual if the explanation is unsatisfactory. Thus the writ of 'Habeas Corpus' is a process for securing the personal liberty of the subjects by affording an

effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This writ is the most important weapon forged by the ingenuinity of man to secure the liberty of the individual. There is no judicial process more familiar or important than this. Lord Acton points out that it is often said that the British Constitution "attained its final perfection in 1679 when Habeas Corpus Act was passed",

2. **Writ of Mandamus**

Literally the term 'mandamus' means 'we command' and reminds one of the times when the King of England "as the autocratic head of a vast administrative system had occasion to mandamus his subjects many times in the course of the day". In Halsbury's Laws of England[3] mandamus is described as follows:

The order of mandamus is an order of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertaining to his or their office and is in the nature of public duty.

Thus it is clear that when a court or tribunal or an authority or a person has refused or failed to perform his statutory obligation, it is the writ of mandamus by which the higher court can compel the authority or court or person to do his statutory obligation. So mandamus is a positive remedy.

3. **Writ of Prohibition**

Prohibition is an original remedial writ, as old as the common law itself. Originally the primary purpose of prohibition was to limit the jurisdiction of the ecclesiastical courts. Prohibition as a writ means one which prevents a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance. Thus prohibition is originally a judicial writ since it can be used against a judicial or quasi-judicial body and not against an administrative body or public corporation or body. But no longer it remains limited to be used only against judicial and quasi-judicial body. The wording in 1962 Constitution of Pakistan and also in present Bangladesh Constitution makes it clear that this writ can be used against any public body. It is thus clear that when a court, or a tribunal or an authority or a person is about to violate the principles of natural justice[1] or is about to abuse the power or is about to act in excess of its jurisdiction, the higher court by issuing a writ of prohibition can prohibit the tribunal, court or authority from doing such act. So prohibition is a preventive remedy.

4. Writ of Certiorari

The term 'certiorari' means 'to be certified' or 'to be more fully informed of. The writ of 'certiorari' is so named because in its original form it required the King 'should be certified' of the proceedings to be investigated. This writ was drawn up for the purpose of enabling the Court of King's Bench to control the action of inferior courts and to make it certain that they should not exceed their jurisdiction; and therefore, the writ of certiorari is intended to bring into the High Court the decision of inferior tribunal, in order that the High Court may be certified whether the decision is within the jurisdiction of the inferior courts.2

Initially at common law certiorari used to be used either form the King's Bench or the Chancery for the purpose of exercising superintending control over inferior courts. So certiorari was necessarily a judicial writ at its initial stage. But gradually, the jurisdiction was enlarged to include within its fold all authorities performing judicial, quasi-judicial and even administrative functions. Thus certiorari is no longer a judicial writ. When a court or a tribunal or an authority or a person has already violated the principle of natural justice, or misused the power or acted in excess of its jurisdiction, the higher court by issuing certiorari can quash that act ie. can declare that act illegal. This is certiorari.

5. Writ of Quo Warranto

The term "quo-warranto" means "by what warrant or authority." Quo-warranto is a writ by which any person who occupies or usurps an independent substantive public office or franchise or liberty, is asked to show by what authority he claims it, so that the title to the office, franchise or liberty may be settled and unauthorised occupants be ousted by judicial order. More precisely, when a person illegally holds a public office created by law, the higher court may, on the application of any person, by issuing quo-warranto, ask the person to show on what authority he holds the office and can make him not to hold such office further.

2. The types of writ found in article 104 but description is given in article 102-explain the statement.

The term "writ" is mentioned in Section 104 of the constitution, which refers to the powers of the Appellate Division. However, the actual discussion and detailed explanation of writs are found in Section 102. Section 102 is more comprehensive in defining the nature and scope of writs, explaining how and when they can be issued, and for what purposes. This distinction is important because Section 104 touches upon the broader powers of the Appellate Division, while Section 102 specifically addresses the issuance of writs as a tool for safeguarding fundamental rights.

3. Distinguish Between Writ and Public Internet litigation?**

Aspect	Writ	Public Internet Litigation
Definition	A formal written order issued by a court or authority commanding or prohibiting specific actions.	Legal disputes or proceedings conducted through online platforms or forums.
Purpose	To direct a party to perform or refrain from performing a particular action as mandated by law.	To resolve legal disputes or seek legal remedies through online channels.
Issuing Authority	Issued by a court or judicial authority.	Typically initiated by parties involved in a dispute using online platforms.
Formality	Highly formal and follows specific legal procedures and formats.	Can vary in formality; may involve informal or formal online platforms.
Process	Followed by strict legal procedures, including filing, service, and compliance.	May involve less formal procedures, including online filings, submissions, or discussions.
Examples	Writ of habeas corpus, writ of mandamus, writ of prohibition.	Online small claims courts, e-discovery, online mediation platforms.
Legal Framework	Governed by established legal principles and statutes.	Governed by laws applicable to electronic communications and online processes.
Public Access	Generally accessible to the public but typically involves formal court proceedings.	Often more accessible to the general public through various online platforms.
Representation	Typically involves legal representation and formal court appearances.	Can involve self-representation or online legal services; some cases are handled without traditional legal representation.
Enforcement	Enforced through traditional legal mechanisms such as court orders and penalties.	Enforcement can vary, including online dispute resolution, court orders, or settlement agreements.

Question- 7

1. What do you mean by constitutional supremacy and parliamentary supremacy?
2. Difference between constitutional supremacy and parliamentary supremacy?
3. What type of supremacy does prevail in our constitution?**

1. What do you mean by constitutional supremacy and parliamentary supremacy?

Two types of supremacy are found in the constitutional systems in different countries. One is parliamentary supremacy and the other is constitutional supremacy or judicial supremacy.

Parliamentary Supremacy

The term Parliamentary ntary supremacy means that parliament ent is supreme over the Constitution. It is also called legislative supremacy because the legislature is not a body created by the constitution; neither the power of the legislature is limited by the Constitution; the legislature exercises an unlimited and supreme er in law-making. Such legislative supremacy is possible only power where the Constitution is unwritten and flexible. The British Constitutional system has this legislative supremacy. Three intrinsic features of parliamentary supremacy are following:

(i) There is no law which parliament cannot change or modify.

(ii) There is no distinction between constitutional law and ordinary law.

(iii) There is no body which can declare the law passed by parliament illegal or unconstitutional.

Constitutional Supremacy

The term constitutional supremacy means that the Constitution is supreme over the parliament and the parliament can exercise its functions being only within the bounds of the Constitution. Constitutional supremacy is possible only where the Constitution is written and rigid.

The object of making the Constitution written and rigid is to limit the powers and functions of the government and the legislature. In most cases of written Constitutions a declaration is made in the Constitution that the Constitution shall be the supreme and fundamental law of the land and no other law can be inconsistent with it. The American Constitution makers were the first to designate their Constitution as the "Supreme Law of the Land" and this designation has resulted the doctrine of Constitutional supremacy.

The founding fathers of American Constitution had the painful experience that even a representative body might be tyrannical and there should be a law superior to the legislature itself and that it was the restraints of this permanent written law that could only save the people from the fear of absolutism and autocracy.

This constitutional supremacy is also called judicial supremacy in the sense that the judiciary i.e, the highest court of the land is supreme over the legislature. Because the judiciary is invested with the power to examine the validity and constitutionality of any legislation made by the parliament and can declare a law void on the ground of inconsistency with the Constitution.

As to the doctrine of constitutional supremacy Professor Wade says that 'in a constitutional system which accepts judicial supremacy legislation may be held invalid on variety of grounds: for example, because it conflicts with the separation of powers where this is a feature of the Constitution or infringe human rights guaranteed by the Constitution or has not been passed in accordance with the procedure laid down in the Constitution.' Professor Hood Philips says that 'to say that a Constitution is supreme is to describe its relation to the legislature's power to alter the Constitution is either limited or non-existent.' Actually a Constitution with constitutional supremacy not only defines the power of the legislature; it defines and establishes the principal organs of the state; it is the source of their authority. It prescribes the manner in which and within which their functions are to be exercised. The three organs of the state cannot do anything beyond the constitutional limitations. If any organ does anything in violation of the constitutional limitations then it is the court which can declare the action null and void and this paramount power of the court is given by the Constitution itself. Thus the Constitution has a sanctity over everything in the realm. It is why this position is called constitutional supremacy.

2. Difference between constitutional supremacy and parliamentary supremacy?

Aspect	Constitutional Supremacy	Parliamentary Supremacy
Definition	The principle that the constitution is the highest law of the land, and all laws and government actions must conform to it.	The principle that Parliament is the supreme legal authority and can create or end any law.
Legal Authority	The constitution holds the highest legal authority, and no law or act can contravene it.	Parliament has the highest authority and its laws cannot be overridden by any other entity.
Role of Judiciary	The judiciary has the power of judicial review to ensure laws and government actions comply with the constitution.	The judiciary's role is more limited; it does not typically review or invalidate parliamentary laws based on their content.
Law Making	Laws must be consistent with the constitution, which provides the framework and limits for legislation.	Parliament can make or change laws without reference to a constitution, as there is no higher legal constraint.

Aspect	Constitutional Supremacy	Parliamentary Supremacy
Example of System	United States, where the Constitution is supreme and courts have the power to invalidate laws that are unconstitutional.	United Kingdom, where Parliament is sovereign and can make or repeal any law, including constitutional laws.
Amendment Process	Amendments to the constitution usually require a special procedure, reflecting its foundational status.	Parliament can amend any law, including those related to constitutional matters, often through simple legislative processes.
Checks and Balances	Emphasizes a system of checks and balances, with different branches of government having distinct powers and responsibilities.	Focuses on the supremacy of legislative authority, with less emphasis on judicial checks on legislative power.
Flexibility	Less flexible, as changes to the constitution typically require rigorous procedures and broad consensus.	More flexible, as Parliament can enact or amend laws relatively easily within its authority.
Historical Roots	Originates from the idea that a constitution embodies fundamental principles that govern society.	Originates from the tradition of parliamentary sovereignty and the authority of the legislature.
Impact on Governance	Ensures stability and continuity in fundamental principles, but may limit legislative flexibility.	Allows for greater legislative flexibility and adaptability, but may risk concentration of power.
Scope of Authority	Limits governmental power to ensure adherence to constitutional principles.	Grants broad legislative powers without constitutional constraints.
Examples of Legal Systems	U.S. Constitution, German Basic Law.	UK Parliament, New Zealand Parliament.
Constitutional Change	Requires complex processes, often involving supermajorities or referenda.	Can be accomplished through regular parliamentary procedures.
Judicial Review	Widely practiced, with courts actively involved in interpreting and applying constitutional norms.	Rare or minimal, with limited scope for courts to challenge parliamentary decisions.

This comparison highlights how the two concepts differ in their approach to legal authority and the role of legislative and judicial branches. If you need further elaboration or additional examples, feel free to ask!

Characteristics of Constitutional Supremacy

The doctrine of constitutional supremacy as form the parliamentary supremacy has following charadistinguished

(i) The Constitution is written.

(ii) The Constitution must be rigid.

(iii) There must be, in the Constitution, either express or implied declaration that this Constitution shall be the supreme law and any other law inconsistent with this Constitution shall be void.

(iv) The parliament is created by the Constitution itself and it exercises its legislative power being within the bounds of the constitutional limitations.

(v) There is distinction between constitutional law and ordinary law.

(vi) There is an independent body (court) created by the constitution to examine the constitutionality of legislation made by the parliament and any action done by the executive.

How can the Supremacy of the Constitution be maintained

Constitutional supremacy is never a matter of conventional sanction as is the case of parliamentary supremacy in Britain. Constitutional supremacy depends on the fulfillment of the following conditions:

1. **The Constitution of Bangladesh is a written one**. It specifically prescribes the manner how the power and functions of the organs of the government will be exercised.

2. **rigid Constitution :** It is a rigid Constitution. Because it can be amended only by two-thirds majority (Art. 142). Again, to amend some provisions like the preamble, the form of government (Articles 48 & 56) and Fundamental Principles of State Policy (Art.8) a more stringent method has been provided for. In these cases even after the bill has been passed by two-thirds majority, a referendum is essential. This rigidity, therefore, imposes restriction on the power of the parliament on the one hand and ensures distinction between ordinary law and fundamental law on the other hand.

3. Supreme law of the country: It is the Constitution and not the parliament which is supreme under the Constitution of Bangladesh. This is because, **firstly**, it is stated in the preamble that ". it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh."
Secondly, Article 7 states "All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of,

this Constitution. This constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

Thirdly, Article 26 states that "All existing laws inconsistent with the provisions of this part (i.e. fundamental rights) shall, to the extent of such inconsistency, become void on the commencement of this Constitution. The state shall not make any law inconsistent with the provisions of this part, and any law so made shall to the extent of such inconsistency be void.

Fourthly, Article 65 states that the legislative powers of the Republic shall, subject to the provisions of this Constitution, be vested to the parliament.

Thus it is clear that the Constitution declares itself to be supreme over the parliament.

4**. The declaration of Constitutional supremacy** in the Constitution implicitly presupposes the existence of an independent authority to examine the constitutionality of actions taken by the legislative and the executive. To that end the Constitution of Bangladesh has ensured in Articles 94 and 95 an independent organ-the Supreme Court. Under article 102 the Supreme Court has been empowered to scrutinise the governmental actions done in violation of fundamental rights. Again, under Articles 7 and 26 the Supreme Court exercises the power of judicial review i.e. to examine the constitutionality of any law passed by the parliament. And a glaring example to this is the historic Eighth Amendment case. In that case the Supreme Court held the Eighth Amendment to the Constitution unconstitutional and invalid.