GSSCORE

An Institute for Civil Services

MAINS TEST SERIES 2023

GS MAINS Q&A

TOPICAL TEST - 13

(5 QUESTION)

POLITY

Constitutional Development+ Comparison with other constitution+ System of government

POLITY - 1

Time Allowed: 50 Mins. *Max. Marks: 75*

1. **"Democracy is the worst form of government, except for all the others". The quote aptly explains that despite all its imperfections, democracy continues to be the best possible alternative. Critically analyze.**

2. **Discuss the contribution of Kesavananda Bharati Case Judgment in retaining India as a cherished republic envisioned by its founding fathers.**

3. **What is the Montesquieu doctrine? How is it relevant to the theory and practice of separation of power?**

4. **Illustrate how the Constitution of India is distinctive in its own way, notwithstanding being a blend of various constitutions around the world. Also, discuss how Indian Secularism is different from Western Secularism.**

5. **The doctrine of separation of powers is essentially what fortifies the three pillars of democracy. In this context, discuss the constitutional status of separation of powers in India and the USA. Can they learn something from each other?**

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POLITY - 1

1. "Democracy is the worst form of government, except for all the others". The quote aptly explains that despite all its imperfections, democracy continues to be the best possible alternative. Critically analyze.

Approach

1. ***Introduce with defining democracy as a form of government (30 words)***
2. ***Enlist some forms of government by power other than democracy (50 words)***
3. ***Enumerate the arguments in favour of democracy (70 words)***
4. ***List down flaws with democracy (70 words)***
5. ***Conclusion (30 words)***

Hints:

Democracy is defined as government in which the supreme power is vested in the people. Direct democracy refers to a form of government wherein citizens out rightly take part in the administration of the government. Indirect democracy implies a democracy in which people vote for their representative, to represent them in the parliament. In some forms, democracy can be exercised directly by the people; in large societies, it is by the people through their elected representatives. Some core features of a democratic system of governance are citizen participation, equality, accountability, transparency, regular, free and fair elections, economic freedom, control of the abuse of power, fundamental rights human rights, the rule of law, etc.

Some forms of government by power other than democracy

- **Autocracy:** Autocracy is a system of government in which supreme power (social and political) is concentrated in the hands of one person or polity, whose decisions are subject to neither external legal restraints nor regularized mechanisms of popular control.
- **Oligarchy:** Oligarchy, meaning "rule of the few", is a form of power structure in which power rests with a small number of people. These people might be distinguished by nobility, wealth, family ties, education or corporate, religious or military control.
- **Theocracy:** Rule by a religious elite; a system of governance composed of religious institutions in which the state and the church are traditionally or constitutionally the same entity. The Vatican's (see Pope), Iran's (see Supreme Leader), Caliphates and other Islamic states are historically considered theocracies.

Arguments in favor of Democracy:

- **Liberty:** Democratic states always have freer people than autocratic states. They have the right to vote for their government so by extension deciding the policy of their nation and what their nation should be like. They have more freedom of speech and expression than in autocracies. In particular they are free to criticize their own government.

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- **Represents the people:** The government represent the views of the people who elect them and can expel if the government does things that the people do not like.
- **Better governance due to transparency:** Democracy is as much about having checks and balances to the executive and having transparency of decision-making as it is about elections and the populace throwing governments out of power. In a democracy the parliament, the media and the judiciary all keep an eye on the executive and what is being done with the public money.
- **Human Rights:** The citizens have the rights to exercise freedom of speech concerning the well-being of the populace in areas of the economy, education, health, infrastructural development, etc.
- **Individual rights and equality:** The most important attribute of democracy is that everyone is treated equally before the law, irrespective of caste, creed or sex. Everyone is entitled to freedom of speech, freedom of worship, freedom of occupation and freedom to move throughout the country. The dignity of man is recognized and respected. People are given ample opportunities to move ahead in life.
- **Citizen participation:** The ability of the people to have a voice in the running of the State, in the economy, health, education, infrastructural development, etc creates a bit-balanced environment for governance to thrive, this can only be achieved in a democratic governance.

Drawbacks of Democracy:

- The election process of representative government focuses solely on the majority. The minority groups, are rarely represented simply because they do not have the majority of the votes to get an official into office. This causes a feeling of separation with these groups as well as feeling like their issues are not as important.
- Further leaders are chosen by the parties based on caste, creed and other such factors that appeal to the poor population. The government thus formed may more often than not work for its own welfare and not nation building, therefore giving a freehand to corrupt practices in politics and bureaucracy.
- The prospect of personal interest becoming the predominant factor in decisions, and negative financial implications.
- In democracy, due to principle of participation, decision making often gets delayed.

Conclusion:

Democracy is not perfect and there are few structural deficiencies, which if tried can be ironed out. But it is better that the other forms of government such as monarchy and dictatorship. In both monarchy and dictatorship, the ruler- individual or group - wields absolute power and the people have no remedy against its misuse. Thus despite its lacunas, democracy remain to be the best among all forms of government.

2. Discuss the contribution of Kesavananda Bharati Case Judgment in retaining India as a cherished republic envisioned by its founding fathers.

Approach

1. ***Introduce with the Kesavananda Bharti Case (40 words)***
2. ***Explain what the judgment meant for Indian polity (170 words)***
3. ***Conclusion (40 words)***

Hints:

The **Kesavananda Bharati judgment** is a landmark decision of the Supreme Court of India that outlined the basic structure doctrine of the Indian Constitution. In this case, the validity of 24th, 25th and 29th

amendments to the Constitution of India was challenged. The main question was related to the nature, extent and scope of amending power of the Parliament under the Constitution.

The founding fathers of the Constitution of India had made a grandeur constitution after going through extensive studies of prominent existing constitutions in the world. With the adoption of the constitution of India, India became a republic in which supreme power is held by the people and their elected representatives and constitution is the highest law of the land in such polity.

Significance of the judgement in preserving the republic character of Indian polity:

- The Supreme Court laid down the Theory of Basic Structure in this case. According to this theory, some of the provisions of the Constitution of India form its basic structure which is not amendable by Parliament by exercise of its constituent power under Article 368.
- The Basic Structure doctrine forms the basis of power of the Indian judiciary to review, and strike down, amendments to the Constitution of India enacted by the Indian parliament which conflict with or seek to alter this basic structure of the Constitution.
- Apart from it, the judgement cleared the deck for complete legislative authority to amend any part of the Constitution except when the amendments are not in consonance with the basic features of the Constitution.
- Judiciary successfully defended that fundamental rights cannot be amended by whims and fancies of the legislature. The judiciary thwarted the attempt of the Parliament to amend the constitution erratically.
- Judiciary also asserted their privilege as the custodian of the constitution.
- The 'rule of law' was upheld by the judiciary.

Conclusion:

The judgement of Kesavananda case is very significant in terms of the theorization of 'basic structure', which clearly states that abridgement of basic structure is not possible, hence it protects the political, social and economic system of the country. It has also shielded the constitution from unconscionable amendment in the future.

In this context, Kesavananda Bharati case judgement is landmark as it shaped the future of the country as a democratic republic governed by the Rule of Law. The judgement underlined that the visions of the founding fathers- a republic state, cannot be tarnished by the any of its organs and that can preserve democracy.

3. What is the Montesquieu doctrine? How is it relevant to the theory and practice of separation of power?

Approach

1. ***Briefly introduce the Montesquieu doctrine. (40 words)***
2. ***Discuss its relevance to separation of power (90 words)***
3. ***Analyse the challenges it faces in the Indian context. (80 words)***
4. ***Briefly conclude along with way forward. (40 words)***

Hints:

The term "**trias politica**", or "**separation of powers**", was coined by **Montesquieu**, an **18th century** French social and political philosopher. Under his model, the political authority of the state is divided into legislative, executive and judicial powers.

- The legislative branch is responsible for enacting the laws of the state.
- The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.

- The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

There are three aspects of Montesquieu's theory:

- At First, he recognized that government has three functions "that of making laws, executing public affairs, and adjudicating on crimes or individuals cases."
- He stipulated that there should be three corresponding organs of the government for the three separate functions; the legislature, the executive and the judiciary.
- Finally, he stated that these three functions should be held by three separate branches in order to uphold and protect liberty.

Relevance of Montesquieu doctrine to separation of power:

- The main object as stated by Montesquieu in the doctrine of separation of power is that there should be government of law rather than will and whims of the officials.
- Another feature is that 'there should be independent judiciary, i.e., it should be free from the other organs of the state and if it is so then justice would be delivered properly'.
- The judiciary is the scale through which one can measure the actual development of the state. If the judiciary is not independent then it is the first step towards a tyrannical form of government, i.e., power is concentrated in a single hand.
- If this happens, then there is a cent percent chance of misuse of power.

Challenges faced in the practical implementation of the doctrine:

- As the government is a single entity, it is impossible to have complete separation of three organs of government. It is not desirable because without having mutual coordination amongst these, the government cannot carry out its functions effectively and efficiently.
- The function of law-making cannot be exclusive domain of the legislature. The needs of our times have made it essential to provide for law-making by the executive under the system of delegated legislation. In the same way, judges while giving judgments lay down certain judicial legislation which is criticized as judicial overreach.
- Separation of powers is unhistorical as it has never been in operation in England.
- While formulating and advocating this theory, Montesquieu advocated that it was at work in England. Under the British parliamentary system of government, there is a close relationship between the British parliament and the Cabinet. Even there is no separation of judiciary from legislature and the British House of Lords acts as the highest court of appeals.
- It is criticized that the theory of separation of powers wrongly assumes the equality of all the three organs of the government. The legislature of the state is always regarded as the primary organ of government. The work of the government begins by law-making.
- However, in actual practice the executive acts the most powerful organ of the government. The judiciary is considered to be the weakest organs, yet it is always held in high esteem by the people. But, it appears that this preposition has no application in India because with the passage of time, Indian judiciary has proved to be the strongest organ but not dominating.
- Separation of powers has often created a situation in which each organ can get engaged in conflict and deadlocks with the other two organs.
- The Doctrine of Separation of Powers' is wrong because this theory actually advocates a separation of functions and not the powers. Power of the government is one whole. It cannot be separated into three separate parts. It is at the back of the functions of all the three organs of government. The theory of separation of powers is really a theory of separation of functions.

Actual practical working of the Separation of Power Doctrine:

- While separation of powers is key to the workings of the Parliamentary government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized.
- As a result, there is an inherent measure of competition and conflict among the branches of government. Throughout history, there also has been an ebb and flow of preeminence among the governmental branches. Such experiences suggest that the determination of the sources of power is part of an evolutionary process.
- The legislative power should be in the hands of the legislature but the executive and judiciary should have some checking powers over it with a view to prevent any misuse or arbitrary use of legislative powers by the legislature. In the same way, the executive powers must be vested with the executive but legislature and judiciary should be given some checking powers over it. The same should be the case of the judiciary and its power should be in some respects checked by the legislature and executive.

Conclusion:

Thus, each organ must have some checking power over the other two organs to maintain a balance among the three organs of government. This would lead to the system of checks and balances. And constitutionalism, i.e., no one is above the law and equality amongst all the organs of the government.

4. Illustrate how the Constitution of India is distinctive in its own way, notwithstanding being a blend of various constitutions around the world. Also, discuss how Indian Secularism is different from Western Secularism.

Approach

1. *Briefly introduce about the formation of the Constitution of India. (30 words)*
2. *Elaborate on the many distinct features of the Indian Constitution. (100 words)*
3. *Discuss the difference between Indian Secularism and Western Secularism. (90 words)*
4. *Conclusion (30 words)*

Hints:

The Constitution of India is the **supreme law of India.** The document lays down the framework demarcating fundamental political code, structure, procedures, powers, and duties of government institutions and sets out the Fundamental Rights, **Directive Principles,** and the duties of citizens. It is the longest written constitution of any country on earth. The Indian Constitution is unique in its contents and spirit. The Constitution of India has several features which are borrowed from that of other countries.

Borrowed Features:

- The Indian Constitution is a blend of various constitutions, such as, it has borrowed the features of the Preamble, the Supreme Court, a written constitution, Fundamental Rights from the USA, Fundamental Duties and the Five Year Plan from Russia, the Election Commission, Parliamentary Election from the UK, Federal System and Union-State List from Canada, etc.
- Even though it had picked up many best features from other constitutions of the world, the Constitution of India has several salient features that distinguish it from the constitutions of other countries.

Few of the salient Features of Indian Constitution:

- It is one of the largest written liberal democratic constitutions of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity.

- The Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body—the Constituent Assembly– in December 1946.
- The Preamble declares India to be a Republic. It means that India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India), who wields power for a fixed term of 5 years.
- Under its Part III C (Articles 12-35), the Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights.
- Part IV of the Constitution dealing with the '**Directive Principles of State Policy'** provides one of the most striking features of the Indian Constitution. The Directive Principles are instructions to the state for securing socio-economic developmental objectives through its policies. These are to be implemented by both the Union for the States.
- The Constitution provides for a Bicameral Legislature at the Union level and names it as the Union Parliament. Its two Houses are: The Lok Sabha and the Rajya Sabha.

Difference between Indian Secularism and Western Secularism:

Western Secularism:

- In most commonly prevalent conceptions, inspired mainly by the American model, separation of religion and state is understood as mutual exclusion: the state will not intervene in the affairs of religion and, in the same manner; religion will not interfere in the affairs of the state.
- Each has a separate sphere of its own with independent jurisdiction. No policy of the state can have an exclusively religious rationale. No religious classification can be the basis of any public policy. If this happened, there is illegitimate intrusion of religion in the state.
- Similarly, the state cannot aid any religious institution. It cannot give financial support to educational institutions run by religious communities. Nor can it hinder the activities of religious communities, as long as they are within the broad limits set by the law of the land.

The Indian Model of Secularism:

- Sometimes, it is said that Indian secularism is an imitation of western secularism. But Indian secularism is fundamentally different from Western secularism. Indian secularism does not focus only on the separation of the church and the state and the idea of inter-religious equality is crucial to the Indian conception.
- Indian secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities.
- Within it, an individual has the right to profess the religion of his or her choice. Likewise, religious minorities also have a right to exist and to maintain their own culture and educational institutions.
- Since a secular state must be concerned equally with intra-religious domination, Indian secularism has made room for and is compatible with the idea of state-supported religious reform. Thus, the Indian constitution bans untouchability. The Indian state has enacted several laws abolishing child marriage and lifting the taboo on inter-caste marriage sanctioned by Hinduism.

Conclusion:

India has a unique constitution and some of the features – that might seem to be the same – have very different interpretations. Although some concepts have been borrowed from various different sources, they have been adapted and changed according to the Indian society and needs. Thus, the Indian Constitution is distinctive in its own way, notwithstanding being a blend of various constitutions around the world.

5. *The doctrine of separation of powers is essentially what fortifies the three pillars of democracy. In this context, discuss the constitutional status of separation of powers in India and the USA. Can they learn something from each other?*

Approach

1. ***Briefly introduce the meaning and essentiality of the doctrine of separation of powers. (40 words)***
2. ***Discuss the constitutional status of separation of power in India and the USA. (90 words)***
3. ***Analyse the working of both the structures and the improvements that can be applied on each of them. (80 words)***
4. ***Write a brief conclusion. (40 words)***

Hints:

The premise behind the concept of **Separation of Powers** is that when a single person or group has a large amount of power, they can become dangerous to citizens. Separation of Power is a method that enables the removal of the amount of power in any group's hands, making it more difficult to abuse.

- On the basis of this theory, the Supreme Courts were not given power to decide political questions so that there was not interference in the exercise of power of the executive branch of government. Also, overriding the power of judicial review has not given to the Supreme Court**.**
- To prevent one branch from becoming supreme, protect the "opulent minority" from the majority, and to induce the branches to cooperate, governance systems that employ a separation of powers need a way to balance each of the branches. This has been accomplished through a system of "checks and balances". Checks and balances allow for a system based regulation that allows one branch to limit another.

Constitutional Status of Separation of Power in India and the USA:

In the USA:

- The form of government, characterized as **Presidential**, is based on the theory of separation between the executive and the legislature. The President is both the head of the state as well as its chief executive. He appoints and dismisses other executive officers and thus controls the policies and actions of government departments.
- In the USA, the President is not in theory responsible to the Congress unlike India where the cabinet is collectively responsible to the Parliament. The President has a fixed tenure of office and does not depend on majority support in the Congress. Before the expiry of his term, he can be removed only by the extremely cumbersome process of impeachment. Nor can the President dissolve the Congress whereas in India, Prime Minister has the power to seek dissolution of the Parliament.
- The executive therefore is not in a position to provide effective leadership to the legislature and it is not always that the Congress accepts the programme and the policy proposed by the executive. The independence of the Supreme Court is constitutionally guaranteed.
- The U.S. Constitution however incorporates some exceptions to the doctrine of separation with a view to introduce the system of checks and balances. For instance, a bill passed by the Congress may be vetoed by the President and, to this extent the President may be said to be exercising a legislative function. Again, appointment of certain high officials is subject to the approval of the Senate. Also, treaties made by the President are not effective until approved by the Senate; to this extent, therefore, the Senate may be deemed to be exercising executive functions.
- The position in America is that despite the theory that legislature would not delegate its power to the executive a host of rules and regulations are passed by non-legislative bodies, which have been judicially recognized as valid.

In India:

- In India, the doctrine of Separation of Powers has not been accorded a constitutional status. Apart from the directive principle laid down in Article 50 which enjoins separation of judiciary from the executive, the constitutional scheme does not embody any formalistic and dogmatic division of powers.
- Parliament is entrusted to make the law. Executive is entrusted with duty of implementation of law and judiciary is considered to be independent under the constitutional scheme in India. However, there are many exceptions which negate the application of this doctrine.
- The Executive in India is authorized to legislate in the name of delegated legislation. In the name of administrative adjudication of the right of individual citizens, the administrative agencies, which are statutory tribunals and domestic tribunals have been constituted and perform judicial function.
- After the Keshavananda Bharati v. State of Kerala [AIR 1973 SC 1461], and the judicial articulation of the doctrine of basic structure of the Constitution therein, the separation of powers is spoken as a structural basis of the constitutional framework and cannot be destroyed by any amendment.

Working of both the structure

The Modern State has transformed from Police State to Welfare State. Earlier the State functions were confined to defense, administration of justice or maintenance of law and order. With the gradual change in time, state undertook the responsibility to provide social security and social welfare for the common man, regulate industry, trade, etc., with a view to protecting as well as promoting public interest.

Thus with such a workload it is not possible for the State to stick to the doctrine of Separation of powers. Theory of Separation of power cannot be practically possible in reality.

- From this it can be concluded that the doctrine of separation of powers in the strict sense is undesirable and impracticable and therefore till now it has not been fully accepted in any of the country. In theory under the Constitution of United States of America the doctrine of separation of power has been strictly adopted but there also gradually the Supreme Court is relaxing the policy.
- In India also on casual viewing of the Constitution it can be said that India has adopted the doctrine of separation of power but in reality it is not so. The three organs in some or the other way perform the task of other. For e.g. the legislature delegate some powers to executive, thus executive the function of the legislature, in the same way the Parliament other than making laws also have judicial power which it can exercise when its contempt take places.

Conclusion:

After considering all the aspects, one can postulate that the doctrine of separation of power is not accepted in any country till now due to many critical issues involved in it. And on comparing the Indian Constitution and U.S.A Constitution it can be said that on face it seems that both the Constitution has adopted the doctrine of separation of power but after through study it can be said that the doctrine is not strictly accepted in both the countries**. The Working of separation of power is guided under the requirements of 'cultural lens',** i.e., observe viewpoint and structure with an open mind, gauge requirement at your end and adopt structures based on unique requirement of the region.

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