

1.The Indian constitution is more or less copy-pasted from various constitutions, statutes, and laws made during British rule than of any of our own work. Comment.

Approach

Candidates are expected to write about how the most of Indian constitution's provision are copied from various countries constitution and laws from the British rule such as Gol act 1935.

Introduction

There was no hesitation to learn from the experiences of other nations, hence, the Indian Constitution has various features that are borrowed from other nations as well as from the Government of India Act 1935. Indian Constitution has absorbed those features from other nations' constitutions that suited Indian problems and aspirations.

Body

Indian Constitution is a unique document drafted after a hard work of three years of the constituent assembly. Some features of the Indian constitution are borrowed from other nations and laws of British rule such as:

- Rule of Law from the UK basically states that a State is not governed either by the representatives or by the people but only by the law of that country. The concept of rule of law states that everyone is equal before the law; even the ones making it. Article 14 of the Indian Constitution codifies the rule of law.
- Parliamentary form of government a Westminster model is such form of government, the country is governed by a cabinet of ministers led by the Prime Minister. The main feature of the parliamentary form of government is the availability of one or more opposition parties that exists to keep a check on the ruling party and its functioning.
- Idea of the fundamental rights was taken from the USA Articles 12 to 32 of the Indian Constitution contains all the fundamental rights. Fundamental rights are the basic human rights given to the citizens of the country to assure them an equal stance in society.
- The provision of Judicial Review gives the judiciary an upper hand in interpreting the Constitution was also borrowed From the USA. The judiciary can thus nullify any order by the legislature or executive if that order is in conflict with the Constitution of the country.
- The Constitution of 1950 was a by-product of the legacy started by the Government of India Act 1935. This was the longest act passed by the British government with 321 sections and 10 schedules. The constitution have included a large number of the provisions of the Government of India Act of 1935 into the Constitution of India. It include federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions etc.

- From Canada we inspired and modelled our polity as a union. Borrowed provisions from Canada are Federation with a strong Centre, Vesting of residuary powers in the Centre, Appointment of state governors by the Centre and Advisory jurisdiction of the Supreme Court.
- From Australia Concurrent List, Freedom of trade, Commerce and inter-course and Joint sitting of the two Houses of Parliament were borrowed.

Though some features of the Indian constitution are borrowed from other nations, it is still wrong to say that it is a copy pasted. Reasons to not call the Indian Constitution as copy pasted are given below:

- It is drafted considering the historical perspective of Indian Nationalist struggles, the geographical diversity of India, and its traditional and characteristics which are totally different from any other nation.
- Indian Constitution is the most detailed constitution of the world. Where the American Constitution has only seven articles, Australian Constitution 128 articles, Indian Constitution originally consisted of 395 articles which have now increased to 448 articles.
- There are various provisions borrowed from other nations but they are absorbed in the Indian Constitution to suit its polity and governance. They are not exactly copied.
- From example American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The scope of judicial review in India is narrower than that of what exists in USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions.
- The British Parliament is the only legislative body in the country with unfettered power of legislation. It can make, amend or repeal any law. Though in India's case, we have legislature at state level too.

Conclusion

Indian Constitution is a evolutionary living document. As per the demand of time it was the duty of our constitutional forefathers to draft a constitution to fit a country so culturally diverse, and economically wide. They made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

2. In spirit and philosophy, the Indian Constitution tilts towards the American Constitution. Do you agree? Illustrate.

Approach

Candidates are expected to write about the Indian constitution's spirit and philosophical tilt towards American constitution and then can write counter arguments with illustrations.

Introduction

When India's first constituent assembly convened on 9 December 1946 to begin hammering out its constitution, chairman Sachchidanand Sinha urged the delegates in attendance to look first and foremost to the US Constitution. Sinha called it 'the soundest and most practical and workable republican constitution in existence.'

Body

The architects of modern India paid close attention and were titled to the democratic cornerstones laid by their American constitutional setup in many ways:

- India's leaders were enamoured of the American concept of a document written by the people, for the people. For Nehru and Gandhi, the example of the US drafting its own Constitution right after its independence, was very strong as per Granville Austin.
- Indeed, the preamble the moral philosophical guidance to both Indian and USA documents starts with the same three stirring words: 'We the people,' a phrase that somehow confers equality, humility and self-possession all at once.
- Other echoes abound is India's Fundamental Rights which include the abolishment of untouchability mirror America's Bill of Rights both guarantee freedom of speech (though India's does not explicitly mention 'the press') and the right of citizens 'peaceably to assemble' (America's) or 'to assemble peaceably' (India's).
- Belief in the freedom of religion is also part of philosophy behind fundamental rights in both countries. India and US share positive secularism which addresses religious plurality and peaceful coexistence of all the religions.
- Individual centric nature of fundamental rights, priority of individual rights over community rights is another thread shared by bill of rights and fundamental rights.

India's unique circumstances meant that the US Constitution should be studied 'not for wholesale adoption, but for judicious adaptation of its provisions as per Indian requirement there are many differences such as:

- Theoretically, we may say that the doctrine of Separation of Power is adopted in our Constitution, but it is only between the Executive and Judiciary. Separation of Power is complete in US.
- In the US, the President is the head of the state and so his government is popularly referred as the Presidential form of government. India, on the other

hand, has a Parliamentary form of Government as the Prime Minister with his cabinet exercises real power with the President being only a nominal head.

- India has only one Constitution, wherein the Central government interferes with functions of State governments in the form of, inter alia: Appointment of Governors. Governor having the power of reserving the States' bills for consent of the President. Central government's power to impose President's rule in the States.
- In the US, head of the government, President is indirectly elected by the electoral college. Whereas in India, The President is indirectly elected by means of an electoral college consisting of the elected members of the Parliament of India and the Legislative assemblies of the States of India and the Union territories of Delhi, and Puducherry.
- Clear cut demarcation of powers of judiciary. Central judiciary deals only with central subjects and respective states subject have no appeal in federal courts.
- In India, there is single citizenship i.e. no separate citizenship of states but in USA, there is a dual citizenship states i.e. citizenship of states as well.

Conclusion

When it comes to comparison between different constitutions, there might have some similarities and some stark differences. However their performance with respect to political-social and economical conditions of their respective countries matters the most. Though the US and Indian political systems are similar in many respects, yet they are the product of their unique history, vision of makers and socio-economic milieu, and varying political culture.

3. To what extent have the 5th and 6th schedules of the Indian constitution helped in integrating tribal people with the mainland? Has it really been successful or it has further alienated them? Critically Examine.

Approach

Question demands critical examination of 5th and 6th schedule. Candidates need to examine how it had helped to integrate tribal people with mainland India by securing sociocultural rights and also how it further alienated tribals with counter arguments.

Introduction

Fifth and Sixth Schedules were discussed and passed by Constituent Assembly between September 5-7, 1949. These days are remembered by tribal rights activists every year. These two schedules provide for alternate or special governance mechanisms for certain 'scheduled areas' in mainland and certain 'tribal areas' in northeastern India.

Body

British policy advocated protection of these areas through exclusion and isolation from the operation of general laws however the nationalist leadership recognised these dimensions of social and geographical isolation and tried solve this problem with integrative approach by adopting 5th and 6th schedule:

- Heart of the tribal integration policy was preservation of the tribal people's rich social and cultural heritage. Jawaharlal Nehru had the main influence in shaping the govt's attitude towards the tribals.
- The State proposed these schedules in constitutional setup to inspire them with confidence to interact with mainland India and to make them feel at one with India, and to make them realise that they are part of India and have an honoured place in it.
- The mandate towards devolution of power through both schedules determined the protection of their customs, better economic development on the lines of mainland India with importantly ethnic security.
- India as free country had build capacity with both schedules by accommodating the uniqueness of tribal people on the larger level legislature (Indian parliament) executive and judiciary with great emphasis on the preservation of the rich and distinct culture of the tribal people living in various parts of India.
- In area of administration 5th and 6th schedule brought the reliance on the tribal people. As per schedules administrator should be recruited from among them. If an outsider is chosen or appointed to administer, they should have sympathetic approach or attitudes towards them.
- An autonomous district council gave greater role in directing administrative requirements without depending on the Central State structure. This gave

recognition of self rule on same stature of any mainland state, body or institutions.

- Thus both Schedule mandating the state to devolve certain political, administrative and fiscal powers to local governments elected by the communities due to which, it has been quite successful in countering the so called Separatist movements, of which some have become active insurgencies, as a key issue in North-East.

Approach of integration was to provide space for protections and safeguards for their distinct identity, as enshrined in the Constitution but State actually pursued the tribals with assimilation rather than integration which transformed into alienation of Indian tribes:

- There was attempt of over-administration of tribal areas. Efforts were made for administration and development through their different state sponsored social and cultural institutions that gave less chance of self development and self rule.
- The two schedules remain probably, the most enigmatic segments of the Constitution of India. Constitutional authorities, judiciary, bureaucrats, journalists and academia alike are ignorant about factual realities on these two schedules, as evident from passionate yet factually incorrect writings that keep appearing in dailies, magazines and journals.
- Displacement of tribals from their land amounts to violation of the Schedules of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life.
- Fifth Schedule accorded far greater autonomy to tribal areas, but Tribes Advisory Council remained a mere consultancy body rather than an autonomous decision-making body.
- Governor's reports is not covering issues of displacement and rehabilitation, law and order problem, tribal protests, atrocities against tribes, and so on. The reports do not offer an independent assessment of the policies of the State Governments vis-à-vis Scheduled Areas.
- The State Governments has held the view that that these Councils ought to stick to their traditional role, which is to protect tribal culture, land and identity and refrain from engaging in developmental activities.
- Powers given to the Councils to make legislation and implement development programmes have not been matched with the financial autonomy.
- Weakness in the justice delivery mechanism & lack of awareness about legal system led to continued alienation of tribal land, indebtedness, bonded labour.
- The Development model in India was carry forward from the pre-independence British period which was based on exploitation of natural resources and human capital for extraction.

Wayforward:

- Making them part of the developmental process, example Forest Rights Act for managing forest-based resources.
- Human Development congruous to their traditional systems like Eklavya Model Schools.

- Anthropological Survey of India (AnSI) can become a stronger organization and enrich research if it comes under Ministry of Tribal Affairs.
- There is dispersed population of tribes and displaced population due to infrastructure projects, conflicts new micro-agencies need to be created in such pockets to cater to specific tribal groups.

Conclusion

Tribal communities face disregard for their values and culture, breach of protective legislations, serious material and social deprivation, and aggressive resource alienation. Hence right to preservation of their language, culture and traditions, and to protect themselves against the loss of identity, must be recognized, protected, documented and allowed to thrive as a dynamic living culture.

