

## LAW SEMINAR-2000

### NEW CONSTITUTION FOR THE NEW MILLENIUM

#### *THE INDIAN, GERMAN (BASIC LAW) AND THE PORTUGUESE CONSTITUTIONS*

*By Prof. Carmo D'Souza*

Writer is the author of the book "The Indian and Portuguese Constitution; A Comparative Constitutional Analysis", Vol I. -Vol. II is yet to be published. He also has authored a booklet "The Prime Minister of India: A Comparative Constitutional Analysis"

*Following is the outline of paper presented to help Indian students to undertake comparative Constitutional study. It is useful also to Portuguese students for a comparative constitutional analysis.*

- THE INDIAN CONSTITUTION
- BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY
- CONSTITUTION OF THE PORTUGUESE REPUBLIC

#### **INTRODUCTION**

The present paper analysis some of the provisions from the Indian ,German (Basic Law)and the Portuguese Constitutions which might be of help a scholar to carry out a comparative study.

#### **OBJECTIVES**

- 1) Comparative Constitutional study helps to know the constitutional provisions of other countries.
- 2) A comparative Constitutional study helps one to understand the Constitution of his own country.

#### **NOTE OF CAUTION**

One method of legislation is by imitation of the laws of another country. However one has to be very careful to see that the provisions are workable considering the social, political and other relevant conditions of the place.

#### **FEDERAL OR UNITARY SYSTEM:**

- India is a Union of States (Art.1) i.e. quasi-federal system.
- Germany is a Federal State(Art.20(1))
- Portugal is Unitary State(Art.6)

#### **PRESIDENT**

STATUS: In India the President is a titular figure. In marginal cases he may exercise discretion. India has adopted a parliamentary form.

In Portugal the President exercises some powers on his own.

## SYSTEM;

India has adopted the Parliamentary form.

Portugal has adopted the semi-Presidential or semi-Parliamentary form. The President is the fourth Regulating Power besides the Legislature, Executive and the Judiciary.

## ELECTION

In India President is indirectly elected.

In Portugal the President is directly elected.

In Germany the Federal President is elected by the Federal Convention .The Federal Convention consist of the Members of the Bundestag and equal number of members elected by the parliaments of the Lander on the basis of proportional representation

## RE-ELECTION

In Portugal there are restrictions on re-election for the office of President.

## COUNCIL OF STATE

Art.141of the Portuguese Constitution envisages a Council of State as a political organ to advise the President.

## PARLIAMENT:

- In India the two Houses are the Council of States and the House of the People.
- In Portugal there is one House i.e. The Assembly of the Republic.
- The German Bundestag represents the people with normally around 656 members. Bundesrat is the institution of the Federation by which the Lander participate in legislative process and administration of the Federation and matters concerning European Parliament.

## FIRST SESSION

In Portugal the Assembly meets as of right on the third day after the results of the election etc.

## DEFLECTIONS

In Portugal nominations of deputies only by political parties (may be in combination). Ceases to hold office if he joins a different party than those who nominated him.

## GOVERNMENT

In India the Union Executive consists of the President and the Council of Ministers.

In Germany the Federal Government is made of the Federal Chancellor and Federal Ministers.

The Government in Portugal comprises of the Prime Minister, the Ministers, the Secretaries and the Under-Secretaries.

## APPOINTMENT OF PRIME MINISTER:

- In India President appoints the P.M. but restricted by conventions and constitutional provisions.

- In Portugal President has certain discretion in appointment but then the Prime Minister has to present the Programme of Government in the House.
- The Federal Chancellor is elected by the Bundestag without debate on the proposal of the Federal President (Art.63(1)). If the person proposed by the Federal President is not elected, the Bundestag may elect a Federal Chancellor within 14 days.....

#### TENURE:

- In India the tenure of the Council of Ministers as rule not dependent on the President's discretion though Art.75 speaks of pleasure of the President
- Government of Portugal can be dismissed by the President independent of the Assembly (Parliament). So the Government is dependent on the President as well as the Assembly.

#### PROGRAMME OF GOVERNMENT:

In the Portuguese Constitution the programme of the Government is to be tabled before the Assembly by the Prime Minister within a maximum of ten days after appointment.

#### CARE TAKER GOVERNMENT:

As per Art.186(5)of the Portuguese Constitution the Government is to limit its activities to those strictly necessary after it has been dismissed or before its programme has been subjected to review of Assembly.

#### CONSTRUCTIVE VOTE OF CONFIDENCE:

Art. 67 of the German Basic Law states that the Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by vote of majority of its members....

Art.68 refers to a vote of confidence by a motion of the Federal Chancellor.

#### COURTS:

- India: *The Supreme Court-The High Courts-Subordinate Judiciary.*
- Portugal: *Constitutional Court (apart) - Supreme Court of Justice(and the courts of first and second instance)-The Supreme Administrative Court (other administrative and fiscal courts)-The Court of Audit etc.*
- Germany: *Federal Constitutional Court-Federal Courts-Courts of Lander*

Note: Federation to establish Federal Court of Justice, Federal Administrative Court, Federal Financial Court, Federal Labour Court and Federal Social Court as supreme courts of ordinary, administrative, financial , labor , and social jurisdiction.

#### CAPITAL PUNISHMENT:

- Art. 24(2) of the Portuguese Constitution states that in no case death penalty will be applied.
- Art.102 of the Basic Law of Germany states that capital punishment is abolished.

#### RIGHT TO ASYLUM:

- Art.16a of the Basic Law refers to right of asylum.
- Art.33of the Portuguese Constitution refers to right of asylum.

**FAMILY:**

- Art. 36 of the Portuguese Constitution deals with Family, marriage and filiation.
- Art.6 of the Basic Law deals with Marriage and the family; children born outside of marriage.

**RIGHT TO VOTE:**

- Art.49 of the Portuguese Constitution gives citizens the right to vote as a fundamental right.

**RIGHT TO STRIKE:**

Art. 57 of the Portuguese Constitution gives a right to strike and there is prohibition of lock-out.

**RIGHT TO WORK**

Art. 58 of the Portuguese Constitution gives the right to work.