

Examine Montesquieu theory of separation of powers. Why has he been called "Aristotle" of eighteenth century? Discuss.

INTRODUCTION:

Montesquieu was a French philosopher, and his philosophy was affected by spirit of rational liberty. He formulated his thoughts in the form of doctrine of 'separation of powers' expounded in his book 'The Spirit of Laws' written in 1748. He emphasized the three fold distribution of governmental functions and powers. They are: Law making legislative power; the law enforcing executive power; and the law adjudicating or judicial power. He has been called Aristotle of 18th century. Because both were practical and used empirical method. Both agreed upon the influence of geography on politics. Both acknowledged laws as the product of collective wisdom. Both classified several types of government on the basis of number and the way they are ruled.

HISTORICAL CONTEXT:

In his time, France was ruled by tyrannical kings. He witnessed the era of Louis XIV, who is regarded as world's longest reigning monarch. Individual liberty was hard to find in France. He visited France, met John Locke,

studied English writers. What influenced him was practical enjoyment of liberty by Englishmen, and balance of English constitutional machinery. He wanted to reform political life of France by infusing in it the British sense of liberty and principles of separation of power.

THEORY OF SEPARATION OF POWER:

Since the ancient days of Greek Philosophy, political writers have recognised three fold distribution of government power, but it was expounded in theory by Aristotle Montesquieu. He wrote:

"In every government, there are three sorts of power, executive legislative and judiciary. The liberty of individual required that neither all three nor any of two of them should be placed in the hands of one man or one body of men"

Montesquieu divided the three organs as follows.

a) LEGISLATURE:

Legislature branch is concerned with law-making. It is composed of whole community, but its not possible in large states, therefore representation is

used. Montesquieu stressed that representatives must be elected from different areas and they must be free to discuss and make their decisions. Quality and quantity should be considered in parliament.

b) EXECUTIVE:

Executive powers should be exercised by Monarch. He must be empowered with strength of veto. Legislature should not have power to impeach monarch, doing this would place it above the monarch.

c) JUDICIARY:

The branch of judiciary deals with interpretation of laws. It is also concerned with disputing matters between the other two organs. Judiciary, however provides guidance on the legal matters.

ACCUMULATION OF POWER IS FATAL:

Montesquieu stated that concentration of all power in same body or a group will result in lack of government moderation, which is unfavourable to political liberty. If legislative and executive functions are exercised by same person, he will become tyrannical and deduce

oppressive laws. If judicial powers are also entitled to king, he might behave with violence. In any of the above case liberty is not possible. Hamilton says:

“Accumulation of all powers, legislative, executive and judicial in the same hands, whether of one, few or many, may justly be pronounced the very definition of tyranny”

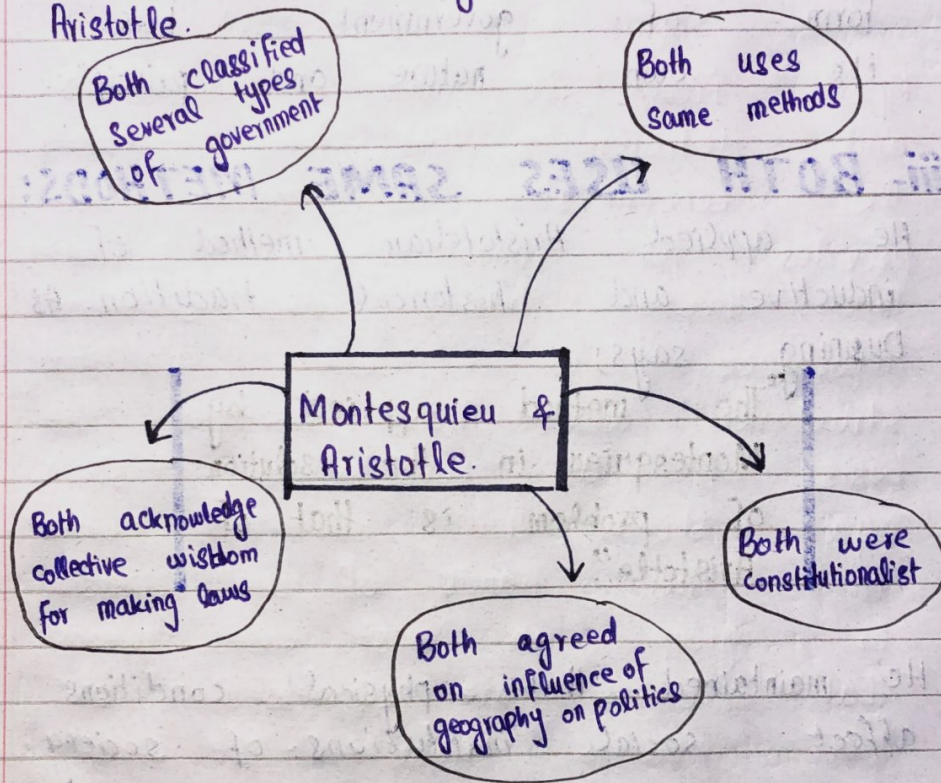
PROTECTION OF INDIVIDUAL LIBERTY:

The main idea, Montesquieu wanted to ensure by theory of separation of power, was protection of individual liberty. According to him it was possible only by making sharp distinction between powers and functions of different organs of state. R. M. MacLaver visualised the theme of Montesquieu by saying,

“The problem of separation of power is nothing to political science, until the issue of political liberty becomes urgent”

MONTESQUIEU, ARISTOTLE OF 18th CENTURY:

Montesquieu is widely regarded as Aristotle of 18th century. Because he followed and adopted certain methods of great Greek philosopher Aristotle.



i- BOTH WERE CONSTITUTIONALIST:

Aristotle saw security in a constitutional form of government, where the community determines the ends to be pursued and only the experts would suggest and apply the means. Montesquie also emphasized the constitutional separation of power of legislature, executive and judiciary.

ii- BOTH CLASSIFIED SEVERAL TYPES OF GOVERNMENT:

Both classified the government on the basis of the number and manner of rulers into monarchy, republic and despotism. He like Aristotle also believes that each form of government has its own nature and principle.

iii- BOTH USES SAME METHODS:

He applied Aristotelian method of inductive and historical tradition. As Dunning says;

"The method applied by Montesquieu in the solution of problem is that of Aristotle".

He maintained that physical conditions affect social institutions of society.

iv- BOTH AGREED ON INFLUENCE OF GEOGRAPHY ON POLITICS:

The form taken by government and law adopted will depend on the 'general spirit of each nation' and this spirit itself be determined by a number of variables such geographical region, climate etc. India and Britain both follow parliamentary system, but it varies in both.

V- BOTH ACKNOWLEDGED THE COLLECTIVE WISDOM FOR MAKING LAWS:

Montesquieu borrowed from Aristotle the idea that laws are produced by collective wisdom of society. He, therefore defined the legislative branch consisted of whole community, if directly not possible then through representation. People are free in making laws, which should suit society as whole.

CRITICAL ANALYSIS:

Theory of Montesquieu well define the powers of all organs, but if it is applied in strict sense and three organs of state made absolutely separate, it will produce several defects.

Nineteenth century has exploded this theory of absolute separation. J.W Garner says:

"The strict separation of power is not only impracticable as a working principle of government, but it is not to be desired in practice"

It leads to constitutional deadlock and administrative inefficiency. It creates such a system that will defeat the true ends of the state. It declared, all the

The three organs of state as coordinate and equal, but in modern democracies legislature is superior to other two. Also, too much separation of power destroys responsibility in state organs.

CONCLUSION:

Apart from its many drawbacks and deficiencies, this theory prevents the concentration of power and provides for checks and balances. This theory has gained significant importance in global political structure and have become the basis of US constitution. History again shown that unlimited power in the hands of one person or group in most cases means that others are suppressed or their powers curtailed. The separation of power in democracy is to prevent abuse of power and safeguard democracy and freedom for all.