

SUBJECTIVE PART — PART-II

SECTION-A

- ✓ Q.2. Critically examine Montesquieu's Theory of Separation of Powers. On what ground he is compared with Aristotle of eighteenth century?

Q.1 Introduction:-

"When legislative and executive body/powers are united in the same body, there can be no liberty"
≈ Montesquieu ≈

Montesquieu gave the theory which is known as separation of power. He urged that powers should be separate among state organs. According to separation of power theory legislature, executive and judiciary should be work in their own jurisdiction. According to Montesquieu, there is some peculiar powers of upper house and he gave importance to the upper house in some cases. Moreover, Montesquieu also known as Aristotle of eighteenth century. The reason behind is both gave the concept of law and both said physical environment also impacts on human behavior and state. Importantly, both gave the classification of state in different ways.

What is theory of separation of powers?

A Montesquieu, who gave this theory

has much influenced on the USA constitution. Separation of power theory, basically said about the checks and balances of each government organ to another.

This theory states that legislature has own jurisdiction. The legislature and executive must be different and separate to each other. But legislature can review executive process. Legislature carries the general will of the people. Executive puts the general will into the action. Finally the judiciary which is chosen by the people interpret the general will of the people.

"Fear the office, not the magistrate"

People should not fear of judge but his office.

Peculiar powers of legislature especially upper house.

In the separation of power theory, Montesquieu gave some peculiar power to the upper house of legislature. According to it, the trials of nobles.

is to be carried out in the upper house. Any government official can be ~~total~~ impeached in the upper house. For instance, in the USA, the trials of government official is done by senate.

ii) Appellate authority for lower courts' judgments.

Any person who ~~has~~ is unsatisfied the judgment of the court can ~~be~~ appeal to the upper house of legislature. As it has been said previously that the USA constitution exercises these work and powers according to Montesquieu theory. so, in the USA senate it can be seen that people appeal to the senate against the lower court judgment.

(iii) Impeachment tribunal for cases initiated by lower houses. As it has been mentioned above that upper house can trials of nobles. same like upper house can work as a tribunal for the impeachment cases which has been originated by lower house.

Why should powers be separated?

"Since laws make liberty possible by breaking laws, society reverts to the state of nature where liberty does not exist."
~ Montesquieu ~

According to Montesquieu power should be separated because they can work more easily their own jurisdiction and according to their obligations. Through checks and balances states could be made more secure. If check and balances do not assure, wrong acts/laws can be pass easily. After separation of power executive and judiciary cannot make laws, law making is the obligation of legislature, and legislature cannot implement those laws which are created by legislature because it is not its duty. So that are the benefits of the separation of powers.

Montesquieu, Aristotle of eighteenth century:-
Montesquieu also known as Aristotle of eighteenth century, because he adopted and used some patterns which had been introduced by Aristotle. Both had used historical methods and classified state into various types according to their future.

concept of law

Both had focused that it is the responsibility of state to provide law. Law is very important for human life.

Aristotle:-

- Law is integral for any good state.
- Law reflects the quality of citizenry.
- A constitution is good if it is just.

"The worst form of inequality is to try to make unequal things equal!"

~ Aristotle

Montesquieu:-

Government is necessary to provide civil and political law.

• Law, to be just, must be adaptable to changing circumstances.

• "The deterioration of a government begins almost always by the decay of its principles".
~ Montesquieu ~

• Role of physical environment-
Both said that physical environment influences on the social institution. If one place has warm weather, the people of that area are happy and angry and their institutions also make policies angrily. If the state has cold weather, the people of that area are cool active and their institutions also make policies in the well manner.

• Classification of govt/state-
Aristotle and Montesquieu both gave and classified the state into different types according to their features.

Aristotle:-

Aristotle classified ~~state~~ govt in to two groups good and bad form of government. In good

good states he said Monarchy, Aristocracy and ~~tyranny~~ ^{polity} are the good states. The bad states he said, tyranny, oligarchy and democracy are the corrupt form of government.

	one person	few people	many people
Good	Monarchy	Aristocracy	Polity
Bad	tyranny	oligarchy	Democracy.

Montesquieu:-

Montesquieu also classified the government into various types. He said Monarchy is the government which works on the rule of law.

Despotism is the government which works without law and Republic is the government which exist in between democracy and aristocracy and very state to state.

Monarchy:- honours
Reading collective benefits of Monarch and public.

Despotism:- fear
Law and general interest is replaced by the whim of the despot.

Republic:-

- Limit inequality.
- Educational law that promote unity and patriotism.

conclusion

Montesquieu gave the theory of separation of powers through which state's affairs can be run easily. Every organ has ~~own~~ its own jurisdiction in which every organ works more frequently and easily. Moreover, Montesquieu is also compared with Aristotle and called Aristotle of eighteenth century. The reasons are both had adopted same way of study and research regarding state and classified the government into various types according to their features.