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Assignment

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1. Describe the origin and evolution of Indian constitution.

The very idea to have our own constitution was given by M.N.Roy. M.N Roy was great political philosopher. Then a constituent assembly of India was set up in December, 1946. Constituent assembly was set up in accordance with cabinet Mission Plan under the chairmanship of Sachidanand Sinha. Chairman of the drafting committee was Dr. B.R Ambedkar. Dr.B.R Ambedkar is also called the father of Indian constitution Soon After the constitution of the constituent Assembly, Sachidanand Sinha expired and then Dr. Rajendra prasad was elected as the president of the constituent Assembly. B N Rao was appointed as the constitutional advisor. The Total Membership of constituent assembly was 389 members, where 93 membere were representatives from the Indian Princly states and form British India.

Evolution of Indian Constitution:

The British period in India began with the incorporation of English East India company in 1600 in England and it lasted till 1947 when India attained Independence on August 15. The Evolution of Indian constitution is closely related with the british Rule in India. May we broadly divide the british period in India into following phases:

1. 1600-1765: Advent of British in India
2. 1765-1858: The Company's Rule in India
3. 1858-1947: Rule of British Crown in India.

1600-1765: Advent of British in India

Britishers came to India as Traders; they formed English East India company by securing a charter from Queen Elizabeth I in 1600. The charter authorized the company to organize and send trading expeditions to East Indies. This charter was initially granted for 15 years and later for 20 years. This charter could be terminated on two years notice. The charter must actually be renewed periodically, provided it didn't adversely affect the interest of the crown and English People.

later English East India company established factories at various centres namely surat, Masulipatnam Hariharpur which later developed into chief settlement. like Madras, Bombay and Calcutta. Each of these Presidencies was to be controlled by president and a council.

Till half of 18th century company remained primar a trading concern. But after disintegration of Mugh Empire, the company took advantage of the chaotic condit and then established itself The victory of the company in Battle of Plassey, 1757 and again in the Battle of Buxar, 1764 established the British firmly

1765 - 1858 : The Company's rule in India

The grant of Diwani (power of collection of revenue and civil justice) by Shah Alam II to the company in return for 26 lakh rupees annually and the grant of Nizamat (power of administration, military power and criminal justice) by Shuja-ud-Daula, Nawab of Bengal in return f 53 lakh rupees annually has made the East India Compa the real power in Bengal, Bihar and Orissa. This was the beginning of the territorial sovereignty of British

During the period between 1765 and 1858 the government of England managed the affairs of the company administration whereas the company ruled ove it territorial possessions and people living there in.

Administrative legacy of the company from 1765 - 1858

During the period between 1765 and 1858, the compa began ruling along its trading activities During this period the company enjoyed Diwani and Nizamat rights. Thi made the company, become a political and territorial pow in India. By the time the crown took over India's administrat from the company, the britishers have a well-founded civil military and judicial base.

1858 to 1947 : Rule of British crown in India

The British territories acquired by the company in India came under the direct rule of British crown in 1858, which rule remained on India till August 1947. Most of our constitutional developments, leading to the making of our present constitution, ower their existence to this period. Administrative legacy of the company from 1858-1947;

The British Government's rule has left a legacy that still affects Indian society even today some of them are good and some of them are bad. Though we cannot imagine India without colonial rule, but it is very much true that India would have been entirely different.

The Present administrative system is the legacy of the British rule. for Example central secretariat Civil services, the parliamentary system, Military organization, education system, legal and judicial system are all inherited from the British time.

The Indian constitution that emerged out in 1950 has an uncanny resemblance to the Government of India Act, 1935. Same principles and same essence can be found in both Act of 1935 and constitution of India. Even we can find some phraseological resemblances between Act of 1935 and constitution of India.

What is Written constitution, unwritten constitution, Rigid constitution and Flexible Constitution.

Written Constitution :-

A written constitution is normally supposed to mean a document or a collection of documents in which the basic rules regarding the main organs and institutions of government are clearly laid down.

A Written constitution is a deliberate creation and it

it is a consciously planned system. It may be created by a constituent assembly or a convention.

The constitution is a deliberate of India was formulated and adopted by the constituent assembly. The preamble of India constitution begins with the wor

We the peoples of India having solemnly resolved Constitute India into a sovereign democratic Republic.

And ends with the words, in our constituent assem this twenty sixty day of November 1949, do hereby adop enact and give to ovelselves this constitution.

A Written Constitution may be single document having one date. Such is the case of India, Myanmar an United states.

It may be in a series of documents bearing different dates. This is the case with France, Australia e The french constitution under the Third Republic was fragmentary and didnot consist of one single document was composed of three constitutional laws passed on february 24, February 26 and July 26, 1874.

Unwritten Constitution:-

An Unwritten constitution reflects the evolutiona nature of free documentation of the rules and regulati first they are practiced and then by continuous pract they became part of the constitution. The constitution of Britain is the best example of an Unwritten Constitution.

Unwritten constitution is the result of long proce and Natural growth of political constitutions of the country. There are no single document/documents, which contain it. though many sources may be found describ it. There may be some written documents but their proportion is much smaller than the unwritten element

Rigid Constitution :

Rigid constitutions are those, which require a special procedure for the amendment. The constitutions of USA, Australia and Switzerland are the best examples of a rigid constitution. The rigid constitution is above the ordinary law and can be changed by a procedure, which is different from the procedure of ordinary law, thus making it difficult to change. The objective is to emphasize that the constitutional law embodies the will of the soverign, and it should be treated as sacred document.

American constitution is the best example of a rigid constitution. The American congress cannot make any law contrary to the constitution. The American supreme court acts as the guardian of the constitution and it has right to declare any law of the congress null and void. The constitution of India is neither as flexible as the British constitution not as rigid as the American constitution. But it is midway, which means more rigid than British constitution and less rigid than American constitution. A rigid constitution is always written.

Flexible Constitution :-

Famous political writer, Bryce has suggested that the classification of the constitution should be based on the method of amendment to the constitution and its relation to ordinary or statutory law. Under this scheme there are two types of constitution - flexible and rigid.

In a flexible constitution there is no distinction between ordinary law and constitutional law. Both the laws are enacted in the same manner and their source is also

same. In this type, the constitution may be written or mainly based on agreements.

The Amendment of the flexible constitution requi no special procedure. The constitution of Britain is a classic example of a flexible constitution. The parliamen in Britain is sovereign. Here,

1. There is no law which parliament cannot make.
2. There is no law which parliament cannot unmake.
3. There is no clear distinction between laws which ar fundamental or constitutional and laws, which are not.
4. In Britain constitutional changes can be made by following the same way as an ordinary law is enacte
5. The courts have no authority of review. They cannot nullify any enactment of parliament.

3. Explain about the Theory of separation of Powers.

A. The Theory of separation of powers is a prominent theory in political science. It is closely associated with the name of Montesquieu, a renowned french political philosopher of eighteenth century. Montesquieu advanced this theory by enunciating limited powers to the state and separation by powers among the governmental organs.

Montesquieu gave the following statement when the legislature and executive powers are united in the same person or in the same body of magistrates, there can be no liberty because apprehensions may arise, lest the same monarch or senate should enact tyrannic laws and execute them in a tyrannical manner. Again there is no liberty if the judicial power is not separate from the legislature and executive. Were it Joined with

the Judiciary, the life and liberty of the subjects would be exposed to Arbitrary control as the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man or the same body exercise those three powers that of enacting laws, that of executing the public resolutions, and that of trying the cases of individuals.

Montesquieu, through the proposal and the popularisation of the theory of separation of powers, intended to suggest limited monarchic rule (prevalent in Britain) in France. He stated that it is only under the limited constitutional monarchy, the king or the queen would act as nominal or constitutional head and see that law and order condition are established in France. He further pointed out that the political system shall work according to the system of checks and balances and intermediate bodies. He felt that there must prevail a free atmosphere for enjoying the liberating and freedoms by the people.

Main Principles:

The Main principles of the theory of separation of powers can be drawn from its proponent's right from the aristotle and up to Montesquieu. These may be explained as follows

1. Separation of Powers: Powers of the government shall be separated among the three organs i.e. legislature, executive and judiciary. Every organ shall strictly discharge its functions. It implies that the legislature shall confine its business to the formulation of the laws, amendment of

of the existing laws and repeal of outdated laws The Executive shall enforce the laws approved by legislatu The judiciary shall perform such functions which are judicial in nature Hence no single organ shall perform all functions of the government. Similarly no single organ shall be assigned more powers when compared to the othe two organs of the government.

2. Decentralisation of authority: Political philosophers from aristotle to Montesquieu suggested that the auth of the state shall not be vested in a person or group of persons of institution. Montesquieu felt that despotism can be avoided and people's liberties and freedoms ca be safeguarded through the decentralisation of authority.

3. Determination of sphere of powers:- This theory states that the functions and procedures of every orga shall be determined. Every organ shall be improved autonomy for carrying on its functions without interrupt At the same time other organs shall refrain themselves from interesting in the working of an organ. Then only the efficiency of governmental organs will increase, and th results and advantages as expected will be released.

4. Checks and Balances:- There shall be checks and balances in the maintenance of the various organs of th government. Every organ of the government shall be assigned such powers as prescribed in the constitut At the same time no organ shall interference in the af of other organs. Every organ shall be assigned equal powers on par with other organs as far as possible. No single organ shall be vested more or less powers when

compared to other organs. It implies that no single organ shall be vested with more or less powers when compared to the other organs. Then only it is possible that every organ possess autonomous powers and can discharge its powers and functions with efficiency responsibility and democratic values.

Explain the power and functions of Judiciary.

Judiciary is the third branch of government. It is a separate and independent organ. It interprets law, settles the disputes and provides justice. It includes those officiers of government whose function is to apply the existing laws to individual cases. In federal states, it acts as the guardian of the constitution and settles disputes between federal government and units. In the words of laski, the judiciary of the state may be defined as that body of officials whose work consists in the resolution of a complaint, whether between subject and subject, or between state and subject, that the laws of the state have been a matter of fairly common agreement among thinkers that the judicial power should be regarded in its nature and even more in the persons who administer it as separate from other aspects of political authority

functions of Judiciary:

The functions of judiciary differ from one political system to another. The following are the important functions of judiciary.

1. **Adjudication:** The first and foremost function of the judges is to administer justice. They hear and decide cases - civil, criminal and constitutional - in the light of the arguments given by the concerned parties. The judiciary

hears the disputes between individuals and between state and the individual. It applies the law- written and customary - to the particular cases and gives verdict. judge is competent to interpret the law. It is the duty of the judge to see whatever law has been violated and meet our punishment according to the law.

2. Legislation :- Judiciary also makes laws. When existing laws are ambiguous or inconsistent, the courts decide what the laws are and which of them shall prevail. In this context they are guided by the principle of equity and common sense and their decisions become precedents Such laws are known as case laws or judge made laws.

3. Graduation of the Constitution :- In the countries having written constitutions, the highest judicial tribunal and its branches are often vested with the power of interpreting the constitution. The state which recognises the supermacy of the constitution, regard judiciary as the guardian of the constitution. Particularly in a federal system the court acts as the guardian of the constitution and an umpire between the central and provincial governments. All constitutional disputes between the units or between the units and the centre are settled by the Highest occur of the country.

4. Safeguards fundamental Rights :- The modern democratic state assures rights to the people, generally by enshrining them in the constitution. These rights are inviolable and guaranteed. Generally independent and impartial tribunals in the country are assigned the job to protect the fundamental rights. Judiciary has the right to issue Writs if any organ or agency of the government encroaches upon the rights of the citizen.

5. Advisory functions :- The judges are also vested with

advisory jurisdiction. In states like India, the judiciary has the right and duty of rendering advisory opinion when it is sought. Sometimes when highly technical, legal and constitutional matters need clarification, such opinion may be sought. The supreme court of India may be consulted by the president in connection with highly controversial matters for its advisory opinion. Advisory opinion is not like a verdict, and it is not binding on the parties consulting it.

6. Other functions: Judicial has the following miscellaneous functions

1. The judge possess the power of issuing injunctions or restraining orders. The court act as custodians of basic lights.
2. When ownership, use or right of property are in dispute, the courts may take over the administration of such property pending a final settlement.
3. The chief Justice presides when the president is impeached for instance the chief justice of the American Supreme court presides when the president is impeached by the senate.
4. Sometimes the courts are empowered to grant licenses, naturalise aliens, perform civil marriages and appoint guardians of minors and the administrators of estates.
5. They perform certain administrative functions such as appointment of their own clerical establishments and supervision of lower tribunals.
6. They admit wills to probate.

Explain the differences between unitary Government and federal Government

Differences between unitary and federal Government

Unitary Government	Federal Government
1. There will be one integrated set of government All the powers are vested in the central government by the constitution.	1. There will be two sets of governments There is division of powers between the two levels of government
2. Political divisions or provinces are integral part of Government	2. Units have complete autonomy regarding subjects under them.
3. The constitution may be written or unwritten. It may be rigid or flexible.	3. A written or rigid constitution is absolutely necessary because it is a contract between the two governments.
4. Central Government is the creater of political divisions and provinces are its subordinates.	4. Central Government is not the creator of the federated units. Both the central Government and the units owe the existence to a written constitution.
5. Central Government can issue orders to the provinces as its pleases, as they are subordinate to it, it can increase or reduce their powers and can even abolish any of the provinces or create new provinces.	5. Federal or central government can deal units the federated units only in accordance with the provisions of constitution It cannot order them as it Pleases and cannot reduce their power. The units have a constitutional status, which the centre cannot determine
6. At the centre, there will be a supreme legislature, executive and judiciary.	6. The centre has its own separate organs like legistature, executive and judiciary. Each unit in the federation also has its

Unitary Government	Federal Government
	Own execution and legislature and judiciary
7. There are uniform laws throughout the country	7. Laws are generally of two types They are central laws and state laws Both are equally important in their respective sphere.
8. Government is highly centralized, as all decisions are taken by the centre	8. There is much decentralization, and the units enjoy much autonomy within the constitutional frame work. Decisions regarding Subjects of National importance are taken by the central government But decisions of regional importance are taken by the units But all these are subject to the clearly written provisions of the constitution.
9. The second chamber is less powerful and some times is superficial	9. The second chamber is more powerful than the first one and generally the most influencial chamber.
10. It is better suited for smaller countries as it fails to tackle a hetero-geneous society	10. It is most suited to larger states and has the quality of tackling the heterogeneous society
11. Cost of administration is not so high, as there is only one set of government	11. Cost of running government is relatively high, as there are two sets of government
12. Governmental machinery is simple and also flexible	12. Government machinery is complex and rigid.