

Contemporary political system

(Allied- Political science to History and Economics)

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Unit 1

Basic concept of constitution

Meaning definition classification of constitution

Constitution means the aggregate of only those written principles which regulate the administration of the state. It is identified as a written document which defines the basic rights of the Governed and the limitation of the government. It can also be defined as a document which contains (those) rules which provide the framework for government. Classification of Aristotle and others evolved and enacted constitution

Generally the following are the classifications of the constitutions:

- Evolved and Enacted
- Legal and Real
- Written and Unwritten
- Flexible and Rigid

According to Dr. Garner, the difference between the evolved and enacted constitution is similar to that of written and unwritten constitution. An unwritten constitution is one whose major portion is not written. Mostly it includes customs and the decisions of the courts. Such type of constitutions is not framed by any Constituent Assembly.

Thus the constitution is not enacted but it is evolved". Written constitution is one whose basic principles are written. According to Dr. Gamer, "A written constitution is generally an instrument of special sanctity distinct in character from all other laws, proceeding from the different sources, having a higher legal authority and alterable by a different procedure".

Sometimes some written constitutions are issued in the form of charts by the Monarchs in order to suppress the rebellion or to silence the people. For example, in Germany after 1815 several liberal Monarchs issued charters.

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In the early part of the nineteenth century, the Portuguese Monarch gave a charter to his people. Besides that, the written constitutions are enacted by a Constituent Assembly. In

1787, the Constitution of America was enacted by the Constituent Assembly.

In India, a new constitution was enacted by the Constituent Assembly. Great Britain is the only country where there is an unwritten constitution. This is the glaring example of an evolved constitution.

The second difference between the written and unwritten constitution generally relates to the ordinary and constitutional laws. In England, the Parliament has the right to amend both the ordinary and constitutional laws but in America, France and India this is not the case, because in these countries there is a special procedure to amend the constitutional laws. Generally an unwritten constitution is flexible, while a written constitution is rigid.

There is no scientific basis for the difference between a written and an unwritten constitution. Though the British Constitution is an unwritten Constitution, yet it includes a large part of laws passed by the Parliament.

In England, many Acts and the Charters like Magna Carta of 1215, Bill of Rights, 1688, Habeas Corpus Act, 1679 and Reform Acts of 1832, 1867 and 1884 and the decisions of the judges have become an integral part of the constitution.

Parliamentary presidential form of government

In a presidential system, the head of the government leads an executive, that is distinct from the legislature. Here, the head of the government and the head of the state are one and the same. Also, a key feature is that the executive is not responsible to the legislature.

Features of the Presidential System

The executive (President) can veto acts by the legislature.

The President has a fixed tenure and cannot be removed by a vote of no-confidence in the legislature.

Generally, the President has the power to pardon or commute judicial sentences awarded to criminals.

The President is elected directly by the people or by an electoral college.

Features of the parliamentary system

Close relationship between the legislature and the executive: Here, the Prime Minister along with the Council of Ministers form the executive and the Parliament is the legislature. The PM and the ministers are elected from the members of parliament, implying that the executive emerges out of the legislature.

Executive responsible to the legislature: The executive is responsible to the legislature. There is a collective responsibility, that is, each minister's responsibility is the responsibility of the whole Council.

Dual executive: There are two executives – the real executive and the titular executive. The nominal executive is the head of state (president or monarch) while the real executive is the Prime Minister, who is the head of government.

Secrecy of procedure: A prerequisite of this form of government is that cabinet proceedings are secret and not meant to be divulged to the public.

Leadership of the Prime Minister: The leader of this form of government is the Prime Minister. Generally, the leader of the party that wins a majority in the lower house is appointed as the PM.

Bicameral Legislature: Most parliamentary democracies follow bicameral legislature.

No fixed tenure: The term of the government depends on its majority support in the lower house. If the government does not win a vote of no confidence, the council of ministers has to resign. Elections will be held and a new government is formed.

Requisites of good constitution

- Clarity or definiteness: Every clause of the constitution should be written in simple language.
- Brevity: The constitutions should not be lengthy.
- Comprehensiveness:
- Flexibility
- Declaration of rights
- Independence of judiciary
- Directive Principles of State Policy

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