

# Constitutional Law

(104)

(C) Provided for the representation of labour in the provincial legislatures

(D) None of these

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## CONSTITUTIONAL LAW

17. What constitutional doctrine in UK is associated with the principle that "what the Crown has done, the Crown can undo"?
- (A) Royal Prerogative (B) Doctrine of Ultra Vires (C) Doctrine of Desuetude (D) None of these
18. According to the French Constitution, what mechanism allows the President to submit certain policy matters to a national referendum?
- (A) Constitutional Council Authorization (B) Article 11  
(C) Council of Ministers' Decision (D) None of these
19. What is the primary role of the Senate in the French bicameral system?
- (A) Scrutinizing government bills (B) Conducting impeachment proceedings  
(C) Ratifying international treaties (D) None of these
20. How are judges appointed and removed in Turkey?
- (A) Judges are appointed by the President and can only be removed by the Grand National Assembly.  
(B) Judges are appointed by the Council of Ministers and can be removed by the President with Constitutional Court recommendations.  
(C) Judges are appointed by the Supreme Board of Judges and Prosecutors and removal requires a disciplinary process overseen by the Constitutional Court.  
(D) None of these

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## PART-II

- NOTE:** (i) **Part-II** is to be attempted on the separate **Answer Book**.  
(ii) Attempt **ONLY FOUR** questions from **PART-II**. **ALL** questions carry **EQUAL** marks.  
(iii) All the parts (if any) of each Question must be attempted at one place instead of at different places.  
(iv) Write Q. No. in the Answer Book in accordance with Q. No. in the Q.Paper.  
(v) No Page/Space be left blank between the answers. All the blank pages of Answer Book must be crossed.  
(vi) Extra attempt of any question or any part of the question will not be considered.

- Q. No. 2. How did the Supreme Court's legal reasoning in the Dosso v. Federation of Pakistan case contribute to legitimizing the imposition of martial law, with a focus on its alignment with the Kelsenian theory? (20)
- ✓ Q. No. 3. Examine the mechanism of checks and balances within Pakistan's parliamentary system. How does it ensure accountability and prevent abuse of power? (20)
- ✓ Q. No. 4. Compare the federal structures of USA and India, emphasizing the similarities and differences in the division of powers between central and state governments. (20)
- ✓ Q. No. 5. Critically analyze the salient features of the Russian Constitution and explain how they impact the country's laws and politics. (20)
- ✓ Q. No. 6. Comprehensively examine how the system of checks and balances within the U.S. Constitution contributes to the separation of powers and safeguards against potential abuses of authority? (20)
- ✓ Q. No. 7. Compare how the House of Lords and the House of Commons contribute to making laws in the UK. Explain the key differences in their roles and how these differences impact the legislative process. (20)
- Q. No. 8. Critically analyze the historical and foundational aspects of the Objective Resolution 1949. Highlight its specific inclusion in the 1973 constitution, examining its ongoing influence in interpretation in the country's constitutional framework. (20)

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(2024)

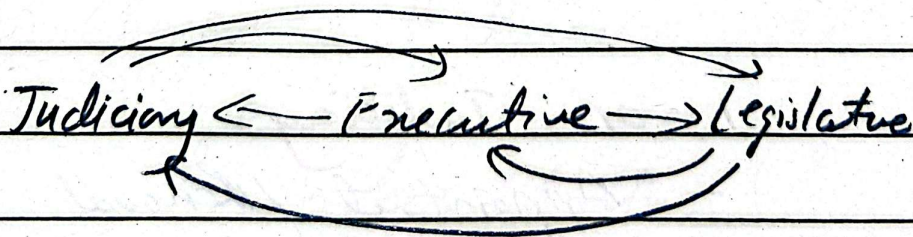
## Constitutional Law

### Q.3) (1) Introduction:

Pakistan has established a Parliamentary system in the early years of its making. The system is divided among three branches.

Hence, known as: Judiciary, Executive, legislative. Like the American system of checks and balances laid by Montesquieu, Pakistan also follows it. Each branch as a check on one another.

### (2) Checks and balances in Pakistan:



- all are having checks on each other

## a) Executive Branch checks:

Executive branch has checks on both Judiciary and Legislature

### i. On Judiciary:

- Appointment / Removal
- JCP
- Pardons

### ii. On Legislature:

- Dissolution of Assembly
- ECP
- Oversight + ordinance

## b) Legislative branch checks:

### i. on Judiciary:

- Appointment / Removal
- JCP
- New laws

ii. On Executive:

- Vote of No Confidence
- Budget
- Accountability.

c) Judiciary checks:

i. On Executive:

- Can convict
- Precedent
- Suo Motto (Art. 184)

ii. On Legislature:

- Summon
- Suo Motto.

(3) checks and balances vale  
in ensuring no abuse of power  
and accountability:

The recent 26<sup>th</sup> Amendment  
in 2024 has enabled further

avenues for accountability.

The over control of Judiciary by legislation would eliminate the issue of abuse of power.

The concept of abuse of power is related to all three branches of State. The Judiciary with its *suo moto* powers has the right to stop any abuse of power by executive. Similarly, the Executive can pardon a convict if it think fits that he/she was wrongly convicted.

Legislature on the otherhand, has the power to check duty of both branches. Hence, creating the sphere for accountability of acts of executive and judiciary.

(7) Conclusion:

(Q.4)

## (1) Introduction:

Federalism is the most balanced and outcome based government structure. The concept of federalism is to divide the power between the states and central authority but having main control. Both India and the US follow this form of government structure. However there are some differences.

## (2) Feature of Quasi-Federalism in India:

### a) Unequal Division of Power:

The power unlike the US is unequally distributed. The monopolized power has led to less controls to central and major to one state.

## (b) Constitutional Flexibility:

The US constitution is considered to be too rigid to amend. The Indian constitution is considered as neither too flexible nor rigid. The concept of Absolute majority applies at this and the bill can be initiated in any house.

## (c) Representation in Rajya Sabha

The concept of equal representation in upper house is not present in India. India focuses on population based system - Hence, creating an imbalance.

## (d) Proclamation of Emergency:

The President has power to proclaim emergency at the times of national, state and financial security.

### (e) Control of Center:

The center holds the regulatory and most authority over other states. Hence, bringing true form of federalism.

### (3) Federal Structure of USA:

#### (a) Sovereignty division:

In the USA, the sovereignty is not solely given to central. Rather it is divided between central and people.

#### (b) Equal power division:

The states and central hold equal power. Hence, a more balanced approach.

### (c) Constitutional Amendment:

USA has a rigorous form of constitutional amendment.

The two-third majority vote in congress makes it difficult to pass.

### (d) Representation in Congress:

The US, unlike India gives equal representation to States in congress. The concept of population - seats is not present in the United States.

### (e) Emergency powers

The US president has powers to proclaim emergency. However, the power undergoes the process of checks and balances.

## (f) States autonomy:

The States in the US are more autonomous than anywhere. The finance system as well as local executive department is given full autonomy.

## (4) Conclusion:

In a nutshell, the concept of federalism is present in both India and the US. However, India uses a different approach in state representation rate and distribution of power. US on the other hand follows the approach of State sovereignty and autonomy. Along with this it provides with a balanced approach to State organs.

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(Q.5)

## (1) Introduction:

Russia was once part of the Soviet Union. It followed the Soviet Constitution 1977. It emphasised a federal structure. The disintegration of Soviets and formation of Russia led to Russian Federation enacted on 25 December 1993. The current Russian Constitution is written and follows federalism. It features a <sup>mixed</sup> ~~semi~~-Presidential - Parliamentary system similar to France.

## (2) Political Parties in Russia:

The 1993 Constitution declares Russia as a Republic. It is a semi-Presidential form of government. It has six parties present in the government in which United Russia is the largest.

### (3) Features of Russian Constitution:

#### (a) Written form of Constitution:

The 1993 Russian Constitution is a codified written document. It consists of two parts.

##### i. Part-A

Part A has nine chapters and 137 Articles.

##### ii. Part-B

Part B has 9 Articles.

#### (b) Republic in nature:

The 1993 Russian Constitution declares Russia as a Republic State. In a Republic State, the power belongs to the people. The Article 1 of Constitution defines this concept.

### (c) Federalism:

Russia follows the federal structure of government. With distributed power among cities and central control. Such seen in India or Pakistan.

### (d) Supremacy of Constitution:

The Constitution of 1993 clearly declares itself as the supreme law of the land. Article 65 identifies how the duty of state is to protect rights of citizen, therefore, Constitution is supreme law of land.

### (e) Bicameral Legislature:

The form of Parliament is Bicameral. The upper house is called 'Federal Council' and lower house is called 'The State Duma'. The lower house is

more powerful than the upper house.

### (f) Rigid Constitution:

Constitution of 1993 is a very rigid in nature. The amendment process requires  $\frac{1}{5}^{\text{th}}$  of number of two houses.

### (g) Semi-Presidential system:

The form of government in Russia is a mixture of Presidential and Parliamentary system. Similar to France the government is mostly controlled by President. The President has both Head of State and Executive powers.

### (h) Fundamental Rights:

The constitution is a power source of protection for rights of citizen - The Article 17-64 in

chapter 2 protect the  
fundamental rights of all  
Russian citizens.

#### (4) Conclusion:

In a nutshell, the Russian  
Constitution 1993 is a semi-  
Presidential system. It follows  
the federal form of government  
and is a protector of the  
rights of Russian citizens.

(Q.7)

(Ans)

### (1) Introduction:

The United Kingdom's Parliament consists of two houses. The House of Lords (upper House) and the House of Commons (lower House). The House of Lords acts as a reviewing chamber for the Bills passed in the House of Commons. It can scrutinise a bill passed by the lower House. The House of Commons is the elected representatives of citizens of UK. The major difference is the form of law being passed. Where the House of Lords is fixed with reviewing the passed legislation.

## (2) House of Lords' role in law making:

The House of Lords has the power to introduce a new law. However, the main function of HOL is set to review and scrutinize the legislation passed in House of Commons. House of Lords is <sup>presented</sup> ~~created~~ by the Nobels and The King of England and Wales. Hence, the bill is mandatory to come to House of Lords for assent.

## (3) House of Commons' Role in law Making:

The House of Commons is led by the Member Parliaments elected by the voting system. They are considered as the main House to initiate a Government Bill. That Bill

then goes through a scrutiny process in the House of Lords. With the approval from the upper house, the bill is then sent for assent of the crown. Only then it is enforced as a law.

### (3) Difference in Role of HOL and HOC:

| House of Lords       | House of Commons   |
|----------------------|--------------------|
| a) Hieridetary       | Elected by people  |
| b) Secondary Chamber | Primary Chamber    |
| c) Scrutinizes Bill  | Initiates Bill     |
| d) Head of State     | Head of Government |

### (4) Conclusion:

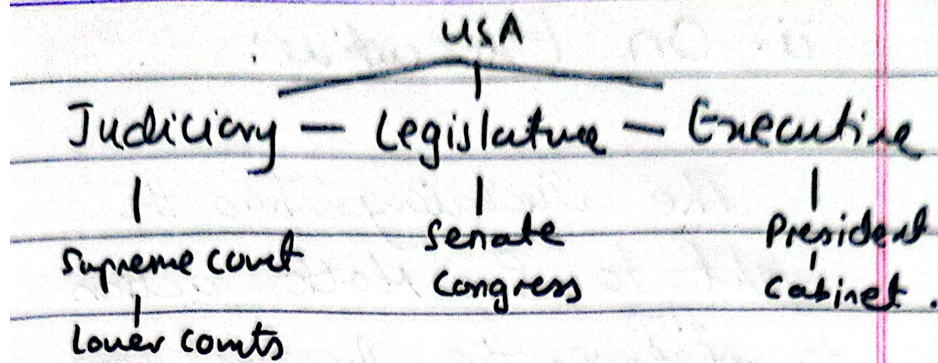
House of Lords is the upper house of Parliament which deals with scrutinizing the bill passed in lower house of Parliament known as House of Commons.

(Q.6)

### (1) Introduction:

The system of checks and balance laid by Montesquieu is used by the United States. This system of checks and balance enforces a secondary check on one another of State organs. The main three Judiciary, Legislature, and Executive have all checks on each other. This is done to balance the power apparatus of each. This helps each the organs to not come out as supreme from one another.

### (2) What are Three Organs of US State:



### 3) Concept of Separation of power in US:

The United States follows the system of checks and balances. This is to ensure that no state organ becomes overpowered from the others. This concept was laid by Montesquieu and is now enshrined in the US constitution.

#### a) Check and balance of Judiciary: On Legislature:

i. The Judiciary has a right to call review on new law passed. Other than that it has right to give out precedents over subsiding law.

## ii. On Executive:

The Judiciary has the right to ~~reserve~~<sup>stop</sup> the President ordinance and bill. Other than that, the Judiciary has right to impeachment of President.

## b) Checks and Balances of Legislature:

### i. On Judiciary:

Can appeal to the decision of court. Senate can impeach or nominate Judges. Has control of Judicial budget.

### ii. On Executive:

The Legislature can call review and justification on cabinet action. Can impeach the President and can override veto.

### c) Checks and Balance of Executive:

#### i. On Judiciary:

The executive appoints and removes the Judges. The President can give <sup>Presidential</sup> Judicial pardons overriding the courts' decision.

#### ii On legislature:

The executive or President can establish and pass law under ordinance. It can veto actions of legislatures.

### (4) How Does this Contribute to protection of citizens:

The system of checks and balances balances the power between all three state institutions.

The checks and balance on Judiciary will eliminate the issue of wrongful conviction.

and biased courts in the United States. As for the legislative, the system of checks and balance makes it less controlling in law passing and over power.

Lastly, the checks and balances on Executive helps the power to be balanced. Whereas, any new bill or law passed by President is unconstitutional shall be revoked as seen in recent times with 'Birth Right Citizenship'. Hence, all three institutions have the power of checks and balances, protecting the rights of its citizens.

### (5) Conclusion:

The system of checks and balance was established by Montesquieu. The purpose of this was to maintain power balance between institutions.

The balance of power and the system of checks and balance has helped USA restore the human rights. Hence, creating a balanced power society.

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