

QUESTION : 2

Evaluate the theory of 'separation of power' as proposed by Montesquieu. How have modern political systems interpreted and implemented this doctrine?

INTRODUCTION:

Montesquieu, a French philosopher, was born in Bordeaux, France, in 1689 to a wealthy family. Montesquieu's political philosophy was affected by the spirit of rational liberty, which characterized French thought in his days. His philosophy represented a reaction against the absolutism and general conditions prevailing in the age of Louis XIV. Montesquieu wanted to reform political life in France by infusing in it the British sense of liberty and by introducing into the French institution the principle of separation of powers especially separation between executive and judiciary. The modern political system implemented and interpreted Montesquieu's theory of separation of powers in various ways including the system of checks and balances, separate executive and legislative branches, independent judiciary and constitutional framework. United States, Pakistan, England, France and India are some of the examples which have

interpreted and implemented this doctrine.

CONCEPT OF LIBERTY:

The most significant of the political contributions of Montesquieu is his conception of liberty which pervades through his The Spirit of Laws. According to him, liberty may be conceived in absolute or relative sense. Absolute liberty is the unrestricted liberty of the individual to do what he is pleased to do whereas relative liberty, which alone is a rational form of liberty is the equal liberty of all to do that which is not forbidden by law. Montesquieu sharply distinguished political liberty from civil liberty or individual liberty.

To Montesquieu, political liberty is to be gained by conforming to laws and not by violating them. It means freedom of action in accordance with and under the protection of the laws. It follows naturally that if in state an individual or a body of individuals are above the laws, there can be no liberty.

SEPARATION OF POWERS:

Liberty lies in subjection to law instead of subjection to persons, secured best by separation of powers. Montesquieu subjected

the constitution of England to a critical examination with a view to finding out a machinery of government which would best ensure liberty. He began by pointing out that liberty was possible in a country where all parts of government were subject to law and control. He found in the separation of three powers of government, i.e. executive, legislature and judicial the best guarantee for liberty.

If the legislative power is united with the executive power in the hands of one person or of one body of officials, there can be no liberty; nor can there be any liberty if the power of judge is not separated from the executive and legislative powers.

The theory of "separation of powers" is the best known theory which exerted influence upon Europe and America. Montesquieu is concerned with the constitutional arrangement necessary in a government to secure an adequate degree of liberty for the individual and at the same time it assure that government has the necessary authority. In order to establish and maintain a moderate government, power must be checked with power. One government that

has political liberty as its "particular end" has achieved this goal. That is the government of England and in description of that government, Montesquieu developed the theory of separation of powers.

Montesquieu instance on the separation of powers was his main contribution to political philosophy and this instance was no lost sight of when the constitution of USA and revolutionary France were framed.

INTERPRETATION AND IMPLEMENTATION

OF THEORY OF SEPARATION OF

POWERS IN MODERN POLITICAL SYSTEM

The modern political system has interpreted and implemented Montesquieu's theory of separation of powers in various ways:

Interpretation:

1: Separation of Powers:

Montesquieu's idea of dividing power among three branches of the government i.e. legislative, executive and judiciary has been widely adopted.

2: Checks and Balances:

The concept of checks and balances, where each branch has some power over the others, has been implemented to prevent any one branch from becoming too powerful. For instance, if the legislative and executive powers are given to the same person and there is no ^{system of} checks and Balances, the monarch can make tyrannical laws and execute them in a tyrannical manner. So every organ of the government has a check on the other two organs.

3: Prevention of Tyranny:

The separation of power is seen as a way to prevent tyranny and protect individual rights and freedoms.

Implementation:

1: Constitutional Framework:

Many countries have incorporated the separation of powers into their constitutions, ensuring that each branch has distinct powers and responsibilities.

2: Independent Judiciary:

The judicial branch is often designed

to be independent, with judges appointed or elected through a separate process to ensure their impartiality.

3: Separate Executive and legislative Branches

The executive and legislative branches are typically separated, with the executive branch responsible for enforcing laws and the legislative branch responsible for making laws.

4: System of Checks and Balances:

Mechanisms such as veto power, impeachment, and judicial review have been established to ensure that each branch can check the actions of the others.

Examples of Countries who have Implemented the Theory of Separation of Powers:

1: United States:

The US constitution separates power among the legislative (Congress), executive (President), and judicial (Supreme Court) branches.

2: France :

The French constitution establishes a semi-presidential system, with a separate executive (President) and legislative branches (National Assembly).

3: Pakistan :

(a) Parliament (Legislative): The parliament of Pakistan, comprising the National Assembly and Senate, makes laws.

(b) President and Prime Minister (Executive): The President serves as the head of state, while the Prime Minister is the head of the government; responsible for executing laws.

(c) Supreme Court (Judicial): The Supreme Court of Pakistan is the highest court, interpreting laws, ensuring justice, and providing checks and balances on the other branches.

4: India :

The Indian Constitution also separates power among the legislative (Parliament), executive (President and Prime Minister), and judicial (Supreme Court) branches.

CONCLUSION:

In conclusion, Montesquieu's theory of separation of powers has been widely adopted and implemented in modern political systems, with various countries incorporating the concept into their constitutional frameworks and establishing mechanisms for checks and balances.

And through this mechanism of separation of powers, Montesquieu ensured liberty in a country. The framers of the constitution of America learnt from him the extreme advisability of bringing about the separation of powers.