

{ Constitutional Law }

Question # 1

Examine the operation of separation of powers and checks and balances in United States Constitution.

Assess the constitutional position of congress, the president and judiciary.

Introduction

Separation of powers is a fundamental feature of Constitution of US. According to it the powers of the government are divided into three branches i.e legislative, executive, and judiciary. The concept of separation of powers was first expounded by Montesquieu in his book "spirit of laws".

Montesquieu believed that if the legislative and executive powers are not separated, there can be no liberty because a person or senate may enact tyrannical laws and execute them in tyrannical manner. Political philosopher John Locke in his book "Two Treatise on government" also proposed that

powers of the government should be divided into 3 branches. Separation of powers ensure that each branch has certain checks and balances on the other branches of the government. According to professor Hearnshaw "If the legislative power is combined with executive power in the hands of one person or body of individuals, there can be no liberty. Nor can there be any liberty if the power to judge is combined with the legislative or executive".

In order to limit the despotic tendencies of the government, the framers of US Constitution separated the three branches of the government. They also provided a system of checks and balances in order to ensure liberty. In short the concept of separation of powers has been converted into system of checks and balances by US Constitution.

Checks and balances on Congress

Congress is the legislative organ. It consist of two

houses i.e House of Representative and Senate. The lower house of Congress is House of Representative. The upper house of Congress is Senate. A system of checks and balances is imposed by other branches as well as within the Congress.

Checks and balances within the Congress

Both houses of Congress have certain checks and balances on each other. These include

- a) Money bill must originate in House of Representative, but the Senate can ammend it as much as it likes.
- b) A bill passed by one house can be rejected by the other house.

Checks and balances by executive

The executive branch of the government also impose certain checks and balances on the Congress which include:-

- i) The president can send imessages to Congress for legislation on

Important matter

- ② The president can veto any bill passed by the Congress.

Checks and balances imposed by judiciary

Judiciary also imposes certain checks and balances on Congress. These include

- a) The judiciary can nullify any law passed by the Congress
- b) The judiciary can also interpret the laws passed by Congress in whatever manner it suits. According to Justice James Charles "The Constitution is what the judges say it is"

Checks and Balances on Executive

The executive includes President and all the administrative body of the government. In order to ensure liberty, a system of checks and balances has also been imposed on executive.

Checks and balances by Congress

Following are the checks and balances imposed by Congress on the executive branch of the government

- a) Appointment of high official and judges is done by President after the approval of Congress
- b) President cannot declare war without the approval of Congress
- c) President cannot conclude treaties without the ratification of Congress. President Wilson wanted US to be a member of League of Nations. However, Senate did not approved it.
- d) Congress can impeach the president. So far none of the presidents have been impeached

Checks and balances by judiciary

Following are the checks and balances imposed by judiciary

- a) Any act or order of the president can be nullified by the judiciary.

Checks and balances on Judiciary

Judiciary is an important organ of the state. It is separated from executive and legislative in order to ensure that justice prevails. However, both executive and legislative have checks and balances on judiciary.

Checks and balances by legislative

Following are the checks and balances imposed by legislative organ on judiciary

- a) Congress determines the funds of courts.
- b) Congress also determines the jurisdiction of courts.
- c) Congress can also impeach judges.

Checks and balances by executive

Following are the checks and balances on judiciary imposed by executive

- a) Judges are appointed by president with approval of the senate.

Conclusion

The Constitution of US separates the three organs of the government. It also provides an efficient system of checks and balances to ensure liberty. In most of their working, these organs of government are independent. The president is not answerable to Congress. Laws are solely made by the Congress. Judiciary interprets these laws. Hence the concept of separation of powers has been converted into a system of checks and balances by the US Constitution.

Question #2

Provide a comparative analysis of the constitution of US and UK.

Introduction

Constitution is broadly defined as the body of rules and regulations according to which a country is governed. It provides basic principles and functions of each department of the

government. It also safeguards the interest of the people and ensure their liberty. Every country has a Constitution. The oldest Constitutions are those of UK and USA. Both these Constitutions have certain similarities and differences.

Similarity between the Constitutions of US and UK

Following are the similarities between the Constitutions of US and UK

a) Both have Conventions

According to Dicey "Conventions are the rules for determining the mode in which the discriminatory powers of the crown ought to be exercised. Conventions are not enforced by the courts. In the word of Dicey "Conventions are not law". Dr. Jennings further elaborates "Conventions are the flesh that clothes the dry bones of law".

The Constitution of US and UK both contains Convention. The Constitution of UK has a large number of conventions as compared to the Constitution of US

b) Both constitutions contain human rights

Both the constitutions safeguard human rights. The first 10 amendments were inserted in US constitution, which contains human rights. The constitution of UK also contains clauses related to human rights.

c) Both constitutions provide for democratic form of government

Both constitutions are democratic in nature. The constitution of US provided for democratic form of government since its promulgation. However the constitution of UK was transformed from monarchy to democratic form of government.

Differences between the constitutions of US and UK

Following are the differences between the constitution of US and UK

Constitution of US

Constitution of UK

a) Nature of Constitution

a) Nature of Constitution

The constitution of US is written. It is the first ever written constitution in the world.

Rigid Constitution

The constitution of US is rigid in nature. It cannot be amended easily.

c) Form of Government

The constitution of US provides for a federal form of government. Powers are divided between the centre and the states.

d) Supremacy of Constitution

The constitution of UK is unwritten in nature. Although there are certain provisions that are written.

Flexible Constitution

The constitution of UK is flexible. It can be amended by a simple majority in parliament.

c) Form of Government

The constitution of UK provides for a unitary form of government. There are local bodies for smooth administration but they derive their powers from the centre.

d) Supremacy of Parliament

In US, the Constitution is supreme. All the organs of the government derive their powers from the Constitution.

In UK, Parliament is supreme. It can make any kind of law. It also decides the powers of various organs of the state. It is said that the British parliament can do anything except make a man woman and woman a man.

e) Separation of Powers

The Constitution of US provides for separation of powers between three branches of the government. The working of each branch is independent of the others.

However there are certain checks and balances on each organ of the state.

e) Sharing of Powers

The Constitution of US provides for the sharing of powers. The prime minister of British government is also the member of parliament.

Method of amendment

The constitution of US is rigid. It can be amended by

- ① $\frac{2}{3}$ votes by the legislative
- ② Ratification by $\frac{2}{3}$ of the states.

Legislative procedure

In the US Constitution, followings are the steps for the approval of bill

- i) First reading
- ii) Committee stage
- iii) 2nd reading
- iv) Third reading
- v) Approval of President

Method of amendment

The constitution of UK is flexible. It can be amended by a simple majority of the parliament

Legislative procedure

In the Constitution of UK, following are the steps for the approval of bill

- i) First reading
- ii) Second reading
- iii) Committee stage
- iv) Third reading
- v) Approval of King/Queen.

Powers of Executive

According to US Constitution president is the head of state as well as the head of government. He is not a part of Congress.

Judicial Review

In US, the Courts can declare any law passed by the Congress or any act of president as null or void. It allows the judiciary to have a check on executive and legislative organs of the government.

Powers of Executive

According to the Constitution of UK The King / Queen is the head of state. The prime minister is the head of government. He is also a member of parliament.

Judicial Review

In UK, there is judicial review but it is limited. The Courts cannot declare any act of parliament as null or void. The reason is that in UK, there is supremacy of parliament.

Framed by a body

The Constitution of US was framed by a convention held at Philadelphia in 1787

Child of Evolution

The Constitution of UK was not framed by any body. It evolved with time. According to Dr Jennings The Constitution of UK is a child of evolution. It can be traced back for centuries

Conclusion

Although there are certain similarities between the constitution of US and UK but there are a number of differences. Both constitutions provide different forms of government. The Constitution of US provides for a presidential form of government. On the other hand the Constitution of UK provides for parliamentary form of government. However, the importance of Constitution lies in its observance rather than form of government it provides.