

2. HISTORY AND DEVELOPMENT OF CONSTITUTIONS

SYNOPSIS:

- A. Early Constitutions / Legal Codes (Early Period)*
- B. Later Constitutions (Middle Period)*
- C. Modern Constitutions (Modern Period)*

The study of the history and development of constitutions reveal that there were different types of constitutions existed in earlier period, medieval period and modern period. Thus the constitutions can be studied under **three** categories -

- 1. Early Constitutions / Legal Codes (Early Period)**
- 2. Later Constitutions (Middle Period)**
- 3. Modern Constitutions (Modern Period)**

- 1. EARLY CONSTITUTIONS /LEGAL CODES (EARLY PERIOD):**
 - i) The earliest Constitution /Legal Code appear to have existed in Iraq. The excavations in Iraq in 1877 found evidence of the earliest known '**Code of Justice**', issued by the Sumerian King Urukagina of Lagash in 2300 BC.

This legal document could not be treated as constitutional document, though it allowed some rights to his citizens, i.e., it relieved tax for widows and orphans, and protected the poor from the usury of the rich.

- ii) After that, many governments were ruled by special codes of written laws. The oldest document still in existence is the **'Code of Ur-Nammu of Ur'** in 2050 BC.
- iii) The other **better-known ancient law codes** include:-
 - (a) **The Code of Lipit-Ishtar of Isin,**
 - (b) **The Code of Hammurabi of Babylonia,**
 - (c) **The Hittite Code,**
 - (d) **The Assyrian Code**
 - (e) **The Mosaic Law.**

2. LATER CONSTITUTIONS (MIDDLE PERIOD):

- i) In 621 BC, a person named **'Draco'** codified the oral laws of the State of Athens and it prescribed death penalty for many offences and based on this code, any severe punishment for any offence is now described as **'Draconian'**.
- ii) In 594 BC, **'Solon'**, the ruler of Athens, created the **'Solonian Constitution'**. It determined that the

membership of the ruling class was to be based on wealth i.e., plutocracy, rather than by birth i.e., aristocracy.

- iii) **'Cleisthenes'** again reformed the Athenian constitution and he set the constitution on democratic principles in 508 BC.
- iv) In 350 BC, it was Aristotle, who first made a distinction between ordinary law and constitutional law, establishing the ideas of constitution and constitutionalism, and attempting to classify 'different forms of constitutional governments'.

He defined constitution as "the arrangement of the offices in a State".

- v) Aristotle in his works – **'Constitution of Athens, Politics, and Nicomachean Ethics'** explored the different constitutions existed in his days, i.e., the constitutions of **Athens, Sparta, and Carthage.**

He also classified both what he regarded as good and bad constitutions, and came to the conclusion that the best constitution was a mixed system, including monarchic, aristocratic, and democratic elements.

- vi) **Roman Period:** The Romans first codified their constitution in 449 BC as the **'Twelve Tables'**, which consisted of series of codes, consisting of a series of laws. The Roman law was never

reorganised into a single code until the Codex Theodosianus in B.C. 438;

- vii) In the **Eastern Empire**, the '**Codex repetitæ prælectionis**' in 534 B.C. existed which was highly influential throughout Europe and this was followed in the east by the '**Ecloga of Leo III the Isaurian**' (740) and the '**Basilica of Basil I**' (878).
- viii) Similarly, the **Edicts of Ashoka** established constitutional principles for the 3rd century BC , i.e., the Maurya king's rule in Ancient India.
- ix) The first Germanic law code to be written was the **Visigothic Code of Euric (471 A.D.)**. This was followed by the Lex Burgundionum, applying separate codes for Germans and for Romans.
- x) Anglo-Saxon laws were used in England and it began with the '**Code of Ethelbert of Kent**' (602 A.D.). In 893 A.D., **Alfred**, the Great combined this code and two other earlier Saxon codes, with various Mosaic and Christian precepts, to formulate the '**Doom Book code of laws for England**'.
- xi) Japan's Seventeen-article constitution was written in 604 A.D. by **Prince Shōtoku**. Influenced by Buddhist teachings, the constitution focused more on social morality than institutions of government.
- xii) The **Constitution of Medina** was drafted by the **prophet of Islam, Muhammad, in 622 A.D.** This

constitution is said to be one of the earliest constitutions which guarantees basic rights to religions for all judiciary processes regarding the rules of warfare, tax and civil disputes.

- xiii) In England, **Henry I's proclamation of the Charter of Liberties in 1100** bound the king for the first time in his treatment of the clergy and the nobility.

This was followed by King John signing **Magna Carta in 1215**, by which the king was not permitted to imprison, outlaw, exile or kill anyone at his whims. There must be due process of law first. This shifted the power from the monarchy to the House of Commons.

- xiv) In China, the '**Hongwu Emperor**' created and refined a document called '**Ancestral Injunctions**' in 1375 A.D., which served as a real constitution for the **Ming Dynasty** for the next 250 years.

3. MODERN CONSTITUTIONS (MODERN PERIOD):

- i) The earliest written constitution still governing a sovereign nation today is **San Marino**. It was written in Latin and it consists of **six books**.

The first book, with 62 articles, establishes councils, courts, various executive officers and the powers assigned to them. The remaining books cover criminal and civil law, judicial procedures and remedies.

- ii) In 1639, the **Colony of Connecticut** adopted the **Fundamental Orders**, which is considered the first North American constitution, and is the **basis for every new Connecticut constitution**.
- iii) **'Agreements and Constitutions of Laws and Freedoms of the Zaporizian Host'** is the first European constitution in a modern sense. It was written in 1710 by **Pylyp Orlyk, headman of the 'Zaporozhian Host'**.

It established a democratic standard for the separation of powers in government between the legislative, executive, and judiciary branches, well before the publication of **Montesquieu's Spirit of the Laws**.

This Constitution also limited the executive authority of the headman, and established a democratically elected **Cossack parliament called the General Council**.

- iv) Other examples of early European constitutions are the **Corsican Constitution of 1755** and the **Swedish Constitution of 1772**. The British colonies in North America adopted their own constitutions in 1776 and 1777 during the American Revolution.
- v) The United States Constitution was ratified on June 21, 1788, which was based on the British constitutional system and the political system of

the United Provinces, plus the writings of Polybius, Locke, Montesquieu, and others.

The **Polish-Lithuanian Commonwealth Constitution** of May 3, 1791, was regarded as world's second and Europe's first.

- vi) The **French Constitution** of September 3, 1791 was the third modern constitution.
- vii) The **Spanish Constitution** of 1812 was the fourth modern, democratic and liberal world's national constitution.

UNIVERSITY QUESTIONS FOR REVIEW

1. *Explain the history and development of different constitutions of different Nations.*
2. *Trace the History and development of different constitutions.*
3. *Explain the classifications of different constitutions with special reference to their history and development.*

