

**POLITICAL
SCIENCE-II
LL.B Part-II**

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The Constitution of The People's Republic of China

Q. WHAT ARE SALIENT FEATURES OF CHINESE CONSTITUTION.(A2019)

Ans:

CHINESE CONSTITUTION

The Constitution of the People's Republic of China is nominally the supreme law of the People's Republic of China. It was adopted by the 5th National People's Congress on December 4, 1982, with further revisions نظر ثانی about every five years. It is the fourth constitution in the country's history, superseding the 1954 constitution, the 1975 constitution, and the 1978 constitution.

Though technically the "*Supreme Legal Authority*" and "*Fundamental Law Of The State*", the ruling **Chinese Communist Party** (CCP) has a documented history of violating خلاف ورزی many of the constitution's provisions and censoring سنسر کرنا calls for greater adherence استقامت to it. Furthermore, claims of violations of constitutional rights cannot be used in Chinese courts, and the National People's Congress Constitution and Law Committee, the legislative committee responsible for constitutional review, has never ruled a law or regulation unconstitutional.

History of Chinese Constitution :

The draft of 1982 Constitution of China was prepared by the Central Committee of the Communist Party of China after prolonged طویل nationwide discussions spread پھیلاتا over a period of 2 years. It was officially recognized by the *National People Congress* (NPC), which met in December 1982. The draft of the Constitution follows to four basic principles namely; adherence استقامت to socialist road, to the people's democratic dictatorship, to the leadership by the Communist Party of China and by *Marxism, Leninism* and *Mao Zedong* thought. Chapter 1 of the Constitution of the People Republic of China (PRC) deals with general principles. It has 32 articles in all.

Structure of Chinese Constitution

- Preamble
- General Principle's (Chapter 1)
- The Fundamental Rights and Duties of Citizens (Chapter 2)
- The Structure of the State (Chapter 3), which includes such state organs as the National People's Congress, the State Council, the Local People's Congress and Local People's Governments and the People's Courts and the People's Procuratorates (public prosecutor).

- The National Flag, the National Anthem, the National Symbol and the Capital
(Chapter 4)

Salient Features of Chinese Constitution

Followings are the main features of Chinese Constitution :

- ✚ A Written Document
- ✚ Flexible Constitution
- ✚ Unitary وحدانی System
- ✚ People's Republic
- ✚ Democratic Centralism
- ✚ Communist Party of China (CPC)
- ✚ Unicameral یک ایوانی Legislature
- ✚ Fundamental Rights and Duties
- ✚ Public Interest
- ✚ No Discrimination امتیاز and Exploitation استحصا

A Written Document

The Constitution of People Republic of China is written in nature. It is a brief document containing 138 Articles, which comprises پر مشتمل ہے of four chapters. Though, it is brief اختصار yet it lays down in sufficient کافی detail. The political, social and economic objectives of the regime حکومت. It deals not only with the structure of the state machinery but is also embodies a program for future (Its preamble states the goals of the Communist regime in accordance اتفاق with the basic lines of the Communist Party of China (CPC). According to Article-I of Chinese constitution People Republic of China (PRC) is a socialist state. The Socialist system is the basic system of People Republic of China. No individual or organization is allowed to damage the socialist system. This principle is based on the definite ideology نظریہ of Marxism and Lenin as interpreted by Chinese socialist leader Mao.

Flexible Constitution

The China Constitution of 1982 is flexible. Article-64 of the constitution declares, “Amendments ترامیم to the constitution are to be propose by the standing committee of National People Congress (NPC) and by more than I/5th of the deputies (assistants) to the NPC and adopted the majority vote of more than 2/3rd of all deputies to the Congress”. Statutes and resolutions are adopted by simple majority of the deputies of National People Congress. In

comparison with other rigid کڑا constitutions of the world the procedure of amendment in the Chinese Constitution is easier. Thus the constitution is not rigid, but a flexible.

Unitary System

The 1982 Constitution like the previous ones (1954.1975.1978) provides for a unitary system. It provides for the centralization of powers at the Centre. Though there are provinces autonomous خود تھمی regimes and municipalities, but they are given powers by the Central Government, which can be taken always whenever it is so desired.

People's Republic

Article-II of the Constitution says that all powers in People Republic of China belong to the people, which are exercised through National People Congress and Local People's Congress. The people administer the state affairs and manage their economic, social and other affairs through various channels in various ways in accordance with law. The People Republic of China is a state of people's democratic dictatorships آمریت led by the working class based on allowance of workers and peasants کسان and rallying all democratic classes and various nationalities within the country.

Democratic Centralism

The Article-III of the constitution lays down that the state organs of People Republic of China apply the principle of democratic centralism. The National People at different levels is instituted through democratic election and responsible to the people. All the state organs are created by the people's congresses. The division of powers and functions between the Centre and the local state organs is guided by the principle of giving full play to initiative and enthusiasm of local authorities under the unified leadership of central authorities. The government of the People Republic of China is a government of the People's Congress on the principle of democratic centralism.

Communist Party of China (CPC)

Like the Soviet Union(Russia), the political system of China is also characterized by one party system i.e. the *Communist Party of China* (CPC) under the leadership of *Mao Zedong* and *Marxist* and *Leninist* thought is the guiding and controlling force and agency (in China). Though the Constitution does not emphatically زور دے کر and clearly declares the supreme position of the Communist Party, yet in practice, the party exercises complete control over the machinery of the government. The party occupies the position of permanently not only in the legislative and executive but also to the judicial branch. Thus every organ of the government is under its control and nothing can be done either without its consent or against its will.

Unicameral Legislature

The constitution of the People Republic of China declares that there will be a unicameral legislature to be known as National People's Congress (NPC). It is the highest organ of the state power and the sole legislative assembly of China. It is repository of all powers and authority in the country and people exercise their powers through it. Its deputies **نائبین** are directly elected by the people.

Fundamental Rights and Duties

The Article 33-56 of Chapter II of the constitution give a detail description of the fundamental rights and duties of the citizens. The individual's rights include right to vote, freedom of religion, freedom of speech, freedom of press, freedom of assembly, freedom of association, freedom of procession and of demonstration. The state also protects the right of citizens and their lawfully earned income saving, house, property and also his right to inherit **وارث** property. The important duties include to safeguard the unity of the country, to abide by the laws of constitution, to defend the motherland and resist aggression **جارجیت**, to perform.

Public Interest

The state forbids **ممانعت** any person to use his private property to the detriment of the public interest. Again, it must be noted that in China, it is the government and in ultimate sense, the Communist Party that wholly determines what that "Public Interest" is.

No Discrimination and Exploitation

The constitution of China declares that all nationalities are equal which a major characteristic of chine constitution is. All types of discrimination **انتیاز** or oppression **ظلم** with any nationality and acts, which undermine **کنزور** the unity of the nationalities are prohibited **منع**. It also disbands **توتنا** the exploitation **استحصال** of man by man or exploitation of men by state.



**Q. BRIEFLY MENTIONED THE AMENDMENTS MADE INTO THE CONSTITUTION OF CHINA. (A2018)(A2019) (A2020)
DISCUSS THE PROCEDURE OF AMENDMENT IN THE CHINESE CONSTITUTION(S2019)**

Ans:

The amendment to the Chinese Constitution is only possible when:

- a) Must be proposed by the Standing Committee of the National People's Congress. (or)
- b) By more than one-fifth of the deputies to the National People's Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress

The Constitution of the People's Republic of China states here is an overview on five amendments made over the past three decades. The existing Constitution, which is the fourth Constitution since the founding of the People's Republic of China on Oct. 1, 1949, was adopted on Dec. 4, 1982 by China's top legislature.

The Constitution, consisting of 138 articles in four chapters, has been amended five times: In 1988, 1993, 1999 , 2004 and 2018.

AMENDMENTS MADE INTO THE CONSTITUTION OF CHINA

There had been five major revisions by the National People's Congress (NPC) to the 1982 Constitution which are described below:

1988

On April 12, 1988, the First Session of the Seventh NPC

The first amendment was made to Article 10 and Article 11, affirming the legal status of the private sector and allowing transfer of land-use rights.

The amendments legitimizing the existence of the rapidly developing private economy and providing a constitutional basis for the commercial transfer of land use rights were the results of China's economic reform since 1978, while also provided prerequisites *شرطیں* for further economic development.

1993

On March 29, 1993, the First Session of the Eighth NPC

The second amendment, which was made to nine articles, declared China will practice a market economy instead of a planned economy. It came after the CPC adopted the notion of a "socialist market economy" at its 14th National Congress in 1992. It also incorporated the system of CPC-led Multi-party Cooperation and Political Consultation into the preamble of the Constitution.

1999

On March 15, 1999, the Second Session of the Ninth NPC

China revised six items in its Constitution. It protected the guiding role of Deng Xiaoping Theory and declared the rule of law is stipulated as a national policy.

One of the most important moves was to upgrade the private sector from "complement of the socialist economy" to "an important component" in the country's market economy, which is widely regarded as milestone in private sector development.

2004

On March 14, 2004, the Second Session of the Tenth NPC

"The State respects and protects human rights," says the new expression added to the Constitution, marking the first time China enshrined human rights protection into the Constitution, thus becoming a principle of paramount importance under the country's fundamental law.

The important theory of the "Three Represents" was also written into China's Constitution, along with the provision that "private property obtained legally shall not be violated," putting private assets on an equal footing with public property.

2018

13th National People's Congress

The Constitution was amended on 11 March 2018, with 2,958 votes in favour, two against, and three abstentions. It includes an assortment of revisions that further strengthen the Communist Party's control and supremacy, including setting up the National Supervisory Commission, establishing a new anti-graft agency, extending the powers of the Communist Party's implant watchdog, adding *Hu Jintao's Scientific Outlook on Development* and *Xi Jinping Thought* to the Preamble of the Constitution, and removing term limits for both the President and Vice President, enabling *Xi Jinping* to remain president indefinitely. The amendment also adds the phrases "Communist Party of China" and its "leadership" into the main body of the Constitution.

Q. EXPLAIN THE GENERAL PRINCIPLES OF THE CONSTITUTION OF CHINA. (S2018)

Ans:

GENERAL PRINCIPLES OF THE CONSTITUTION OF CHINA

Law in the People's Republic of China (PRC) that was promulgated on April 12, 1986 and came into force on January 1, 1987. It is heavily influenced by the German Civil Code. It is the main source of civil law in the PRC and seeks to provide a uniform framework for interpreting the PRC's civil laws. Unlike most civil law jurisdictions دائرہ اختیار, the PRC didn't not have a comprehensive جامع civil code until 2022, and attempts to create one by the Chinese government have been difficult and controversial. The "General Principles" include both civil rights and liabilities under civil law, and contains 9 chapters and 156 articles. The chapters deal with the following topics:

- 1) Basic Principles
- 2) Citizen (Natural Person)
- 3) Legal Persons
- 4) Civil Juristic Acts and Agency
- 5) Civil Rights
- 6) Civil Liability
- 7) Limitation of Action
- 8) Application of Law in Civil Relations with Foreigners
- 9) Supplementary Provisions

Followings are main principles of Chinese constitution:

General Principles

- This Law is formulated in accordance with the Constitution and the actual situation in our country.
- The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.
- Parties to a civil activity shall have equal status.
- In civil activities, the principles of voluntariness رضاکارانہ, fairness, making compensation معاوضہ for equal value, honesty and credibility سادھ shall be observed.

- The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may overstep upon them.
- Civil activities must be in compliance ^{تعمیل} with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.
- Civil activities shall have respect for social ethics and shall not harm ^{انتضان} the public interest, undermine ^{مکڑور} state economic plans or disrupt ^{خلل} social economic order.
- The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated ^{مقرر} by law.
- The stipulations ^{شرائط} of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China.
- A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume ^{فرض} civil obligations ^{ذمہ داریاں} in accordance with the law.
- All citizens are equal as regards their capacity for civil rights.
- A citizen aged 18 or over shall be an adult. He shall have full capacity ^{صلاحیت} for civil conduct, may independently engage in civil activities and shall be called a person.
- A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labour shall be regarded as a person with full capacity for civil conduct.
- A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate ^{مناسب} to his age and intellect.
- A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented ^{پیش} in civil activities by his agent ad litem.
- The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual ^{عادی} residence shall be regarded as his domicile.

Guardianship Principles

- The parents of a minor shall be his guardians.
- If the parents of a minor are dead or lack the competence ^{تالیبت} to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:
- paternal or maternal grandparent; (2) elder brother or sister; or (3) any other closely connected relative.
- A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

- (1) spouse; (2) parent; (3) adult child; (4) any other near relative; (5) any other closely connected relative or friend.
- A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward.
- A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

Declarations of Missing Persons and Death

- If a citizen's whereabouts **جھانگ** have been unknown for two years, an interested person may apply to a people's court for a declaration **اقرار** of the citizen as missing.
- A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends.
- Under either of the following circumstances **حالات**, an interested person may apply to the people's court for a declaration of a citizen's death:
 - if the citizen's whereabouts have been unknown for four years or
 - if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.
- In the event that a person who has been declared dead reappears or it is ascertained **معلوم** that he is alive, the people's court shall, upon his own application or that of an interested person, revoke **کرتا منسوخ** the declaration of his death.
- A person shall have the right to request the return of his property, if the declaration of his death has been revoked.
- "Individual businesses" refers to business run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere **دائرے** permitted by law. An individual business may adopt a shop name.
- "Lease holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.
- The legitimate rights and interests of individual businesses and lease holding farm households shall be protected by law.
- The debts of an individual business or a lease holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family.

Individual Partnership

- "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.
- Partners shall make a written agreement covering the amount of funds to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.
- The property provided by the partners shall be under their unified management and use.
- An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and registered.
- The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.
- A partnership's debts shall be secured محفوظ with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.
- Partners shall undertake اختیار کرنا joint liability ذمہ داری for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation معاوضہ from the other partners.

Legal Persons

- A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes فرض civil obligations in accordance with the law. A legal person shall have the following qualifications:
 - (1) establishment in accordance اتفاق with the law;
 - (2) possession of the necessary property or funds;
 - (3) possession of its own name, organization and premises; and
 - (4) ability to independently bear civil liability.
- In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.
- A legal person's domicile shall be the place where its main administrative office is located.
- When a legal person terminates ختم, it shall go into bankruptcy دیوالیہ پن in accordance with the law and discontinue all other activities.

Education

- The state develops socialist اشتراکی educational undertakings and works to raise اٹھانا the scientific and cultural level of the whole nation.

- The state runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education, and promotes pre-school education.
- The state develops educational facilities of various types in order to wipe out illiteracy and provide political, cultural, scientific, technical, and professional education for workers, peasants, state functionaries and other working people. It encourages حوصلہ افزائی people to become educated through independent آزاد study.
- The slate encourages the collective economic organizations, state enterprises and undertakings, and other social forces to set up educational institutions of various types in accordance with the law.

Economic Association

- If a new economic entity جوہد is formed by enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.
- If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution امانت to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.
- If the contract for economic association of enterprises or of an enterprise and an institution specifies that each party shall conduct operations independently آزادانہ, it shall stipulate مقرر کرنا the rights and obligation فرض of each party, and each party shall bear civil liability separately.

Civil Rights

- "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.
- Property ownership shall not be obtained حاصل in violation خلاف ورزی of the law.
- State property shall be owned by the whole people.
- State property is sacred مقدس and inviolable ناقابل, and no organization or individual shall be allowed to seize پکڑنا, encroach متجاوز upon, privately divide, retain or destroy it.
- Citizens shall have the right of inheritance وراثت under the law.
- The lawful property of social organizations, including religious organizations, shall be protected by law.

- State-owned forests, mountains, grasslands, un reclaimed land, beaches ساحل, water surfaces and other natural resources may be used according to law by units under ownership by the whole people.
- Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Personal Rights

- Citizens shall enjoy the rights of life and health.
- Citizens shall enjoy the right of personal name and shall be entitled حقار to determine فیصلہ کرنا, use or change their personal names in accordance with relevant provisions.
- Citizens shall enjoy the right of portrait تصویر. The use of a citizen's portrait for profit without his consent shall be prohibited منع.
- Citizens and legal persons shall enjoy the right of reputation شہرت. The personality of citizens shall be protected by law, and the use of insults, libel لعن طعن or other means to damage the reputation of citizens or legal persons shall be prohibited.
- Citizens shall enjoy the right of marriage by choice. Mercenary کرائے کا فوجی marriages, marriages upon arbitrary من مانی decision by any third party and any other acts of interference مداخلت in the freedom of marriage shall be prohibited.
- Marriage, the family, old people, mothers and children shall be protected by law.
- Women shall enjoy equal civil rights with men.

Principles Regarding Relations with Foreigners

- If any international treaty معاہدہ concluded ختم or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.
- International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.
- If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable.
- The ownership of immovable غیر منقولہ property shall be bound by the law of the place where it is situated.

- An act committed outside the People's Republic of China shall not be treated as an infringing *غلاف ورزی* act if under the law of the People's Republic of China it is not considered an infringing act.
- The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.
- The application of foreign laws or international practice in accordance *اتفاق* with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

Armed Forces

- The armed forces of the People's Republic of China belong *تعلق* to the people. Their tasks are to strengthen *مضبوط کرنا* national defence, resist aggression *جارجیت*, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction *تعمیر*, and work hard to serve the people.
- The state strengthens the revolutionization, modernization and regularization of the armed forces in order to increase the national defence *دفاع* capability.



Q. EXPLAIN THE FUNDAMENTAL RIGHTS AND DUTIES IN CHINESE CONSTITUTION. (S2018) (A2020)

Ans:

RIGHTS AND DUTIES IN CHINESE CONSTITUTION

Chapter 2 of Constitution of China 1982 contains the fundamental rights and duties of the citizens. There are 24-Articles in Constitution of China. In almost all the democratic countries, only the fundamental **بنیادی** rights have been guaranteed by the constitution **آئین**, but in China, like the constitution of Soviet Russia, the constitution speaks of the citizens as well. The state expects **توقع** from its citizens the performance **کارکردگی** of certain duties in return for the rights it guarantee. From Article-33 to 51 the fundamental rights are enumerated **شمار شدہ** and from article 52 to 56 the fundamental duties or the citizens of the People Republic of China.

FUNDAMENTAL RIGHTS OF CHINESE CITIZENS

The citizens of China, according to the constitution of China, enjoy the following fundamental rights.

Article 33: Equality For All Citizens

1. All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.
2. All citizens of the People's Republic of China are equal before the law.
3. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 34: Electoral Rights and Equality

All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless **قطع نظر** of nationality, race **نسل**, sex, occupation **پیشہ**, family background, religious belief, education, property status, or length of residence, except persons deprived **محروم** of political rights according to law.

Article 35 Freedom:

Citizens of the People's Republic of China enjoy

- Freedom of speech

- freedom of press
- freedom of assembly
- Freedom of association and
- Freedom of procession and demonstration.

Article 36: Religion

1. Citizens of the People's Republic of China enjoy freedom of religious belief.
2. No state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.
3. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.
4. Religious bodies and religious affairs are not subject to any foreign domination.

Article 37: Personal Freedom

1. The personal freedom of citizens of the People's Republic of China is inviolable .
2. No citizen may be arrested except with the approval or by decision of a people's protectorate or by decision of a people's court, and arrests must be made by a public security organ.
3. Unlawful deprivation or restriction of citizens' personal freedom by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited .

Article 38: Personal Dignity

The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.

Article 39: Home

The home of citizens of the People's Republic of China is inviolable . Unlawful search of, or intrusion into, a citizen's home is prohibited.

Article 40: Correspondence

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom

and privacy of citizen's correspondence except in cases where, to meet the needs of state security or of investigation into criminal offenses, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

Article 41: Freedom of Speech

1. Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures **نمائش** of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication **بناوٹ** or distortion of facts for the purpose of libel or frame-up is prohibited.

2. The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining **معلوم کرنا** the facts. No one may suppress **مٹائیں** such complaints, charges and exposure, or retaliate **تجسس** against the citizens making them.

3. Citizens who have suffered losses through infringement **خلاف ورزی** of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

Article 42: Work

1. Citizens of the People's Republic of China have the right as well as the duty to work.

2. Using various **مختلف** channels, the state creates conditions for employment, strengthens labour protection, improves working conditions, and, on the basis of expanded **توسیع** production, increases remuneration **اجرت** for work and social benefits.

3. Work is the glorious duty of every able-bodied citizen. All working people in state enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The state promotes socialist labour emulation **تقلید**, and commends and rewards model and advanced workers. The state encourages **حوصلہ افزائی** citizens to take part in voluntary labor.

4. The state provides necessary vocational training to citizens before they are employed.

Article 43: Leisure **فرصت**

1. Working people in the People's Republic of China have the right to rest.

2. The state expands **پھیلتا ہے** facilities for rest and recuperation **صحت یابی** of working people, and prescribes working hours and vacations **چھٹیوں** for workers and staff.

Article 44: Retirement

The state prescribes **تجزیر کرتا ہے** by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs **اعضاء** of state. The livelihood **روزی** of retired personnel is ensured by the state and society.

Article 45: Social Security

1. Citizens of the People's Republic of China have the right to material **مدد** assistance from the state and society when they are old, ill, or disabled. The state develops the social insurance, social relief, and medical and health services that are required to enable citizens to enjoy this right.

2. The state and society ensure **یقینی بنانے** the livelihood **روزی** of disabled members of the armed forces, provide pensions for the families of martyrs **شہید**, and give preferential **ترجیحی** treatment to the families of military personnel.

3. The state and society help make arrangements for the work, livelihood and education of the blind **اندھا**, deaf **بہرا**, mutes and other handicapped **معذور** citizens.

Article 46: Education

1. Citizens of the People's Republic of China have the duty as well as the right to receive education.

2. The state promotes **فروغ دیتا ہے** the all-round moral, intellectual **ذہن**, and physical development of children and young people.

Article 47: Research

Citizens of the People's Republic of China have the freedom to engage **مشغول** in scientific research, literary and artistic creation, and other cultural pursuits **مشاغل**. The state encourages and assists creative endeavours **کوشش** conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art, and other cultural work.

Article 48: Gender Equality

1. Women in the People's Republic of China enjoy equal rights with men in all spheres **شعبوں** of life, political, economic, cultural, and social, including family life.

2. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike **دونوں**, and trains and selects units from among women.

Article 49: Marriage, Family, Parentage

1. Marriage, the family, and mother and child are protected by the state.
2. Both husband and wife have the duty to practice family planning.
3. Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents.
4. Violation of the freedom of marriage is prohibited. Maltreatment بدسلوکی of old people, women, and children is prohibited منع.

Article 50: Nationals Abroad

The People's Republic of China protects the legitimate قانونی rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing رہنے والا abroad.

Article 51: Interest of the State

The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.

DUTIES OF CITIZENS IN CHINESE CONSTITUTION

Along with these Fundamental Rights, the Constitution of 1982 also lists the fundamental duties of the Chinese citizens. The Constitution subscribes to the view that there can be no rights without duties. As such, while explaining a particular right of the citizens, the constitution at the same time states their duties also. Every citizen enjoys his fundamental rights and freedoms only when he performs his fundamental duties. The following are the duties of the citizens of the People Republic of China.

1. Duty to Follow the Constitution:

The primary fundamental duty of a Chinese citizen is to abide by the Constitution and the law and to respect the rights of his fellow citizens. Article 53 enjoins on all citizens “*to abide by the Constitution and the law, keep state secrets, protect public property and observe labour discipline and public order and respect social ethics.*” No organisation or individual is above the constitution and the law.

All state organs, the armed forces, all political parties and public organisations and all enterprises and undertakings must abide by the constitution. The Constitution is the supreme

law of the land and it is the duty of everyone to support the dignity و قار of the Constitution and ensure عمل its implementation یقینی بنانے.

2. Duty to Safeguard حفاظت the Unity of the Nation:

It is one of the foremost اہم سب سے duties of the citizens of China to safeguard the unity of the country and the unity of all its nationalities قومیت. It is the responsibility ذمہ داری of all the citizens to help the state in preserving محفوظ کرنا the unity of all nationalities and in suppressing treasonable نامعتول and other counter revolutionary انقلابی activities, and activities against public order and security.

3. Duty to Safeguard the Honour of China:

To safeguard the security, honour and interests of the motherland is the sacred مقدس duty of all the citizens. They are not to get involved, in acts detrimental نقصان دہ to the security, honour and interests of the motherland. The June 1989 military crack down upon the Chinese students and their subsequent بعد trials were justified by the state authorities in the name of securing the unity, integrity, security and interests of the motherland.

4. Duty to Perform Military Service and Defend the Motherland:

It is the duty of every citizen of the People's Republic of China to defend دفاع the motherland and resist مزاحمت aggression جارحیت. All citizens have the duty to undergo گزرنا military training and join the military in accordance اتفاق with the law. In other words, the 1982 Constitution provides for compulsory لازمی military training and service for all able-bodied citizens who are young and within the age range specified by law.

5. Duty to Pay Taxes:

It is a constitutional آئینی duty of all citizens to pay all taxes punctually وقت کی پابندی and regularly, and to enable the government to perform its functions adequately مناسب, efficiently and effectively موثر. A tax is a compulsory contribution امانت of all citizens towards national reconstruction تعمیر and development.

6. Other Specific Duties of a Chinese Citizen:

Several کئی specific duties of the Chinese citizens have been mentioned in the Articles which explain their rights. The Chinese citizens have been assigned the duty to work. “Work is the glorious شاندار duty of every able bodied citizen.”

Article 46 makes it the duty of every citizen to receive education. Married Chinese couples جوڑوں have been assigned the duty to practice family planning and help the state in controlling the growth of population آبادی. Further, parents have the duty to rear and educate their minor children.

It is the duty of the adult children to look after and help their parents. Workers have the duty to do their work efficiently and follow the labour discipline. The 1982 Constitution of China incorporates شامل کرتا ہے a detailed a Bill of Rights and Duties of the citizens. It gives added importance to the rights and duties.

Conclusion:

It is well established that China has achieved substantially کافی unique status over four decades دہائیوں of the rule of Communist Party. She is now reckoned شمار as one of the greatest powers of the world. This could be possible only if people are happy, contented خوش and disciplined. There are neither beggars بھکاری nor thieves چوروں and dacoits ڈکیت at large in die country. People do their work diligently سے تندہی سے and also obtain normal comforts آرام a life. They are provided with their residence near the place of work. They do hard and enjoy well their hard earned income. The birth rate is reduced کم and marriages are delayed. It is a pointer that the people at large approve of the policies of the government. There is no exploitation استحصال of man by man and the principle, “*from each according to his ability, to each according to his work*” as laid down in Article-6 of the Chinese constitution is well protected. Equality before law, freedom of religious belief, protection of home and hearth, privacy of correspondence etc. guaranteed, as rights are fully fixed . The freedom of speech, press, assembly محفل , association, procession and demonstration; although secured under Article-35, arc allowed only to a limited extent حد تک against unimportant organ of state but not against the party or top brass پیتل of government.



Q. HOW DOES THE CHINESE CONSTITUTION PROMOTE NATIONAL UNITY AND COMMUNIST IDEOLOGY?

(A2019) (S2019)

Ans:

Currently, China is not a democracy *جمہوریت*. It is an authoritarian state which has been characterized as a totalitarian *مطلق العنان* surveillance *نگرانی* state, and a dictatorship *آمریت*. The Constitution of the People's Republic of China (PRC) states that its form of government is "people's democratic dictatorship".

Chinese authorities have introduced a wide-reaching new regulation that compels *مجبور کرتا ہے* parents, schools, religious groups even restaurants and hotels to promote "National Unity" in the country. According to the new regulation, threatens *خطرہ* punishment for the publication and dissemination *پھیلاؤ* of "**speech that harms national unity**" and demands that all layers of society participate in promoting *فروغ* it. Parents, for example, must "educate their children with the concept of national unity and progress," while children "should influence *ث* family members with knowledge of national unity and progress and modern civilized thinking." At home, families should "cultivate a sense of community of the Chinese Nation."

Religious groups and institutions, meanwhile, must ensure *یقینی بنانے* that places of worship incorporate *شامل* the national flag, the constitution, core socialist values and "The excellent Chinese traditional culture."

Chinese President **Xi Jinping** delivered a major speech and said, it is need of time to stand for unity between the party, the state, and "Chinese people of all ethnic groups" to build a modern socialist country and achieve *حاصل* the Chinese dream of national revolution.

According to article 33 to 56 of Chinese constitution the important duties include to safeguard the unity of the country, to abide by the laws of constitution, to defend the motherland and resist aggression *جارجیت*, to perform.

The constitution of China declares that all nationalities are equal which a major characteristic of chines constitution is. All types of discrimination *امتیاز* or oppression *ظلم* with any nationality and acts, which undermine *کمزور* the unity of the nationalities are prohibited *منع*. It also disbands *توزنا* the exploitation *استحصا* of man by man or misuse of men by state. It is the responsibility *ذمہ داری* of all the citizens to help the state in preserving *محفوظ کرنا* the unity of all nationalities and in suppressing treasonable *نامعقول* and other counter revolutionary *انقلابی* activities, and activities against public order and security.

PROMOTION OF COMMUNIST IDEOLOGY IN CHINESE CONSTITUTION

The Communist Party of China is the vanguard ^{موہرا} both of the Chinese working class and of the Chinese people and the Chinese nation. It is the core of leadership for the cause of socialism with Chinese characteristics and represents the development trend of China's advanced productive forces, the orientation of China's advanced culture and the fundamental interests of the overwhelming ^{بھاری} majority of the Chinese people. The realization of communism is the highest ideal and ultimate ^{آخری} goal of the Party.

The Communist Party of China takes Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents as its guide to action.

Historical Background:

On October 1, 1949, Chinese Communist leader *Mao Zedong* declared the creation of the People's Republic of China (PRC). The announcement ended the costly full-scale civil war between the *Chinese Communist Party* (CCP) and the *Nationalist Party*, or Kuomintang (KMT), which broke out immediately following World War II and had been preceded ^{پہلے} by on and off conflict ^{تعارض} between the two sides since the 1920's. The creation of the PRC also completed the long process of governmental upheaval ^{اتھل پھل} in China begun by the Chinese Revolution of 1911. The “fall” of mainland China to communism in 1949 led the United States to suspend diplomatic ^{سفارتی} ties with the PRC for decades.

The Chinese Communist Party, founded in 1921 in Shanghai, originally existed as a study group working within the confines ^{حدود} of the First United Front with the Nationalist Party. Chinese Communists joined with the Nationalist Army in the Northern Expedition of 1926–27 to rid the nation of the warlords ^{جنگجو} that prevented ^{روکنا} the formation of a strong central government. This collaboration ^{تعاون} lasted until the “White Terror” of 1927, when the Nationalists turned on the Communists, killing them or purging ^{پھانکنا} them from the party. During World War II, popular support for the Communists increased. U.S. officials in China reported a dictatorial ^{آمرانہ} suppression of dissent ^{اختلاف} in Nationalist-controlled areas. These undemocratic polices combined with wartime corruption made the Republic of China Government vulnerable ^{کمزور} to the Communist threat. The CCP, for its part, experienced success in its early efforts at land reform and was lauded ^{سجایا گیا} by peasants ^{کسان} for its unflagging efforts to fight against the Japanese invaders ^{حملہ آور}.

Concept of Religion in Chinese Constitution:

Article 36 of China's constitution guarantees freedom of religious belief, but that freedom is seriously limited by the requirement that worshipers adapt their "theology, conception, and organization" to socialist principles. There are other limitations as well, including the following:

1. The government defines what constitutes a religion.

Five religions are officially recognized, Buddhism, Daoism, Islam, Catholicism, and Protestantism. Everything else is considered to be superstition. By this definition, "popular religion," a syncretic blend of Daoism, Buddhism, and polytheistic elements, that attracts the vast majority of Chinese believers is not a religion at all, and therefore people are not authorized to practice it.

2. The government defines what is orthodox.

Even within acknowledged religions, the government can deem a particular group's practices or belief structure heterodox. The group in question then becomes labelled a "cult" or "sect" and can be banned accordingly.

3. The government insists that all religious practice take place under the auspices of official, state- and Party-sanctioned religious bodies.

Congregations formed apart from these bodies, such as those associated with the Protestant "house church" movement, are illegal. Their meeting sites may be closed down or even demolished. Members are often fined and harassed, and sometimes detained. Unofficial gatherings, such as the traditional celebration of religious holidays by Catholics on a hill in Jiangxi province on feast days, are absolutely forbidden, and many participants in these gatherings have been detained.

4. The government uses the registration process to control all aspects of legal religious practice and to separate legal worship sites from illegal ones.

Legally registered sites are bound by a host of regulations including those mentioned above, selection of leaders, restrictions on publication, supervision of finances, and regulation of foreign contacts. No religious structures may be built without authorization including "temples, churches, Daoist temples, shrines, open-air statues of gods or of the Buddha." The government not only has refused to issue permits but has demolished many structures because, officials say, the number of worship sites already exceeds the needs of the population.

Applications in advance are required in order to hold "non-regular" religious activities. Religious debates are banned. In Shanghai and Guangzhou, organizations can be fined.

5. In addition to religious regulations, the government uses other regulations and laws to restrict religious practice.

Urban building and land use codes are used to stop construction of religious sites, the Law on Assembly and Demonstrations **مظاہروں** eliminates **ختم** large-scale meetings and training classes; laws governing printing and publishing restrict dissemination **پھیلاؤ** of religious material. According to the government, no one is punished for religious practice but for breaking the law as defined in China's Criminal Code.

6. Chinese authorities use campaigns - intensive efforts **کوششوں involving education and force organized either locally or from Beijing- to break up large concentrations **ارتکاز** of unofficial sites, as in Hebei province (where underground Catholic churches are concentrated) or Tibet.**

Tactics include arrests, fines, forced confessional **اقراری** statements of illegal worship practices, destruction **تباہی** of monasteries **خانقاہوں** and convents, school expulsions **بے دخلی**, and job loss. Respected local figures with followings are particular campaign targets. They may be placed under heavy surveillance **نگرانی** and isolated **الگ تھلک** from their followers and from foreign contacts.



Q. EXPLAIN CHINESE STRUCTURE OF STATE AND THE ROLE OF POLITICAL PARTIES ACCORDING TO CHINESE CONSTITUTION. (A2018)

Ans:

CHINESE STRUCTURE OF STATE

The state organs of the People's Republic of China include the National People's Congress, the President, the State Council, the Central Military Commission, local people's congresses and local people's governments at various levels, organs of self-government in national autonomous خودتکمی regions, the people's courts and the people's procuratorates.

The National People's Congress

The National People's Congress of the People's Republic of China is the supreme organ of state power. Its permanent body is the Standing Committee of the National People's Congress. The National People's Congress is composed مشتمل of deputies elected from the provinces, autonomous خودتکمی regions, municipalities directly under the Central Government, and special administrative regions, and of deputies elected from the armed forces. All the minority اقلیتی nationalities are entitled to appropriate representation.

The President of the People's Republic of China

The President and Vice-President of the People's Republic of China are elected by the National People's Congress. Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice-President of the People's Republic of China.

The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive مسلسل terms.

The President of the People's Republic of China, in pursuance پیروی of the decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints or removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council; confers دینا State medals and titles of honour; issues orders of special pardons معافی; proclaims اعلان entering of the state of emergency; proclaims a state of war; and issues mobilization orders.

The State Council

The State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the supreme organ of state power; it is the supreme organ of State administration.

The State Council is composed of the following:

The Premier; the Vice-Premiers; the State Councillors; the Ministers in charge of ministries; the Ministers in charge of commissions; The Auditor-General; and The Secretary-General.

The Premier assumes overall responsibility for the work of the State Council. The ministers assume overall responsibility ذمہ داری for the work of the ministries and commissions.

The State Council exercises the following functions and powers:

- (1) to adopt administrative measures, enact اور کرنا administrative regulations and issue decisions and orders in accordance with the Constitution and other laws;
- (2) to submit proposals to the National People's Congress or its Standing Committee;
- (3) to formulate وضع کرنا the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction اختیار of the ministries and commissions;
- (4) to exercise unified leadership over the work of local organs of State administration at various مختلف levels throughout the country, and to formulate the detailed division of functions and powers between the Central Government and the organs of State administration of provinces, autonomous regions, and municipalities directly under the Central Government;
- (5) to draw up and implement the plan for national economic and social development and the State budget;
- (6) to direct and administer economic affairs and urban and rural development;
- (7) to direct and administer the affairs of education, science, culture, public health, physical culture and family planning;
- (8) to direct and administer civil affairs, public security, judicial administration, supervision and other related matters;
- (9) to conduct foreign affairs and conclude treaties and agreements with foreign states;
- (10) to direct and administer the building of national defence;
- (11) to direct and administer affairs concerning the nationalities and to safeguard حفاظت the equal rights of minority nationalities and the right to autonomy خود مختاری of the national autonomous areas;

(12) to protect the legitimate قانونی rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;

(13) to alter تبدیل or annul نامناسب orders, directives ہدایات and regulations issued by the ministries or commissions;

(14) to alter or annul inappropriate decisions and orders issued by local organs of State administration at various levels;

(15) to approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;

(16) in accordance اتفاق with the provisions of law, to decide on entering into the state of emergency in parts of provinces, autonomous regions, and municipalities directly under the Central Government;

(17) to examine and decide on the size of administrative organs and, in accordance with the provisions of law, to appoint or remove administrative officials, train them, appraise their performance and reward or punish them; and

(18) to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign to it.

The Central Military Commission

The Central Military Commission of the People's Republic of China directs ہدایت the armed forces of the country. The Central Military Commission is composed مشتمل of the following:

- The Chairman
- The Vice-Chairmen
- Members

The Chairman assumes فرض overall responsibility for the work of the Central Military Commission. The term of office of the Central Military Commission is the same as that of the National People's Congress. The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

The Supreme People's Court

The Supreme People's Court is the highest trial organ in the country and exercises its right of trial independently آزادانہ. It is also the highest supervising organ over the trial practices of local people's courts and special people's courts at various مختلف levels. It reports its work to the National People's Congress and its Standing Committee. The right of appointment and removal

تتألف من الرئيس ونواب الرئيس وكذلك أعضاء اللجنة القضائية العليا من المحكمة الشعبية كما أن السلطة القضائية العليا من المحكمة الشعبية تقع بيد المجلس الشعبي الوطني.

The Functions and Rights of the Supreme People's Court (SPC)

- 1. Conducting التقاضي trial of the following cases:** first-hearing cases placed with the SPC by laws and regulations and those the SPC deems مقبولة within its jurisdiction; appeals or protests against trial decisions or verdicts فصل of the higher people's courts and special people's courts; appeals against court judgments lodged by the Supreme People's Procuratorate according to trial supervision procedures.
- 2. Giving approval to death sentence.** The SPC may, when necessary, delegate مناوئة the right of approval for death sentences passed against offenders مجرم involved in serious cases of killing people, raping women, looting, destruction تفاهي by using explosives بارود and other cases which severely endanger خطره and harm public security and social order.
- 3. Supervising the trials** by local people's courts and special people's courts at different levels.
- 4. On discovering mistakes** in the rulings احكام and verdicts فصل of local people's courts already being legally enforced, conducting questioning or appointing a lower level court to conduct re-hearing.
- 5. Giving approvals to verdicts on crimes not specifically stipulated مقرر in the criminal law.**
- 6. Offering explanations وضاحت over the concrete application of laws during the trial process.**

The SPC is made up of a president, vice presidents, presiding judges, vice presiding judges and judges. The SPC operates courts of criminal, civil, economic, administrative trials and other courts set up according to actual needs. Besides, the SPC is also made up by a research office, general affairs office, personnel department, judicial affairs department, administrative affairs department, office affairs bureau, foreign affairs bureau and education department.

The Trial Committee

Consisting of the president, vice presidents, presiding judges, vice presiding judges and judges, the Trial Committee is the leading body of the SPC with the following tasks: summing up experiences in the work of trials, and discussing important or difficult cases and other issues related to trials. Meetings of the Trial Committee are presided over by the president of the SPC. The president of the SPC is elected and removed by the National People's Congress. The vice presidents, presiding judges, vice presiding judges, and other members of the Trial Committee, and judges are appointed and removed by the Standing Committee of the National People's Congress.

The National Court Organizations

China's people's court system consists of courts at four levels: namely the grassroots, intermediate, higher and supreme people's courts, in addition to special courts such as the military, railway and water transportation courts. Grassroots courts refer to tribunals in counties/autonomous counties, cities without administrative districts, or administrative districts of cities; intermediate courts are set up in prefectures, cities directly under provinces (also autonomous regions and municipalities directly under the Central Government); higher courts are those set up in provinces (also autonomous regions and municipalities directly under the Central Government).

Central Military Commission.

Special courts include the military court, maritime court, railway transportation court, forestry court, agricultural reclamation court and petroleum court.

The Military Court is established out of consideration of the special features of the system of the armed forces and their combating tasks.

The Maritime Court handles first-hearing maritime cases or cases involving maritime businesses. It does not deal with criminal cases or other civil cases.

The Railway Transportation Court. There are two levels of railway transportation courts, namely the intermediate railway transportation courts of the railway administrations and grassroots courts of the railway branch administrations.

The Forestry جنگلات Court: The tasks of forestry courts are to protect the forests, deal with cases involving sabotage تخریب کاری to forestry resources, serious responsibility cases and cases involving foreigners.

The Supreme People's Procuratorate

The people's procuratorates are State organs for legal supervision. The Supreme People's Procuratorate is the highest procuratorial organ. It is mainly responsible for supervising regional procuratorates and special procuratorates to perform legal supervision by law and protecting the unified and proper enforcement of State laws. The Supreme People's Procuratorate has to report its work to the NPC and its Standing Committee, to whom it is responsible, and accept their supervision.

The Local People's Congresses and Local People's Government at Various Levels

People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns. The organization of local people's congresses and local people's governments at various levels is prescribed by law.

The Organs of Self-Government of National Autonomous خودتحرکمی Areas

The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties. In the people's congress of an autonomous region, autonomous prefecture or autonomous county, in addition to the deputies of the nationality exercising regional autonomy خودمختاری in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation. The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned.

ROLE OF POLITICAL PARTIES IN CHINA

The political system of a country is an important factor to the democratic جمهوری politics. However, the kind of political party system that is adopted by a country depends on the nature, social development and national conditions of that particular country. Moreover, the diversity اختلاف of the political parties in a country's political system also reflects the scale of human civilization in that country.

Since china got independence in 1949, the Chinese communist party has been the ruling political party. Other eight parties have also been inexistence تاوجود since then but they are seen as minor parties which cooperate with the major party in the administration of China. However, the Chinese communist party together with its affiliates plays a major role in formulation of detailed government policies in the country.

Moreover, china is a communist country which implies that government is involved in nearly all the activities that take place in the country. However, the Chinese communist party, being the dominant غالب party has its members as the leaders of any activity that takes place in the country while members of other political parties take junior roles in such activities. China is the only country in the world where there is multiparty system but all under one major party which controls and monitors their activities.

In china, the Chinese communist party serves کام as a socialist party which suits the conditions of Chinese people. However, the party forms the backbone of the country's legislature in which it has more main functions and powers. These functions include; supervision, appointment, legislation and also the removal of officials from power. First, the party supervises the state functions at all levels of governance including the supervision of other counterpart political parties in the country.

Lastly, the party officials also carry out the role of removing the appointed officials from powerful positions in the country. With accordance to the party's role of appointing government officials, the role of removing the same officials falls under the jurisdiction of the party. Chinese Communist Party, has the role in making decisions in international affairs which

affect China. However, the decisions are represented by the president of china who in such cases acts as the spokesman of the majority of Chinese citizens.



CONSTITUTION OF TURKEY

Q. EXPLAIN THE HISTORICAL DEVELOPMENT OF THE CONSTITUTION OF TURKEY? (A2018) (S2018)(A2019)

Ans:

HISTORICAL DEVELOPMENT OF THE CONSTITUTION OF TURKEY

The word Turkey is derived from Medieval Latin, *Turchia*, which means *The Land Of Turks*. Since the beginning of 12th century, western sources commenced calling Anatolia and Thrace (a part of south eastern Europe) as Turchia, for these lands were largely inhabited by Turkic tribes coming from Central Asia.

Ottomans, which was one of these tribes, succeeded to construct a political unity all over the Turchia and conquered Constantinople in 1453. After capturing the capital of Byzantium, Ottoman Sultans began to perceive themselves as emperors of Rome. For this reason, they showed tolerance towards non-Muslim subjects (Greeks, Armenians, and Assyrians etc.) and let the state tradition of Eastern Rome continue. Sultan was an absolute monarch.

Currently the governmental system in Turkey is based on the principle of self-determination and government by the people. The politics of Turkey take place in the framework of a presidential republic as defined by the Constitution of Turkey. The President of Turkey is both the head of state and head of government. Over the centuries, Turkey has had many constitutions and can be characterized by the steady establishment of a nation-state, democratization and recognition of international law. The Turkish constitution was ratified in 1921, revised in 1924, 1961, 1982, and most recently in 2010. The historical development of Turkish constitution can be understood through following stages.

Classical Era (12th – 18th Centuries)

During the classical period (until 19th century), Ottoman law was composed of two parts: *şheri hukuk* (Islamic law) and *Orfi hukuk* (customary and secular law). As a combination of Quran, hadith and jurisprudence of Islamic scholars, *şheri hukuk* was being applied by Qadis, who had also some administrative functions. In terms of private law issues such as

marriage and inheritance **وراثت**, non-Muslim communities had their own courts. Islamic law does not prescribe **تجزیہ کرنا** concrete rules or provisions regarding to public law, except for certain crimes and punishments. For this reason, Orfi hukuk which consists of edicts **نہایت** and decrees **حکم** enacted **تائید** by Sultans was an independent source of law and had great significance.

Nizam-I Cedid and Tanzimat (1792-1876)

Selim III, He was the first Sultan to recognize the need for change and to open up channels of communication **ابلاغ** towards the West. In this context **سیاق**, Selim III launched **شروع** a reform program called Nizam-i Cedid (New Order) mainly focusing on army and tax collection system. Permanent Ottoman embassies were also established in London, Vienna, Berlin and Paris for the first time. Having assassinated **قتل** by conservative **قدامت پسند** opponents **مخالفین**, Selim III could not be able to accomplish **پورا** the New Order program. After a short interruption , Mahmud II, who was called by religious zealots **انتہا پسند** as Sultan, resumed the modernization **جدید کاری** process in a more profound **گہرا** and determined **متعین** way. During his reign, numerous reforms were made, that enabled a centralized, rational and European-style bureaucracy to emerge **اُبھرنا**. Although being a Muslim, Mahmud II tried to develop an equal attitude towards non-Muslim subjects.

Kanun-u Esasi (1876-1921)

Young Ottomans, which is a secret society composed **مشتعل** of leading politicians dissatisfied **اجاٹ** with Tanzimat reforms. In 1876, new Sultan unwillingly **ناخوشی سے** signed and promulgated **پروموت** Kanun-u Esasi (Fundamental Law), the very first constitution of Turkish legal history. Although the Fundamental Law recognized basic rights and liberties on paper and reiterated **دہرایا** that all Ottomans were equal before the law regardless of race and religion, it was not an actual reform since the Sultan preserved **مخفوظ** most of his prerogatives **استحقاق**.

The Constitution of 1921

The constitution of 1921 was the fundamental law of Turkey for a brief period, from 1921 to 1924. It was a simple document consisting of only 23 short articles. In October 1923 the constitution was amended to proclaim Turkey a republic. The governmental system is based on the principle of self-determination and government by the people.” One other important aspect of this constitution is that it was the first and last Turkish constitution, in which the preferred moniker of the country was “The State of Turkey” rather than “the Turkish State”.

The Constitution of 1924

The constitution of 1924, formally titled the Constitution of the Republic of Turkey, replaced the constitution of 1921 and was ratified **توثیق شدہ** by the Grand National Assembly of Turkey following the proclamation **اظہار** of the republic on October 29, 1923. It was inspired by the constitutions of France and Poland. The constitution of 1924 lasted for 36 years from 1924 until 1961, the longest time a constitution has ever remained in force in the history of Turkey. The constitution of 1924 was amended seven times in total.

The 1924 constitution was maintained without change after the transition to a multi-party system in 1946. It came to an end with the military takeover of May 27, 1960. The revolutionary **انقلابی** officers, with the help of opposition parties, started to prepare a new constitution to establish a more mixed mode of democracy, with all its attendant safeguards, while maintaining the modern and secular nature of the state.

The Constitution of 1961

The constitution of 1961 was prepared **تیار** by a constituent **دستور** assembly composed **مشتل** of military leaders and indirectly elected civilians. The constituent assembly was made up of the National Unity Committee and the Representatives' Assembly. It was adopted by a referendum held on July 9, 1961, with 61.7 percent of the nation voting in its favour. For the first time in Turkish history, a constitution prepared by a constituent assembly was passed through a public referendum. The constitution of 1961 introduced significant **اہم** innovations **اختراعات**. It strengthened **استوار** the supremacy of the constitution by establishing a constitutional court, effectively restricting the powers of the elected branches of government, and strengthening the safeguards of fundamental rights and liberties through the rule of law.

The Constitution of 1982

The 1982 constitution was stricter **سخت** than the previous one, especially on the subject of fundamental rights and liberties. The number of irrevocable **اٹل** articles in the constitution was increased to three. While only the article defining the Turkish State as a republic has been irrevocable in the 1960 Constitution, the first four articles of the 1982 constitution were now immutable. They read as follows:

Article 1 - Form of the State: The Turkish State is a Republic.

Article 2 - Characteristics of the Republic: The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity **یکجہتی** and justice; respecting human rights; loyal to the nationalism of Ataturk and based on the fundamental tenets **اصول** set forth in the Preamble.

Article 3 - Integrity **سالمیت** of the State, Official Language, Flag, National Anthem and Capital:

- 1) The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish.
- 2) Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent **هلال** and star on a red background.
- 3) Its national anthem is the Independence March. Its capital is Ankara.

Article 4 - Irrevocable Provisions: The provision of Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.

There are ongoing discussions about changing the current constitution, which had already been amended sixteen times. Ten of these amendments were implemented **لاگو** under the rule of the Justice and Development Party (AKP). The last initiative **سرگرمی** for an amendment was the one approved by a referendum held on September 12, 2010. The most radical **اصلى** and comprehensive **جامع** amendment was that of 2001, which involved changes to 34 articles, followed by the 1995 amendment, which amended 15 articles. The amendment in 2004 changed ten articles.

The Political Parties Involved in the Process of Constructing the New Constitution

-  The Justice and Development Party (AKP)
-  The Republican People's Party (CHP)
-  The Nationalist Movement Party (MHP)
-  The Peace and Democracy Party (BDP)

Conclusion

In spite **باوجود** of temporary interruptions **خلل**, last two centuries of Turkey represents a gradual **تدریج** and continuous progression from pre-modernity **ماقبل جدیدیت** to modernity in terms of both legal institutions and the perception of justice. Through introducing revolutionary **انقلابی** concepts and meeting the needs of real politics **حقیقی سیاست**, constitutions of 1876, 1921, 1924, 1961 and 1982 played a pioneering **پیشقدمی** role in that transformation. In order not to be misled **گمراه** by the comments confined to only recent **جدید** developments, a foreign reader must take into account the historical evolution as a whole and should have in mind that Turkish people has a long experience of freedom and democracy.



Q. EXPLAIN THE MODE OF ELECTIONS ACCORDING TO THE TURKISH CONSTITUTION. (S2018) (A2019)

Ans:

MODE OF ELECTIONS IN THE TURKISH CONSTITUTION

The Turkish Constitution defines the election system. Elections in Turkey are held according to a proportional representation *نمائندگی متناسب* system in a single stage in accordance with the principles of general, equal, secret and direct voting, universal suffrage, public counting and tally of the votes. Every province is an electoral *milieu* and every ward is a *precinct*.

The Electoral system of Turkey varies for general, presidential and local elections that take place in Turkey every five years. Turkey has been a multi-party democracy since 1950 (officially since 1945), with the first democratic election held on 14 May 1950 leading to the end of the single-party rule established in 1923. The current electoral system for electing Members of Parliament to the Grand National Assembly has a 10% election threshold, the highest of any country. A brief summary of the electoral systems used for each type of election is as follows:

General Elections:

The D'Hondt method, a party-list proportional representation system, to elect 600 Members of Parliament to the *Grand National Assembly* from 87 electoral districts that elect different numbers of MPs depending on their populations.

Local Elections:

Metropolitan and District Mayors, Municipal and Provincial Councillors, neighbourhood presidents and their village councils elected through a First-past-the-post system, with the winning candidate in each municipality elected by a plurality *کثرت*.

Presidential Elections:

A Two-round system, with the top two candidates contesting a run-off election two weeks after the initial *ابتدائی* election should no candidate win at least 50%+1 of the popular vote.

Description Of Government Structure

- 1) President
- 2) Prime Minister
- 3) Assembly

Turkey has a unicameral *یک ایوانی* Grand National Assembly of Turkey with 550 seats.

ELECTORAL DISTRICTS

Turkey is divided into 85 electoral districts: one for each of the country's 81 provinces, plus two additional districts for Istanbul, one for Ankara, and one for Izmir. Each district is represented by between two and 31 members of parliament, in proportion to the district's population. The country's electoral council conducts population reviews of each district before an election and can adjust a district's number of seats according to the latest census.

Threshold For Representation

A political party needs to win at least 10 percent of the vote at the national level to enter the parliament. A party may therefore come first in a particular electoral district but not gain representation in the parliament. In this case, the votes for that party in the district in question are discarded, and the district's seats are allocated to those parties that managed to clear the 10 percent hurdle nationally.

Description Of Electoral System:

The President is elected by absolute majority vote through a two-round system to serve a 5-year term. Candidates must be members of the Grand National Assembly supported by 20 of its members, or nominees by political parties that have attained more than 10 percent of votes in the last legislative election. Candidates must be 40 years of age and have completed higher education.

To form a government, a party needs to secure a simple majority in the parliament, consisting of at least 276 out of 550 seats. If a party wants to change the country's constitution, it needs either 330 votes to initiate a referendum on the proposed amendments or 367 votes to amend the constitution via a parliamentary procedure.

The Prime Minister Is Appointed By The President.

In the Grand National Assembly of Turkey 550 members are elected through a closed-list proportional representation system to serve 4-year terms. There are 79 MMD corresponding to the provinces. Each party must clear a national threshold of 10 percent and at least one D'Hondt quotient in the district from which it is elected. Additionally, a candidate may be seated only if his party is organized in one-third of districts within each of half of the provinces, and has nominated two candidates for each seat in at least half of provinces.



Q. EXPLAIN THE CONCEPT OF SEPARATION OF POWERS MENTIONED IN CONSTITUTION OF TURKEY? (A2018)

Ans:

CONCEPT OF SEPARATION OF POWERS IN CONSTITUTION OF TURKEY

What is Separation of Powers Means..?

Separation of powers refers to the division of a state's government into branches, each with separate **الگ**, independent powers and responsibilities, so that the powers of one branch are not in conflict **تعارض** with those of the other branches. The intent **ارادہ** of separation of powers is to prevent **روکنا** the concentration **حراستی** of unchecked power and to provide for checks and balances, in which the powers of one branch of government is limited by the powers of another branch to prevent abuses **بدسلوکی** of power and avoid autocracy **آمریت**. For example, In general, Parliament has the power to create laws, the President has the power to veto them, and the Supreme Court may declare laws unconstitutional. Parliament can override **زیر** a Presidential veto with a 2/3 vote in both houses.

Dissection:

The separation of powers is imitable for the administration of federative **فائی** and democratic states. Under this rule the state is divided into three different branches:

- 1) Legislative
- 2) Executive
- 3) Judiciary

Each organ of state having different independent power and responsibility on them so that one branch may not interfere **مداخلت** with the working of the others two branches. Basically, it is the rule which every state government should follow in order to enact **ادا کرنا**, implement **تائز** the law, apply to specific case appropriately **مناسب**. If this principle is not followed then there will be more chances of misuse of power and corruption. If this doctrine is followed then there will be less chance of enacting a tyrannical **ظالم** law as they will know that it will be checked by another branch. It aims at the strict demarcation **حد بندی** of power and tries to bring the exclusiveness **تجزاگی** in the functioning of each organ.

The definition of separation of power is given by different authors. But in general, the meaning of separation of power can be categorized into three features:

- i. Person forming a part of on organs should not form the part of other organs.
- ii. One organ should not interfere with the functioning of the other organs.
- iii. One organ should not exercise the function belonging to another organ.

The separation of power is based on the concept of *Trias Politica*. This principle visualizes تصور a tripartite سه فریقی system where the powers are delegated تفویض کرده and distributed among three organs outlining بیان their jurisdiction اختیار each.

Concept of Separation of Powers in Turkey:

Turkey's political system is based on a separation of powers. Executive power is exercised by the Council of Ministers, which is appointed and headed by the President. Legislative power is vested in the Grand National Assembly. The judiciary is independent of the executive and the legislature. Its current constitution was adopted on 7 November 1982 after a constitutional referendum.

Separation of powers has been one of the fundamental principles on which Turkish political organization was built. Since Turkey moved to presidential republic in April 2017 following a constitutional referendum enabling the president of Turkey to act as the head of state and head of government simultaneously ایک بار میں, the government receives ongoing criticism تنقید from both inside and outside of the country for undermining this principle by violating the judicial independence.

Advantages of Concept of Separation of Powers

1)-Protection of Liberty and Rights:

The theory of separation of powers protection to the liberty آزادی and rights of the individual, and protects him from different of dictatorship آمریت and oppression ظلم.

2)-Increase in Government's Efficiency:

As powers are distributed among the government departments, these departments gain deep knowledge of the matters they with, and become more efficient موثر.

3)-Limited Government:

As powers are distributed among different depart these departments enjoy only limited powers. This prevents rise چڑھتا of dictatorship.

4)-Prevents Abuse of Power:

Separation of powers accompanied ساتھ by check and balance is an effective check against abuse of power and arrogance تکبر of power.

Conclusion :

Exercising the doctrine of separation of power cannot be applied in the strict sense in any contemporary معاصر countries like The United States, Nepal, France etc. But still, this doctrine has relevancy مناسبت now a days. Government is an organized system and it is very difficult to divide into watertight compartments.

For the smooth functioning of any government, cooperation and coordination among all three wings of the government are necessary. Professor Garner said that “This doctrine is impracticable as working principle of Government. It is difficult to divide the functions of each organ on an accurate درست basis”. In short this doctrine has a great significance اہمیت as it protects the liberty of the individual from the arbitrary من مانی rule and prevents the organs from usurping غصب کرنا the essential ضروری functions of other organs. It is applicable in almost all countries up to a certain extent.



Q. WHAT ARE FUNDAMENTAL RIGHTS GRANTED TO CITIZENS IN TURKISH CONSTITUTION. (A2019)

Ans:

FUNDAMENTAL RIGHTS IN TURKISH CONSTITUTION

According to constitution of turkey , it is the birth right of every Turkish citizen to lead an honourable life and develop his material and spiritual روحانی resources under the aegis پناه of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution, in conformity موافقت with the requirements of equality and social justice. The recognition شناخت that all Turkish citizens are united in national honour and pride فخر, in national joy and grief غم, in their rights and duties towards their existence as a nation, in blessings and in burdens بوجھ, and in every manifestation اظہار of national life, and that they have the right to demand a peaceful life based on absolute مطلق respect for one another's rights and freedoms, mutual love and fellowship, and the desire for, and belief in, "Peace at home, peace in the world".

In Constitution of Turkey (Chapter One) ARTICLE 12 says:

Everyone possesses inherent fundamental rights and freedoms which are firm مضبوط and absolute. Fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and other individuals.

II. Restriction of Fundamental Rights and Freedoms ARTICLE 13

Fundamental rights and freedoms may be restricted by law, in conformity موافقت with the letter and spirit روح of the Constitution, with the aim of safeguarding حفاظت the indivisible integrity سالمیت of the State with its territory علاقہ and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest public morals and public health, and also for specific reasons set forth in the relevant Articles of the Constitution. General and specific grounds for restrictions of fundamental rights and freedoms may not conflict with the requirements of the democratic order of society and may not be imposed مسلط for any purpose other than those for which they are prescribed. The general grounds for restriction stipulated in this Article apply to all fundamental rights and freedoms.

Suspension of the Exercise of Fundamental Rights and Freedoms ARTICLE 15

In times of war, mobilization, martial law, or state of emergency the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures may be taken, to the extent required by the needs of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his material and spiritual entity shall be inviolable except where death occurs through lawful acts of warfare and execution of death sentences.

THE RIGHTS AND DUTIES OF THE INDIVIDUAL

Constitution of Turkey in its chapter two from Article 17 To Article 40 explains the fundamental rights and duties of individuals, which are discussed below:

I. Personal Inviolability خلاف ورزی

According to Article 17: Everyone has the right to life and the right to protect and develop his material and spiritual object. The physical integrity of the individual may not be violated except under medical necessity and in cases prescribed by law. No one may not be involved in scientific or medical experiments without his consent. No one can be tortured .

II. Prohibition of Forced Labour

Article 18 : No one may be required to perform forced labour. Unpaid compulsory work is prohibited . The term forced labour does not include work required of an individual while serving a court sentence or under detention , services required from citizens during a state of emergency, and physical or intellectual work necessary by the requirements of the country as a civic obligation.

III. Personal Liberty and Security

ARTICLE 19 - Everyone has the right to enjoy personal liberty and security. No one may be deprived of his liberty except in the following cases where procedure and conditions are prescribed by law: Execution of sentences restricting liberty if ordered by court, for the

treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant آورہ or a person spreading contagious متعدی diseases امراض, when such persons constitute a danger to the public etc.

IV. Privacy and Protection of Private Life

A. Privacy of the Individual's Life ARTICLE 20

Everyone has the right to demand respect for his private and family life. Privacy of individual and family life may not be violated. Unless there exists a decision duly passed by a judge in cases explicitly defined by law.

B. Inviolability خلاف درزی of Domicile

ARTICLE 21 :The domicile of an individual shall not be violated. Unless there exists a decision duly passed by a judge in cases explicitly defined by law.

C. Freedom of Communication

ARTICLE 22 : Everyone has the right to freedom of communication. Secrecy رازداری of communication is fundamental. Communication shall not be impeded nor its secrecy be violated, unless there exists a decision duly passed by a judge in cases explicitly defined by law.

V. Freedom of Residence and Movement

ARTICLE 23 - Everyone has the right to freedom of residence and movement, Freedom of residence may be restricted by law for the purpose of preventing روک تھام offenses م promoting social and economic development ensuring یقینی بنانا sound and orderly urban growth, and protecting public property. Citizens may not be deported جلاوطن, or deprived محروم of their right of entry into their homeland.

VI. Freedom of Religion and Conscience

ARTICLE 24 - Everyone has the right to freedom of ethics, religious and belief. Acts of worship, religious services, and ceremonies may be conducted freely, provided that they do not violate the provisions of Article 14. No one may be compelled مجبور to worship, or to participate in religious ceremonies and rites رسوم.

VII. Freedom of Thought and Opinion

ARTICLE 25 - Everyone has the right to freedom of thought and opinion. No one may be compelled مجبور to reveal ظاہر his thoughts and opinions for any reason or purpose , nor shall anyone be blamed or accused only on account of his thoughts and opinions.

VIII. Freedom of Expression and Dissemination پھیلاؤ of Thought

ARTICLE 26 - Everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures. or through other media, individually or collectively. This right includes the freedom to receive and impart ابلاغ کرنا information and ideas without interference from official authorities. This provision does not preclude روکنا subjecting transmission by radio, television, cinema, and similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of preventing روک تھام crime, punishing offenders, withholding information duly classified as a State Secret, protecting the reputation and rights and the private and family life of others.

IX. Freedom of Science and Arts

ARTICLE 27 - Everyone has the right to study and teach freely, explain, and disseminate پھیلاتا science and arts and to carry out research in these fields. Provisions of this Article does not stop regulation by law of the entry and distribution of foreign publications in the country.

X. Provisions Relating to Press and Publication

A. Freedom of the Press

ARTICLE 28 - The Press is free, and may not be censored. The establishment of a printing house may not be subject to prior permission and to the deposit of a financial guarantee. Publication may not be made in any language prohibited by law. The State shall take the necessary measures to ensure the freedom of the Press and freedom of information.

B. Right to Publish Periodicals رسائل and Non- periodicals

ARTICLE 29 - Publication of periodicals or non - periodicals may not be subject to prior authorization or to the deposit of a financial guarantee. To publish a periodical it

shall suffice کافی to submit the information and documents prescribed by law to the competent authority designated by law.

C. Protection of Printing Facilities

ARTICLE 30 - A printing press or its annexes ضمیمہ duly established as a publishing house under law may not be seized , confiscated ضبط, or barred from operation on the grounds of being an instrument of crime, except where it is convicted of offenses against the indivisible integrity of the State with its territory and nation, against the fundamental principles of the Republic or against national security.

D. Right to Use Mass Media Other Than the Press Which are Owned by Public Institutions

ARTICLE 31 - Individuals and political parties have the right to use mass media and means of communication other than the Press owned by public corporations. The conditions and procedures for such use shall be regulated by law. The law may not impose restrictions preventing the public from receiving information or forming ideas and opinions through these media.

E. Right of Rectification تصحیح and Reply

ARTICLE 32 - The right of rectification and reply shall be accorded only in cases where personal reputation and honour is attacked or in cases of unfounded allegation الزام and shall be regulated by law. If a rectification or reply is not published, the judge shall decide, within seven days of appeal by the individual involved, whether such publication is required.

XI. Rights and Freedoms of Assembly

A. Freedom of Association

ARTICLE 33 - Everyone has the right to form associations without prior permission. Submitting the information and documents required by law to the competent authority designated by law. No one may be compelled to become or remain a member of an association.

B. Right to Hold Meetings and Protest Marches

ARTICLE 34 - Everyone has the right to hold unarmed غیر مسلح and peaceful meetings and protest marches without prior permission. The competent administrative authority may determine فیصلہ کرنا a site and route for the demonstration march in order to prevent disruption خلل of order in urban life.

XII. Right of Property

ARTICLE 35 - Everyone has the right to own and inherit وارث property. These rights may be limited by law only in view of public interest. The exercise of the right to own property may not be in contravention خلاف ورزی of the public interest.

XIII. Provisions Relating to the Protection of Rights

A. Freedom to Claim Rights

ARTICLE 36 - Everyone has the right of file lawsuit either as plaintiff or defendant before the courts through lawful means and procedure. No court may refuse to hear a case within its jurisdiction.

B. Guarantee of A Lawful Judge

ARTICLE 37 - No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction اختیار of his legally designated court may not be established.

C. Principles Relating to Offenses and Penalties

ARTICLE 38 - No one may be punished for any act which did not constitute a criminal offense under the law in force at the time it was committed; no one may be given a heavier penalty for an offense than the penalty applicable at the time when the offense was committed.

XIV. Right to Prove an Allegation

ARTICLE 39 - In libel لسن طعن and defamation ہتک عزت suits involving allegations against persons in the public service in connection with their functions or services, the defendant has the right to prove the allegations. A plea for presenting proof shall not be granted in any other case unless proof would serve the public interest or unless the plaintiff consents.

XV. Protection of Fundamental Rights and Freedoms

ARTICLE 40 - Everyone whose constitutional rights and freedoms are violated has the right to request prompt access to the competent authorities. Damages suffered by any person through unlawful treatment by holders of public office shall be compensated معاوضہ by the State. The State reserves the right of recourse to the official responsible.



Q. WHAT IS THE STRUCTURE OF JUDICIARY IN THE CONSTITUTION OF TURKEY. (S2019)

Ans:

STRUCTURE OF JUDICIARY IN THE CONSTITUTION OF TURKEY

Judicial power in Turkey is exercised by independent courts and supreme judiciary organs. The judicial section of the Constitution, with the principle of a legal state as its basis, is founded on the independence of the courts and the judges, and the guarantee of judges rights. Judges rule on the basis of Constitutional provisions, law and jurisprudence.

The legislative and executive organs must comply with the rulings of the courts and may not change or delay the application of these rulings. Functionally, a three-party judicial system has been adopted by the Constitution and accordingly, it has been divided into an administrative judiciary, a legal judiciary and a special judiciary.

The Constitutional Court, the Supreme Court of Appeals, the Council of State, the Supreme Military Court of Appeals, the Supreme Military Administrative Court and the Court of Jurisdictional Conflicts are the supreme courts mentioned in the judicial section of the Constitution. The Supreme Council of Judges and Public Prosecutors and the Supreme Council of Public Accounts are also two organizations having special functions in the judicial section of the Constitution. Structure of Judiciary is explained as following:

Turkish Courts System

Courts are mainly divided into three main types:



JUDICIAL COURTS

Basically Judicial courts are divided into two main types:

1. Criminal Courts
2. Civil Courts

Both courts are further divided into many types and we can understand all types of judicial courts through following diagram.

CRIMINAL COURTS	GENERAL COURTS	CRIMINAL JUDGESHIP OF PEACE
		CRIMINAL COURTS OF FIRST INSTANCE
		ASSIZE COURTS
	SPECIALIZED COURTS	JUVENILE HIGH CRIMINAL COURT
		JUVENILE COURT
		CRIMINAL COURT OF ENFORCEMENT
		CRIMINAL COURT OF INTELECTUAL & INDUSTRIAL PROPERTY RIGHTS
JUDGESHIP OF CRIMINAL EXECUTION		
CIVIL COURTS	GENERAL COURTS	CIVIL COURT OF PEACE
		CIVIL COURT OF FIRST INSTANCE
	SPECIALIZED COURTS	COMMERCIAL COURT OF FIRST INSTANCE
		CIVIL COURT OF ENFORCEMENT
		CADASTRAL COURT
		LABOUR COURT
		CONSUMER COURT
		CIVIL COURT OF INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS
FAMILY COURT		

1. CRIMINAL COURTS

Criminal courts are divided into two types:

- General Courts
- Specialized Courts

General Courts

Criminal Judgeship of Peace

Criminal Judgeship of Peace, without prejudice تعصب to the conditions assigned by the Laws, in the ongoing investigations, is in charge of rendering بیان decisions on surveillance نگرانی, body examination of the suspect تشک کرنا and taking samples from their body, search, seizure اچانک حملہ, arrest, and is responsible for reviewing appeals against those decisions. In these judgeships, cases are heard by a single judge.

Criminal Courts of First Instance

Criminal Courts of First Instance, without prejudice to the conditions assigned by the Laws, are in charge of dealing with cases that fall outside of the duties of criminal judgeship of peace,

assize criminal courts and other specialized criminal courts. These courts deal with crimes which require less than ten years of imprisonment. In these courts, cases are heard by a single judge.

Assize (Hearing) Courts

Without prejudice to the circumstances assigned by the Laws, assize courts deal with serious crimes such as plundering لوٹ مار, extortion بھتہ خوری, fraud in the official document, qualified fraud, fraudulent bankruptcy, as well as crimes against the security of the state, constitutional order and its functioning, national defence, state secrets espionage جاسوسی crimes and other crimes stipulated مقرر in Law on Anti-Terror nr. 3713 and in the Turkish Criminal Code. In addition, these courts also deal with crimes which require a sentence of aggravated life imprisonment, life imprisonment قید and more than ten years of imprisonment. In these courts, cases are heard by a panel of 3 judges, the presiding judge and two judges of the court. The panels rule over the cases by majority of the votes.

Specialized Courts

Specialized Courts are further divided into following types:

Juvenile High Criminal Courts

Juvenile High Criminal Courts are in charge of dealing with criminal cases which fall under the jurisdiction of the assize court regarding the crimes committed by children under the Law No. 5395 on the Protection of the Child and also taking the protective حفاظتی measures existing in other laws. In these courts, cases are heard by a panel of 3 judges, the presiding judge and two judges of the court. The panels rule over the cases by majority of the votes.

Juvenile Courts

Juvenile courts are in charge of dealing with cases to be opened against children that are pushed to crime in terms of offences جرم that fall under the jurisdiction اختیار of criminal court of first instance and of taking protective measures stipulated مقرر in the Protection of the Child Law No. 5395 and other laws. In these courts the cases are heard by a single judge.

Criminal Courts of Enforcement

Criminal Courts of Enforcement are in charge of dealing with cases shown in “Criminal provisions” section of the Enforcement and Bankruptcy Law, in particular including crimes regarding the debtor مقروض decreasing the amount of property of the creditor in order to incur losses, false statements, debtor’s violation of the payment terms, non-compliance with the decisions regarding child support and alimony . In these courts, cases are heard by a single judge.

Criminal Courts of Intellectual and Industrial Property Rights

Criminal Courts of Intellectual and Industrial Property Rights are in charge of dealing with cases regarding crimes regulated in the Law No. 5846 on Intellectual and Artistic Works such as infringement *خلاف ورزی* of the moral and material rights deriving *اخذ کرنا* from intellectual property and artistic works or the infringement of related rights, attempts to circumvent *روکنا* technological protection measures, crimes against the obligation of the proper labelling of IP products, or crimes regulated on the Law No. 6769 on Industrial Property such as trademark infringement *خلاف ورزی*. In these courts, cases are heard by a single judge.

Judgeship of Criminal Execution

Judgeships of Criminal Enforcement *نفاذ*, established by the Law no. 4675 of Judgeship of Criminal Enforcement, are responsible for examining and concluding cases on the actions taken regarding convicts and detainees in prisons and detention houses and complaints regarding those actions and are tasked to fulfill other responsibilities under the law. In these judgeships, cases are heard by a single judge.

2. CIVIL COURTS

Civil courts are divided into two types:

- General Courts
- Specialized Courts

General Courts

Civil Courts of Peace

Civil Courts of Peace are general courts which are in charge of dealing with cases, regardless of the value or amount of the subject matter, regarding tenancy *کرایہ داری* contracts and dissolution of joint ownership of movable and immovable property, non-contentious cases and mediation issues. In these courts, cases are heard by a single judge.

Civil Courts of First Instance

Civil Courts of First Instance are general courts responsible for dealing with cases arising from private law disputes *تنازعات*, in particular, personal and property rights. The duty of the civil court of first instance is primary, the duty of the civil courts of peace and specialized courts is an exception. Unless otherwise is stipulated by a special provision of a law, all private law cases should be heard by Civil Courts of First Instance. In these courts, cases are heard by a single judge.

SPECIALIZED COURTS

Specialized Courts are further divided into following types:

Commercial Courts of First Instance

Commercial Courts of First Instance are specialized courts which are in charge of dealing with commercial cases and non-contentious غیر متنازع judicial matters of commercial character, regardless of the value or amount of subject matter. In Commercial Courts of First Instance some of the cases are heard by a panel of 3 judges, the presiding judge and two judges of the court. The panels rule over the cases by majority of the votes. However, cases the monetary مالیاتی value of which is below the certain threshold set out by law are ruled by a single judge.

Civil Courts of Enforcement

Civil Courts of Enforcement, as per the Law on Enforcement and Bankruptcy No. 2004, are specialized courts that keep the enforcement office under supervision so as to control the accuracy of the transactions of enforcement offices, that check whether they are in accordance with law or not, and that try cases on other enforcement issues set out by law. In these courts, cases are heard by a single judge.

Cadastral Courts

Cadastral (Related to immovable property) Courts are specialized courts established by the Law on Cadastre No. 3402. The subject matter of the cases that fall under the jurisdiction of these courts are: real estate property and limited real rights, other rights to be registered or annotated مظهر to the land registry or to be shown in the declarations اعلانات, boundary and measure conflicts, similar cases concerning the cadastre and land registry given to the court by special laws. In these courts, cases are heard by a single judge.

Labour Courts

Labour courts are specialized courts established by the Labour Courts Law No. 7036. As per the Law No. 7036, labour courts are responsible for dealing with any cases arising from the employment contracts, social security and collective labour agreements. In these courts, cases are heard by a single judge.

Consumer Courts

Consumer صارف courts are specialized courts in charge of dealing with cases arising from consumer contracts and practices concerning consumers according to Consumer Protection Law No. 6502. In these courts, cases are heard by a single judge. For disputes arising from consumer contracts it is mandatory لازمی to apply to arbitration تہ پٹی panels on consumer rights over disputes that is under monetary threshold set each year. There are arbitration panels on consumer rights in all provinces and districts.

Civil Courts of Intellectual and Industrial Property Rights

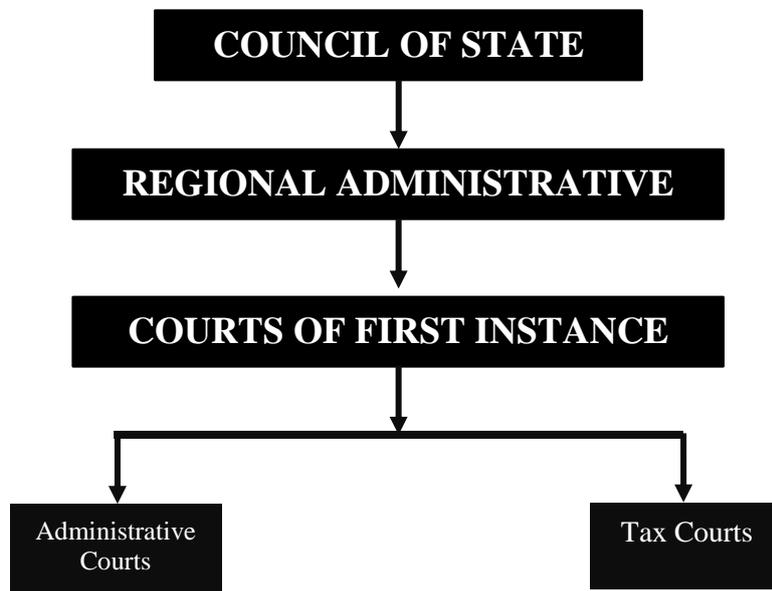
Civil courts of intellectual and industrial property rights established in 2001 in Turkey are in charge of dealing with the civil cases arising from the rights and issues laid down by Law No.

5846 on Intellectual and Artistic Works and Law No. 6769 on Industrial Property. In these courts, cases are heard by a single judge.

Family Courts

The regulations concerning family courts are stipulated مقرر in the Law on the Establishment, Duties and Powers of Family Courts no. 4787. According to the fourth article of the Relevant Law, family courts are in charge of disputes arising from engagement, annulment منسوخ of the marriage, legal capacity to marry, ceremony of marriage, null and void marriages, divorce, dissolution of property and debts between spouses, recognition and paternity provision, adoption اتيار, custody, child property, alimony (support) , house order, family goods and other cases referred to in special laws. In these courts, cases are heard by a single judge.

ADMINISTRATIVE COURTS



Council Of State

The Council of State is the high court for reviewing decisions and judgments given by administrative and tax courts not referred by law to other administrative courts. It is also the first and last instance court for dealing with specific cases prescribed by law and an advisory and investigatory authority to specific topics. Currently, in the Council of State, there are 12 chambers, including 1 administrative chamber and 11 litigation chambers. Cases are heard by a panel of 5 justices, the presiding justice and four justices of the chamber members. Members of the Council of State are elected for twelve years. A person cannot be elected as a member of the Council of State twice.

REGIONAL ADMINISTRATIVE COURT

The regional administrative courts are in charge of reviewing and deciding on appeals against decisions made by administrative courts and tax courts and resolving the jurisdictional conflicts between the administrative and tax courts. In regional administrative courts, cases are heard by

a panel of 3 judges, the presiding judge and two member judges. Presently, there are eight Regional Administrative Courts operating across Turkey.

COURTS OF FIRST INSTANCE

ADMINISTRATIVE COURTS

Administrative courts are the general courts dealing with cases initiated ^{لئے} for the annulment ^{منسوخ} of administrative decisions and on the claims for damages caused by an administrative decisions or actions, other than those to be settled in the Council of State in the first instance and the cases that fall under the duties of the tax courts. Administrative courts generally hear cases by a panel of 3 judges, the presiding judge and two member judges. However, cases the monetary value of which is below the certain threshold set out by law are ruled by a single judge.

TAX COURTS

In general, the tax courts are responsible for resolving cases concerning the application of the Law No. 6183 on the Collection of Public Receivables on cases related to taxes, duties and charges and similar financial obligations and their increases and penalties and tariffs. Tax courts generally hear cases by a panel of 3 judges, the presiding judge and two member judges. However, cases the monetary value of which is below the certain threshold set out by law are ruled by a single judge.

MILITARY COURTS

The High Military Administrative Court

The High Military Administrative Court is the first and last instance for the judicial supervision of disputes arising from administrative acts and actions involving military personnel or relating to military service, even if such acts and actions have been carried out by civilian authorities. However, in disputes arising from the obligation to perform military service, there is no condition that the person concerned to be a member of the military body.

The Military Court of Cassation

The Military Court of Cassation is the last instance for reviewing decisions and judgments given by Military Courts. It is also the first and last instance court for dealing with specific cases designated by law concerning military personnel.



Q. WRITE DETAILED NOTE ON EXECUTIVE AND JUDICIAL SYSTEM OF TURKISH CONSTITUTION. (A2020)

Ans:

EXECUTIVE AND JUDICIAL SYSTEM OF TURKISH CONSTITUTION

According to the 1st Article of Constitution (1982), Turkey is a Republic. Constitution also explicitly ^ع states that "Turkey is a democratic, secular and social state governed by the rule of law respecting human rights; loyal to the nationalism of Atatürk" (Article 2).

Within the framework of unitary insight, The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish. (Article 3). All the constitutions referred so far (1924,1961, 1982 and 2010) characterized the Turkish Republic not only as a state of law but also as a "social state of law" . The Turkish public administration is regulated according to the principle "*Separation Of Powers*". This principle was first introduced in the 1876 Constitution and also adopted in 1924, 1961, 1982 and 2010 constitutions. In this respect, the legislative power is vested in the Turkish Grand National, the executive power is exercised by the President of the Republic after the constitutional amendment on 24 June, 2018 and the Council of Ministers, and the judicial power is exercised by the independent courts.

EXECUTIVE SYSTEM IN TURKEY

The executive branch in Turkey has a dual structure. It is composed of the President of the Republic and the Council of Ministers (Cabinet).

The President

The President of the Republic is the Head of the State. He represents the Republic of Turkey and the unity of the Turkish nation. The President's term of office is five years. The President can serve no more than two terms. Turkish citizens of at least forty years of age are eligible to be elected President by the TGNA's secret ballot ^{وٹ} process. They can be either deputies ^{نايبين} who have received a higher education or those who are qualified to be elected a deputy. The election of the President of the Republic shall be concluded within sixty days before the term of office of the incumbent President of the Republic expires, or within sixty days after the Presidency falls vacant ^{نالی} for any reasons.

In presidential elections conducted by universal suffrage, the candidate who receives the absolute majority of the valid votes shall be elected President of the Republic. If this majority cannot be obtained ^{حاصل} in the first ballot, the second ballot shall be held on the second Sunday following this ballot. The two candidates who receive the greatest number of votes in the first ballot can run for the second ballot, and the candidate who receives a majority of valid votes shall be elected President of the Republic.

If one of the candidates who earns the right to appear on the second ballot dies or loses his or her eligibility, the second ballot shall be conducted by substituting within the vacant candidacy in conformity موافقت with the ranking on the first ballot. If only one candidate remains for the second ballot, this ballot shall be conducted as a referendum. If the candidate receives most of the votes, he or she shall be elected President of the Republic.

Presidents of the Republic of Turkey:

- Mustafa Kemal Atatürk (October 29, 1923 - November 10, 1938)
- İsmet İnönü (November 11, 1938 - May 22, 1950)
- Celal Bayar (May 22, 1950 - May 27, 1960)
- Cemal Gürsel (May 27, 1960 - March 28, 1966)
- Cevdet Sunay (March 29, 1966 - March 28, 1973)
- Fahri Korutürk (April 6, 1973 - April 06, 1980)
- Kenan Evren (September 18, 1980 - November 08, 1989)
- Turgut Özal (November 09, 1989 - April 17, 1993)
- Süleyman Demirel (May 16, 1993 - May 16, 2000)
- Ahmet Necdet Sezer (May 16, 2000 - August 27, 2007)
- Abdullah Gül (August 28, 2007 - August 28, 2014)
- Recep Tayyip Erdoğan (August 28, 2014 - present)

Duties & Powers of President:

The president's duties, powers, qualifications, election, and other issues are stated in the Articles 8, 101, 103, 104, 105 and 106 of the Constitution of the Republic of Turkey. Major powers of president are described below:

- He/she shall give message to the Assembly regarding domestic and foreign policies of the country.
- He/she shall promulgate پروموٹ laws.
- He/she shall send laws back to the Grand National Assembly of Turkey to be reconsidered.
- He/she shall appeal to the Constitutional Court for the annulment منسوختی of all or certain provisions of laws and the Rules of Procedure of the Grand National Assembly of Turkey on the grounds that they are unconstitutional in form or in content.
- He/she shall appoint and dismiss the deputies of the President of the Republic and the ministers.
- He/she shall appoint and dismiss the high ranking public executives, and shall regulate the procedure and principles governing the appointment thereof by presidential decree.
- He/she shall accredit representatives of the Republic of Turkey to foreign states and shall receive the representatives نمائندوں of foreign states appointed to the Republic of Turkey.
- He/she shall ratify توثیق and promulgate international treaties معاہدوں.

- He/she shall submit laws regarding amendment to the Constitution to referendum, if he/she deems سمجھتا it necessary.
- He/she shall determine فیصلہ کرنا national security policies and take necessary measures.
- He/she shall represent the Office of Commander-in-Chief of the Turkish Armed Forces on behalf of the Grand National Assembly of Turkey.
- He/she shall decide on the use of the Turkish Armed Forces.

The Prime Minister and the Council of Ministers (Cabinet)

The Council of Ministers (Cabinet) consists of the Prime Minister, designated وزیر by the President of the Republic from members of the Turkish Grand National Assembly (TGNA), and various ministers nominated by the Prime Minister and appointed by the President of the Republic. Ministers can be dismissed from their duties by the President or upon the proposal of the Prime Minister when deemed necessary. When the Council of Ministers (Cabinet) is formed, the government's program is read at the TGNA and a vote of confidence is taken. Members of the Council of Ministers (Cabinet) are responsible for the execution of general policies. The Ministers assume two kinds of political responsibilities.

First is responsibility for the general policy of the government, shared equally by all ministers. Second, each minister is individually responsible for matters within the jurisdiction of his/her own ministry and for the acts of his/her subordinates.

The fundamental duty of the Council of Ministers (Cabinet) is to formulate and to implement the internal and foreign policies of the state.

Duties and Responsibilities of the Prime Minister

The Prime Minister is responsible for ensuring تقابلی بنانا the Council of Ministers (Cabinet) functions in a harmonious ہم آہنگی manner. He/she supervises implementation عمل of government policy. The Prime Minister is the de facto head of the executive branch. Each Minister is accountable to the Prime Minister who in turn ensures that Ministers fulfill their functions in accordance with the Constitution and its laws.

The Administration

The administration entity وجود, its structure and functions, is regulated by law. The organization and functions of the administration are based on the principle of centralization and local administration.

Central Administration

Turkey is divided into provinces based on geography, economic conditions and public service requirements. Provinces are further divided into administrative districts.

Local Administrations

Local administrative bodies are public entities established to meet the common needs of the local inhabitants باشندوں of provinces, municipalities, districts and villages. The decision making

organs are chosen by the electorate prescribed in the law. The structure of the local administrations is defined by law.

THE JUDICIAL SYSTEM IN TURKEY

Judicial power in Turkey is exercised by independent courts and supreme judiciary organs. The judicial section of the Constitution, with the principle of a legal state as its basis, is founded on the independence of the courts and the judges, and the guarantee of judges rights. Judges rule on the basis of Constitutional provisions, law and jurisprudence.

The legislative and executive organs must comply with the rulings of the courts and may not change or delay the application of these rulings. Judges also assume the duties of monitoring elections.

Functionally, a tripartite سه فریقہ judicial system has been adopted by the Constitution and accordingly, it has been divided into an administrative judiciary, a legal judiciary and a special judiciary.

The Constitutional Court, the Supreme Court of Appeals, the Council of State, the Supreme Military Court of Appeals, the Supreme Military Administrative Court and the Court of Jurisdictional Conflicts are the supreme courts mentioned in the judicial section of the Constitution. The Supreme Council of Judges and Public Prosecutors and the Supreme Council of Public Accounts are also two organizations having special functions in the judicial section of the Constitution. The judicial system of Turkey has following courts:

- The Court of Appeals
- The Council of State
- The Supreme Council of Public Accounts
- The Supreme Military Court of Appeals
- The Supreme Military Administrative Court
- The Court of Jurisdictional Conflicts
- Military Courts
- The Supreme Council of Judges and Public Prosecutors



Q DISCUSS THE PROCESS OF LEGISLATION IN THE TURKISH CONSTITUTION? (S2019)

ANS:

PROCESS OF LEGISLATION IN THE TURKEY

The legislative function is exercised by the Grand National Assembly of Turkey (GNAT). Bills can be introduced by any member of parliament. Laws passed by the GNAT are approved by the President or sent back to the GNAT for reconsideration. The President can challenge a bill that has become law before the Constitutional Court, including those passed without his approval, within 60 days from its effective date, on the ground of non-compliance with the Constitution.

Separately, the President can also introduce pieces of legislation by issuing presidential decrees **م**. However, laws introduced by the GNAT prevail **غالب** over presidential decrees on the same subject in the hierarchy **درجه بندی** of norms.

When the GNAT passes a law on a matter regulated by a presidential decree, that decree becomes obsolete. Further, presidential decrees cannot regulate:

Fundamental and personal rights or duties and political rights or duties.

Matters that are explicitly regulated under the laws or must be exclusively **صرف** be regulated by laws.

PROCESS OF LEGISLATION :

Bill:

Bills can be proposed by any member of parliament.

Scrutiny

Once a bill has been proposed by a member of parliament, the legislative process involves three steps:

- The Speaker of the GNAT forwards the bill to an expert committee.
- The expert committee prepares and submits its examination report to the GNAT Speaker's Office.
- The GNAT convenes **جلسه** with a quorum of at least one third of total members and discusses the general outline of the bill. If it resolves on moving forward with the general outline, the parliament proceeds to discuss each article of the bill. On an affirmative **تصویب** vote of an absolute majority of the members present in the session (but

in any case not below one fourth of the total members), the bill is deemed ^{مقبول} accepted and is transferred to the President for review.

Enactment

Laws passed by the GNAT are approved by the President within 15 days of submission for review or sent back to the GNAT within the same term for reconsideration. If the GNAT re-passes the law without any amendment, the President must approve it, or can initiate a cancellation lawsuit before the Constitutional Court. The President can initiate the lawsuit regardless ^{قطع نظر} of whether he has approved the amendments. In other words, the President can initiate a lawsuit for cancellation of a law that he has not previously challenged.

Publication

On the approval of the President, laws are published in the Official Gazette and come into force by virtue of that publication, unless a specific effective date is stipulated in the law itself.

Judicial Review

The Constitutional Court reviews compliance of laws, law amending ordinances and bye-laws of the GNAT with the Constitution.

Administrative actions and decisions can be challenged before the administrative courts. Review by courts is limited to assessment of compliance with law, and judicial decisions cannot:

- Restrict the discharge of executive functions under the law.
- Eliminate ^{اختم} discretionary ^{صوابدیدی} power.
- Constitute an administrative action.

The Constitutional Court is the sole ^{واحد} authority that reviews laws enacted by the GNAT for compliance with the Constitution.



Q DISCUSS SALIENT FEATURES OF CONSTITUTION OF TURKEY. (A2020)

Ans:

CONSTITUTION OF TURKEY

The Constitution of the Republic of Turkey is also known as the Constitution of 1982. This constitution is Turkey's fundamental law. It establishes the organization of the government and sets out the principles and rules of the state's conduct along with its responsibilities in regards to its citizens. The constitution was ratified on 7 November 1982. It replaced the earlier Constitution of 1961. The constitution was amended nineteen times, three of them through a referendum: 2007, 2010, 2017, one of them partly through referendum: 1987. As of April 2016, 113 of the 177 articles of the Constitution of 1982 were amended overall.

FEATURES OF CONSTITUTION OF TURKEY

Salient features of Constitution of Turkey are described below:

Preamble of Constitution:

The 1982 Constitution was composed of a Preamble and has following parts. These parts are titled as follows:

- General Principles
- Basic Rights and Duties
- Fundamental Organs of the Republic
- Financial and Economic Provisions
- Miscellaneous Provisions.

Republic of Turkey:

According to Constitution of 1982, "The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity اتحاد and justice; respecting human rights; loyal to the nationalism.

Sovereignty

According to ARTICLE 6 - Sovereignty is vested عطاونتا in the nation without reservation or condition. The Turkish nation shall exercise its sovereignty through the authorized organs as prescribed by the principles laid down in the Constitution. The right to exercise sovereignty may not be delegated to any individual, group or class. No person or agency may exercise any State authority which does not emanate كنا from the Constitution.

Separation of Powers:

The task of the state is to fulfilling the three fundamental legal functions:

1. Legislative Functions

2. Executive Functions.
3. Judicial Functions

These functions were given by the Constitution to three corresponding state organs:

- Legislation to the TGNA
- Execution to the President of the Republic and the Council of Ministers
- Judicial powers to independent courts

The Constitution has adopted a moderate separation of powers between the legislative and executive organs based upon their cooperation, and the principle of independence of the courts.

Legislative Powers:

According to the Constitution, which suggested a single-assembly system, legislative power is vested in the *Turkish Grand National Assembly* on behalf of the Turkish Nation. This power cannot be delegated in (Art. 7). The primary tasks of the TGNA are to make law, to review the executive organ, to give to the Council of Ministers the authority to issue decisions having the force of law.

Executive Powers:

According to the Constitution, "Executive power and function shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law (Art. 8).

Judicial Powers:

According to the Constitution, Judicial power shall be exercised by independent courts on behalf of the Turkish Nation (Art. 9). Judges shall be independent in the discharge of their duties, having the security of tenure. The Supreme Council of Judges and Public Prosecutors has been suggested to ensure judicial independence and guarantees for the judge.

Equality:

All individuals are equal without any discrimination امتياز before the law, irrespective قطع نظر of language, race, colour, sex, political opinion, philosophical belief, religion and sect فرقة, or any such considerations. No privilege امتياز may be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance تقبل with the principle of equality before the law in all their proceedings.

Fundamental Rights:

According to ARTICLE 12 - Everyone possesses inherent ذاتي fundamental rights and freedoms which are unbreakable and inalienable. Fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and other individuals. Here are few examples of rights which Constitution provides:

- Right to adopt Religion
- Right to live and carry on legal business
- Right of ownership of property

- Right to get education
- Right to get respect.

Prohibition of Forced Labour

No one may be required to perform forced labour. Unpaid compulsory work is prohibited منع. The term forced labour does not include work required of an individual while serving a court sentence or under detention حراست, services required from citizens during a state of emergency, and physical or intellectual work necessitated ضروری by the requirements of the country as a civic obligation, provided that the form and conditions of such labour are prescribed by law.

Freedom and Security

Everyone has the right to enjoy personal liberty and security. No one may be deprived محروم of his liberty except in the following cases where procedure and conditions are prescribed by law.

- i. Everyone has the right to freedom of communication. Secrecy of communication is fundamental.
- ii. Everyone has the right to freedom of residence and movement, Freedom of residence may be restricted by law for the purpose of preventing offenses promoting social and economic development ensuring sound and orderly urban شهری growth, and protecting public property etc.
- iii. Everyone has the right to freedom of conscience ضمیر, religious belief.
- iv. Everyone has the right to freedom of thought and opinion. No one may be compelled to reveal ظاهر his thoughts and opinions for any reason or purpose.
- v. Everyone has the right to study and teach freely.
- vi. In Turkey, The Press is free, and may not be censored.
- vii. Everyone has the right to form associations without prior permission.
- viii. Everyone has the right to hold unarmed غیر مسلح and peaceful meetings and demonstration marches without prior permission.
- ix. Everyone has the right to own and inherit وارث property. These rights may be limited by law only in view of public interest.

Privacy of Life:

Everyone has the right to demand respect for his private and family life. Privacy of individual and family life may not be violated خلاف ورزی. Exceptions مستثنیات necessitated ضروری by judiciary investigation and prosecution are reserved. Unless there exists موجود a decision duly passed by a judge in cases explicitly defined by law.

Privatization:

The privatization of the companies and properties present at hands of the state, public economic enterprise, and other corporate personalities, and the adjudication فیصلہ or transferring of the

enterprises and services made by those personalities to real and corporate personalities on the base of private legal contracts would be possible by principles and procedures determined by law.

The Criticisms Of The 1982 Constitution

Since its inception ابتداء، the 1982 Constitution has been criticized by lawyers, political scientists and politicians, in fact, by almost all segments of society. These criticisms are that:

- 1) The making of the Constitution was not democratic.
- 2) The state was protected against individual.
- 3) It adopted a less pluralist کثرتیت پسند and participatory شراکتی democratic model than the 1961 Constitution.
- 4) It involved official ideology.
- 5) It is an extremely rigid constitution.
- 6) It is poorly worded.
- 7) It severely restricts the fundamental rights and freedoms, and the insurances it brings are insufficient.
- 8) There are many limitations on political parties, associations and labour unions.
- 9) The Presidency is strengthened in a way that is incompatible with a parliamentary system.
- 10) The situations under which may be declared a state of emergency or martial law are extended and the decrees having force of law during periods of martial law and states of emergency have been kept immune ممانعتی from judicial review.
- 11) The acts of the President of the Republic in his own competence and the decisions of the Supreme Military Council and the High Council of Judges and Prosecutors are outside the scope of judicial review.
- 12) Centralism has been increased and the principle of local administration weakened.
- 13) The autonomy خود مختاری of the universities has been abolished ختم.
- 14) The structure and constitution of the High Council of Judges and Prosecutors negatively influences اثر the independence of courts.
- 15) The principle of natural judgement has been transformed into a legal judgement insurance, and allows the founding of the State Security Courts and martial courts in a way incompatible بجوڑ with the principle of natural judgement.



Q EXPLAIN THE FOREIGN RELATIONS OF TURKEY WITH DUE REFERENCE TO PAKISTAN. (S2018)

Ans:

FOREIGN RELATIONS OF TURKEY

Turkey has been a diplomatically vigorous *زوردار* actor, particularly since the end of the Cold War. Although Turkey has become militarily more aggressive *جارحانه* and expansionist *توسیع پسند* since 2010, the Turkish government still utilizes its diplomatic ties to achieve its foreign policy goals. At the top of our list was **Russia**, because of the multifaceted strategic partnership Turkey has with that country. Next on our list was the **United States of America**, but difficult alliance. Third, we expected that the Mediterranean situation would intensify and therefore that the countries involved would demand Turkey's attention. Finally, **European** countries would still be important to Turkey, especially with regards to the economy.

Turkey's foreign relations are based within the contexts of

- (1) the case of Syria,
- (2) the politics of the Eastern Mediterranean,
- (3) the politics of the Black Sea Region.

Turkey is making foreign policy to make good relations with, Iran, Saudi Arabia, and Qatar, as well.

Turkey's relations with Russia

"Turkey's relationship with Russian Federation will remain as one of the fundamental elements of our foreign policy". Russia has been classified as a strategic partner to Turkey, and cooperation with Russia is and will remain for the foreseeable future especially important to Turkey with regards to Energy, Trade, and the Syrian conflict. Presently, the planned purchase of S-400 Triumf (SA-21 Growler) medium range ballistic missiles and air defence systems is also framing the relationship and has become an area where Turkey needs to balance Russian interests and demands with those of NATO.

Turkey's relations with the US

By the end of the 2nd World War, Turkey chose to side with the Western alliance and moved close to the new superpower, the United States. When Stalin in 1946 opted *منتخب* for Turkish territory, the Turkish leadership's alliance-forming initiatives *اقدامات* with the US picked up speed. The threat posed by Russia aligned Turkey completely with the US, who in return granted Turkey security guarantees. The relationship with Washington became a bulwark *دیوار*

of Turkish foreign policy and a crucial insurance policy against the Soviet Union. In 1952 Turkey became full member of NATO, thereby cementing Turkey's Cold War alliance with the US. During this period there were intermittent problems in the relationship, such as the 1974 Cyprus War. Still, the Turkish leadership placed trust in its close alliance with the United States to guarantee its security throughout the Cold War. Like his predecessors, he has sought to reclaim great power status for Turkey, he has departed from previous strategy in one significant way. The relationship between the two countries has had some serious troubles in recent times as well.

Turkish Relationship with European Union:

Relations between the European Union (EU) and Turkey were established in 1959, and the institutional framework was formalized with the 1963 Ankara Agreement. Albeit not officially part of the European Union, Turkey is one of the EU's main partners and both are members of the European Union. At a time when Europe's future is taking shape, Turkey with a visionary approach is intensifying her relations and cooperation in all areas with European countries, while retaining its influential position on the international arena.

Turkey's Relations with Pakistan:

Turkey and Pakistan are supporting each other in all international platforms. Pakistan also adopts a highly supportive approach on international matters, which are of special interest for Turkey. Frequent high-level visits are a clear indicator of the close political relations between Turkey and Pakistan. In the last few years, the perceptions and interests of Turkey and Pakistan have started to converge on a number of important issues. It is important to note that strategic importance of the two countries in the light of events that unfolded in the aftermath of 9/11 attacks on the US, both countries extended each other their support during the most difficult times. During any natural disasters and they cemented their friendly relations with frequent high-level visits. The High Level Cooperation Council which was established in 2009 and upgraded to High Level Strategic Cooperation Council has been a clear demonstration both countries' will to further bilateral relations in every field.

Sixth meeting of the High Level Strategic Cooperation Council was held in Islamabad on 13-14 February 2020 under the chairmanship of H.E. Recep Tayyip Erdoğan and H.E. Imran Khan. Within this mechanism, 73 agreements and documents have been signed, so far. The positive reflection of the excellent bilateral relations can also be seen in the international forms. It is clear that Pak-Turkey relations have been taken to the next level under the leadership of Erdogan and Imran Khan. Pakistan's support for the ambitions of Erdogan to emerge as the leader of the Ummah, replacing Saudi Arabia. Getting nuclear technology from Pakistan would be the icing on the cake.



Q. WRITE DETAILED NOTE ON TURKISH GRAND NATIONAL ASSEMBLY(A2018)

Ans:

Turkish Grand National Assembly

The Grand National Assembly of Turkey, usually referred to simply as the TBMM or Parliament, is the unicameral **یک ایوانی** Turkish legislature. It is the sole body given the legislative prerogatives **استحقاق** by the Turkish Constitution. It was founded in Ankara on 23 April 1920 in the midst of the National Campaign. The legislative power is used by the Grand National Assembly of Turkey on behalf of the Turkish Nation and this right is inalienable.

Duties and Powers of Grand National Assembly

The Grand National Assembly of Turkey shall be composed of six hundred (600) deputies directly elected from 81 provinces and 87 electoral districts in total. As per Article 87 of the Constitution, the duties and powers of the Grand National Assembly of Turkey have been stated as follows:

- Enacting, amending and repealing laws,
- Debating and adopting the Budget Bills and the Final Account Bills,
- Deciding on issuing currency,
- Deciding on the declaration of war,
- Approving the ratification **توثیق** of international treaties,
- Deciding on granting general amnesty **معافی** and pardon,
- Exercising the powers and carrying out the duties foreseen **پیش نظر گوی** in the other articles of the Constitution.

In other articles of the Constitution, the following duties and authorities have been granted to the Grand National Assembly of Turkey:

- Amending the Constitution,
- Scrutinizing **چھان بین** the government,
- Approving developmental plans,
- Adopting the Rules of Procedure of the Grand National Assembly of Turkey,
- Approving, amending and rejecting presidential decrees of state of emergency,
- Approving a decision on a state of emergency, extending their duration to not exceed four months at every turn, and removing a state of emergency.
- Electing the Speaker and the Bureau members of the Grand National Assembly of Turkey,
- Electing the Chief Ombudsperson,
- Electing three (3) members of the Constitutional Court out of fifteen (15),
- Electing the members of the Supreme Council of Radio and Television,

- Electing the President and the members of the Court of Accounts,
- Electing seven (7) members of the Council of Judges and Prosecutors out of thirteen (13),
- Deciding to renew the election of the Grand National Assembly of Turkey and the President of the Republic prematurely قبل از وقت ,
- Impeachment مواخذہ of the President of the Republic, Deputies of the President of the Republic, and Ministers,
- Lifting parliamentary immunity,
- Deciding on the loss of membership,
- Permitting the deployment of Turkish Armed Forces abroad and admitting the presence of foreign armed forces in Turkey,
- Inspecting public economic enterprises.
- Electing the members of the Board of the Protection of Personal Data (this authority of the Grand National Assembly stands on the Law on the Protection of Personal Data)



CONSTITUTION OF SWITZERLAND

Q. WHAT ARE THE MAJOR FEATURES OF THE CONSTITUTION OF SWITZERLAND? (A2018)

ANS:

INTRODUCTION OF SWITZERLAND

The Republic of Switzerland is a small country, situated ^{واقع} in the heart of Western Europe. Her people live on both sides of a great mountain chain. It is surrounded by Germany in the North, by France in the west, by Austria in the East and by Italy in the South. Its people differ in race ^{نسل}, religion, language and to some extent in civilization. In the words of Dr. Munro, People of Germanic, French and Italian stocks, speaking four languages, have been so squeezed ^{نچوڑا ہوا} together by powerful neighbours that they have grown into one. Despite all these differences on the basis of race, religion and language, the Swiss constitute a thoroughly coherent ^{متوکل} nation. A very healthy tradition of self-government has been established on the Swiss soil for the last seven hundred years or more.

Silent Features of Swiss Federal Constitution

1. Written constitution

Swiss Constitution has been reduced to writing and it comprises ^{پر مشتمل ہے} a detailed document consisting of 122 articles. Such details have also been made the part of the Constitutional Law as are normally regulated through statutes in other countries. Constitutional conventions also constitute unwritten part of the Constitution. Hence all traditions also performed due role along with conscious ^{ادراک ہونا} and deliberate ^{ارادی} efforts in the development and growth of the Constitution.

2 Rigidity of the Constitution

The procedure of Constitutional amendment, unlike that of Pakistan's, is a bit lengthy one as it can be amended not only by the Federal Assembly but the federating units and the electorate is also directly involved. There are two important aspects of the process of Constitutional amendment:

(a) Total Revision

Total revision of the Constitution took place only once and that was in 1874. In order to undertake total revision of the Constitution, both 1111 the Chambers of the Federal Assembly are required to approve it along with the concurrence ^{اتفاق} of the majority of the cantons ^{چھائی}. Final approval has to be given by the people at referendum. Such amendment got to be initiated by both the Chambers of the Federal Assembly. Nevertheless, electorate by a specific majority

may also initiate such amendment. Accordingly, at least 50,000 voters make a request to the Federal Assembly for total revision of the Constitution; such a move shall be put at referendum to elicit public opinion. If approved by the people, both the chambers of the Federal Assembly shall have to be re-elected. The newly elected Assembly shall approve the revision of the Constitution in collaboration with the majority of the Cantons. After getting approval, the Constitution stands amended.

(b) Partial Amendment.

Partial amendment implies few alterations in different provisions of the Constitution. This method has close resemblance with the former method of amendment. If both the Chambers of Federal Assembly initiate any proposal for constitutional amendment, it becomes part of the Constitution with the approval of the majority of the Cantons and that of the People through referendum. Nevertheless, the voters can also initiate such Proposal.

3. Federal System.

According to the Swiss Constitution, the word 'Confederation' has been used in the name of the country, whereas the system is, in fact, federal one. It comprises 20 full Cantons and six half Cantons. The federal system ensures a suitable balance between regional autonomy and the requirements of an effective national government.

Division of Powers

The pattern of division of powers in Swiss Federation is, to a greater extent, similar to the pattern of American Federation. The powers of the central government have been expressed in the Constitution in the form of a list. It includes all such matters which relate to the collective interest, Second list deals with concurrent affairs, on which both the central as well as Canton's governments can legislate. In case of clash between the Central Law and that of the Cantons Law, the former shall prevail.

Federal List

Certain important matters in the federal list are

- Defence
- Foreign affairs
- Appointment of diplomatic corps
- Declaration of war
- Making of peace
- Negotiation of treaties
- Administration
- Railway
- Currency
- Commerce and planning
- Banking

- Post and telegraph
- Weights and measures
- Citizenship laws
- Natural resources

Concurrent List.

Following are certain important matters included in the as well as Canton's governments are authorized to legislate Concurrent List:

- Construction and maintenance of high ways
- Control over press
- Insurance and industry
- Promotion of education

Regional Autonomy خودمختاری

All the federating units enjoy full autonomy within their respective sphere of action. The national Constitution cannot be amended without their approval. These are also authorized to frame their separate Constitutions. First, no Canton is allowed to insert in its Constitution any such clause شق as clashes with the provisions of the Constitution of the Republic. Second, the political system of every Canton is required to secure a republican form of government. Thirdly, the method of amendment ترمیم of every Constitution should ensure public participation in this process. It is worth-pointing it out that cooperation between the federal government and the governments of Cantons has been fully ascertained معلوم in various fields.

Trends of Centralism.

The Non federal experience in the, past was a total failure, hence the presence of an effective and stable central government was Thought indispensable ناپیدی. Total revision of the Constitution, therefore, took place in 1874, in order to establish an effective national government. From that time onward, the central government grew in powers. At present, the jurisdiction of the central government has been expanded even to the matters which were considered beyond its sphere دائرے of action a century ago.

4. Plural جمع Executive.

Plural executive is a novel feature of Swiss political system, i.e., no single person is the head of the government, it is a collegian body known as *Federal Council* which exercises executive authority. It consists of seven members elected by the Federal Assembly for a period of four

years. No single individual holds distinct ^{الک} position as President or Prime Minister. Presidency rotates among all the members of Federal Council turn by turn. To illustrate, all the members of the Council are generally elected from the members of the Federal Assembly but after their election, they have to resign from its membership. They actively participate in the deliberative ^{غور و خوض} process of the Assembly and perform an important role in legislation. But they are deprived ^{محروم} of the right to vote within the legislative chambers. Federal Assembly has no power to initiate no-confidence motion against the Council. Despite the accountability of the Federal Council to the Assembly, the former enjoys security of its tenure. Hence, this system combines the features of both, parliamentary and presidential forms of government.

5. Bicameral Legislature.

The federal legislature is bicameral in which the upper chamber is named as *State Council* while the lower one as *National Council*. The former represents the federating units on parity ^{برابری} basis and two seats are allocated to each Canton while one seat to every half Canton. The total number of its members is 46. National Council is the popularly, elected chamber and constituted on the basis of one seat allocated to every twenty four thousands electorate. Both chambers share equal powers.

6. Direct Democracy.

Switzerland is a unique country where the devices of direct democracy are put into practice in a modern age. Swiss people consistently participate directly in public affairs through such devices as initiative and recall. These political practices of popular participation help in perpetuating ^{دائمی} the interest of the people in public affairs. Swiss people have undoubtedly, demonstrated maximum level of political awareness. Public participation in state-craft has not been confined merely to the election of the rulers; they rather actively participate in policy-making. Through initiative they may initiate proposals in respect of policy-making while they may obstruct ^{رکنا} the passage of any bill or proposal to this effect by disapproving it at referendum, Elected representatives can be called back prior to the termination of their tenure, by the voters through recall.

7. Fundamental Rights.

in modern democracies, a list of fundamental rights is drawn in the constitutional document so as to secure better protection to, public liberties. This practice has been adopted in the Constitution of Islamic Republic of Pakistan as well. But fundamental rights are not found explicitly ^{واضح} in the form of a list in the Swiss Constitution; rather different provisions of the Constitution deal with fundamental freedoms. All basic rights are enforced through the superior courts. Certain important fundamental rights are the following;-

Equality before Law

All citizens stand equal in the eyes of law and no discrimination امتیاز is done in this regard.

Freedom of Conscience and Religion

All citizens are adopting any faith and no limitations are imposed in matters of religion.

Freedom of Expression.

Every citizen has been ensured to express his Opinion with any fear or restraints. But any speech impairing the prevailing laws is, however, treated as an offence.

Freedom of Press.

Media enjoys maximum freedom and no restraints are imposed on communication activity provided it is carried on in accordance with the dictates of law. Press is expected to observe, rules of professional morality and keep into consideration the national interest while performing its function.

Choice of Profession.

Every citizen has been given the right to work for earning his livelihood. He may adopt any profession of his choice. Right to own property and all other belongings has also been secured. It is to be noted, that the level of per capita income in Switzerland is one of the highest amongst the developed countries.

Right to Education.

Primary education is free and compulsory and no discrimination is done as far as admission to public schools is concerned. Administration of primary education is the responsibility of Canton's governments.

Personal Liberty

Every Swiss citizen has been ensured personal freedom and none can be detained گرفتار unlawfully without his guilt proved in a court of law. All citizens enjoy freedom of movement within the territory of the state. They enjoy all family rights including right to privacy. In short, Swiss citizens enjoy all fundamental freedoms as are secured in modern democratic states.

8. Political Rights

All Swiss citizens enjoy equal political rights necessary for political participation. The democratic traditions of this country are far advanced to those of most of the other democracies.

All citizens have been given the right to vote on the basis of universal suffrage حق رائے دہی. Through different political devices, the citizens participate directly in political decision-making and in enactment قانون سازی of laws. The people are generally taken into confidence through Referendum on all important policy matters. The system of direct democracy in its pristine قدیم form, still flourishes پھلتا چھوڑتا at local level in an age of direct democracy.

9. Representation of Woman

It was on 7th February, 1971 that women were enfranchised حق رائے دہی as a result of referendum, prior to that they remained deprived محروم of the right to vote. In October, 1984 the Federal Assembly elected first lady Cabinet Minister, Dr. Beth Kopp, a member of the Radical Democratic Party. She became head of the Federal Department of Justice and Police and was elected Vice-President of the country in 1989.

10. Bill of Right:

A major change affect by the new Swiss Constitution has been the incorporation of a detailed bill of Rights. Under Title 2 chapter 1 and 2 and article 7 to 40, the new constitution describes the basic, civil, social and political rights of the Swiss people. The bill of rights is a very detailed bill and incorporates almost all the rights and freedoms which stand recognized as essential conditions of civilized living and necessary for the enjoyment of the right to life.

11. Dual Citizenship:

The system of double citizenship prevails in Switzerland. The Constitution states that every citizen of a Canton shall be a citizen of Switzerland. This entitles a person to enjoy the citizenship of his Canton as well as that of the Swiss Federation.

12. No Judicial Review:

The Swiss judiciary play a less vital role then the judiciary in Pakistan ,India or USA. The Swiss Federal Tribunal has only limited judicial review authority. It can declare only cantonal law unconstitutional. But it does not exercise judicial review of the laws passed by the central government.

Conclusion:

The political system of Switzerland has such features as direct democracy and plural executive, the political maturity of the Swiss, and the status of a permanently neutralized and internationally recognized neutral state. Those have all combined to give Switzerland an honourable place in the world, and its constitution enjoys a unique place in the world of constitution.



Q. WHAT IS HISTORICAL DEVELOPMENT OF CONSTITUTION OF SWITZERLAND. (S2018)

(OR)

HOW SWISS CONSTITUTION WAS DEVELOPED, DISCUSS SOME IMPORTANT MILE STONES IN ITS DEVELOPMENT? (A2018)

Ans:

HISTORICAL DEVELOPMENT OF SWISS CONSTITUTION

Prior to 1798, the Swiss Confederacy was a confederation of independent states, not a federal state, and as such was based on treaties rather than a constitution. The *Helvetic Republic* of 1798–1803 had a constitution largely drawn up by Peter Ochs, in 1803 replaced by the Act of Mediation, which was in turn replaced by the Federal Treaty of 1815, which restored the Confederacy اتحاد, while the individual cantons drew up cantonal constitutions, in most respects based on the Ancient قدیم Regime حکومت of the 18th century, but with notable liberal innovations in the constitutions of the new cantons of St. Gallen, Aargau, Thurgau, Ticino, Vaud and Geneva. The new cantonal constitutions in many cases served as precedents مثالی for the later federal constitution.

Following the French July Revolution in 1830, a number of large assemblies were held calling for new cantonal constitutions. The modifications to the cantonal constitutions made during this period of "Regeneration" remains the basis of the current-day cantonal constitutions. Vaud introduced the legislative popular initiative in 1846. Berne introduced the legislative optional referendum in the same year. The political crisis of the Regeneration بحالی period culminated اختتام پذیر ہوا in the Sonderbund War of November 1847. As a result of the Sonderbund War, Switzerland was transformed into a federal state, with a constitution promulgated پروموت on **12 September 1848**. This constitution provided for the cantons sovereignty, as long as this did not impose on the Federal Constitution. The creation of a bicameral دو ایوانی assembly was consciously شعوری طور پر inspired by the United States Constitution, the National Council and Council of States corresponding to the House of Representatives and Senate, respectively.

The Constitution of 1848 was partly revised in 1866, and wholly revised on 29 May 1874. This latter constitutional change introduced the referendum at the federal level. In a partial ترمیمی revision of 1891, the "Right Of Initiative" was introduced, under which a certain number of voters could make a request to amend ترمیم a constitutional article, or even to introduce a new article into the constitution. This mechanism is called federal popular initiative. Thus, partial

کئی revisions نظرآنی of the constitution could from this time onward be made at any time. Twelve such changes were made in the period of 1893 to 1994 (with no changes during the thirty-year period of 1950–1980)

The Federal Constitution was wholly revised for the second time in the 1990s, and the new version was approved by popular and cantonal vote on 18 April 1999. It came into force on 1 January 2000. The 1999 Constitution of Switzerland consists of a Preamble and 6 Parts, which together make up 196 Articles. It provides an explicit provision for nine fundamental rights, which up until then had only been discussed and debated in the Federal Court. It also provides for greater details in tax laws. The Constitution of 1999 has been changed by popular initiative ten times in the period of 2002 to 2014.



Q. EXPLAIN THE ROLE OF CANTONS IN THE SWISS POLITICAL SYSTEM? (A2018)

(OR)

WHAT IS THE NATURE OF RELATIONSHIP BETWEEN CANTONS AND FEDERAL GOVERNMENT UNDER SWISS CONSTITUTION. (A2019) (A2020)

Ans:

CANTONS IN THE SWITZERLAND

The word canton means district or a section or part of a country. There are 26 cantons in Switzerland. Not all cantons speak the same language, some cantons are French speaking, German speaking and Italian speaking etc. all of which manage education, healthcare, law enforcement, taxes, as well as social welfare themselves. Each canton also has its own official language or languages; in fact, only four Swiss cantons are officially bilingual **دو زبانی** in Switzerland.

History of Swiss Cantons

A few Swiss cantons are among some of the oldest political entities in Europe as a matter of fact. The Old Swiss Confederacy **اتحاد** came into being as more of a loose military alliance at the dawn of the 14th century when Schwyz, Unterwalden (now split into Nidwalden and Obwalden), and Uri created the union in 1291. Cantons in the Old Swiss Confederacy were effectively independent countries originally brought together to reduce military conflict between them, but it slowly grew over the centuries into a proper federation of member cantons.

The Sonderbund War took place in 1847, pitting seven independently-minded Catholic cantons against the rest of the Confederacy in order to resist **مزاہمت** a growing federal government. The Confederacy prevailed **غالب** after four weeks of fighting, leading to a new Swiss Federal Constitution that promised **دعہ کیا** sovereignty to the cantons as long as the cantons didn't violate the Swiss constitution or impose on the role of the federal government.

The Role of The Canton in Switzerland

Swiss cantons are the largest levels of regions inside of Switzerland. Indeed, the cantons themselves manage many aspects **پہلوؤں** of everyday life. They generally oversee everything from schools and police forces to healthcare and taxes. It's safe to say that the canton is the government that a Swiss resident will interact with the most while living in the country.

Within each canton, there is a large number of communes (around 2,300 across Switzerland, in fact). In Switzerland, a commune is equal to a city or a municipality. This is generally where the cantons watch over their programs in action. Cantons supervise the healthcare system or

the education system and fund them by levying taxes, while the communes run the hospitals and schools directly. If you live in Switzerland, you'll interact with your local canton (and commune) far more often than you will with the federal government.

The list of Swiss cantons

The canton names below are the official names in the local language. For cantons with more than one official language, the names are listed in the same order as the languages. There 26 Swiss cantons are the following:

CANTON NAME	CAPITAL	LANGUAGE
Aargau	Aarau	German
Appenzell Ausserrhoden	Herisau	German
Appenzell Innerrhoden	Appenzell	German
Basel-Landschaft	Liestal	German
Basel-Stadt	Basel	German
Bern/Berne	Bern	German, French
Fribourg/Freiburg	Fribourg	French, German
Genève	Geneva	French
Glarus	Glarus	German
Graubünden/Grischun/Grigioni	Chur	German, Italian
Jura	Delémont	French
Luzern	Lucerne	German
Neuchâtel	Neuchâtel	French
Nidwalden	Stans	German
Obwalden	Sarnen	German
St. Gallen	St. Gallen	German
Schaffhausen	Schaffhausen	German
Schwyz	Schwyz	German
Solothurn	Solothurn	German
Thurgau	Frauenfeld	German
Ticino	Bellinzona	Italian
Uri	Altdorf	German
Valais/Wallis	Sion	French, German
Vaud	Lausanne	French
Zug	Zug	German
Zürich	Zurich	German

Role of Cantons in Swiss Politics:

The 26 cantons are the constituent elements of the Swiss Confederation. They possess a wide range of powers and are thereby involved in the development of Switzerland's policy on Europe when their interests are at stake. The cantons define their positions within the Conference of cantonal governments (CdC), which has a representative at the Mission of Switzerland to the EU. The participation of the cantons in foreign policy is anchored in the

federal constitution. Article 55 stipulates مقرر کرتا ہے that the cantons “shall be consulted” in the preparation of foreign policy decisions that “affect their powers or their essential interests”. The Confederation must therefore “inform” and “consult” them on such matters. The views of the cantons also carry “particular” weight if their powers are to be affected. In practice, the cantons are consulted on international negotiating مذاکرات mandates and their specialists take part in the delegations that safeguard حفاظت Swiss interests. So we can say cantons play a vital role in Swiss politics and they are just like a back bone of Switzerland’s political system.



Q. DISCUSS IN DETAIL THE PRESIDENTIAL POWERS IN THE CONSTITUTION OF SWITZERLAND? (S2019)

Ans:

THE PRESIDENTIAL POWERS IN SWITZERLAND

The President's primary function is to conduct the meetings of the Federal Council and to act as arbiter if necessary. The President also has additional representative tasks, both in Switzerland and abroad. In parallel متوازی, the President remains the head of the federal department for which they are responsible.

In an emergency, the President is empowered باختیار to take provisional measures, i.e. temporary decisions to resolve a specific situation. If the Federal Council cannot be convened بلائی گئی for any reason, the President is also entitled to take decisions on its behalf. The Swiss executive branch instead بجائے of executive power being vested in an individual, it is held by a committee. Unlike other countries, there is no prime minister or head of state. Since 1848, the Swiss cabinet, known as the *Federal Council*, has consisted of seven members. The Federal Council has been composed مشتمل of the same political parties for more than 60 years. By common agreement Switzerland's four main parties divide the seven cabinet seats according to a set formula determined ultimately آخر by their strength at the ballot box.

The Swiss presidency is rotated گھمایا ہوا annually. According to an unwritten agreement, cabinet ministers take turns serving as president of the confederation, with newer members waiting until seniors have served. Even though the Swiss president chairs council meetings and represents the country at home and abroad باہر, he or she is considered a "first among equals", and not a leader. The head of state, formally speaking, is the Federal Council. Its seven members are not elected by the people but by parliament. During state visits, foreign dignitaries معززین are received by the Federal Council as a whole, not by the minister serving as president.

The President, whose role is largely ceremonial رسمی, has very little additional responsibility above that of the other six members of the Council, but performs actions and duties similar to a President or Prime Minister in other European democracies.

The Swiss government, particularly the executive branch, is regarded as one of the most stable in the world. It has featured a coalition اتحادی of four major parties since 1959, with each party retaining a number of seats in the assembly.



Q. WRITE IN DETAIL THE LEGISLATIVE PROCESS IN THE SWISS FEDERAL LEGISLATURE. (S2018) (A2019)

Ans:

LEGISLATIVE PROCESS IN THE SWITZERLAND

In Switzerland, laws are created in four steps, which are described below:

1. Draft مسودہ by the administration
2. Consultation of federal states, political parties, entrepreneurs تاجروں, unions and other interested groups
3. Parliamentary debate and final version passed
4. Possibility of a referendum

The formal (institutionalised ادارہ جاتی) consultation results in comments, demands for modifications and even alternate propositions تجویز. Normally they are made public so that the electorate is informed what is going on and what the pros فوائد and cons نقصان of the new law are. If a strong party or lobby threatens خطرہ to call for a referendum in a later stage if their demands are not met, a new law may be completely reworked by the administration after the consultation.

Commissions of both chambers of parliament study and discuss the proposal as well as the arguments put forward during consultation in detail behind closed doors and prepare a recommendation to their chamber. Sometimes the commissions find a compromise, sometimes they don't. a speaker for the commission (or one each for the majority and the minority of the commission) presents the new law to the parliament chamber to start the public debate.

Both chambers discuss new laws separately. Sometimes they have to repeat a discussion if the other chamber has passed a different version of a law. Which chamber is discussing a new proposal first is not determined by the constitution but results from the time the chambers spend discussing on each law.

If *National Council* and *Council of States* pass the same version of a change to the constitution or decide to join an international union (like the EU or NATO) a date will be fixed for the mandatory لازمی referendum. In case of all other laws and international treaties citizens have three months time to collect 50,000 signatures among the electorate to demand for a referendum. The result of a referendum is binding. The constitution may only be changed if both a majority of the votes and a majority of the results in the cantons favour it. Thus, smaller cantons may block changes to the constitution with relatively نسبتاً few votes. Normal laws do only need a majority of the total votes.

The process of making laws is rather slow in Switzerland, which may be a handicap with more technically oriented laws (regulating questions of public interest but addressing a small number of professionals applying a new, potentially *زبردست* dangerous technology for example).

Laws concerning everybody's every day's actions (like traffic law), however, may get more attention and acceptance by the public and therefore be more effective due to the intense public debate. If one keeps in mind that laws are only useful if a majority respects them, the slower process may in the end be the better one.



Q. DEFINE THE CONCEPT OF DIRECT DEMOCRACY AND ITS IMPORTANCE IN THE SWISS POLITICAL SYSTEM? (A2018)(S2018) (S2019) (A2020)

Ans:

DIRECT DEMOCRACY

Direct democracy means that people vote on policies and laws themselves, instead of electing politicians to do it on their behalf. This is why it's sometimes referred to as "*Pure Democracy*." Direct democracy could take different forms, from a system where all executive and legislative decisions are taken by direct vote of the people, or where only certain policies or legislative acts are voted on by the people. The latter system has been the most common form of direct democracy throughout modern history, and it is considered semi-direct democracy. This is a hybrid form of governing that combines that tenets اصول of direct democracy and representative democracy. The people choose representatives to administer day-to-day governance, but they keep the power to directly vote on important issues through binding referendum, popular initiative, revocation منسوخ of mandate, and public consultations.

Examples of direct democracy

The origin of modern democracy, at least as we commonly understand it, is the direct democratic system of Athens around 600 BCE. In this Athenian democracy, citizens didn't choose representatives to vote on legislation on their behalf but instead voted on proposals and initiatives themselves.

Today, there are few direct-democracy states. Switzerland prides itself on its system of direct democracy the government even has a webpage to tout it but in truth the Swiss system, at federal level, is a semi-direct democracy. Politicians are elected to handle the daily governance of the nation and make many decision on behalf of the people. Still, citizens do retain a high degree of democratic power. They can propose changes to the constitution or ask for a referendum to be held on any law proposed by the federal government or any cantonal parliament or other legislative body.

Direct democracy: what are the pros and cons?

Direct democracy, or "*Pure Democracy*," is often seen as the truest سچا سے سچا form of democracy. The people choose the laws they live under, cutting out the "middlemen" to vote on their behalf. In this way, it can be seen as inherently فطری طور پر more virtuous نیک than representative democracy. But that's not to say it doesn't have its drawbacks. So what are the main pros and cons?

Pros:

Transparency:

Direct democracy is surely the most transparent form of democracy. There are no "backroom deals" made to decide the outcome or scope of legislation, because discussions and debates on important issues are held in public. And it's the people who decide whether a proposal becomes law, and thus they bear full responsibility for the outcome.

Accountability:

Speaking of responsibility, direct democracy ensures that there is no doubt about who is accountable for the successes or failures of a countries laws or policies. Moreover, the government cannot claim to be unaware of the will of the people, and partisan lobbying and other interference in the legislative process is minimal or non-existent.

Cooperation:

Direct democracy encourages citizens to communicate and cooperate with one another, not only to consider current legislation, but also to craft legislation that best serves the most people, and thus has the best chance of winning majority support. And when people know with certainty that their voice will be considered in the process, they are far more likely to participate and cooperate with fellow citizens.

Cons:

Indecision:

Simply put, there are more people now than there were when direct democratic systems existed. Many, many more. Consider the United States, with its some 350 million people. If they all had to vote on every policy initiative or legislative proposal, nothing would ever get done. It simply would not be an efficient system, and thus it could actually weaken the effectiveness of the government.

Participation:

We are busy people. We have jobs to do, families to care for, and sports teams to form unhealthy obsessions over. If we are asked to weigh in on every decision, eventually we would just lose interest. Or simply be unable to keep up with such a demand.

Tension:

Important decisions often create tension between people with opposing views. The more important the decision, the more tension. The more decisions, the more tension. Trying to implement direct democracy today could lead to even more acrimonious societies, where people are angrier and, perhaps, more violent.

Importance of Direct Democracy in Swiss Political System

Switzerland is perhaps best known for its system of democracy. Known as “direct democracy”, it’s a legal framework that enables all Swiss citizens over the age of 18 to vote on how the country is run.

Here are a few other facts about Switzerland’s political system:

- Switzerland has a population of 8.2 million people, of which 24% are foreign nationals, spread across 26 cantons.
- The fundamental principle of direct democracy is that all citizens take part in decision-making and there’s a strong respect for minorities. Unfortunately, this wasn’t extended to women, who were not given the vote until 1971 (and even until 1991 in the case of one canton).

- The government, also called Federal Council, is the executive power. It is composed of seven Federal Councillors from several Swiss political parties, which are elected by the Federal Assembly every four years and share the duties of a head of state. Federal Councillors rotate and every year one takes on the role of president.
- The Swiss political scene **منظر** is dominated **تألب** by four main parties:
 - The Swiss People's Party
 - The Social Democrats
 - The Liberals
 - The Christian Democratic Party.
- In recent years, the Green Party has emerged, as well as a small number of minority parties. The “Anti PowerPoint Party”, for example, was a political party in Switzerland that worked to decrease the use of PowerPoint in professional presentations. They claimed that PowerPoint software was economically harmful.
- Popular votes can be held up to four times a year. The Federal Council decides a couple of months in advance which proposals will be voted on and releases the dates of the votes even earlier. Currently all the dates have been fixed from now until 2034.

The instruments of direct democracy

There are three instruments of direct democracy, all types of referendum: mandatory, popular initiative and optional. A vote must be held on any amendment to the constitution resulting in a mandatory referendum. A double majority, meaning the consent of a majority of the people and of the cantons is required to amend the country's constitution.

Citizens can launch a popular initiative to demand a change to the constitution. Any Swiss citizen who is eligible to vote can sign a popular initiative and a group of at least seven citizens (the initiative committee) can launch their own popular initiative. Before a vote is held on a popular initiative, the initiative committee must collect 100,000 valid signatures in favour of the proposal within a period of 18 months.

The Federal Council and Parliament will recommend whether the proposal should be accepted or rejected. For the proposal to be accepted a double majority is needed. If it is accepted, new legislation or an amendment to existing legislation is normally required to implement the new constitutional provision.

Conclusion:

In many ways, direct democracy deserves its title as the purest form of democracy. But does that mean it's the best? There are many reasons why we should be hesitant to want to live in a true direct democracy, even despite the fact that it makes certain that our individual opinion will matter and be considered in the final outcome. Certainly, representative democracy came about because it does some things better than direct democracy. But whether we can maintain our representative democracies so that they function as they were intended to is another matter altogether.

Q. ELABORATE FUNDAMENTAL RIGHTS MENTIONED IN THE CONSTITUTION OF SWITZERLAND. (S2019)

Ans:

FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF SWITZERLAND

Swiss Constitution's Articles 35 and 36 contain the general rules governing the application of fundamental rights. According to article 35, "*The fundamental rights shall be realized in the entire legal system*". This implies that the Constitution's fundamental rights are binding on all levels of state authorities and are directly enforceable in the courts. Constitution of Switzerland provides the following fundamental rights to its citizens.

1. Right to Human Dignity وقار:

The Swiss bill of rights gives first priority to human dignity. Article 7 reads:

"Human dignity ought to be respected and protected." The right naturally involves the right to life because human dignity can be protected and promoted only when right to life is fully respected.

2. Right to Equality and Protective Discrimination امتياز:

Under its Article 8 the Constitution grants the right to equality to all the people. Article 8(1) says: "Every one is equal before the law." It also states that there is to be no discrimination on the basis of origin, race, sex, age, language, social position, way of life, and religious, philosophical or political convictions. Further, all men and women enjoy equal rights without any discrimination. There is to be legal equality as well as equality in family life, during education and at the work place.

3. Protection Against Arbitrariness من مانی and Preservation of Good Faith:

Article 9 of the Constitution lays down, "Every person has the right to be treated equally by the state institutions without arbitrariness and in good faith."

4. Right to Life and Personal Freedom:

In its Article 10 the Constitution grants right to life and personal freedom. It says that every person has the right to life. Death penalty stands prohibited ٤. No one can be subjected to torture and any other form of cruel, inhuman or degrading treatment or punishment.

5. Special Protection of Children and Adolescents نوعمر and Right to Aid in Distress مصيبت:

Children and adolescents have been granted the rights to special protection for their personal integrity. They have the right to work for their development. Each one exercises these rights according to his capacity. Each one in distress has the right to get aid.

6. Protection of Privacy, Right to Marriage and Family:

The Constitution guarantees to every citizen the right to marriage and family (Article 14). Further Article 13(1) declares that every man and woman has the right to get respect for his/her private life, family life, home and secrecy of correspondence mail as well as telecommunication. Every person has the right to be protected against abuse of personal data. [Article 13(2)]

7. Right to Freedom of Religion and Conscience:

The Constitution guarantees freedom of religion and conscience to all. Every person can freely choose his religion and profess his faiths, individually as well as collectively with others. He has the right to join or belong to a religious community as well as to receive religious education. No one can be forced to accept or join any religion or religious activity or religious education against his will.

8. Right to Freedom of Opinion رائے, Information and Media (Press):

Article 16 of the Swiss Constitution provides guarantee to the right to freedom of opinion and information. Each person enjoys the right to freely express his opinions, to receive information and to share opinions, views and information with others. The freedom of press, radio, television and other means of mass communication stands guaranteed under Article 17. It also prohibits censorship and guarantees editorial secrecy.

9. Rights to Freedom of Language, Primary Education, Science and Art:

Article 18 guarantees freedom of language. The citizens have the right to learn and use any language. However, four languages stand recognized as the national language-German, French, Italian and Romansh. The citizens have been guaranteed the right to sufficient and free primary education (Article 19). The Constitution also guarantees the freedom to pursue Science or Art Scientific research and teaching.

10. Right to Freedom of Assembly and Association:

Like every true democratic constitution, the Swiss Constitution also guarantees to all its citizens the freedom of assembly and the freedom to form associations. Every person has the

right to organize assemblies, to participate in these or to abstain from these. He has the right to form or join any association as well as to participate in its activities.

11. Freedom of Domicile and Protection against Expulsion اخراج,

Extradition حوالگی and Removal by Force:

Article 24 and 25 of the Constitution, respectively, grant to the Swiss citizens the freedom of residence in any part of Switzerland. They enjoy the freedom to move their residences/domiciles at any time. They have also the freedom to leave or re-enter Switzerland. No citizen can be expelled from the country and extradition of a person to a foreign country can only take place with his consent. Protection of refugees is granted and their persecution stands prohibited. No person can be forcibly removed to a state where he may feel a threat to his life or torture or cruelty.

12. Rights to Property and Economic Freedom:

Under its Article 26, the Swiss Constitution guarantees the right to property to its entire citizen. Each citizen has the right to get compensation for any expropriation and restrictions that may be placed by the government or others. Each citizen enjoys economic freedom and he has the right to choose his profession, or to pursue any business or trade. He has the freedom to enjoy the fruits of his private economic activity (Article 27).

13. Freedom to Form Unions and Right to Strike:

The right of the workers, employers and organisations to form their unions for protecting their interest stands recognized under Article 28 of the Constitution. However, no one can be forced to compulsorily join any association or union. Negotiation and mediations are to be used as means of conflict resolution. The right to strike and lockout are permitted. This right can be exercised in labour relations. Further, strikes and lockouts are not to violate or be contrary to the obligation to keep labour peace or to resort to conciliation. However, the state can prohibit certain categories of persons from resorting to strike.

14. Certain Guarantees in Respect of Administrative and Judicial

Proceedings:

The Swiss Constitution gives a guarantee of fair and speedy trial. Fair administrative and legal hearing is a right of every citizen. Any person who cannot afford the services of a lawyer has the right to get free legal assistance for the protection of his rights. A person can be awarded punishment only after fair trial by a judicial authority i.e., by a court that stands established by law, which has jurisdiction over the case and which is an independent and impartial body. Again a punishment can be awarded only in accordance with law. Normally, a person facing a civil suit has to be tried by the judicial authority working in the place of his domicile. Further all hearings by the courts have to be public, fair and impartial.

15. Rights of the Accused الزام and Detained گرفتار Persons:

Article 31 of the Constitution provides for Habeas Corpus and records that no person can be deprived of liberty except in cases and in the form provided by laws. Each person who is arrested or detained has to be informed about the grounds of his arrest/detention. The detaining authority has to give such an information to every accused or detained person. Such a person has the right to assert his rights. His relations have to be informed about his case. Every person taken into preventive detention has to be produced before a judge without delay. The judge then decides as to whether he is to remain in detention or is to be released. Every detained person has to be tried within a reasonable time. Any person who is detained without a trial has the right to approach a court. The court then decides, as soon as possible, as to whether his detention was legal or not.

16. Right to Fair and Speedy Trial in a Court of Law:

Each accused has a right to fair trial and speedy justice. He has the right to be informed, as soon as possible and in full detail about the charges against him. Further, he has to be provided with means of his legal defence. Every person condemned as a criminal has the right to get the judgment against him reviewed by a higher court. However, when a case is decided by the

17. Right to Petition:

The Constitution grants to every citizen the right to address petitions to authorities and for this no action can be taken against him. The authorities are duty bound to take notice of the petitions made by citizens as well as to take appropriate action in case it is deemed fit and essential.

18. Grant and Guarantee of Political Rights:

Article 34 of the Swiss Constitution guarantees political rights to all citizens. Each citizen can freely express his political views on various issues, problems and policies. Further, the Constitution lays down provisions regarding the exercise of political rights. Article 39 gives to the Swiss Federation the power to regulate the exercise of political rights in federal matters. In respect of cantonal and municipal matters, this power is to be exercised by each Canton in its own territory. Each person exercises his political rights at the place of his domicile. No person can exercise his political rights in more than one Canton. Any Swiss citizen who starts residing in another Canton becomes eligible to exercise his political rights there only after a period of 3 months counted from the date of his domicile in the Canton.

19. Right regarding Citizenship and Acquisition حصول and Loss of Citizenship:

Every person who has citizenship of a municipality and of a Canton enjoys Swiss citizenship. In other words, all citizens of all Cantons enjoy equal citizenship of Switzerland. No

discrimination is made in respect of the grant of citizenship and rights, to all the Swiss people. The Federation enjoys the power to regulate the issues pertaining to acquisition, loss and reinstatement of citizenship through descent, marriage and adoption. Naturalization of foreigners (aliens who aspire for Swiss Citizenship) is practiced by Cantons. While doing so the Cantons are expected to prescribe only minimum possible conditions. The naturalization of stateless children has to be practiced in an easy manner.

20. Rights of Swiss Citizens Residing Abroad:

Article 40 of the Swiss Constitution, which happens to be the last Article of Chapter 2 of Title 2, stands devoted to the rights of Swiss citizens living abroad. It requires the Swiss Federation to encourage links with such citizens, particularly their links with Switzerland. It also calls upon the Federation to support such organisations as may pursue this goal. The Federation also enjoys the power to legislate on the rights and obligations of Swiss Citizens domiciled abroad, particularly their political rights at the federal level, their duty to render military service, cases of assistance to needy persons and the extent and content of social security to be given to them.



THE MALAYSIAN CONSTITUTION

Q. EXPLAIN THE CONCEPT OF CITIZENSHIP IN MALAYSIAN CONSTITUTION(A2018) (S2018) (A2020)

Ans:

CITIZENSHIP IN MALAYSIAN CONSTITUTION

A person can become a citizen of Malaysia either by registration or naturalisation. In cases by registration, where a person is by operation of law is a citizen but have yet to be registered, such person is entitled to citizenship upon application and be registered as a citizen of Malaysia. The laws on citizenship in Malaysia are basically protected in Federal Constitution, that is the supreme law of our land.

According to Federal Constitution of Malaysia Article 14(1)(b)

Most Malaysians acquired citizenship by operation of law under this provision. This article basically says the following persons are citizens by operation of law:-

- (a) he/she was born on or after Malaysia day on 16 September 1963 in Malaysia and one of the parents at least is a citizen; or
- (b) in the event he/she was born on or after Malaysia day on 16 September 1963 outside Malaysia, then at the time of birth his/her father was a Malaysian citizen and the birth is registered at a consulate of Malaysia within a year or within such longer period as the Federal Government may in any particular case allow.

Once all the requisite requirements are met, the person is automatically a citizen. There is no room for discretion *اختيار* by the authorities.

Married Woman

Article 15(1) of the Federal Constitution says that Any married woman whose husband is a Malaysia citizen may make an application to the Federal Government to be registered as a citizen if the marriage was subsisting and the husband is a citizen at the beginning of October 1962 provided that she has resided in Malaysia throughout the 2 years preceding the date of the application and intends to do so permanently and that she is of good character.

Child of Malaysian:

Article 15(2) of the Federal Constitution says that The Federal Government may cause any person under the age of twenty-one (21) years of whose one of the parents is (or was at death) a Malaysian, to be registered as a citizen upon application made to the Federal Government by his parent or guardian. Citizenship by application under Article 15(1) and Article 15(2) are rather easy as the requirements are clear.

Special Circumstances

Article 15A of the Federal Constitution , The Federal Government may cause any person under the age of twenty-one (21) years to be registered as a citizen in such special circumstances as it thinks fit. Such application must be made by the parent or guardian who is relative to the person to be registered.

It is the discretion of the Federal Government to grant citizenship under Article 15A and Article 19. What constitute ‘special circumstances’ under Article 15A This is not defined. In this respect, perhaps the recent incidents have shed some lights on the idea of special circumstances as in Article 15A of Federal Constitution.

This is an instance of an ‘illegitimate’ child who was born out of wedlock of the parents in Malaysia, i.e. the parents were not married to each other at the time of the child’s birth. Under Malaysian law, an illegitimate child must take on the citizenship of his or her natural mother. If the mother is a Malaysian, the child will be a Malaysian by virtue of Article 4(1)(b). But, if the mother is a foreign citizen, the child’s citizenship will be stated as ‘non-citizen’ in his or her birth certificate, thus also known as ‘stateless’ child. In this instance, the child may apply for citizenship under Article 15A of Federal Constitution.

Arguably, Article 15A should also be applicable to the abandoned newly born baby and the abandoned child in which their parents are unknown for grant of citizenship to the guardian or adopter.

Naturalization

Article 19 of the Federal Constitution ,A person may acquire citizenship by naturalization. Naturalization is a legal process by which Malaysia citizenship is granted to a non-citizen upon fulfilling certain requirements. The Federal Government may upon application made by any person of or over the age of twenty-one (21) years old, grant a certificate of naturalization to that person provided that he/she has resided in the Federation for the required periods and if the certificate is granted and intends to do so permanently and that he/she is of good character and has an adequate knowledge of the Malay language.

Illegitimate Child

Section 19B of Part III of Second Schedule of Federal Constitution , Any newborn child found exposed in any place shall be presumed to have been born there of a mother permanently resident there unless it can be shown otherwise; and if he is treated by virtue of this section as so born, the date of the finding shall be taken to be the date of the birth.

All in all, be it an illegitimate child, stateless child, abandoned child, it is arguable that the only way to acquire the citizenship is by way of adoption and then, apply for citizenship under Article 15A of Federal Constitution, on the ground of special circumstances.



Q. WHAT ARE THE TEMPORARY PROVISION IN THE MALAYSIAN CONSTITUTION? (A2018) (S2018)

Ans:

TEMPORARY PROVISION IN THE MALAYSIAN CONSTITUTION

Article 162 of Malaysian Constitution 1957 says that:

(1) Subject to the following provisions of this Article and *Article 163*, the existing laws shall until repealed ^{منسوخ} by the authority having power to do so under this Constitution, continue in force on and after *Merdeka Day* [(National Day) is on 31 August and marks Malaya's independence from the British in 1957.], with such modifications as may be made therein under this Article and subject to any amendments made by federal or State law.

(2) Where any State law amends ^{تدوين} or repeals an existing law made by the Legislature of a State, the existing law, relating to a matter with regard to which Parliament as well as the Legislature of a State has power to make laws, is federal law.

(3) References in any existing law to the Federation established by the Federation of Malaya Agreement, 1948, and its territories ^{علاقوں}, and to any officer holding office under that Federation or to any authority or body constituted in or for that Federation (including any references falling to be construed as such references by virtue of Clause 135 of the said Agreement) shall be construed ^{سمجھا}, in relation to any time on and after Merdeka Day, as references to the Federation (that is to say, the Agreement, 1957) and its territories and to the corresponding ^{متعلقہ} officer, authority or body respectively; and the Yang di-Pertuan Agong may by order declare what office, authority or body is to be taken for the purposes of this Clause to correspond to any officer, authority or body referred to in any existing law.

(4) (Repealed).

(5) Any order made under Clause (4) may be amended or repealed by the authority having power to make laws with respect to the matter to which the order relates.

(6) any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provision of this Constitution.

(7) In this Article "modification" includes amendment, adaptation and repeal.

Article 163 (Repealed).

Article 164 (Repealed).

Article 165 (Repealed).

Article 166

(1) (Repealed).

(2) (Repealed).

(3) Any land vested in the State of Malacca or the State of Penang which immediately before Merdeka Day was occupied *مقبوضه* or used by the Federation Government or Her Majesty's Government or by any public authority for purposes which in accordance with the provisions of this Constitution become federal purposes shall on and after that day be occupied, used, controlled and managed by the Federal Government or, as the case may be, the said public authority, so long as it is required for federal purposes, and -

(a) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government, and

(b) shall not be used for federal purposes different from the purposes for which it was used immediately before Merdeka Day without the consent of the Government of the State.

(4) (Repealed).

(5) (Repealed).

(6) (Repealed).

(7) (Repealed).

(8) Any property which was, immediately before Merdeka Day, liable to escheat *موقوف* to Her Majesty in respect of the Government of Malacca or the Government of Penang shall on that day be liable to escheat to the State of Malacca or the State of Penang, as the case may be.

Article 167

(1) (Repealed).

(2) (Repealed).

(3) (Repealed).

(4) (Repealed).

(5) (Repealed).

(6) The Attorney General shall, on the application of any party interested in any legal proceedings, other than proceedings *کارروائی* between the Federation and a State, certify whether any right, liability or obligation *فرض* is by virtue of this Article a right, liability or obligation of the Federation or of a State named in the certificate, and any such certificate shall for the purposes of those proceedings be final and binding on all courts, but shall not operate to prejudice *تعصب* the rights and obligations of the Federation and any State as between themselves.

(7) The Federation shall make the like annual payments as fell to be made before Merdeka Day under Article II of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine,

between Her Majesty of the one part and the King of Siam of the other part relative to the State of Kedah.

Article 168 (Repealed).

Article 169

For the purposes of Article 76 (1) -

(a) any treaty, agreement or convention entered into before Merdeka Day between Her Majesty or her predecessors or the Government of the United Kingdom on behalf of the Federation or any part thereof and another country shall be deemed to be a treaty, agreement or convention between the Federation and that other country;

(b) any decision taken by an international organisation and accepted before Merdeka Day by the Government of the United Kingdom on behalf of the Federation or any part thereof shall be deemed to be a decision of an international organisation of which the Federation is a member;

(c) in relation to the States of Sabah and Sarawak paragraphs (a) and (b) shall apply with the substitution of references to Merdeka Day and of references to the territories comprised in those State or any of them for the references to the Federation or any part thereof.

Article 170 (Repealed).

Article 171 (Repealed).

Article 172 (Repealed).

Article 173 (Repealed).

Article 174 (Repealed).

Article number: 175

The person holding office as Director of Audit immediately before Merdeka Day shall, as from that day, hold office as Auditor General on terms and conditions not less favourable than those applicable to him immediately before Merdeka Day.

Article number: 176

(1) Subject to the provisions of this Constitution and any existing law, all persons serving in connection with the affairs of the Federation immediately before Merdeka Day shall continue to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

(2) This Article does not apply to the High Commissioner or the Chief Secretary.

Article 177

A person who, under any provision of this Part, holds office under the Federation by virtue of having been the holder of a corresponding office immediately before Merdeka Day may, until

Parliament otherwise provides, perform his functions without taking the oath required in the case of other holders of that office.

Article number: 178

Until Parliament otherwise provides, the remuneration *اُجرت* payable to the person holding offices of Prime Minister and other Ministers shall be the same as was payable immediately before Merdeka Day, to the Chief Minister and other Minister of the Federation respectively.

Article 179

Any agreement in force immediately before Merdeka Day relating to the proportion *تناسب* of the remuneration *اُجرت* payable by the Federation and any State in respect of any such employment as is mentioned in Article 133 (2) shall continue in force until superseded *سُيَاوِلَا* by a new agreement or federal law.

Article 180

(1) The Tenth Schedule to the Federation of Malaya Agreement, 1948, shall continue in force on and after Merdeka Day, but with the modification that any reference therein to the High Commissioner shall be construed *سُيَاوِلَا* as a reference to the Yang di-Pertuan Agong.

(2) The said Schedule shall for the purposes of this Constitution be deemed to be federal law and may, subject to the provisions of Article 147, be amended and repealed accordingly.

(3) In its application to any law made under Clause (2) of Article 147 shall have effect as if references therein to an award included compensation.

So above are the main temporary and transitional provisions of Malaysian constitution 1957.



Q. WHAT ARE THE POWERS OF PUBLIC SERVICE IN MALAYSIAN CONSTITUTION? (A2019) (A2020)

ANS:

POWERS OF PUBLIC SERVICE IN MALAYSIAN CONSTITUTION

The Public Service Commission (PSC) of Malaysia is founded on Article 139 of the Constitution of Malaysia. It is responsible for the general administration of the public service of the federal government. It establishes the rules and regulations for the conduct of all members of the federal civil service. The PSC has the authority to appoint and dismiss most members of the services. It offers advice to the King of Malaysia regarding appointments to positions that he has designated as Special Posts. The PSC was established in 1957 in terms of the provisions of Article 144(1) of the Federal Constitution which stated that:

“..., it shall be the duty of the Commission to ..., appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service to which its jurisdiction extends”,

Composition of the PSC

The Chairman and other members of the Commission are appointed by the King of Malaysia as his discretion within the provisions of Article 139(4) of the Malaysian Constitution. The PSC is considered a special institution and therefore falls outside the scope of the public service as defined in the legislation. However, its administration that provides support and secretarial services fall within the public service.

FUNCTIONS OF THE PSC

Each of the public services its respective appointing authorities. The PSC is one such authority responsible for making appointments in the Federal Public Service (excluding the Education Service, Judiciary & Legal Service, Police and Armed Forces) and public services in the states of Selangor & Penang. The functions of the PSC are listed as follows:

- **Appointment**

The commission manages the appointment of personnel in the Public Service on permanent, temporary, contractual, temporary transfer and loan status. It also has the authority to terminate the services of personnel in the Public Service according to the appointment directive.

- **Confirmation of Service**

The PSC has authority to confirm personnel in the Public Service of the services, to extend trial period, to return personnel to an original post or to terminate the services due to failure at being confirmed of their services.

- **Conferment into Pension Status**

The Commission manages the conferment into pension status of personnel who are in service and have served in services deemed ^{معتبر} pension status for less than 3 years.

Promotion

The PSC operates as a Board of Promotion for promotion posts for members from the Public Service Boards of Promotion as well as promotion to a higher grade under the Integrated ^{مربوط} Service Scheme. It further functions as a Board of Appeal for the Public Service Promotion as provided under the relevant Orders of the Public Service’s Board of Promotion.

- **Transfer**

The PSC has authority to transfer permanent personnel in Public Service from one scheme of service to another scheme and from one service to another scheme of service of equal grade. In addition, it can transfer permanent personnel appointed on temporary transfer or loan.

- **Exercise Disciplinary Control**

The Commission is the appropriate Disciplinary Authority for disciplinary actions with the purpose of dismissal or demotion of officers in the Highest Management Group and the Professional Management Group. It also operates as the Public Service Disciplinary Board of Appeal as provided by relevant Orders of the Public Service Disciplinary Board.

Structure of the Malaysian PSC

The Public Service Commission is divided into two main Divisions and further sub-divided into 7 functions and other 8 sub-divisions tasked with secretariat, legal and public relations functions. The organogram depicting the functional divisions is illustrated below.

Secretary	Deputy Secretary (Recruitment)	Under Secretary: Recruitment Division
		Under Secretary: Special Recruitment Division
		Under Secretary: Examination Division
		Under Secretary: Information Management Division
	Deputy Secretary (Service)	Under Secretary: Service Division
		Under Secretary: Promotion and Disciplinary Division
		Under Secretary: Management Division



Q. WHAT IS MALAYSIAN CONFERENCE OF RULERS? HOW DOES IT HELP IN STATE FUNCTIONS?(A2019)

(OR)

WHAT IS THE CONFERENCE OF RULERS (MAJLIS RAJ RAJA) IN MALAYSIAN CONSTITUTION? WHAT ARE ITS POWERS? (A2020)

Ans:

CONFERENCE OF RULERS

The Conference of Rulers in Malaysia is a council comprising **پرمشتمل** the nine rulers of the Malay states, and the governors or Yang di-Pertua Negeri (Supreme Head of the Federation) of the other four states. It was officially established by Article 38 of the Constitution of Malaysia, and is the only such institution in the world, according to the Malaysian National Library. Although its position in the process of elective monarchy **بادشاہت** is unique, the Conference of Rulers also plays a role in amending the Constitution of Malaysia and some other policies.

Under the Federal Constitution, the Conference of Rulers has been invested **سرمایہ کاری** with a number of critical constitutional functions, including veto power over some constitutional amendments, right to be consulted on some key government appointments and right to deliberate **ارادی** on national policies, including matters relating to Islam and Malay privileges.

The conference has the great constitutional role and It has the dramatic power to dismiss the King. If the King or a ruler is to be tried **آزمایا** in a court under Article 182, the conference has the authority to appoint two out of the five judges on the Special Court. If the King or a Sultan is found guilty in a court, the conference has the power to grant a pardon **معافی**, reprieve **مہلت**, remission **معافی**, suspension **معطلی** or commutation **تغیر** of the sentence.

POWERS & FUNCTIONS OF CONFERENCE OF RULERS

Election of the King

Under Article 38(2) the Majlis Raja-Raja has the important constitutional function of electing the Yang di-Pertuan Agong and the Timbalan Yang di-Pertuan Agong. The significance of this power is that the Yang di-Pertuan Agong (supreme) is in some respects the delegate **نمائندہ** of the Majlis Raja-Raja at the federal level and accountable **ذمہ دار** to the majlis.

Dismissal of the King

The Majlis Raja–Raja has the great and dramatic power to dismiss the Yang di–Pertuan Agong. Though never exercised, this remarkable power under Article 38(6) probably exerts a significant pressure on the King to respect the wishes of his brother rulers.

Legislative veto

The Majlis Raja–Raja has the power to veto federal legislation on several critical and sensitive issues. For example, any law affecting the privileges, position, honours or dignities of the rulers: Article 38(1); any law altering the boundaries of a state: Article 2(b).

In relation to amendments to the Federal Constitution, Article 159 requires that any legislation making an amendment to the following provisions of the Constitution shall not become law without the consent of the Majlis Raja–Raja:

- Any amendment that directly affects the privileges, position, honours or dignities of the rulers: Article 38(4);
- An amendment to Article 70 of the Constitution that deals with the precedence of rulers;
- An amendment to Article 71(1) that guarantees rights and privileges of the ruler to succeed to the state throne;
- An amendment to sedition laws that prohibit the questioning of “sensitive issues”: Article 10;
- An amendment to Articles 63(4) and 72(4) of the Constitution that curtail freedom of speech on the floor of Parliament and State Legislative Assemblies so as to prevent seditious speeches;
- An amendment to Article 152 dealing with Bahasa Melayu as the national language;
- An amendment to Article 153 on special privileges of Malays and the natives of Sabah and Sarawak; and
- Any amendment to provisions of Part III regarding citizenship.

Appointments

The Majlis Raja–Raja has the right to be consulted before several critical federal posts are filled. Among these are: judges of the superior courts, the Auditor–General, and chairpersons and members of the Public Services Commission and the Election Commission.

Religion

The Sultans are the head of Islam in their states. But in order to promote unity, the conference can agree or disagree to the extension of any religious acts to the Federation as a whole.

Privileges

Article 38(5) requires that the conference be consulted before any changes in policy relating to privileges of the Malays and the natives of Sabah and Sarawak are made.

Pardon

Under Article 42(5) the conference may exercise the power of pardon معافی in relation to the Yang di-Pertuan Agong, the Sultans and their groups after considering any written opinion of the Attorney-General.

Special Court

If the Yang di-Pertuan Agong or a Sultan is subject to judicial proceedings in a civil or criminal court, Article 182 requires that the action be commenced in a Special Court of five judges, two of whom shall be nominated by the Majlis Raja-Raja.

National Policy

Under Article 38(2), the conference has been given the power to deliberate اراوی on questions of national policy and any other matter it thinks fit.

This role contains tremendous زبردست potential . In relation to it, the Constitution invests the conference with a unique unifying and advisory مشاورتی role. The conference is authorised to “deliberate on questions of national policy (for example, changes in immigration policy) and any other matter that it thinks fit”.



Q. ELABORATE THE POWERS AND FUNCTIONS OF THE MALAYSIAN EXECUTIVE GIVEN BY MALAYSIAN CONSTITUTION. (A2019)(S2018)

Ans:

POWERS AND FUNCTIONS OF THE MALAYSIAN EXECUTIVE

According to Article 32 of Malaysian Constitution There shall be a Supreme Head of the Federation, to be called the Yang di- Pertuan Agong [means supreme power].

The separations of power in Malaysia system are similar with English legal system in United Kingdom. In Malaysia, Prime Minister must come from the *Dewan Rakyat* and it is compulsory as a democratic country. In Malaysia the YDPA (Yang di-Pertuan Agong) who is the ceremonial executive is an integral part of the Parliament and also stands as monarchy power thus becoming integral part of Separation of Power in Malaysia also. The cabinet is appointed by the YDPA in the advice of the Prime Minister. Doctrine of Separation of powers in Malaysia is stipulated clearly in the article 121, 44, and 39, of Federal constitution .

What is the Executive?

In the federal government, the Executive consists of:

- Conference of Rulers
- Yang di-Pertuan Agong (“YDPA”)
- Prime Minister
- Cabinet
- Public Services

Executive power is vested in the cabinet led by the prime minister, the prime minister must be a member of the Lower House of parliament who, in the opinion of the Yang di-Pertuan Agong (YDPA).

According to Article 39:

The executive authority of the Federation shall be vested in the YDPA (Yang di-Pertuan Agong) and exercisable by him or by the Cabinet or any Minister authorised by the Cabinet, but Parliament may by law confer executive function on other persons.

Main Powers and Functions of Executive:

The Executive governs the country according to the laws made by Parliament. Each part of the Executive has its own role to play. We will discuss the different roles below.

Conference of Rulers?

The Conference of Rulers is made up of the nine Rulers and the four Yang di-Pertua Negeri (Governors) of the States which do not have Rulers. It has the following functions:

- It elects and may remove the YDPA. It also elects the Timbalan YDPA (Deputy YDPA). Only the Rulers participate in this function;
- It has control over Islamic ceremonies in Malaysia;
- Its consent is needed in order to pass certain laws. For example, laws affecting the privileges, position, honours or dignities of the Rulers must have the consent of the Conference of Rulers;
- The appointment of the Chief Justice of the Federal Court, President of the Court of Appeal, the Chief Judges of the High Courts and other judges of the superior courts.
- It appoints two out of five members of the Special Court which is the court set up to deal with proceedings by or against the YDPA or the Ruler of a State in his personal capacity;
- It may deliberate *ارادى* on questions of national policy and any other matter that it thinks fit.

The Powers of the YDPA?

The YDPA is a constitutional monarch *بادشاه*. Under the Constitution, he is the Supreme Head of the Federation. The YDPA is Head of Islam in his home state, and in Malacca, Penang, Sabah, Sarawak and the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. He is also the Supreme Commander of the Armed Forces. The YDPA's powers come from the Constitution. The Constitution provides that in exercising his functions, the YDPA must generally follow the advice of the Prime Minister or Cabinet. For example:

- In appointing judges, the YDPA must act on the advice of the Prime Minister;
- For the appointment and dismissal of all Cabinet Ministers (save for the Prime Minister), the YDPA must act on the advice of the Prime Minister;
- In making a proclamation *اظہار* of emergency, the YDPA must act on the advice of the Cabinet;
- In summoning *طلب کرنا* or adjourning *مستوی کرنا* the Dewan Rakyat, the YDPA must act on the advice of the Prime Minister.

However, for a few functions and powers, the YDPA does not have to act on the advice of the Prime Minister or Cabinet but can act on his own discretion. These functions are:

- Appointment of the Prime Minister. However, the YDPA must appoint a member of the Dewan Rakyat .
- To make a request to dissolve Parliament.
- Calling a meeting of the Conference of Rulers.

Cabinet's role as Executive:

The Cabinet consists of all Ministers and is the highest policymaking body in the Federation. These Ministers run and control the functions of the various ministries that govern the country.

Members of the Cabinet must also be members of Parliament (either the Dewan Rakyat or the Dewan Negara). Ministers are appointed by the YDPA upon the advice of the Prime Minister, which means that they are selected by the Prime Minister. They control all functions of the country.



Q. What is the process of elections according to Malaysian Constitution. (A2020)

Ans:

PROCESS OF ELECTIONS

Malaysia's electoral process is among the most extensively manipulated جوڑ توڑ in the world. Only registered voters may vote in elections. Any Malaysian citizens above 21 years old must register in the voters' registry with the Election Commission via any offices affiliated with the Election Commission, post offices with computerised facilities or specified counters, before he or she could vote in elections.

According to the Election Commission (EC) of Malaysia, there are six steps for the Electoral process in Malaysia. It consists of the

- 1) Issuance of the writ
- 2) Nomination of candidates
- 3) Election campaign
- 4) Polling
- 5) Counting of votes
- 6) Announcement of results.

1) Issuance of the writ

Firstly, a writ to the Returning Officers (RO) will be issued by the Election Committee under the Elections Act 1958 ("The election process - 13th Malaysian", 2013) after the dissolution of the Parliament or a State Legislative. The RO can then conduct the elections. A notice of election will be announced and posted in public places for citizens to view. The notices will include some information such as the date of nomination and the polling. There will be an advanced voting date for those who are absent on the exact polling.

2) Nomination of candidates

Next, during the process of nomination نامزدگی the candidates, proposer تجویز کرنے والا or seconder کمر کر will submit the nomination forms to the RO on nomination day. The nomination forms must be accompanied ساتھ by a statutory قانونی declaration اقرار along with a deposit of RM10, 000 to contest for a parliamentary seat and RM5, 000 for a state seat by the candidates. The Assistant Returning Officers will assist the RO to ensure that the candidates are eligible to stand for the elections. The candidates are disqualified if they are of unsound mind, relinquished چھوڑ دیا their citizenship, failed to lodge any return of election expenses, holds an "office of profit", convicted سزایانہ of an offense by a court of law in Malaysia.

Q. EXPLAIN THE ISLAMIC INJUNCTIONS IN MALAYSIAN CONSTITUTION? (S2019)

Ans:

THE ISLAMIC INJUNCTIONS حکم امتناعی IN MALAYSIAN CONSTITUTION

Islam plays a important role in the legal system of Malaysia. The side lining of Islamic law during the intervention مدخلات of western imperial شاهی powers beginning in the 15th century did not cause the end of its influence اثر which revive بچرنا with the independence of Malaysia in 1957 and continue its domination. Around the same time of the Malaysian independence آزادی, the conception of human rights gains importance in the internationally with the proclamation اظہار of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948.

The Position of Islamic Law in Malaysia

In the clear wording of the Federal Constitution, the word ‘law’ in Article 160 does not mention Islamic law at all. It is a pity افسوس that the word law in this Article only ‘includes any written law. Similarly, no provision is traced in the Federal Constitution for the jurisdiction and powers of the Shari’a Courts. The only provision where the Federal Constitution does state the word ‘Shari’a Courts’ is in Article 121 (1A), where it takes away the jurisdiction of the Civil Courts on matters that are within the jurisdiction of the Shari’a Courts. The jurisdiction of Islamic law is covers only persons professing اقرار the religion of Islam. These matters are strictly confined to personal laws such as marriage, divorce, and all secondary matters related to them and succession . With regard to criminal laws, it has jurisdiction اختیار over only punishment of offences by persons owning the religion of Islam , against precepts of that religion such as offences of eating and drinking in public during the month of *Ramadhan*, neglecting performance of Friday prayer, committing zina and other matters that are restricted according to Islamic laws.

Islam and Human Rights

Some groups of Muslims viewed human rights as compatible with Islam due to the fact that Islam is a mercy to the whole of mankind and thus aims to protect the welfare of every human being. On the other hand, other groups of Muslims connect human rights to western philosophy with a hidden agenda that is clearly incompatible with Islam. It is therefore important to look at human rights within the margin of Islamic law or Shari’a in order to know and understand what Islam’s position is in relation to human rights. The first major contribution of Islam is a example shift towards human rights. The key terms used by the Qur’an and the Sunnah in this regard are huquq Allah and huquq al-‘ibad, the rights of the Creator and humans.

Islam, Fairness and Equality

According to Articles 7 and 8, Islam has made it clear that it پہچانتا ہے and guarantees the protection of the right to equal treatment under the principle of human brotherhood regardless of race, colour or nationality. This principle is in line with Article 8 of the Constitution which provides equality of all persons before the law and that all persons are entitled to the equal protection of the law. It is important to note that in Islam no one is above law.

Islam, Life and Security

Article 5 of the Federal Constitution, The first and the primary ethical principle on which human rights in Islam are founded is the value relating to protection of life. Perhaps nowhere has the sanctity of human life been so forcefully established as in the Qur'an, which says:

“Whosoever killed a human being for other than man slaughter or corruption on the earth, it shall be as if he had killed all mankind, and whoso saves the life of one, it shall be as if he had saved the life of all mankind...”

At the same time the Qur'an emphasises the value of human life by equating one life with that of the entire people. These injunctions apply to all human beings regardless of race or religion and make it clear that Muslims are obliged to protect life wherever possible, as well as to be careful about how a life should be taken. Islam also guarantees the rights of non-Muslims since they are also human beings and this was emphasised in the address which the Prophet delivered on the occasion of the Farewell Hajj.

Islam and Freedom of Expression

As provided by Article 10 of the Constitution, freedom of expression which may be manifested ظاہر through speech or involvement in assembly and association constitute one of the core human rights principles. This is because the intellect ذہانت is the greatest instrument of human life and its full and extreme potential can only be achieved through interaction of ideas and the impartation دینا of information among individuals. Under the Shari'a, the main objective of this right is the 'discovery of truth and upholding برقرار رکھنا human dignity'. Islamic law endeavours کوشش a balance between these two principal objectives and does not accommodate the spread of evil or obscenity بے حیائی under its threshold of freedom of expression.

Protection of Human Rights under Islamic Law in Malaysia

Under classical Islamic law, offences that violate basic rights under the overall objective of Shari'a are punishable by very strict punishment. The offences of murder (that violates the rights to life), and offences that violates the rights to preservation تحفظ of honour, dignity وقار and lineage خاندان of humankind are punishable according to law. In addition, the offence of drinking alcohol shall be punishable with whipping کوڑے مارنا whereas the offence of theft or robbery is

punishable with amputations ^{کٹا} of hands or feet. The nature of punishments provided under classical Islamic law for the abovementioned ^{ادب پر بیان کردہ} offences show how serious Islam protects the basic rights of a human being.

as far as the application of Islamic law in Malaysia is concerned, it is crystal clear that such law has a very limited jurisdiction. It only covers the matters specified within the jurisdictions stated in Constitution. In other words, the implementation of Islamic law is purely under the jurisdiction of the State government which is mainly concerned with the non-criminal offences related to marital issues. There are also some provisions granted to Islamic law to punish a number of criminal offences. The maximum punishments that could be made by the Shari'a Court are three years imprisonment, RM5,000.00 fine and six times whipping. The Shari'a Court has no power to give a death penalty.

Islamic Law Institutions And Their Human Rights Roles

Since Islam has clearly been indicated in the Constitution as the religion of The Federation, the Government has the power to establish institutions and agencies that could mobilise ^{متحرک کرنا} the development and progress of Muslims in Malaysia. There are a number of religious authorities in Malaysia whose jurisdictions ^{دائرہ اختیار} govern the issues related to Muslims including the protection of their rights as Muslims. Among notable bodies is the Department of Islamic Development Malaysia which generally aims firstly, to coordinate the Islamic Affairs administration in Malaysia, of which its main role is implemented ^{لاگو} by the State Islamic Division and Council, and secondly, to create an integrated ^{مربوط} Islamic Affairs administration through effective planning, coordination ^{ہم آہنگی} and implementation ^{عمل}.

Conclusion

Islamic law and human rights are two important elements of the Malaysian legal system which have been strongly emphasised ^{زور دیا} by the Federal Constitution of Malaysia. Human rights are not strange to Islam because the coming of Islam is meant to serve as a mercy ^{رحم} for the whole universe and to safeguard ^{حفاظت} the sacred principles of humanity. As such, it is not an exaggeration ^{مبالغہ} to consider that any violation of human rights may be equivalent to disobeying Islamic principles. Indeed, Islam has a very close relationship with Malaysia for a twofold ^{دوہرا} reason. Firstly, because, unlike other religions, Islam is the only religion whose name has specifically been mentioned in the Federal Constitution to symbolise its status as the religion of federation. The second applies because the majority of Malaysia's population is Muslim. Islamic law in Malaysia only covers a limited jurisdiction ^{اختیار} due to constitutional constraints.



Q. WRITE A COMPREHENSIVE NOTE ABOUT THE JUDICIAL SYSTEM IN MALAYSIA. (S2019)

Ans:

THE JUDICIAL SYSTEM IN MALAYSIA

The Malaysian legal system is largely based on the English common law system. This is because of the long period of colonization نوآبادی by the British Empire starting in Penang Island from the year 1786 until the independence of Malaya in 1957. Besides that, the development legal system in Malaysia also being affected by many other factors like the rule of Malay Sultanates, the local custom, the spreading of Islamic religion, the immigration of various races into Malaya and many more.

On August 31, 1957 the Federation of Malaya achieved independence and became a sovereign nation. With the existence of a written constitution, there is a clear division between the administration of the judiciary, executive and legislative bodies stated by the constitution. The judicial system is more independence as compare to the early days.

Hierarchy درجه بندی of Courts in Malaysia

The High Courts of Malaya, Sabah and Sarawak, the Court Of Appeal and the Federal Court are the superior courts in Malaysia. While the Sessions Court, Magistrate's Court and in west Malaysia the Penghulu's Court are the subordinate courts. Article 121 of the Federal Constitution establishes the current hierarchy of courts:

THE COURT SYSTEM IN MALAYSIA

The jurisdiction and powers of courts under the Malaysian hierarchy of courts are contained in the Court of Judicature Act 1964 (Act 91) for the superior courts (Federal Court, Court of Appeal and High Court) and in the Subordinate Courts Act 1948 (Act 92) for the subordinate courts (Sessions and Magistrate' courts).

THE SUPERIOR COURTS:

Federal Court

The Federal Court is the highest court in Malaysia. In its original jurisdiction, the Federal Court is empowered to determine whether a law made by the Parliament or by the State Legislature is invalid on the ground that the Parliament or State Legislature has no power to make laws, and as to disputes on any question between States or between the Federation and any State.

The Federal Court may hear appeals of civil decisions of the Court of Appeal where the Federal Court grants leave to do so. The Federal Court also hears criminal appeals from the Court of Appeal, but only in respect of matters heard by the High Court on its original jurisdiction.

Court of Appeal

The Court of Appeal has appellate jurisdiction on both criminal and civil matters. It is the court of the final jurisdiction for cases which began in any subordinate courts. The Court of Appeal hears civil appeals against the decisions of the High Court where against judgement or order made by consent. In cases where the claim is less than RM250000, the judgement or order relates to cost only or against decisions of a judge in chambers on an inter pleader summons on undisputed غير متنازع facts, the leave of Court of Appeal must be obtained first.

High Court

The High Court has both original and appellate jurisdictions for both civil and criminal matters. The High Court has the jurisdiction to try all civil matters and these include matters relating to divorce and matrimonial cases, appointment of guardians for infants نوزائیدہ بچے, granting of certification of wills, bankruptcy and other civil claims where the amount of dispute exceeds RM250000. The High Court also has unlimited jurisdiction اختیار on all criminal matters other than matters involving Islamic law and it also has original jurisdiction for criminal cases punishable by death.

THE SUBORDINATE COURTS:

Sessions Court

For civil matters, the Sessions Court may hear all matters where the amount of dispute exceeds RM25000 but does not exceed RM250000 except in matters relating to motor vehicle accidents, landlord and tenant کرایہ دار and distress مصیبت, where the Sessions Court has unlimited jurisdiction. For criminal matters, Sessions Court has the jurisdiction to try all criminal offences other than offences punishable by death and may pass any sentence allowed by law other than the sentence of death.

Magistrate's Court

In its civil jurisdiction, Magistrate's Court shall have jurisdiction to try all actions and suits where the amount of dispute or value of the subject-matter does not exceed RM25000. In criminal matters, the court has the power to try all offences of which the maximum term of imprisonment قید does not exceed 10 years or which are punishable by fine only, but the court may pass sentences not exceeding 5 years imprisonment, fine not exceeding RM10000, and/or whipping up to 12 strokes. This court can hear the appeal of Penghulu's Court.

Penghulu's Court

Penghulu's Court is one of the subordinate courts in West Malaysia. The Penghulu's Court hear civil matters of which the claim does not exceed RM50 and where the parties are persons of Asian race and speaking and understand the Malay language. While for criminal matters, its jurisdiction is limited to offences of a minor nature charged against a person of Asian race which can be punished with a fine not exceeding RM25.



Q. HOW FEDERATING UNITS AND THE STATE WORK UNDER THE MALAYSIAN AN CONSTITUTION. (S2019)

Ans:

FEDERATING UNITS AND THE STATE

Malaysia basically consist of 13 states and 3 federal territories and out of the 13 states in Malaysia, 9 are monarchies بادشاهت. Each state has its own written constitution, legislative assembly, and executive council, which is responsible to the legislative assembly and headed by a chief minister. The federal territories, which include

1. The capital city region of **Kuala Lumpur**
2. The administrative capital of **Putrajaya**
3. The island of **Labuan** off the coast of East Malaysia

They carry the same status as states, but they do not have separate legislatures or heads of state.

States of Malaysia

As described above Malaysia is combination of States and names of states are given below:

1. Johor
2. Kedah
3. Kelantan
4. Malacca
5. Negeri Sembilan
6. Pahang
7. Penang
8. Perak
9. Perlis
10. Sabah
11. Sarawak
12. Selangor
13. Terengganu

All states in Malaysia are subdivided into districts. In Sarawak and Sabah, however, these districts are grouped into larger administrative units called divisions. The village, headed by a tua kampung (“village leader”), is the smallest unit of government.

Justice System

The constitution of Malaysia, which is the supreme law of the country, provides that the judicial power of the federation shall be vested in two High Courts:

1. Peninsular Malaysia, called the High Court in Malaya
2. The High Court in Sarawak and Sabah (East Malaysia)

There are also in subordinate courts for justice. Appeals from the High Courts are heard first by the Court of Appeal; they may then be appealed to the highest court in Malaysia, the Federal Court (formerly called the Supreme Court), which is headed by a chief justice. A separate Special Court handles cases involving charges against the paramount رuler or the heads of states. The High Court has criminal and civil jurisdiction and may pass any sentence allowed by law. Below each High Court are three subordinate courts:

- The Sessions Court,
- The Magistrate Courts
- The Court For Children.

These lower courts have criminal and civil jurisdiction. Criminal cases come before one or the other court depending on the seriousness of the offense and civil cases depending on the sum involved. In addition, there are religious courts in those Malay states that are established under Islamic law (syariah, or Sharī'ah). These Islamic courts are governed by state not federal legislation.

Political Process

Malaysia has a multiparty political system; the country has held free elections and generally has changed prime ministers peacefully. All citizens who are at least 21 years old are permitted اجازت to vote. Although their numbers in political positions have been increasing since the late 20th century, women have remained under represented in the political process. Most ministerial appointments are held by Malays, but a few posts are filled by indigenous سرخ and nonindigenous minorities.

Security of States

The Malaysian armed forces have increased in strength and capability since the formation of Malaysia in 1963. After the withdrawal of British military forces from Malaysia and Singapore at the end of 1971, a five-country agreement between Malaysia, Singapore, New Zealand, Australia, and the United Kingdom was concluded to ensure defence against external aggression جارجیت. The armed forces consist of :

- An Army
- A Navy
- An Air Force

The army is the most experienced and the largest of the three units. The Royal Malaysian Navy concentrates توجہ مرکوز کرتا ہے mainly on defending the long indented coastlines ساحل and narrow waters of the country. The Royal Malaysian Air Force has combat جنگ aircraft as well as many transport aircraft and helicopters.

Health and welfare

Health conditions and health facilities vary among the states, but facilities are generally better equipped and staffed in Peninsular Malaysia than in Sabah and Sarawak. Health services generally are more extensive in the towns and cities than in the rural areas. Most health services are provided by the government.

Housing

The multicultural character of the population of Malaysia is visibly reflected in the wide variety of houses, which range from the traditional longhouses and stilt houses of the rural peoples to examples of modern high-rise architecture in the cities. A governmental housing authority has had success in establishing low-cost housing in urban areas.

Education

The federal government allocates a significant portion of its budget to education, and it provides free public schooling at the primary and secondary levels. Although only six years of primary education (from age six) are compulsory, most children receive at least some secondary education. Secondary school consists of one three-year segment; students may attend a technical or vocational school for their second segment of secondary study.

Media and publishing

The press is the principal source of information in urban areas of Malaysia. The newspapers are all privately owned (many by political parties) and vary greatly in circulation, quality of reporting, and news coverage. Dozens of daily papers circulate in all the major languages of the country, including Malay, English, Chinese, and Tamil. Although many public and private radio stations are available for urban listeners, radio is the primary information channel in remote rural areas. Television is a popular medium of Malaysia. The government had a monopoly اجاره داری on television broadcasting until the mid-1990s, when it opened the industry to private operators. Since that time several commercial stations have been established, and the emergence انجرتا of private cable and satellite companies has allowed television broadcasting to reach the most remote rural regions of the country.

