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Directorate of Distance and Continuing Education

THEORY OF POLITICAL SCIENCE



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THEORY OF POLITICAL SCIENCE

Unit I:

State and its elements – relationship between Government and Society – Organs of Government – Legislative, Executive, and Judiciary.

Unit II:

Citizenship – meaning – rights of the citizen – Duties of Citizen – Fundamental rights – How rights are safeguarded.

Unit III:

Forms of Government – Unitary and Federal - Types of Constitutions – Written and Unwritten Flexible and rigid.

Unit IV:

Executives – Parliamentary and Presidential – Legislature – Unicameral – Bicameral – Judiciary – Judicial review – Rule of Law and Administrative Law.

Unit V:

Separation of Powers – Pressure groups – Political parties – Single Party, Bi-party, and Multi-party systems Reference

Books:

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Unit I:

State and its elements – relationship between Government and Society – Organs of Government – Legislative, Executive, and Judiciary.

Unit- I

STATE AND ITS ELEMENTS

History is the mother of all disciplines of study. Political Science is one of the branches of study. Political science deals with the study of the state. Modern government is a branch of Political Science. To study modern governments one should understand the salient features of the state. It is essential to understand the meaning, definition, structure, and functions of a state. City-states flourished in ancient Greece and Rome. The Greek term 'polis' denotes the English word city. When the cities were studied as states, the study of states came to be known as politics. Machiavelli, the author of the famous work called 'The Prince', used the term 'state' first in its modern sense.

Meaning and Definitions

From the Latin word 'Status' the word 'State' originated. The word 'status' denotes the position of a person in a society. In ancient times there were no differences between state and society. Machiavelli used the term in the modern sense. There are different definitions put forth by scholars. According to Bluntschi, a 'state is a politically organized people of a definite territory'. To Aristotle 'it is a union of families and villages aiming at a happy and honourable life'. Woodrow Wilson defined it as a 'people organized by law within a definite territory'. Garner defines a 'state as a community of persons permanently occupying a defined portion of territory and possessing an organized government'. Gilchrist also gives a similar definition.

Salient Features of State

Though there are differences in the structure of the state all types of states possess some common features. They are as follows. It is a political organization. It has a

definite territory. The state is the supreme organization within the territory. It should fulfill the basic elements. Its functions are based on definite principles and regulations. Government is an important element through which it functions. In Greece, city-states performed police duties. Hence the states were called 'Polis' in Greece. Their duties were limited. But in the modern period, States are entrusted to promote the welfare of their subjects and it is known as a *welfare state*. The state has four elements viz., the People, Territory, Government, and Sovereignty. If any one of the elements is absent it won't be called a state. It is entirely different from other institutions such as Society, Nation, and Government. The state is said to be the most powerful association functioning in society.

Elements of State

People

The state is a political institution functioning in society. Society is comprised of people. The people constitute the first element of a state. There can be no state without people. There is no specific number of people required to constitute a state. It may be around a few thousand or some million. The size of the population may contribute to the strength of a state. The quality of the people may also contribute to its strength. Plato, Aristotle, and Rousseau tried to fix the number of people required to promote the prosperity of a state. But in the modern condition, their estimation has become irrelevant because most of modern states crossed the limit.

Territory

Territory denotes the geographical area of a state. There should be a definite territorial boundary. In the past, some of the writers of political science did not consider territory as an essential element of the state. But modern writers insist that territory is also an essential element. The size and nature of the geographical area in a state contribute considerably to its strength and prosperity. The states like China, India, and the U.S.A have larger territories. San Marino, Monaco, and the Vatican are the best example

of states with very small territories. The territory does not mean the land area alone within a state's boundaries. It includes natural and mineral resources.

Sovereignty

The word 'Sovereignty' is derived from the Latin word 'superanus' meaning chief, ruler. It denotes supremacy. Sovereignty is the important feature that distinguishes the state from other associations. There are different definitions of sovereignty. It is unquestionable and unchallengeable political authority. There are two types of Sovereignty namely internal sovereignty and external sovereignty. Internal sovereignty denotes the unquestionable authority of the state within its territories. External sovereignty implies that there is no power or authority outside the state to control it. A state recognized by other states enjoys external sovereignty. Sovereignty is said to be the blood of a state. As there is no life without blood, there could be no state without sovereignty.

State and society

In an organized life of human beings, society and state are considered as essential human institutions. But they are different from each and other. The society originated earlier than a state. When humans led a settled life society emerged. Similarly, when they realized their protection and safeguard the institution called the state emerged. A society comprised of individuals concentrated on its own welfare and development. Hence the purpose of the society is wider than that of the state. Society is larger than the state. Sometimes a society may cross many territorial boundaries. For example when we refer to Hindu society, Christian society or Islamic society we include all individuals of concerned religion all over the world. For a society, territory is not an essential element like the state. Similarly, society doesn't need sovereignty. But state requires sovereignty to function. The rules of society are different from those of the state. Every citizen of the state could understand the rules of the state. Accordingly, they have to lead their life. But, the rules of one society could not be understood by the members of another society. So

rules of a state are clear. But the rules of society are not clear. Further, it explains that everyone should obey the rules and regulations of their state. If they violate, they have to undergo punishments. Observance of the rules of society is optional. The state functions according to the constitution. But there is no such arrangement in a society. Society regulates the internal and external activities of individuals. But state regulates only their external activities of its people.

State and Nation

State is different from nation. The word nation originated from the Latin word 'natus'. It means 'born'. Hence the word nation denotes people having common origin. Burgess defines nation as a population of an ethnic unity inhabiting a particular geographical area. There are some differences between nation and state. To define state four elements are necessary. If anyone element is absent, it cannot be called as a state. But nation does not need such elements. Nation emerges on the basis of the feeling of belonging to a group. The idea of oneness is essential for nation. But there is no such need for a state. Sovereignty is an essential element of state. It is not an essential element of a nation. There are differences between state and nation. In ancient period each city was a state in Greece. The states were called city-states. At present the concept of nation has gained importance. Many nations have developed into states. They are called nation-states. But this does not mean that the state and nation are the same.

State and Government

Both the terms are alike in usage. Generally people use the above terms equally. But there are differences between the two terms. The state is the whole. Government is part of it. State enjoys sovereign power. Government has no sovereign power. State is permanent. Government is temporary. It may be changed periodically through elections and other means. People could see the government through the people and institutions operating it. But state is abstract. State is solitary. There are no different forms of

structures. But there are different forms of Government such as Parliamentary and Presidential.

Theories Related to the Origin of State

There are various theories put forth by the scholars regarding the origin of state. The **theory of Divine Origin** which says that state is a creation of God. **The Force Theory** describes state as a creation of force. **Rousseau and Locke** described state as a product of the Social Contract. All these theories are said to be defective in different aspects. The **theory of Evolution** is said to be the accepted theory. This theory considers state as a product of evolution. There are also different views on the functions of state. The totalitarian concepts hold state above all other things. In a totalitarian state the individuals are for the state and the state is above individuals. In democracy the individuals are above the state and the state is for individuals.

Organs of Government

Government is the agency of the state. The state formulates policies and implements them through its organ called the Government. Every Government has three organs namely the Legislature, the Executive, and the Judiciary. The Government may differ from one state to the other. The form of Government and its performance has a significant role in the functioning of a state.

Unit II:

Citizenship – meaning – rights of the citizen – Duties of Citizen – Fundamental rights – How rights are safeguarded.

Citizenship

Meaning of citizenship

The population of state is divided into two classes-citizens and aliens. A citizen of a state is a person who enjoys full civil and political rights. Citizens are different from aliens. Citizenship carries with it certain advantages conferred by the constitution. Aliens do not enjoy these advantages.

Citizenship is the status of a person as a legitimate member of a sovereign state or nation. A person can have more than one citizenship. If a person does not have the citizenship of any country, he can be called *stateless*. When someone is located at the border of the state and no clear idea about his citizenship is found, he is called a *border-lander*.

Citizenship Act in 1955

To establish rules and procedures for acquiring and laying citizenship after the enactment of the constitution, parliament passed the **Citizenship Act in 1955**. So the subjects of Indian citizenship are divided into two parts.

- **First Parts** – relevant articles of the **Indian Constitution (Articles 5-11)**, and
- **The second** one is the **Indian Citizenship Act of 1955**.

Constitution Provision on citizenship:

The Constitution of Independent India was introduced on **26 January 1950**. Articles 5-11 of the Constitution discuss in detail who will be and under what conditions a person should be considered as an Indian citizen before the enactment of the Constitution:

At the time of enactment of the Constitution, i.e. 26 January 1950, all permanent residents of India shall be Indian citizens and those who have been residing in India for at least five years immediately before the enactment of the Constitution shall be deemed to be citizens of India (Article 5).

Acquisition of Citizenship of person coming from Pakistan:

Those who left Pakistan and settled in India before July 19, 1948, will be considered Indian citizens. But those who came to India after July 19, 1948, will also become citizens of India if they apply to the higher authorities before the date of enactment of the Constitution (January 26, 1950).

Rights

Apart from the provisions in these Parts, other sections of the Constitution, are also interspersed with provisions which give substance to citizenship. Provision to 'elections' and 'franchise' are especially important in the context of the long history of deprivation of political rights under colonial rule. It is significant that the Constitution made 'universal adult franchise' the basis of elections to the Lok Sabha and the Legislative Assembly of States. Article 326 of the Constitution conferred voting rights to all citizens above the age of 21 (changed to 18 by the Constitution 61st Amendment Act of 1988, with effect from 1 April 1989). It is crucial that the Constitution did not lay down any property and education criteria. Women, who in most western countries were enfranchised only in the present century, were also enfranchised on equal footing with men.

Duties of Citizenship

The constitutional provisions of citizenship and rights discussed so far might lead one to believe that citizenship is only about a legal status, defining who the citizens of India are and what are their rights or the conditions in which these rights might be enjoyed. A growing body of scholarship believes, however, that such a legal-formal

conceptualization of citizenship as status, is at best a passive notion, answering the question, who is a citizen, only partially. They would want us to move beyond these 'basic structures' (of equality and social justice) which the Constitution seeks to establish, to concentrate also on the notion of citizenship as a function of 'responsible' participation. Citizenship then, would transcend its passive connotation to become also a measure of activity. The basis of a citizen's sense of belonging to the national community, would come then from the attitudes and qualities of responsibility and virtues which distinguish her/him as a 'good' citizen. Responsible participation would manifest itself in diverse social situations viz., how citizens view or act amidst potentially competing forms of national, regional, ethnic, or religious identities; their ability to tolerate and work together with others who are different from themselves; their desire to participate in the political process in order to promote the public good and hold political authorities accountable; their willingness to show self-restraint and exercise personal responsibility in their economic demands and personal choices which affect their health and environment etc. Such citizenship qualities, it is said, make a democracy stable and governable. Various voluntary institutions and organisations within society including schools, environmental groups, unions and associations are regarded as inculcating these virtues of citizenship. By an amendment (42nd Amendment Act, 1976) a list of Fundamental Duties of Citizens of India was inserted in the Constitution in the form of Article 51A in Part IVA. The legal status of Fundamental Duties, which are addressed to the citizens is quite like the Directive Principles, which are addressed to the State, in the sense that there are no provisions for their direct enforcement. A general slant is, however, towards imbibing a sense of national commonality. It is thus a duty of every citizen of India to respect symbols of national unity like the national flag, the Constitution and the National Anthem and sources of common heritage like the 'national struggle for freedom' and the tradition of 'composite culture'. Citizens are also expected to preserve the 'sovereignty' and 'unity' of the country not only by pledging to 'defend' the country and offer 'national service' but also by spreading a feeling of 'common brotherhood'.

Citizenship of India : Constitutional Provision

- Citizenship is listed in the Constitution's Union List and hence falls within Parliament's sole control.
- The term "citizen" is not defined in the Constitution, however, Part 2 describes the numerous types of people who are eligible for citizenship (Articles 5 to 11).
- Unlike other parts of the Constitution, which took effect on January 26, 1950, these articles were put into effect on November 26, 1949, the day the Constitution was signed.

Article 5

- Citizenship was granted to all persons who were born and raised in India.
- Even people who were domiciled in India but not born there, yet had one of their parents born there, were considered citizens.
- Anyone who had lived in the United States for more than five years was also eligible to seek citizenship.

Article 6

- It granted citizenship rights to certain Pakistani migrants to India.
- Because of Partition and migration prior to Independence, Article 6 stated that anyone who migrated to India prior to July 19, 1949, automatically became an Indian citizen if one of his parents or ancestors was born in India.
- Those who arrived in India after this date, on the other hand, had to register.

Article 7

- It Provided certain migrants to Pakistan with the right to citizenship.
- Those who migrated to Pakistan after **March 1, 1947** and later returned on resettlement permits were included in the citizenship net.

- The law was more sympathetic to those who migrated from Pakistan and were referred to as refugees than to those who were stranded in Pakistan or went there but decided to return soon.

Article 8

- Provided certain persons of Indian origin residing outside India with the right to citizenship.
- Any Person of Indian Origin residing outside India who was born in India, or either of his or her parents or grandparents, could register as an Indian citizen with the Indian Diplomatic Mission.

Article 9

- Article 9 states that if a person voluntarily obtains the citizenship of a foreign state, he or she will no longer be a citizen of India.

Article 10

- Article 10 states that any person who is or is deemed to be a citizen of India under any of the preceding provisions of this Part shall continue to be such a citizen, subject to the provisions of any law made by Parliament.

Article 11

- It gives Parliament the authority to make any provision regarding the acquisition and termination of citizenship, as well as all matters pertaining to it.

Unit III:

Forms of Government – Unitary and Federal - Types of Constitutions – Written and Unwritten
Flexible and rigid.

FORMS OF GOVERNMENTS

Unitary and Federal

A government in a state has many powers. The powers are exercised by the government for the welfare of the people. For the exercise of powers the government is designed in a particular form. There are two types of government. They are unitary and federal government. If there is one national or central government and all the powers are enjoyed by that government it is called unitary government. If the powers are divided into two as national and regional and entrusted to two sets of governments it is federal. Federal form of government is consisted of one central and many state governments. For federal government India is the best example. In today's world, countries are having either unitary or federal form of government.

Unitary Features

A unitary state has organized government under a single authority. All governmental powers are exercised from one center. The central Legislature, Executive and Judiciary are supreme. They do not share powers with any other agencies. There may be provincial bodies as local government. In a unitary state the legislature is supreme. All laws needed to the whole country are enacted by it. Unitary form of government is suitable for small countries like Britain and France.

Merits

Unitary form of government is stable. It has unity. Only one law will be imposed throughout the country. All citizens are coming under one government. So they are loyal

to the government. Faith of the citizens is distributed. Policies are decided and executed from one point. In case of any need for change, the central government can make them without difficult. This ensures flexibility. Flexibility enables the people to have the changes desired by them. Administration is easy in this form of government. Execution of the law is very easy. In a federal form of government, the central government may have to consult the states on many matters of importance. Decisions cannot be taken quickly. It is easy to understand the unitary form of government by an ordinary man. It is less expensive. The expenses of governmental machinery are limited. It is the highest advantage. It is easy to distribute the responsibilities in the unitary form of government.

Demerits

Unitary form has one central government. It may leads to autocratic rule. There is a possibility of misusing the position and power. In unitary form of government, those who reside at a distant place may not catch the attention of the government. Regional interests and ideas may not be represented correctly. The interests of the provinces may be left unattended. People from distant places cannot initiate anything. Local talent is not given opportunity in such governments. In case of any internal disorder, or civil war, the people retaliate or rebel against any situation, the target will be the central government. On such occasions, there is danger for the survival of the government. The administration of the whole country may be easily shaken by a revolution at the capital. Unitary form of government is not suitable for a big country like India. It is suitable to small countries.

Federal

The term federation is derived from the Latin word foedus. It means treaty or agreement. A federation is an association. A federation has certain essential features. First of all, there are two sets of governments. There is a national government and many regional governments. There is a written constitution. The constitution contains a clear division of powers between the federal government and regional governments. Powers of national interest are given to the federation government. For example, defense, currency,

foreign policy etc., are matters of national importance. These are normally given to the central government in a federation. Police, health, education etc., at the regional level are given to the regional governments. Generally the states are given more powers in a federation. In a federation, the constitution is supreme. The U.S.A, Switzerland and India are some examples.

Merits

A federation provides scope for states irrespective of their size to come up together and develop in the main stream. In a federation, there is scope for autonomy of the local units. Central and regional governments' jurisdictions are demarcated by the constitution. The jurisdictions of the units are protected by the constitution. Hence local interests may be given importance by units. Local leaders have chance to participate in the administration of the units. Since powers are distributed federal form of government avoids autocratic rule. It is suitable to big countries like India which has diversity in race, religion, language and culture could maintain unity in diversity by federal set up. There are possibilities for political experimentation.

Demerits

To run the government expenses are high. The structure is complex. The process of decision-making is difficult. There may be possibilities of controversies between the central and state governments. The loyalty of people is divided. Here the administration of the state governments should be effective than the central government. When two different political parties become ruling parties at the center and states, problems would rise. Regionalism prevails in federal form of government. And other elements would develop against unity.

Certain constitutions with federal features are called federal constitutions. Certain constitutions with unitary features are called unitary constitutions. The constitution of India is a federal constitution with many unitary features. Hence it is called Quasi-

Federalism. Usually, the federal system is suitable for a big nation with people of different languages and religions. However, too much diversity may create problems of unity. The suitability of federal system or unitary system depends upon the nature of the people and their political culture. Even the federal features of one constitution may differ from those of the others to some extent.

Quasi-Federal Constitution

A constitution, if it possesses more federal features it is classified as a federal constitution. Similarly, if a constitution possesses more unitary features it is classified as a unitary constitution. If a constitution possesses both federal and unitary features it is called quasi-federation. The Indian constitution is a good example for quasi-federal. India has two sets of government. There is division of powers. The constitution is supreme in India. Besides these federal features, there are many unitary features. India has one constitution. India has single citizenship. The residuary powers are given to the union. The emergency powers enable the union to control the states. Hence India is called a quasi-federation.

Merits

A quasi-federation enables the union of a number of units called the states. It provides independent powers to states and at the same time ensures unity. It is a different experiment which suits the needs of a country like India. The experiment helps in uniting people having heterogeneous elements. Secessionist tendencies are considerably avoided.

Demerits

The Indian Constitution is neither federal nor unitary. Hence it loses the advantages of both the forms. The states in India are denied many rights which are enjoyed by their counter-parts in a federation. There is a demand for state autonomy. Sometimes this leads to confrontation. The people are confused by this system.

Parliamentary and Presidential form of Governments

On the basis of the relationship between the legislature and the executive, governments are classified into parliamentary form of government and presidential form of government. In parliamentary form of government, the executive is responsible to the parliament. Hence, the parliamentary system may also be called cabinet system of government. The cabinet enjoys real executive powers. Its members are members of the parliament. In presidential form the president has no connection with the parliament. He is not responsible to it. The U.K is a classic example for parliamentary form and U.S.A is presidential.

Parliamentary Form

Features

In a parliamentary form of government there are two types of executives. One is nominal and other one is real. United Kingdom and India are the best examples of parliamentary form of government. In U.K., the king or the queen is the nominal head. In India the president is the nominal head. All powers exercised in the name of the nominal head. The real executive power vested in the cabinet. The prime minister is the real head of the state as well as the cabinet. The real executive is drawn from the parliament. Only members of parliament can be ministers. A nominal executive is not a member of the parliament. For example the British queen is not a member of the parliament. In parliamentary form there is fusion of powers. The legislature and executive are fused. The prime minister occupies an important position. He is the head of the cabinet. He is the leader of the parliament and leader of the majority in the lower house. Another important feature of this form is the political homogeneity of the members of the cabinet. All the ministers are from the ruling party. This helps them to function well. In this form, the cabinet is responsible to the parliament. By a no-confidence motion the lower house of parliament can send the cabinet out of power. The cabinet members have to attend the meetings of the parliament and answer the questions of its members. The government is

formed by the political party which enjoys majority in the lower house. In parliamentary form there is an opposition party which plays an important role in checking the cabinet.

Merits

Parliamentary form of government develops good relationship between the legislature and executive. The cabinet government is responsible to legislature. Members of the executive answer all the questions raised by the members of the parliament. So they are responsible to the parliament. The parliamentary form of government is flexible. Able hands are identified and entrusted responsibilities. So they could work for the betterment of the people. Executive i.e., the cabinet is very careful in taking decisions.

Demerits

The parliamentary form of government violates the theory of separation of powers. Prime minister assumes more powers in parliamentary form of government. Cabinet assumes more power and become dictatorial. If any inexperienced person assumes the responsibility in the cabinet they prove themselves inefficient. In countries having multi-party system like India, there is the problem of instability of cabinet. Majority party always dominates in the cabinet. They never care for the opposite party.

Presidential Form of Government

Salient Features of the Presidential form of Government

In presidential form of government has one elected executive. The U.S.A is a good example for presidential system. The executive members are not members of the legislature. Their tenure is a fixed one. The executive is not responsible to the legislature. The legislature cannot remove the executive from power by a no-confidence motion. In parliamentary form there is fusion of powers. The legislature and executive are fused. In presidential form, there is separation of powers. The executive and legislature are separated. The ministers are subordinates to the president. He can appoint and dismiss

them at his will and wish. So the presidential form of government is different from parliamentary form of government in many aspects.

Merits

The tenure of the executive is fixed. The executive is stable. The executive do not share power with anybody. So executive can take firm and prompt decisions. At the time of an emergency, the executive can act quickly. President enjoys the power of choosing the ministers in presidential form. Party is not involved in it. He can be independent in taking decisions. It is suitable to countries having multi-party system.

Demerits

Separation of powers is adopted in presidential form of government. Hence, cabinet is not having any relation or responsibility to the parliament or legislature. When the bill comes for discussion in the parliament, it is very difficult for the cabinet to get the bill passed by it. To implement the policies cabinet has to tackle the legislative body. In presidential form of government, president has the highest power. So he may exercise dictatorial powers. His efficiency may reflect on the whole administration. Presidential form of government is a rigid one. In parliamentary form of government, opposition parties check the wrong doings of the ruling party.

Both form of government has certain merits and demerits. The suitability of any system of government depends upon the people and the country concerned. For example, Britain has proved itself suitable for parliamentary form and the U.S.A has found presidential form.

Quasi-Presidential Form

Some features of a constitution give prominence to parliament. The parliament controls the executive. Such a form of government is called parliamentary form. Some features of a constitution give prominence to executive. The presidential form of

government is powerful. This form of government is called the presidential form. A constitution which contains important features of both the above forms is called quasi-presidential. In this form of government there is an office of president with some important powers. There is also a premier and his council of ministers responsible to the parliament. The president shares some powers with them. He is neither very powerful like the American president nor powerless like the British queen. France is a good example for this form of government.

Features

In quasi-presidential form of government the president is directly elected by the people. He enjoys some independent powers. He could not be controlled by any one while he exercises these powers. In this form of government, prime minister and a council of ministers are functioning under him. They are responsible to the parliament. They assist the president in certain matters. The president has emergency powers also.

Merits

In quasi-presidential form of government for example in France the president is directly elected for seven years. He cannot be removed easily from power. The parliament is given importance as the prime minister and his council of ministers are responsible to it. The problem of multi-party system is avoided to a considerable extent. It has both the features of parliamentary form and presidential form. President is under check as he has to exercise some powers along with ministers.

Demerits

The office of the prime minister is not very important. President presides the meetings of the council of ministers. Parliament is not given due importance. Even the parliamentary contract over budget is limited. Quasi-presidential form of government is difficult to understand by the common people. This system will not be suitable to all nations except with particular social and political conditions.

CONSTITUTION

State functions according to certain basic principles and rules. A constitution is the collection of such basic rules and principles. In modern era, western countries brought forth the concept of ruling a state under a constitution. The rise and growth of constitutionalism is discussed in this part.

The Development of Constitutionalism

In the history of the development of constitutionalism there are seven stages. The first constitutional state was the Greek state. The Greek constitutionalism was the first stage. The Greek state was a city-state. Each city was a state. They knew city states only. In the Greek city state all were not citizens. Women, traders, artisans and slaves were not citizens. But those who were citizens attended senate meetings. Roman constitutionalism was the next stage. The city-state of Rome developed in the Roman Empire. Earliest it was a monarchy by 500 B.C.E it became a republic. Constitutionalism in the middle-ages is the next stage. After the fall of Roman Empire feudalism was the main feature of the society. The political system was organized on the basis of land tenure.

Constitutionalism in England was the fourth stage in the development of constitutionalism. At the decay of feudalism, despotism of the king emerged in many states. But in England particularly after the Glorious Revolution of 1688 the concept of constitutionalism was given importance. In England the control of the government was transferred from the hands of the monarch to the parliament. These changes were confirmed by statutes passed by the parliament. The habeas corpus act gave protection to citizens from false imprisonment. The establishment of rule of law made Britain a constitutional state. Many states started to try the English model. The influence of American and French revolution marked the fifth stage of development of constitutionalism. The declaration of independence made by the Americans at the time of

American war of independence was a great development. The declaration of Independence declared the unalienable rights of citizens. It also stressed the importance of the consent of the people. The constitution of the USA which came into effect in 1789 was the first written constitution. The French revolution also contributed to the development of constitutionalism. The French assembly of 1789 drew up the declaration of the rights of man and citizen. It marked another mile-stone in the development of the modern constitutional state.

Constitutionalism during the First World War was the next stage. By 1914, constitutional experiments had been tried in every state of Europe. In Russia there was duma, the legislature which was partially elected. The USA, Britain, Canada, Australia and New Zealand had constitutional governments. Constitutionalism had spread even to South America. Hence it was adopted across the world. The seventh and last stage there was reactions against constitutionalism in some of the states. By the revolution in 1917 Russia became socialistic and declared the government as the dictatorship of the proletariat. In Germany Nazism gained momentum and Hitler captured power. In Italy Fascism and fascism were under leadership of Mussolini. Both Nazism and Fascism were anti-democratic. At the end of the Second World War these anti-democratic forces were abolished. Many new independent states were born. Many of the Afro- Asian states became independent and adopted Republican constitutions.

Concepts of Constitutionalism

Constitution helps the smooth functioning of the government. Constitution is the means and end. For example the Constitution of India ensures liberty, equality and fraternity to all her citizens. To achieve these is the end. In which the Constitution of India is the means. This view is the main content of the western concept. This was advocated by writers like Thomas Paine, James Bryce, Herald J Laski, Herman Finer and others. The Soviet concept of constitutionalism was different from this. Soviet Russia was a Communist country. For them, the establishment of scientific socialism is the end.

To achieve the end the constitution is the means for them. In western concepts the constitution is both end and means whereas in the communist concept the constitution is only the means and not the end. The western concept considers the constitution as the sacred one. The communist concept does not so. It is based on the ideology of Marxism-Leninism. After the Second World War many Afro- Asian countries became independent states. They were called as developing countries. They wanted to have a democracy like UK and the USA. But at the same time, to achieve economic equality they adopted some aspects of western concept and some aspects of social equality. So their constitutions are the synthesis of both concepts. Some countries have made experiments at the cost of both and suffer under the military or theological rule.

Content of Constitution

State functions according to the constitution. Constitution contains the aims and objectives of the state. Government is one of the basic and essential elements of state. A government has three kinds of functions namely legislative functions, executive functions and judicial functions. The legislature, the executive and the judiciary are the three organs of a government. These organs perform the duties of a government. Constitution laid down the responsibilities of these organs. Constitution demarcates what they should do and what they should not. But there should be co-ordination among the three branches of a government. Constitution tries to ensure such a co-ordination. Government should not misuse its power. Government functions within the constitution. Constitution guarantees to the rights of the people. Constitution ensures safeguard to the people. Some of the constitutions contain a list of fundamental duties of the people.

Features

There are many salient features. According to political thinkers certain features are essential for a good constitution. The rules in a constitution are called articles. These articles should be clear. Ambiguity in the articles would lead to unwanted confusion. A constitution should be as precise as possible. But it should reflect the public opinion and

political culture. The political ideas of a nation may change with the change of time. Hence a constitution should be flexible enough to make change in any of the articles of a constitution. Such changes could be brought out by constitutional amendments. It is based on the nature of the state concerned.

Merits

If a state functions under a constitution the people can make a periodical assessment of the political achievements of their nation. Constitution prevents misuse of power. The weak and meek are rightly protected from the mighty. Constitution enables political education of the people. In the present context it has become almost impossible to rule a state without a constitution. Even in dictatorships constitution has become an essential instrument.

Kinds of Constitutions

Constitutions are classified into two types. They are written and unwritten constitutions. The constitution of the United Kingdom is a product of evolution. It has grown up due to certain events of history. It is not in written form.. It is called an unwritten constitution. It is the only unwritten constitution in the world. A constitution cannot remain unchanged. It has to change according to the change of time. Hence a constitution which does not accommodate changes easily is called a rigid constitution. A constitution which centralized powers in the hands of a single government is called unitary constitution. A constitution which provides two sets of governments and division of powers is called a federal constitution.

Kinds of Governments

There are different forms of government in the world. In a parliamentary form of government, the prime minister and the cabinet are responsible to the parliament. In a presidential form of government the president is more powerful and independent of the parliament. India and the United Kingdom are examples for parliamentary form of

government and USA is an ideal example for presidential system. France was a system combining the features of parliamentary and presidential systems. It is called quasi-presidential system. In Switzerland there is a strange system which is called plural government. It tries to avoid the demerits in other systems.

Origin and Development

Each constitution has its own evolution. The constitution of England had grown in different periods due to some events. The American constitution was drafted in the Philadelphia Convention. Different constitutions of France were drafted by the French National Assembly. The Indian constitution was drafted discussed and adopted by the Constituent Assembly of India. Thus the constitutions originate in different nations under different circumstances.

The development of a constitution is an essential aspect of a political system. Constitutional amendments enable constitutional development. The articles of a constitution are in written form. However to fill the gaps conventions are established. Some of the constitutions provide for judicial review. Under such constitutions the judiciary has the power to interpret the constitution and also to declare a law null and void. The judicial decisions and interpretations also enable the development of a constitution.

The decline of a constitution

A constitution functions for the welfare of the people. If a constitution could not achieve its objectives it may decline. If the constitutional institution break down that may also result in the fall of the constitutions. A constitution could not achieve things on its own. It is the responsibility of the persons concerned to operate it and achieve.

CLASSIFICATION OF CONSTITUTIONS

Constitution is the basic aspect of a state. Each constitution has certain important features. Some of the features may be unique to a constitution. Some features may be common to certain constitutions. For the sake of convenient study constitutions may be classified into different kinds. Broadly constitutions are divided into two i.e., written and unwritten and it is further divided into rigid and flexible.

Salient Features of the Written Constitution

It is a product of thoughtfulness. A special body of representatives called constituent assembly or convention drafts a document, discussed and passes it in its meetings. Hence, it is prepared in a particular period of time. In which rules called articles are in written form. The articles are numbered and arranged in numerical order. It is in the form of document or documents. Written constitution is supreme always. To change or add anything, there is a specific procedure known as amendment. Examples for written constitution are USA, India, France, Switzerland, Germany, Canada, Australia and so on.

Merits

A written constitution is clear. It is easy to understand. It describes the powers and functions of each organ of the government. One organ of the government cannot dominate the other organ of the government. It is very difficult. Written form of constitution is suitable to federal form of government. It demarcates the power between the federal government and units. The powers and rights of states are also protected. The rights of the people are guaranteed in the constitution. Changes are made by amendments. As it is a product of deliberation, it is meant for the welfare of the people. No one can misuse it. It is suitable to the country which is educationally backward. In the form of written constitution the domination of political parties could also be checked to some extent.

Demerits

Since it is the outcome of the particular period it reflects the need and feelings of that period. It is a product of deliberation. Hence it is artificial. It is drafted by a constituent assembly. So it is considered as a product of a few who could dominate at that time in the assembly. A written constitution accommodates changes slowly. The articles of a written constitution are interpreted in different manner by legal experts and judges. It leads to confusion. There is limited scope for development of healthy conventions.

Unwritten Constitutions

An unwritten constitution is not seen in the form of a written document. It is not enacted by a body of persons after deliberation. It is a product of evolution. It has grown up over a period of time. Conventions customs and usages are important in an unwritten constitution. The constitution of England is the best example. It has evolved over a period of time. Many important events and political changes in England enabled its evolution. It has fairly a good system of democratic government without a written constitution. It is because of the love for old institutions.

Salient Features of the Unwritten Constitutions

It is not a written document. Constituent assembly has not involved in its preparation. Conventions customs and usages form the core of the constitution. In this type of constitution parliament is supreme. As there is no written document all the laws of the parliament provide the powers of constitutional institutions. There is no procedure for constitutional amendment. There is nothing called constitutional amendment. There is no distinction as constitutional law and parliamentary law.

Merits

Being a product of evolution, an unwritten constitution has grown automatically according to the circumstances. It is not a result of deliberations of some members during a specific period of time. Its strength lies in the popular support extended to it. Traditions earn the respect and love of the people. It is flexible. Any change could be made just by

passing an Act. Whenever people require change, it was easy to make in it. Hence people love and trust it. As there are no written articles, there is no scope for different interpretations by lawyers and politicians. So, unwritten constitution is free from subjectivity.

Demerits

An unwritten constitution is suitable to a country, where people love their tradition. Otherwise, this constitution is not at all suitable. As an unwritten constitution accepts changes easily, There may be a possibility for political misuse. For the successful operation of an unwritten constitution, the leaders should respect conventions, customs and usages. If they fail to do so, the constitution will decline and fall. It is not applicable to federal form of government. Powers are not distributed in unwritten constitution. Fundamental rights are not guaranteed in an unwritten constitution.

Estimate of the Classification of Constitutions

It is argued that there could be no constitution fully unwritten. In England, there are many written documents such as Magna Carta and Bill of Rights. All the acts of the parliament are in written form. It is obvious that there is no single written document similar to the written form of constitution. Similarly there could be no constitution fully written. Even in a written constitution, unwritten constitutions play a significant role. Some conventions are followed in the U.S.A and India. Hence it is pointed out that the classification as written and unwritten is for the comfort of administration.

Rigid and Flexible

A constitution regulates the administration of a state. State consists of people. People may change their ideas over a period of time. Sometimes changes may be needed due to the development of new happenings in the society. Hence, a constitution cannot be fixed one. It has to change itself to suit the needs of time and the people. Based on the acceptability of changes by constitutions they are classified as rigid constitution and

flexible constitution. A constitution which accepts changes easily is called flexible constitution. A constitution which does not accept changes easily is called rigid constitution.

Rigid Constitution

Salient Features

In a rigid type of constitution, the constitution is supreme. Every organ of the government and institution of the society draws its powers from the constitution. Constitutional law is different from ordinary parliamentary law. There is a separate procedure to pass a constitutional law. Any amendment bill could be passed in the legislature only with the support of a special majority. In some constitutions, a constitutional amendment should get the approval of the people also. Any change through an amendment could not be made without detailed discussions.

Merits

A rigid constitution is stable always. It does not accept the changes easily. If the constitution accepts changes it may lose the love and respect of the people. A rigid constitution prevents politicians from misusing it through changes aimed at personal advantages. Rigid form of constitution protects the rights of the states in a federal form of government. A rigid constitution prevents the government from involving the rights of the people. The rights of minorities are also protected better in a rigid constitution.

Demerits

A rigid constitution refuses easy changes. So there is a possibility for its failure. As changes are not easy people may hate a rigid constitution. Especially radicals don't like rigid constitution. Possibilities of revolution or popular uprising against the constitution are more in a rigid constitution. Even minor constitutional changes are difficult. The procedure for amendment is difficult in rigid form. Sometimes a minority

could the will of the majority. For example, 2/3 majority is essential to pass a constitutional amendment bill. Even if there is the support of 55 percent of members of a legislature the bill may not get through. Similarly in the U.S.A legislatures of fourteen states could prevent the wishes of the thirty six states.

Flexible Constitution

Salient Features

A flexible constitution accepts changes easily. In a flexible constitution, there may not be any difference between a constitutional law and ordinary parliamentary law. For example, in England there is no such difference. Hence any change could be made through an ordinary act of the parliament. It is to be noted that provision for financial assistance to a program and abolition of monarchy could be done by ordinary acts. In a flexible constitution, there may be difference between an ordinary law and parliamentary law. But there may not be any difference in procedure of enacting them. There may not be any condition of special majority. The constitution of New Zealand is an example for this.

Merits

Changes are easy in flexible constitution. So it develops better. There are no complications to carry out the amendments. People may understand and like flexible constitution. There are limited possibilities for revolution. The will of majority could prevail over that of the minority easily.

Demerits

Frequent changes are easy in flexible constitution. People may lose their confidence. Frequent changes may lead to instability of the constitution. Persons in power may misuse a flexible constitution to suit their political ends. It may not suit to the federal form of government. Rights of the states may not be protected. The rights of the people

also meet the same situation. The constitution loses its importance in this form of constitution.

Mixed Constitution

Some constitutions are having both rigid and flexible features. It is difficult to draw an exact line between a flexible constitution and a rigid constitution. The procedure for constitutional amendment is not the same in all rigid constitutions. A constitution may possess combined feature of flexibility and rigidity. The Constitution of India is an example for this. In emending certain aspects there is a difficult procedure. Such a special procedure ensures rigidity. There are some aspects which could be easily amended. This reveals the flexibility of the constitution.

Estimate of this Classification

The classification based on the adaptability of constitution is not absolutely right. Some of the constitutions prescribe a difficult procedure of amendment. In practice it is done easily. For example in socialist countries like china the decisions of the communist party are easily carried out. Hence it may not right to classify china by looming at the formal procedure of amendment. Even in India constitutional amendments are easily done due to the majority of the ruling party in the parliament. In Switzerland changes are made by enacting ordinary laws. Hence this classification is also said to be not thoroughly correct.

Unit IV:

Executives – Parliamentary and Presidential – Legislature – Unicameral – Bicameral – Judiciary
– Judicial review – Rule of Law and Administrative Law.

Executive

India is a Democratic Republic. It is a Union of twenty eight States and seven Union Territories. Being a Union of States, it has two levels of governance. The Government at the Centre is called the Central or Union Government and the Government at the State level is called State Government. The Union Government has three organs – the Legislature (Parliament), the Executive. (The President, the Prime Minister, the Council of Ministers), and the Judiciary (Supreme Court). In this lesson, we shall study about the Executive part of the Government at the Centre as well as in the States.

Functions of the Executive

An executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature.

The executive is often involved in the framing of policy. Some countries have presidents, while others have chancellors. The executive branch is not just about presidents, prime ministers and ministers. It also extends to the administrative machinery (civil servants).

Types of Executive

There are various types of political systems in which different executives command different political sectors:

- **Presidential system:** The president is the Head of the state as well as the head of government. In this system, the office of the president is very powerful, both in theory and practice.

Countries: United States, Brazil and most nations in Latin America.

- **Semi-Presidential Executive:** Under the system of Executive Presidency, people directly elect the President. It may happen that both the President and the Prime Minister belong to the same political party or to different political parties.

Countries: France, Russia, Sri Lanka

- **Parliamentary System:** The prime minister is the head of government. Most parliamentary systems have a president or a monarch who is the nominal Head of state. The role of the president or monarch is primarily ceremonial and the prime minister along with the cabinet wields effective power.

Countries: Germany, Italy, Japan, United Kingdom as well as Portugal.

Union Executive and State Executive:

The executive is growing in importance as it provides leadership to the government. With the ever-widening sphere of its activities, the executive has naturally become the most important branch of government formally, supremacy may rest with the legislature but in practice, it is the executive which is all-important. The Ministries and the department helps running the government successfully along with the bureaucracy and the legislature.

The executive is an important part of Indian Polity which finds itself as an important subject and it is important for aspirants to learn about it for three stages of the UPSC exam – Prelims, Mains and Interview.

This article will mention briefly about the Indian Executive and candidates are provided with the linked articles where they can read about the executive as separate topics.

Union Executive (Article 52-78)

The union executive of Indian polity is a part of the political executive, that comprises three important posts:

1. President (Article 52-62)
2. Prime Minister & Council of Ministers (Article 74-75 & Article 78)
3. Attorney-General of India (Article 76)

State Executive (Article 153-167)

The state executive of Indian Polity is also a part of the political executive that comprises three important posts:

1. Governor (Article 153-161)
2. Chief Minister & Council of Ministers (Article 164-167)
3. Advocate-General of State (Article 165 and 177)

Aspirants are advised to refer to the linked articles to clearly understand about the union and state executive that can help them build their political science subject strongly.

LEGISLATURE

Legislature is a law making body in the state. It is called in different names such as parliament, congress, etc. Once the legislatures were regarded with sanctity and they had a great respect from all sorts of people. But now they have lost that sanctity. There are some factors which changed the position of the legislature.

Meaning and Functions

Legislature is commonly known as parliament. In Britain and India it is called as parliament. In U.S.A it is called as congress. The soviet legislature was Supreme Soviet and Swiss parliament is called the federal assembly. The common function of a legislature is to make laws. As its name varies from country to country, its functions also vary.

Functions of a Legislature

The most important function of a legislature is to make laws. Law is the expression of the will of the people. The legislative assembly is consisted of the representatives of the people. They represents the will of the people in the legislature. Thus the legislature enacts laws to fulfill the will of the people. The legislature may repeal an unwanted old law. Or it may change a defective existing law. For law making there is a procedure. It has to be strictly followed. In U.K the executive has great role in framing laws. All important bills are prepared and introduced by the cabinet. In presidential form of government, the executive has limited role in law-making. The president can influence the legislature only through his party members on whom he has influence. Thus the main function of the legislature is to legislate. In connection with the function of legislation the legislature has the function of taking care of the future of the people. Laws have to pass through the chambers of the parliament. During deliberation the members discuss the merits and demerits of a bill. Deliberation throws light on merits and demerits of the proposed laws. Such deliberations made the people to understand the content of the proposed law.

Administrative Functions

The legislature is not given any direct role in administration. However, it has the responsibility to supervise the executive. In a parliamentary government the cabinet is responsible to the parliament. The control of the parliament is direct and effective. The

members of the parliament can question the ministers and if a no-confidence motion is passed in the lower house the cabinet is removed from power. In a presidential government the legislature does not exercise direct control. However, it exercises some form of control. For example, the president of U.S.A is not responsible to the congress. He does not attend the meetings of the congress and his secretaries cannot be questioned or removed by congress. However, the treaties concluded by the president are subject to the approval of the senate. Appointments made by the president are subject to senate's approval. Moreover, both in parliamentary and presidential forms, the legislature holds the purse. The executive can spend money and levy taxes only with the consent of executive, the legislature can modify the budget. Thus the legislatures perform administrative functions also.

Judicial Functions

In many of the governments, the parliament is bicameral. Usually the upper house of the parliament is provided with certain judicial powers. In U.K the House of Lords is the upper house. It is also the highest court of appeal. In U.S.A the senate enjoys certain judicial powers. For the trial of the American president the senate acts as a court. In France the constitution of 1875 empowered the senate to act as a court while trying cases against the president and the ministers. In Switzerland the judges are elected by the federal assembly. In USSR the Supreme Soviet elected the judges of the supreme court.

Other Functions

Apart from legislative executive and judicial functions the legislature has certain other functions. In many governments the legislature has the power to change the constitutions. In U.K as there is no written constitution, the parliament is supreme. In U.S.A the congress plays an important role in making constitutional amendment. In Switzerland the amendment bill. But the amendment bills are approved by the people in a referendum. In USSR the supreme soviet had full powers in matters of constitutional amendment. The legislatures perform electoral functions. The British parliament has the

power to decide the question of succession of the crown. In US presidential election when no candidate gets the needed majority the house of representatives elects the president from among the candidates with three highest votes. In Switzerland the federal council is elected by the federal assembly. In USSR the Supreme Soviet elected the presidium. In India the members of parliament have votes to elect the president and the vice-president. In this manner the legislatures enjoy constituent and electoral powers.

Types of Legislature

Generally there are two types of legislature namely uni-cameral legislature and bi-cameral legislature. Uni-cameral legislature has only one house or chamber. Bi-cameral legislature has two houses. This is a traditional classification. The legislature of People's Republic of China has only one house. Many of the legislatures of Indian states have only one chamber. The American congress, the British parliament, the Swiss federal assembly and the Indian parliament are some examples for bi-cameral legislature.

Uni-Cameral Legislature

Features

Uni-cameral has one chamber. The whole country is divided into different constituencies and their representatives are elected. There is only one kind of vote. Since uni-cameral has one house, it enjoys all legislative powers provided by the constitution.

Merits

Uni-cameral legislature has simple structure. So people can understand easily. The process of law-making is simple and quick. There is no problem and delay due to any legislative deadlock. It is less expensive.

Demerits

Uni-cameral has full power. It could make any law. It will lead to autocracy. There is no opportunity for adequate discussion. Hence laws may be made in a hurry. Ruling party in the Uni-cameral legislature will be able to legislate at its will and wish. It will not be applicable to big nations. Uni-cameral legislature is not suitable to a federation.

Bi-cameral Legislature

Features

Bi-cameral legislatures are consisted of two houses. They are called the lower house and the upper house. They enjoy various powers. There may be differences in their tenure and mode election. In federations, the upper house is used to represent the units called states. There may be provision for nomination of members to the upper houses.

Merits

The presence of an upper house gives chances for discussion of the bills. Hence making quick laws may be avoided. In a federal form of government, the upper house enables the representation of the units. Intellectuals who are not in politics can enter in the legislature by the provision of nomination. The permanence of the upper houses avoids any possibility of vacuum.

Demerits

In bi-cameral legislatures law making is not quick and sometime unnecessarily delayed. Since it has two houses expenses are more than the uni-cameral legislature. Legislative deadlock creates confusion and the common people get confused. Provision for nomination of members to upper house enables back-door entry of members without meeting the people. Most of the upper houses take a conservative stand and obstruct progressive measures.

Both the legislatures are having advantages and disadvantages. Their utility depends upon the constitution. The American senate plays a vital role in the U.S.A. It is said to be the most powerful second chamber in the world. The bi-cameral legislature has many advantages.

JUDICIARY

India has established a judicial system that is integrated. The Supreme Court is at the top of the system, followed by the High Courts and other lower courts. The provision of judicial review, which allows courts to examine the constitutionality of laws passed by the legislature and executive actions, is an important feature of the Indian judicial system. Some new features of the Indian judicial system have emerged as a result of its work, such as Public Interest Litigation and Judicial Activism. All of this will be discussed in the following sections.

THE SUPREME COURT

In India, a federal government has been established. The presence of a supreme court is an important feature of a federal government. As a result, India's Supreme Court is at the pinnacle of the legal system. It is India's highest court of appeal.

THE HIGH COURT

Every state in India has a High Court established by the Indian Constitution. However, there are times when a single High Court serves two or more states. Because India has an integrated judicial system, the High Courts are ranked after the Supreme Court.

Subordinate Courts

The Court of the District Judge, the Court of the Assistant Judges, the Court of the

Sub-Judges, the Courts of Munsifs, and the Court of Small Causes are the subordinate courts that work under the High Courts. The District Judge's Court is the highest court in a district. The Governor appoints the District Judge after consulting with the state's High Court. When dealing with civil cases, he or she is known as the District Judge, and when dealing with criminal cases, he or she is known as the Sessions Judge. The High Courts have been given the authority to supervise the District Court and other lower courts.

The principal role of the judiciary is to protect rule of law and ensure the supremacy of law. It safeguards the rights of the individual, settle disputes by the law and ensures that democracy does not give way to individual or group dictatorship. To be able to do all this, the judiciary must be independent of any political pressures.

JUDICIAL REVIEW - RULE OF LAW AND ADMINISTRATIVE LAW

Introduction

The 'judicial review' means examining the laws passed by the parliament and implemented by the executive. Judiciary has this right. In which judiciary determines whether the laws passed by the parliament are in accordance with the constitutional provisions or not. Judiciary has the power to declare a law null and void. It will happen, in case any law of executive order under dispute contravenes any provisions of the constitution. This is called judicial review. The power of judicial review is not vested with the judiciaries of all the countries in the world. It is granted only in certain constitutions. For example British judiciary does not have this power. It cannot declare any law passed by the parliament, null and void. The judiciaries of the U.S.A, France, Switzerland and India enjoy the power of judicial review.

Judicial Review in U.S.A

The constitution did not specify the power of judicial review, when it came into operation. In 1803, the chief justice Marshall delivered a historic judgment in the case of *Marbury vs Madison*. It was the first occasion, the judiciary of the U.S.A. indirectly assumed the power of judiciary review. A law of the congress was declared null and void by the Supreme Court of America. From that time onwards, the power of judicial review has been exercised by the judiciary of America in various occasions. The Supreme Court cannot go into any question of dispute voluntarily. If a matter is brought to it by a citizen or an agency in the form of suit, the court hears the case. If it really thinks that the law or order under dispute is a violation of any provision of the constitution judiciary applies its power. By exercising this power Supreme Court have a check on the federal government and the states from going beyond their limits. American constitution has separation of powers. If the center tries to encroach on a state subject by passing a law of executive order, any of the states may go to the Supreme Court and stop the encroachment by the center. In the same manner if there is any dispute between the executive and the legislature, the same is referred to the Supreme Court. Prof. Finer describes the Supreme Court has strong power to form the whole federal structure. By the power of judicial review the judiciary safeguards the interests of the individuals. So, in America individuals could approach the Supreme Court to protect their rights and freedom.

The power of judicial review helps the judiciary in smooth running of the governmental machinery. However it has certain shortcomings. By using this power the Supreme Court interprets the constitution and the laws passed by the congress. Thus the Supreme Court becomes the third chamber of the legislature. Commenting on this Hughes says, "We are under a constitution, but the constitution is what the judges make it". By judicial review many of the laws are knocked down by the judiciary. This power of judiciary reduces the power of the congress. It neglects the view of the representatives of the people. Being the representatives of the people they make laws for the welfare of the people. But such laws are put down by the judiciary on the pretext of being contradictory to the constitution. Some scholars opine that the judiciary has used the

power in many occasions. However, the presence of power of judicial review is considered essential in a federation like U.S.A.

Judicial Review in Switzerland

In Switzerland the federal tribunal is the federal judiciary. It has the power to interpret the laws passed by their legislature called federal assembly. But it cannot declare any law of the federal assembly null and void. The power to interpret the constitution rests with the federal assembly. However the federal tribunal enjoys the power of judicial review. It can declare a law of any of the cantons (state) as against the constitution. Hence the judiciary in Switzerland partially enjoys the power of judicial review.

Judicial Review in France

In France, judiciary has no power of judicial review. Judiciary cannot declare any law unconstitutional. To perform the power of judicial review in France constitution has created a separate institution. Under the fourth republic a constitutional communities was created to decide the constitutionality of laws. Under the fifth republic there is a constitutional council. The constitution says that all organic laws and parliamentary rules should be sent to this council before enforcement. The council considers the constitutional validity of the law or rule. It finalise the constitutional validity of the law within eight days. During emergency the decisions of the council are final. For example if the council decides a law unconstitutional the particular law cannot be enforced. So it is very clear that in France all the laws are subjected to the constitutional validity before it is implemented. It is done by the separate institution called the constitutional council not by judiciary.

Judicial Review in India

The Indian has a clear constitutional provision for judicial review. Indian Judiciary has the power to exercise this provision. It is empowered to declare any law passed by the

parliament and state legislatures null and void. The judiciary enjoys the same power over executive orders also. In 1976, the 42nd constitutional amendment made some restriction on the power of judicial review. But those were changed by the 44th amendment. It protects the rights of the individuals and the states in India. This provision played a major role in the welfare of the people. Further this provision made the judicial review is an interesting concept that plays a significant role. This was first applied by the citizens of India to respect the sovereignty of the constitution.

Conclusion

Judiciaries of India, France, U.S.A. and Switzerland enjoy the power of judicial review. There is no such power in Russia. In Britain the judiciary cannot question the validity of any law passed by the parliament. However the British judiciary may question the validity of the decisions of executive. So the practice of the power of judicial review varies from one country to another country in the world.

RULE OF LAW AND ADMINISTRATIVE LAW

Rule of Law

Meaning and Features

The British judicial system is based on the doctrine of 'rule of law'. Rule of law means that the administration is carried on in accordance with the law of the land. It is considered as the good quality of the British judiciary. Scholars are giving different explanation to this doctrine.

Prof. Dicey is an important writer of the British constitution. He gives three meanings to the concept of rule of law. In the first place, it means that no man is punishable except for distinct breach of law established in the ordinary legal manner before the ordinary court of land. In the second place, the rule of law means that no man is above law and all men are equal before law. Whatever be the social, economic or

political status of a person, he is equal to other citizens before the eyes of law. Hence it conveys that all citizens are considered equal in front of the law irrespective of their social, economic and political status. There are no special courts to try government officers. Except the king, all the citizens are subjected to the laws. The third meaning of the concept is that the constitutional law is the result of ordinary laws enforced by the courts. The judicial decisions of the courts safeguard these rights and liberties. Equality of all persons before the law, absence of arbitrary punishment by the government and protection of rights and liberties by the courts are the features of the concept of rule of law in England.

Merits

Equality and liberty of the people are protected by rule of law. Except the crown, all are treated equally. All the cases are tried in the same kind of courts. Since one set of court is functioning expenses are less and impartiality of the judges wouldn't be there. Jurisdiction of the courts also easily demarcated.

Demerits

Since there are one set of courts judgments are delayed. There may be undue delay. Judges of the ordinary courts may not be experts in administration. So when they may hear cases involving administrative decisions, it may be difficult for them to understand the technicalities. So, administrative law protects the interests of the individuals than the rule of law.

In Britain, it is considered as an important feature of their democracy. Modern democratic countries do not advocate the concept of rule of law. Modern democratic state is a welfare state. To promote the welfare of the people, executive is vested with more powers. In parliament laws are enacted after discussion. Such laws are not coming under the jurisdiction of the courts. Sometimes the executive department may even modify the

provisions of an act passed by the parliament. This development is considered as a threat to rule of law is the establishment of administrative tribunals. These administrative tribunals are made of executive officials with judicial power. The judicial decisions of administrative tribunals are final. This is also a violation of rule of law. The crown proceedings act of 1947 is also an encroachment on the rule of law. This provides some privileges and establishment of administrative tribunals are factors needed for the development of welfare state.

Administrative Law

Meaning and Features

France has followed the feature of administrative law. It is called Droid administrative system. It is an important feature of the French judiciary. There are separate laws and law courts for the government officials and ordinary citizens under this concept. It is said that administrative law is that part of law which governs the relations of the executive and administrative authorities of the government. It conveys that by an ordinary citizen a case cannot be filed against a government officer in an ordinary court. Separate courts meant for the government officers are known as administrative courts, will hear the cases related to the government officers for their action. For their private action suits should be filed in ordinary courts. For example, an order passed by a government officer may be objected by a citizen has to go to an administrative court. A government official might have received some loan from a citizen and failed to return it. Recovering loan for personal use is an act done in ordinary court. This is the concept of the administrative law.

Merits

The administrative law conveys the responsibility of the government officers. It differentiates and obviously shows the relations between ordinary citizen and government officers. It also makes the rights and duties of the officers clear. Easily citizens file cases against the government officers. Welfare of the citizens are protected better in France.

Demerits

By administrative law, the state gives comparatively more facilities to the officials than to its citizens. The officers possess certain privileges and special rights. The government officers are above ordinary law. So the principle of rule of law is violated. As the judges in administrative courts are government officers, it is said that they would favour government officers, not ordinary citizens. So there would be no impartial decision on disputes brought before administrative courts. Though there are points of criticism, the administrative law works well in France.

Comparison of Rule of Law and Administrative Law

Under rule of law there is a single system of courts. All cases are tried in the same kind of courts. But under Administrative law, there are two sets of courts known as ordinary courts and Administrative courts. Cases involving the official acts of government officers could be tried only in administrative courts. The basic idea of Rule of law is equality of all citizens before the eyes of law. But under Administrative law, the government officers are above the ordinary citizens. Rule of law protects the rights of the citizens. Sometime administrative law is better than rule of law. Because, in administrative law, cases filed against the officers are tried in administrative courts. It is conveyed that they are above the ordinary citizens. So there are differences. In administrative law justice is less expensive, prompt and simple. Even the countries which support the concept of rule of law have started to create a sort of administrative courts in their systems. For example in England there are Railway Courts, the Transport Tribunals, National Health Services Tribunal, National Insurance Tribunal, etc. The British ministers are also given with certain judicial powers. In U.S.A there are four types of Administrative tribunals namely independent administrative courts, special administrative courts, the regulatory bodies and licensing authorities. However, these are different from the administrative courts of France in one aspect. Appeals against the decisions of tribunals may be made to ordinary courts.

Rule of law and Administrative law are two different judicial concepts. The difference between the two concepts is slowly narrowing down. The French Administrative law may be said as the best protection of the French citizens against the new despotism of bureaucracy. The British rule of law plays its role equally good in Britain.

Unit V:

Separation of Powers – Pressure groups – Political parties – Single Party, Bi-party and Multi-party systems Reference

SEPERATION OF POWERS

Meaning

A government may be run through three organs known as legislature, executive and judiciary. Hence the powers are also distributed among the three organs. The legislative powers enable the legislature to make laws of the government. The executive powers enable the government to implement the laws. The judicial powers help the government to maintain justice and to avoid wrongs committed either at the time of legislation or execution. The theory of separation of powers insisted the functioning of three organs of the government separately. If all three powers are exercised by one head it would lead to autocratic rule. To maintain liberty the legislature, executive and judiciary should be separated. This idea is the essence of the theory of separation of powers. Aristotle, Cicero and Polybius were the earlier contributors of this theory.

Montesquieu's Theory

Montesquieu, the French philosopher, studied all the constitutions of the world. He made a clear distinction of three sorts of functions of a government. He compared the constitutions of Britain and France. He felt that the people of Britain enjoyed civil

liberties because the English judges were independent of the executive. The English parliament was supreme in law-making. Hence he thought that such a system should help the French people or any people who want to preserve civil liberties. Montesquieu said that the legislative and executive powers exercised together there can be no liberty. Similarly, if the judicial powers are not separated from legislative and executive powers, liberty cannot be achieved. For the smooth functioning of the government, all the three organs should function independently. So, Montesquieu advocated the theory of separation of powers.

The Theory of Separation of Powers and the U.S Constitution

The U.S constitution follows the theory of separation of powers. Article I of the U.S constitution vests all legislative powers in the hands of the Congress. Article II vests all the executive powers in the hands of the President and article III grants all judicial powers to the Supreme Court and other inferior courts. The constitution provides a presidential form of government. The president is the head of the state. He has a fixed term of office. He is neither a member of the Congress nor responsible to it. He does not attend the meetings of the Congress and does not answer the questions of the members. He cannot be removed from his post by a simple no-confidence motion passed in the Congress. He cannot dissolve the lower house of the Congress. Thus the legislature and the executive are independent of each other. The President is at liberty within his jurisdiction. He is not controlled by the Congress. The Congress is at liberty within its jurisdiction. It is not controlled by the President. The judiciary is also independent. The judges are appointed by the President. But they cannot be removed either by him or by the Congress. They can be removed only by impeachment.

Hence in the U.S.A the three organs of the government are functioning separately without dominating each other.

Checks and Balances

In the U.S.A the Congress is separated from the President and the President from the Congress. However, complete separation would lead to troubles and deadlocks. Hence the U.S constitution provides certain checks and balances for the smooth running of the government. Though the President is not a member of the Congress he can send messages on important bills. His messages are seriously considered by the Congress. Moreover no bill could become law without his assent. He has veto power. So he can control the Congress to some extent. The Supreme Court can check the Congress to some extent. By its power of judicial reviews, it can declare any law as unconstitutional. The judges may be impeached by the Congress. The President has powers to make treaties. But these treaties are to be ratified by the senate. The President can summon the emergency session of the congress. The Congress can impeach the President on grave offences. In this manner the U.S Constitution provides certain checks and balances.

The Theory of Separation of Powers and the British Constitution

Britain has parliamentary form of government. In such a government it is difficult to follow the theory of separation of powers. In Britain the crown is the nominal head. The real executive power is vested with the cabinet which is headed by the Prime Minister. They are members of the parliament. They are responsible to the parliament and answer the question of members in parliament meetings. If a no-confidence motion is passed in the House of Commons the cabinet loses its life. Even if a government bill is defeated in the House of Commons the cabinet has to resign. The bills are prepared and introduced by the ministers. The parliament is convened and ended by the crown. The crown has the power to dissolve the House of Commons. The leader of the majority party in the House of Commons becomes the prime minister in Britain. Thus in Britain the legislature and executive are interconnected. By delegated legislature the parliament delegates power of legislation to the cabinet. The House of Lords is the upper house of the British parliament. The House of Lords is the highest court of appeal. It is presided over by Lord Chancellor who is a member of the cabinet. Thus a part of the legislature is also part of the judiciary. Crown is the nominal chief executive. The crown said to be the

fountain of justice. Thus in Britain there is fusion of powers instead of separation of powers.

Estimate

Montesquieu advocated the theory of separation of powers to liberate people from various clutches. In modern democratic countries are willing to adopt this theory in their constitutions. Hundred percentage implementation of this theory may have short comings. The government is an organic whole. It is not possible to keep its organs completely independent and separate in a newly born country. Modern developments have created new situations. These situations make the three branches interdependent. Hence it is not possible to think in terms of complete separation of the three branches. The separation may be implemented in a modified manner suitable to the forms of the government and nature of the people of the nation.

Pressure groups

Meaning

In a country political process will speed up by many factors. The prime role is played by political parties. Next to political parties, pressure groups try to influence in the process of decision-making. A political party has members and definite political program. The pressure groups are organization of like-minded persons with common interest. These groups are tried to safeguard and develop interests and welfare of the people. Pressure groups tried to influence some phase of public policy. They are mediators between the people and the ruling party. They are the bridges between the people and the government. The presence of interest group is an feature of all democratic and even of totalitarian states. There are number of pressure groups in the U.S.A. the National Association of Manufacturers, the American Farm Bureau Federation, the American Farmers Union, American Federation of Labour, Congress of Industrial Organizations,

American Medical Association, the National Education Association, the National Society for Professional Engineers and the American Bar Association are some among them.

Characteristics

Particular interest is the main factor for the rise and growth of a pressure group. For example, the farmers of a state may have a specific interest known as the betterment of their profession. They may have interest in reduction of land tax, development of irrigation facilities, supply of fertilizers at a cheaper cost and regulation of the market to sell their farm produce. So they form a group and give pressure on the bureaucrats, legislators and the party in power to take efforts to fulfill their interests. Similarly in countries like India heterogeneous people are living together. Each caste or each community has their own interest. Socially they come together for a common cause of their caste or community. Today in India some pressure groups are working for the welfare of the socially backward section. Pressure groups never expose themselves. They never directly involve in politics like political parties. They involve in political process for justice. During such time they have contact with political parties. They are at the intermediate level between political and non-political. Political party is a wider organization whereas a pressure group is comparatively smaller organization. Both are informal and extra constitutional agencies. Pressure groups function with a particular interest.

Strategies of Pressure Groups

The pressure groups aim to achieve something by applying pressure on the political process. For this, they adopt some strategies. Lobbying is the most important strategy. They write letters to the legislators. They make representation. They may send telegrams. They go rally in order to bring the attention of the legislators. The pressure groups give pressure on individual legislators especially in their constituencies. Next to lobbying they apply the strategy of influencing the executive and the bureaucracy. In which also if they fail to achieve their objective they seek the help of the judiciary to

achieve their goal especially at the time of enactment of laws. If any law is not suitable they try to make it null and void through various means. Even they go for strike. A strike is a temporary stoppage of work for specific reason. Strikes are of different kinds. The sympathetic strike is one in which the employees may resort to stoppage of work for a short period in sympathy with their fellow workers. The next kind is the token strike. When the members are reluctant to stop work for a long period this method is adopted. They indulge in token strike just to draw the attention of the persons concerned. If the area of striking activity covers the whole country or its major part and if it affects the administration, it is called general strike. Strikes cannot be undertaken on false reasons. They try all means of peaceful settlement. They should also give proper and sufficient notice. The most effective form of strike is hunger strike.

Strategies adopted by the pressure groups have their own merits and demerits. Lobbying is widely practiced in rich countries. The lobbyists are self-interested. So it is difficult for them to conduct lobbying on certain principles. The technique of strike has its own demerits. The members of the pressure groups have to use this technique as the last resort. Sometimes the members try to take the effect of the strike to the maximum extent by paralyzing the whole administration. The participants of a strike try to harass those who decide to attend the work. Sometimes this will result in violence. The pressure groups should use these techniques cautiously. Pressure groups have become a part of the modern political system.

POLITICAL PARTIES

A political party is an association formed by a group of citizens having common ideals and goals. They are more or less organized for political purpose. By acting as a political unit they try to achieve power through constitutional means. In the modern era, in all countries, political parties play an important role. Some countries are having single party system, some are having bi-party system and in some countries multi party system is in practice. In democratic countries political parties are essential.

Functions of Political Parties

Political parties' roles vary from country to country. Their functions also vary in accordance with the form of government and other political factors. Political parties have certain definite functions. They are follows.

- The primary function is to organize public opinion.
- The political parties systematize the unformulated ideas of the people.
- Political parties represent the people and take forward the formulated ideas.
- They shape doctrines out of ideas.
- The parties make democracy workable.
- The success of any representative government depends upon the efficiency of the party system.
- Political parties educate voters and create awareness.
- They create civic sense in voters.
- They help the people to identify the political and social problems.
- They help them to find out the ways and means to solve them.
- They strengthen democracy.
- They help healthy criticism both inside and outside the legislature.
- The party system also helps in the fighting in elections.
- The parties nominate their candidates to contest in the election.
- They do election propaganda and even arrange finance to the candidates.

- Party system provides majority government in parliamentary form of government.
- It provides an alternative government when the ruling party do not have majority..

The functions discussed above are meant for political parties in democratic countries. But in communist countries like China and Cuba the role of the party is different. In those countries there is only one party known as the communist party. No other political party can originate and develop. So the party occupies the most important position in these countries.

Single-Party System

Features

Political party system may be classified according to the number of parties they contain. For example China has only one party. So it is called one-party system. It may also be known as uni-party system.

In some of authoritarian states Uni-party system exists. During the inter-war period the Nazi party was the only one party which existed in Germany. Similarly Italy also had one party during the same period called the fascist party. In China communist party is the only party can exist and exercise power. In one party state there may be political and constitutional institutions as in other states. For example, there is an elected parliament in China. There is a council of ministers too. The constitution of China clearly demarcates the power of various constitutional institutions. Elections are also conducted periodically. But there is no opposition party.

Merits

In Uni-party system the party is unified and disciplined. Implementing policies and programs are easy in single party system. There is no opposition party. So the government is also disciplined. Bureaucracy ensures economic progress by performing

their duties. Example is Germany. After the I World War, under Hitler, Germany became powerful with the work of Nazi party. Similarly Italy under Mussolini became powerful. In single party system loyalty of the people is not divided.

Demerits

It is not suitable to liberal democracy. People do not enjoy their liberty especially their fundamental rights. The voters have no choice in their voting. They have to vote that party. There will be no opposition party to check the wrong doings of the ruling party. It may ruin the administration. Under Uni-party system, there is no difference between the government and the party. Prominent party members occupy important position in the government as well as in the party also. The economic development is achieved at the cost of political liberty. Many nations are against Uni-party system.

Bi-party system

Features

Two political parties in a system is called bi-party system. It had its origin in Britain. The Whigs and Tories were the original parties. Later they became the Liberal party and Conservative party of Britain. The advent of industrial revolution enabled the formation of the Labour party. Now the Conservative party and the Labour party are the two important parties in England. There are certain minor parties also. But they have no significance. Similarly the U.S.A has bi-party system. Their political parties are Democratic party and the Republican party.

Merits

The bi-party system plays a vital role in parliamentary form of government. In a parliamentary form of government the party which gains majority in the lower house is called the ruling party and it forms the cabinet. The other party is called the opposition party. For the effective functioning of parliamentary system bi-party system is essential.

The opposition party provides an alternative to the ruling party. There will be a healthy criticism. People choose their ruling party on the basis of their programs and achievements.

Demerits

Under bi-party system there are only two parties. If both parties are bad or inefficient, then the voters have no other choice. In the U.S.A there is no much difference in the policies of the two parties. Under this system, voting is divided among two parties. Party rivalry under this may affect the administration. The opposition party may object every move of ruling party. Instead of constructive criticism there may be criticism for criticism sake.

Multi-Party system

Features

Some nations in the world are having multi party system. In such system there are more than two political parties. Example for multi-party system is France and India. In which many political parties rise and grow with different political policies and programs. Such countries have national and regional political parties. India has many national parties and innumerable regional parties. The diversity in language, religion, race and culture caused the growth of making multi-party system in India. In France, people are fond of making political experiments. This urge in term created multi-party system there.

Merits

Under multi-party system scope for the public is wider than the Uni-party and bi-party system. They can select the party which follows the policies according to their likes and dislikes. People get choice for alternative parties. The nation would not be divided into two halves. Political rivalry may be limited. There is no possibility for the domination of a single political party in the country.

Demerits

Under multi-party system, there would not be any clarity. There may be political confusion. According to political ideologies people would be divided into many political factions. In parliamentary form of government the cabinet may not be stable. France suffered a lot from this defect. In the fifth republic a quasi-presidential system has been established in France. Under multi-party system there are possibilities for coalition governments. When many parties form the government with understanding, it often lacks confidence.

Merits and Demerits of Political Parties

The political parties have become a part of the political system of every state. To reflect the ideas of the people, political parties are necessary. Role of political parties are important in democracies. The party system helps for the survival and growth of democracy. It avoids direct legislation. The elections are simple. Activities of the ruling party are under the control of other political parties. There are some demerits also. Political parties always take the political problems and it suppresses individualistic approach to any political issue. The members of the party accept the decision of the party even though they differed. So the members of the party are trained to think in party lines. The individual ideas are set aside. The parties create factions among the people. So people are also divided. They even go to the extent of indulging in violence in favour of their parties. One party never recognizes even the good policies and achievements of the other. They give importance to the interests of the party. They do not give importance to the welfare of the nation. Some political parties and its members have narrow vision. Sometime political parties may mislead the people. During elections, expenses will be more due to the activities of political parties. However political parties are essential for the survival of democracy.