KLE LAW ACADEMY BELAGAVI

(Constituent Colleges: KLE Society's Law College, Bengaluru, Gurusiddappa Kotambri Law College, Hubballi, S.A. Manvi Law College, Gadag, KLE Society's B.V. Bellad Law College, Belagavi, KLE Law College, Chikodi, and KLE College of Law, Kalamboli, Navi Mumbai)

STUDY MATERIAL

for

POLITICAL SCIENCE-4: MAJOR WORLD GOVERNMENTS

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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KLE SOCIETYS LAW COLLEGE BENGALURU
POLITICAL SCIENCE – IV
MODERN WORLD GOVERNMENTS
II BA LLB A & B SECTIONS

UNIT 1

UNITED KINGDOM- Brief History, Introduction, nature, sources, importance; Rule of Law.

EXECUTIVE-The Chief Executive, King & Crown.

Political Executive, Prime Minister & Council of Ministers & its functions.

LEGISLATURE- Bi-cameral, Composition, Powers & functions.

JUDICIARY- Rule of Law, composition & its functions.

POLITICAL PARTIES- Organisation & its function.

UNIT II

UNITED STATES OF AMERICA- A brief history- A federal constitution.

THE AMERICAN FEDERATION- Division of Powers, Amendment Procedure.

THE CHIEF EXECUTIVE & VP- Real Executive, elections, tenure & functions; Vice President selection & role.

THE CONGRESS- The Senate & The House of Representatives

FEDERAL JUDICIARY- Organization, Powers & functions.

POLITICAL PARTIES- Organization & functions

UNIT III

SWITZERLAND-Introduction, Features

THE FEDERAL EXECUTIVE-The Federal council, selection, tenure & role.

FEDERAL LEGISLATURE- Bicameral, composition powers & functions.

FEDERAL JUDICIARY- Federal tribunal selection, tenure, organization, powers & functions.

DIRECT DEMOCRACY- Methods of working.

UNIT IV

FRANCE- History, The French Revolution, democracy, the Republic & features.

EXECUTIVE-The chief executive, powers & functions, Prime Minister & his council of ministers.

THE LEGISLATURE-Organization, powers & functions.

JUDICIARY- Features, organization, powers & functions.

POLITICAL PARTIES- Multi party system, features, organization & working.

UNIT V

INDIA: A brief history: Govt of India Act 1935, Constituent assembly, Preamble, features amendment procedure

EXECUTIVE- Chief Executive, Selection, Function & Role; Political Executive, selection, tenure, function & role.

PARLIAMENT- Rajya sabha, Loksabha, organization, function & role of speaker.

JUDICIARY- Organization powers & functions.

POLITICAL PARTIES- Organization Powers & functions.

BRITISH CONSTITUTION

UNIT 1

The Evolution of a Constitution

This new work casts light upon the British constitution of today by means of an in-depth consideration of eight key moments in British constitutional history. The historical perspective adopted in this book facilitates an informed and contextual understanding of the intricacies of the contemporary British constitution. Indeed the book is based upon the premise that it is impossible to fully comprehend the nature, content and implications of today's constitution without a firm grasp on how it evolved into its present form. Each of the eight main chapters focuses upon a different event in constitutional history which has contributed certain principles or practices to the modern day constitution, and explains how these principles or practices evolved and highlights their modern day significance. Historical events covered include the 1688 Glorious Revolution, the 1707 Union between England and Scotland, the 1911 Parliament Act and the 1972 European Communities Act.

Introduction

1688 – Glorious Revolution; Enduring Settlement: Sovereignty, Liberty and the Constitution

1707 – Union between England and Scotland: Unitary State and Limited Parliament

1721 – The First Prime Minister? Executive Power and Its Journey from Monarch to Prime Minister

1832 – The Great Reform Act: A First Step towards Democratic Representation?

1911 – The Parliament Act: Guaranteeing the Legislative Superiority of the House of Commons

1953 – The European Convention on Human Rights: an External Influence Within the Constitution

1972 – The European Communities Act: European Legal Supremacy under the UK Constitution

1998 – Devolution to Scotland, Wales and Northern Ireland: Decentralizing the Union State

Development of the United Kingdom

England is a constituent part of the United Kingdom of Great Britain and Northern Ireland (UK), the political union between England, Wales, Scotland and Northern Ireland. The UK is a sovereign state. Key dates in its development are:

- 1535 and 1542 – Under the Laws in Wales Acts, Wales is incorporated within the English legal system.
- 1603 – England and Scotland become two kingdoms with a shared monarch, with the Union of the Crowns.
- 1707 – England and Scotland become a single all-island Kingdom of Great Britain, with the Act of Union.
- 1801 – The United Kingdom of Great Britain and Ireland comes into being.
- 1922 – Following the partition of Ireland, 26 of the 32 counties of the island of Ireland become an independent state, while the 6 northern counties remain part of what becomes the United Kingdom of Great Britain and Northern Ireland.

Development of the UK constitution

The UK does not have a single codified constitution; instead, the constitution is formed from several sources, including statute, common or case law, and international treaties.

British monarchs were executive monarchs until the end of the seventeenth century, meaning that they had the right to make and pass legislation. Even then, they had to act in accordance with the law and take into account the will of the people. For example, with the signing of the Magna Carta in 1215, the leading noblemen of England succeeded in forcing King John to accept that they and other freemen had rights against the Crown.

In the seventeenth century, the Stuart kings propagated the theory of the divine right of kings, claiming that the sovereign was subject only to God and not to the law. Widespread unrest against their rule led to civil war in the second half of the seventeenth century. In 1688-9, Parliamentarians drew up a Bill of Rights, which established basic tenets such as the supremacy of Parliament.

The constitutional monarchy in existence today developed in the eighteenth and nineteenth centuries, as day-to-day power came to be exercised by Ministers in Cabinet, and by Parliaments elected by a steadily-widening electorate.

The Representation of the People (Equal Franchise) Act 1928 made the voting age for both men and women 21 years of age, leading to an equal and universal adult franchise. The voting age was lowered to 18 by the Representation of the People Act 1969 (subsequently consolidated into the Representation of the People Act 1983).

Devolution in Scotland, Wales and Northern Ireland

Scotland, Wales and Northern Ireland were granted devolved powers in 1998. The first elections for the devolved authorities took place in 1999. Scotland, Wales and Northern Ireland now have powers to administer their domestic affairs, although they retain representation in the UK Parliament. The UK Parliament retains the power to legislate for the UK as a whole, to amend devolution acts, and to legislate on anything that has been devolved. However, it will not normally do so without the agreement of the devolved governments.

The Scottish independence referendum, conducted in September 2014, asked whether Scotland should be an independent country. The result was that 55.3% of the electorate voted against independence and Scotland remains part of the UK.

Unlike Scotland, Wales and Northern Ireland, England has no separate devolved government.

EU membership

At the time of writing (January 2019), the United Kingdom (UK), rather than its constituent parts (England, Scotland, Wales and Northern Ireland), is a member state of the European Union (EU).

The UK did not join the European Communities when first established in the 1950s. It was thought that membership might weaken Britain's strong trade links with other countries in the Commonwealth, which gave access to cheaper food, and its strong political links with the United States of America. The international trading tradition created a feeling that the UK was separate from mainland Europe, and there was opposition from many people who thought that conceding power to any outside body meant loss of national sovereignty.

As a consequence, the UK was initially more interested in creating a European free trade area which would involve no sacrifice of national sovereignty. This led to the European Free Trade Association (EFTA) being created in 1959 by Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK. However, it was not long before the UK realised that it risked economic and political isolation if it remained outside the European Community, although it took more than ten years and several negotiations before the UK achieved membership in 1973. A referendum affirmed this membership in 1975.

The UK is not a member of the Eurozone and retains its own currency – pound sterling (GBP).

Brexit

On 23 June 2016, a referendum on European Union membership was held. The people of the United Kingdom voted to leave the EU and in March 2017 the Government invoked Article 50 of the Treaty of the European Union, which started the formal exit process.

Negotiations between the EU and the UK culminated in a Withdrawal Agreement, which set out the terms on which the UK would leave the EU. The United Kingdom then left the European Union on 31 January 2020.

Under terms of the Withdrawal Agreement, the UK entered a transition period during which time EU law generally continues to apply. The transition period will end on 31 December 2020.

A constitution is a set of laws on how a country is governed. The British Constitution is unwritten in one single document, unlike the constitution in America or the proposed European Constitution, and as such, is referred to as an uncodified constitution in the sense that there is no single document that can be classed as Britain's constitution. The British Constitution can be found in a variety of documents. Supporters of our constitution believe that the current way allows for flexibility and change to occur without too many problems. Those who want a written constitution believe that it should be codified so that the public as a whole has access to it – as opposed to just constitutional experts who know where to look and how to interpret it.
Amendments to Britain's unwritten constitution are made the same way – by a simple majority support in both Houses of Parliament to be followed by the Royal Assent.

The British Constitution comes from a variety of sources. The main ones are:

Statutes such as the Magna Carta of 1215 and the Act of Settlement of 1701.

Laws and Customs of Parliament; political conventions Case law; constitutional matters decided in a court of law, Constitutional experts who have written on the subject such as Walter Bagehot and A.V Dicey.

There are two basic principles to the British Constitution:

The Rule of Law

The Supremacy of Parliament

British Constitution: Features, Comparison with Indian Constitution

Salient Features

- **Unwritten**

One of the most important features of the British constitution is its unwritten character. There is no such thing as a written, precise and compact document, which may be called as the British constitution. The main reason for this is that it is based on conventions and political traditions, which have not been laid down in any document, unlike a written constitution, which is usually a product of a constituent assembly.

Indian Constitution, in comparison, is the lengthiest written constitution in the world.

- **Evolutionary**

The British constitution is a specimen of evolutionary development. It was never framed by any constituent assembly. It has an unbroken continuity of development over a period of more than a thousand years. It is said that the British Constitution is a product of wisdom and chance.

The Indian Constitution has certain similarities as well as differences on this particular aspect. It differs from the British Constitution to the extent that it is a written document and has well defined provisions. However, it too is open to evolution, given that the provision of

However, it too is open to evolution, given that the provision of an amendment is kept such, so as to allow for the Constitution to evolve according to the needs and sensibilities of the time.

- **Flexibility**

  The British constitution is a classic example of a flexible constitution. It can be passed, amended and repealed by a **Simple Majority (50% of the members present and voting) of the Parliament**, since no distinction is made between a constitutional law and an ordinary law. Both are treated alike. The element of flexibility has provided the virtue of adaptability and adjustability to the British constitution. This quality has enabled it to grow with needs of the time.

  Indian Constitution, in contrast, is both flexible as well as rigid. This compliments the basic ideology of the Indian Constitution quite well, wherein certain features like Sovereignty, Secularism, and Republic et al have been held sacrosanct, but otherwise the Constitution is amendable.

- **Unitary vs. Federal Features**

  The British constitution has a unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. Executive organs of the state are subordinate to the Parliament, exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not politically autonomous units. The Indian Constitution, on the other hand, is federal.

Unitary	**Federal**	**Confederation**
Units come together and form the state. Example: India Real power with the units.	All power lies with the Centre Powers for Provincial. Example: Britain Opposite to Unitary	Government comes from the Constitution. Centre delegates power to the provincial government. Example: EU, USA

- **Parliamentary Executive**

  This is one important similarity between the British and the Indian Constitution. (In addition to the Sovereignty of Parliament)

  Britain has a Parliamentary form of government. The King, who is sovereign, has been deprived of all his powers and authority. The real functionaries are Ministers, who belong to the majority party in the Parliament and remain in office as long as they retain its confidence.

  The Prime Minister and his Ministers are responsible to the legislature for their acts and policies. In this system, the executive and legislature are not separated, as in the Presidential form of government

- **Sovereignty of Parliament**

  The term Sovereignty means Supreme Power. A very important feature of the British Constitution is sovereignty of the British Parliament (a written constitution being absent).

  The British Parliament is the only legislative body in the country with unfettered power of legislation. It can make, amend or repeal any law. Though in India's case, we have legislature at state level too, yet the law making power of the Indian Parliament roughly corresponds to that of the British Parliament.

  The courts have no power to question the validity of the laws passed by the British Parliament. The British Parliament may amend the constitution on its own authority, like an ordinary law of the land. It can make illegal what is legal and legalize what is illegal.

  Here, there is a marked difference, vis-à-vis the power of Indian Judiciary to keep a tab on the legality of the law framed. Also, the 'Basic Structure' doctrine, lends the Indian Judiciary further power to question the legality of the law, in light of the fact that the Supreme Court of India is the highest interpreter of the Constitution of India.

- **Role of Conventions**

  Conventions are known as unwritten maxims (rules) of the Constitution. They provide flexibility and avoid amendments.

  Most constitutions of the world have conventions. A necessary corollary to the unwritten character of the British Constitution is that conventions play a very vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure passed by the British Parliament, but by convention, she doesn't do so and the same has become

a principle of the constitution itself. However, the legal status of conventions is subordinate to the written law.

- **Rule of Law**

  Another important feature of the British constitution is the Rule of Law. Constitutionalism or limited government is the essence of Rule of Law. This checks the arbitrary action on part of the Executive. According to Dicey, there are three principles of Rule of Law, found in Britain:

1. Protection from arbitrary arrest and the opportunity to defend oneself.
2. Equality before Law**:** All persons are equal before law, irrespective of their position or rank. Equality before Law is different from the concept of Administrative Law, which gives immunity of various types to public servants. In the absence of Constitution and Fundamental Rights in Britain, the judiciary protects this law. So this system is called as the Principle of Common Laws (in USA – Principle of Natural Law; in India – Maneka Gandhi case).
3. The rights of people in Britain are guaranteed by the judiciary. The Judiciary gives recognition to the common laws. Thus, the people in Britain enjoy rights, even in the absence of a Bill of Rights or Fundamental Rights.

However it has been seen that Rule of Law isn't practiced in its real sense.

Several reasons are attributed for it:

1. Growth of Administrative Law
2. Growth of Delegated Legislation
3. Internal and External Emergencies

These developments have been termed as 'New Despotism'.

- **Independence of Judiciary**

  The Rule of Law in Britain is safeguarded by the provision that judges can only be removed from office for serious misbehavior and according to a procedure requiring the consent of both the Houses of Parliament. So, the judges are able to give their judgments without any fear or favor. The same has been adopted in India, where independence of Judiciary is hailed as an unmistakable part of the Constitution (one of the features of the 'Basic Structure' doctrine).

Organs of the State

British Monarchy

Executive

The Executive in Britain is called as Crown. Earlier, the Crown symbolized King. Now, the King is part of the Crown.

The Crown, as an institution, consists of the following:

1. King
2. Prime Minister
3. Council of Ministers (CoM)
4. Permanent Executive, the Civil Servants
5. Privy Council

1. **Crown:** King is dead. Long live the King. In Britain, initially all power lied with the King. Later on, power shifted out of the institution of the King to the institution of CoM headed by the P.M., Permanent Executive and the Privy Council etc. Today, the Crown comprises of all these institutions. Hence, the first part of the statement describes the King as a person, while the second part describes the King or Crown as an institution.

2. **Nature of Monarchy:** Britain has a constitutional monarchy and a constitutional monarchy is not incompatible with democracy. This is because essentially the powers of the monarch as head of the state – currently Queen Elizabeth II – are ceremonial. The most important practical power is the choice of the Member of Parliament to form a government, but invariably the monarch follows the convention that this opportunity is granted to the leader of the political party or coalition, which has majority in the House of Commons.

   Despite its lack of real power, the monarchy still has several important roles to play in contemporary Britain. These include:

- Representing UK at home and abroad
- Settings standards of citizenship and family life
- Uniting people despite differences
- Allegiance of the armed forces
- Maintaining continuity of British traditions
- Preserving a Christian morality

3. **British Prime Minister and the Council of Ministers:** Britain has a Cabinet form of government. A cabinet is a plural or collegiate form of government. The power doesn't lie in one person, but the entire Council of Ministers**.** The principle is, "all Ministers sink and swim together". It is based on collective responsibility towards the Lower House. The Cabinet has its origins in the Privy Council set up to advice the King. The roles of cabinet include the following:

- Approving policy (major policy making body)
- Resolving disputes
- Constraining the Prime Minister
- Unifying government
- Unifying the parliamentary party

Moreover, the Cabinet is the ultimate body of law making in the Parliamentary system. It is formed out of the party/group, which enjoys majority in the House. The cabinet meetings are held in private.

4. **British Prime Minister**

- **Position of the Prime Minister**

1. P.M. is the captain of the ship of the state.
2. P.M. is the head of the Cabinet.
3. The party of the P.M. enjoys majority in the House.
4. He is the connecting link between the King and the Cabinet as well as the King and the Parliament.
5. The life of the House depends on the P.M. He may advice the dissolution of the House.
6. The other Ministers are appointed on the advice of the P.M.
7. The term of the other Ministers also depends on the P.M.

The P.M. as first among equals

This is also called as Primus Inter Pares or Inter Stella Luna Minors.

This explains the P.M.'s position w.r.t. other ministers. In the cabinet system, there is a principle of collective responsibility; hence other ministers are also important.

The relative position of the P.M. and other ministers in a Parliamentary system can be compared to the relative position of the President and his secretaries in the Presidential system. In the Presidential system, members of the Cabinet are chosen by the President. In USA, spoils system exists.

The Secretaries are not members of the Congress. In the Parliamentary system, ministers are also the members of either House. The P.M. cannot treat them as his subordinates.

Theoretically, the P.M. should consider himself as only first among equals, must give due respect to other members of the Cabinet and should take decisions in consultation with them. However, the P.M. is first because:

- He is the one who is appointed first, since he is the leader of the House of Commons.
- Other ministers are appointed on his advice.
- Other ministers can be removed on his advice.

In practice, the P.M. gains prominence and he is not simply the first among equals. But both formal and informal factors are responsible for this.

- **Formal Factors:** He is the link between the Parliament and the King, and ministers are appointed/removed on his advice etc.
- **Informal Factors:** Personality factors, position of his party, external/internal emergency like situation

Difference between the British and Indian PM

Constitutional position of the Indian P.M. is modeled on the British P.M., with one difference. In India, the PM can be a member of either House of Parliament, i.e. Lok Sabha or Rajya Sabha. However, this is not so in Britain. It is a convention in Britain that the P.M. will always be a member of the Lower House (House of Commons) only.

Privy Council

It has been one of the advisory bodies to the King. It has lost relevance because of the emergence of the Cabinet. Cabinet decisions are the decisions of the Privy Council. It has some supervisory role w.r.t. University of Oxford, Cambridge etc. It also has some role in resolution of disputes related to the Church as well as a Court of Appeal in some admiralty cases.

Permanent Civil Servants/British Bureaucrats

Indian bureaucracy is modeled on the British bureaucracy.

Some features:

- Bureaucracy in Britain is generalist
- They are expected to be politically neutral
- Recruited through competitive exams
- Enjoy a lot of immunities
- It is said that the British bureaucracy is not representative. It is still elitist
- Bureaucrats are known as New Despots
- It is said that the Bureaucracy thrives behind the cloak of ministerial responsibility
- It has also been compared with Frankenstein's monster (overpowering the Ministers)

THE BRITISH PARLIAMENT

1. **Introduction**
2. **The British Parliament**
   a. **Composition of the Parliament.**
   b. **Sovereignty of the Parliament**

3. **The House of Lords**
   a. **Composition of the House of Lords**
   b. **Powers and Functions of the House of Lords**

4. **The House of Commons**
   a. **Composition of the House of Commons**

b. Powers and Functions of the House of Commons

5. **Declining Role of the Parliament**
6. **Conclusion**

INTRODUCTION

The Parliament is the supreme legislative body in Britain. But it does not necessarily work only as a legislative wing of the government; it is supreme and has enormous power. It has tremendous powers in making laws, fixing taxation policy, sanctioning war and peace, controlling governmental machinery and so on. That is why De Lolme says that "The British Parliament can do everything but make woman a man and man a woman." It is the oldest Parliament in the world and hence is regarded as the mother of all Parliaments. It is composed of two Houses besides the King (Queen). This unit will introduce you to the growth, powers and functions of the Parliament of Britain. Besides, it will also help you to find out the changing role of the two Houses of the Parliament in the process of evolution of the Parliament itself.

THE BRITISH PARLIAMENT

The British Parliament is one of the remarkable and most successful Parliaments in the world. Its growth is gradual and in many phases of history its development is haphazard too. In the absence of separation of power the Parliament in Britain works in close relationship with the executive and judiciary.

COMPOSITION OF THE PARLIAMENT

The British Parliament consists of the King and two houses. The Upper House is known as the House of Lords and the Lower House is called as the House of Commons. The former is a symbol of aristocracy, while the latter is a representative of people. The former is much bigger in composition, but regarding the power and function, the lower house exerts much more influence.

SOVEREIGNTY OF THE BRITISH PARLIAMENT

Sovereignty of the British Parliament means that the Parliament in Britain can make, unmake or amend any law on any subject. It is supreme in its exercise of law making power. The law made by it cannot be amended or overruled by any institution. There is no provision for

judicial review in Britain i.e. judiciary cannot declare any law made by the Parliament as unconstitutional.

The British Parliament had been in continuous struggle with the Kings to determine its sovereignty. Parliamentary sovereignty in Britain had passed through the three following landmark events-

- The first landmark was when the Parliament resolved in December 1648 to bring King Charles I to trial who was ultimately executed in 1649. Parliament even abolished Monarchy and declared England to be a commonwealth by its Act. Again in 1660, the Parliament restored Charles II to the throne on the condition of his co-operation with the Parliament.
- The second landmark is the Glorious Revolution of 1688 when James II, failing to co-operate with the Parliament was made to abdicate. Parliament supported the coming of William of Orange to save the rights of the British people against King James II. Parliament also determined by the Bill of Rights of 1689, not only who should reign next but also on what condition he should reign. The Act of Settlement of 1701 was passed to determine the succession to the throne.
- The third landmark is the year of 1783 when younger Pitt became the Prime Minister and the king ceased to choose and dismiss his ministers. The Cabinet system has become stronger and for each and every work ministers become responsible to the Parliament. Though the Parliament is supreme and has unlimited authority in its law making capacity, yet there are a number of restrictions and limitations on its power and functions some of which are-
- There are some moral limitations standing before the Parliament. It cannot pass a law which is against the established codes of private or public morality. No law can be made which is against the convention of the country, unless and until the general public wants it.
- The prevalent system of Rule of Law also puts limitation on the sovereignty of the Parliament. Under Rule of Law every British citizen is equal before law, and his or her rights are derived from it. The Parliament cannot make any law which is against this Rule of Law.

- Parliament cannot make any law which is not supported by its public opinion. Every act of the Parliament must have support from people.
- Parliament does not have any right to violate any international law. Every Act of the Parliament must be in conformity with the principles of International Law.
- The increasing function of the government in recent times has made it imperative for the executive to make laws when the Parliament is not in session. Law making power has now been delegated to the executive to meet the emergencies. Delegated legislation has the force of law.
- The Statute of Westminster of 1931 also puts a limitation on the sovereignty of the parliament. It makes it clear that any Act of the Parliament made after 1931 cannot be operational in any British Dominion without the assent of the Dominion.
- Thus it is apparent that though British Parliament may seem to enjoy unlimited power, yet in reality it is bound by the above mentioned factors like rule of law, public opinion, international law and the like. Hence sovereignty of the Parliament is not absolute and is exercised as per the wishes of the people.

THE HOUSE OF LORDS

The House of Lords is the Upper House of the British Parliament. It is the oldest second chamber in the world. It is basically a hereditary institution representing the royal and aristocratic segments of the population.

COMPOSITION OF HOUSE OF LORDS

The membership of the House of Lords is not fixed. It has more than 1100 members and this number varies through deaths and creation of new peers. As of May 2009, the House of Lords had 738 members. It is a permanent chamber and most of the peers hold office for the whole life. All these members are grouped in the following seven distinct categories-

- Princes of the Royal Blood: Now-a-days they do not take part in the proceedings of the House. This category of peers includes all such male members of the Royal family who have attained maturity and are within the specified degrees of relationship and are conferred the title of Duke.

- Hereditary Peers: Hereditary peers constitute the majority of the members of the House of Lords. About 90% of the members of the House of Lords are from this category. The Crown can create unlimited numbers of peers from this category. But certain classes of people like- persons below 18 years of age, aliens, bankrupts, persons serving a sentence on conviction of felony or treason and women are excluded from its membership. Since 1963 women have been included in this category. Under the Peerage Act of 1963, anyone succeeding to Peerage, may within twelve months of succession, disclaim that peerage and in that case they are eligible for contesting election to the House of Commons.
- Representative Peers of Scotland: All the Scottish peers have been admitted on hereditary basis since 1963. Originally their number was 16 and were elected by the Scottish peers in accordance with the provisions of the Treaty of Union, 1707. But Peerage Act of 1963 abolished the election system.
- Representative Peers of Ireland: Originally there were 28 Irish representatives but since 1922, when Ireland was declared a free state, no new peers have been created. Now not a single Irish peer remains the members of the House of Lords.
- Lords of Appeal in Ordinary or Law Lords: There are altogether 21 law lords who are appointed by the Crown from distinguished jurists.
- Lords Spiritual: There are altogether 26 Lords Spiritual. Two are Archbishops of York and Canterbury and 24 are senior bishops of the Church of England.
- Life Peers: They are created under the provisions of the Life Peerage Act 1958. They are the persons who have held high offices in the state and have since retired like ministers and the like.

Both Houses of the Parliament are summoned simultaneously and prorogued together bur adjourned separately. House of Lords meets four days a week.

Lord Chancellor is the presiding officer of the House of Lords who sits on the woolsack. He is appointed by the Queen on the recommendation of the Prime Minister. He has a very limited power. But he acts as an adviser to the Queen. The Lord Chancellor does not have a casting vote.

THE POWERS AND FUNCTIONS OF HOUSE OF LORDS

The British Parliament started to work as an advisory body of the Monarch without any legislative power. But gradually Parliament started to claim its power and authority. In the process there emerged a question as to which House of the parliament is to exercise power more. The struggle between the two Houses ultimately led to the passage of the Parliament Act of 1911 which virtually abolished the power of the Lords either to amend or reject a money bill. Until then the House of Lords used to enjoy equal power with the House of Commons in law making process but the Act of 1911 also curtailed its power over ordinary legislation.

The Parliament Act 1911 gave more powers to the House of Commons. It has significantly curtailed the powers of the House of Lords in the following way-

- It has made it clear that House of Commons has the only power over the money bill. It declares that a money bill can be presented to the King for his assent even if the House of Lords does not assent to it, provided it was sent to the House of Lords from the House of Commons one month before the end of the session.
- A Bill passed by the House of Commons in three successive session and each time rejected by the House of Lords might be presented to the king for his approval provided that two years have elapsed between the initial proceedings of the Bill in the House of Commons and its final passing in that House in the third session.
- The second provision has been further modified by the Amendment Act of 1949 which further curtailed the powers of the House of Lords. It says that a bill becomes law despite its having been rejected by the House of Lords if it has been passed by the House of Commons in two successive sessions and there is the one year gap between the date of its second reading in the House of Commons and the final date on which it is passed by the House of Commons for the second time.

  The present power of the House of Lords as determined by the Parliament Act of 1911, amended in 1949 may be mentioned in the following way:
- **Executive Powers**: The members of the House of Lords have the power to put questions, to elicit information from the administration and can also have debates on

governmental policies. This debate influences the public. Some of the members of the House of Lords are included in the cabinet but the cabinet ministers are neither individually nor collectively responsible to the House of Lords. The House of Lords cannot pass a no confidence motion against the government and remove the ministry from power.

- **Legislative powers:** The legislative power of the House of Lords is also limited. A non money bill may be introduced in the House of Lords but still 90% of the bills are introduced in the House of Commons. A non money bill passed by the House of Commons in two successive sessions with an interval of at least one year between its first reading in the first session and the last reading in the second session becomes a law having received the royal assent even if it is rejected by the House of Lords.
- **Financial Powers:** In financial matter the House of Lords is very ineffective. The money bill cannot be introduced here. If a money bill passed by the House of Commons is sent to the House of Lords and the latter disapproves it and withholds its assent to the bill for more than a month, the bill is presented to the Queen for approval and becomes a law afterwards.
- **Judicial Powers:** The House of Lords is the highest court of appeal in the country but all members do not participate as a court. Only the Law Lords participate when the house sits as a court. Earlier it used to make trial of impeachment cases on charges preferred by the House of Commons. But with the acceptance of the principle of ministerial responsibility this power of the House of Lords has become obsolete.

These are the present powers and functions that can be exercised by the House of Lords. And because of this limited role many scholars either want to abolish or reform it. That is the reason why it has drawn criticism in Britain.

Criticisms against the House of Lords:

The following are some of the criticisms leveled against the House of Lords–

- The existence of the institution of the House of Lords very clearly depicts the existence of anachronism in the midst of democracy. The members of the House of Lords are basically from the royal family who are not the representatives of the

people.

- The marginal attendance of the Lords shows their indifference to the political happenings of the country. Generally eighty to ninety peers participate in the decisions of the House of Lords. One half of its members have never spoken a single word. The quorum for conducting ordinary business is only three. Thus, most of the members do not attend the meetings of the House.
- The House of Lords is always more inclined to one party i.e. the Conservative party. It is this party that wants to keep the House of Lords unaltered and it is the House of Lords that wants to pass all the bills proposed by the Conservative party. As Laski says "It has always supported the interest of one party. The Conservative party may be in power or not but in the House of Lords it has always been in majority."
- It represents the interest of the landed aristocracy. Property is the basis of the membership in the House of Lords. Some of them are related with the main industries of the country, some of them with real estate and many of them get membership through marriage or business relation with the conservative members in the House of Commons. It basically looks after the interest of the rich people, not the common people.

The above are some of the major criticisms against the House of Lords. Yet it has been in existence for the last many centuries. People have accepted it even though it is not in tune with democracy. Like many other countries such as the United States of America, France or India where there is the provision for a second chamber, in Britain too, the House of Lords fulfils the place of the upper House of the Parliament. It is not altogether a useless chamber - it has the right to ask questions to the ministers and can also discuss any governmental policy. In the process it crystallizes public opinion. In the absence of a supreme court, it accomplishes important judicial function as the highest court of appeal. The House of Lords also saves the time of the House of Commons by initiating non controversial Private bills. All these factors are responsible for the existence of this oldest second chamber in Britain. And despite a determined policy of the Labour party to abolish it and Liberal party's attempt to substitute for it a second chamber constituted on popular basis, the House of Lords still exists in its earlier form with a change brought by the Parliament Act of 1911 and its amendment in 1949.

THE HOUSE OF COMMONS

It is the Lower House in the British Parliament. The House of Commons is the body constituted by the representatives of the people.

COMPOSITION OF HOUSE OF COMMONS

The lower House of the British Parliament I.e. the House of Commons is purely an elected body having more than 650 seats. Among these seats England has the highest share of about 523 seats, followed by Scotland with 72 seats, Wales with 38 seats and Northern Ireland with 17 seats. The representatives of the House are elected by the British citizens above the age of 18, on the basis of universal adult franchise. All British citizens above the age of twenty one can contest election for a seat in the House of Commons. Certain categories of persons are excluded from contesting election like minors, bankrupts, lunatics, criminals, Clergymen of three historic churches, peers of England, Scotland, Wales or holders of profits under the Crown.

The House of Commons has a term of five years unless dissolved by the Queen/King on the advice of the Prime Minister. During emergency the term of the House may be extended. For instance, The House of Commons elected in 1910 continued to function till 1918 and also the HOC elected in 1935, continued till 1945 due to emergency situation.

The Speaker is the presiding officer of the House who is selected by the members from amongst themselves. Earlier he used to work as a nominee of the King but since 17th century he started to work as “a man of the House” instead of “a man of the King”. He continues to be a political figure till the 19th century, but now he works as a neutral and non-partisan person, neither as a member of the majority nor the minority. In fact his neutrality lies in the fact that the Speaker gives up his party affiliation after being elected for the same. To establish this neutrality a convention has developed that “once a Speaker, always a Speaker” i.e. once elected, the Speaker is reelected time and again so long as he wants to hold the office. On his re-election he becomes the Speaker again.

The Speaker in Britain has enormous powers in hands. He presides over the meetings of the House, maintains order and decorum in the House, protects the rights and privileges of the members, and certifies the money bill and the like. He also has casting vote in case of a tie. The impartial and neutral role performed by the Speaker has made the position of the Speaker

in a upper pedestal than his Indian or American counterpart. The first Speaker known to have been chosen is Sir Thomas De Hungerford in the year 1377.

POWERS AND FUNCTIONS OF HOUSE OF COMMONS

The House of Commons exercises tremendous power and authority in the Parliamentary system of Britain. It has wide ranging powers starting from legislative to judicial powers. These powers are discussed under the following heads-

- Legislative powers: In a unitary system of government law making on all subjects and for all people is done by its legislature. In Britain this function is invariably performed by the Parliament. Earlier, both Houses of the Parliament used to have co equal powers over the ordinary laws, but since the passage of the Parliament Act of 1911, the House of Commons has assumed more power over general legislation.
- Though such bill can originate in either house of the parliament, yet almost majority of the bills have their origin in the House of Commons. If a bill is passed by the House of Commons, it is sent to the House of Lords which passes the bill with or without amendment. It is the discretion of the House of Commons whether to accept or reject the proposed modification. The House of Lords can just delay the passage of the bill but it cannot reject the bill altogether. If a bill originates in the House of Lords and sent to the Commons for approval it is the discretion of the House of Commons to accept or reject the bill. Thus, the House of Commons has more power in the law making of the Parliament.
- Financial Powers: The British Parliament exerts great powers in the financial matters of the country. The finance of the nation and all financial deals of the country are controlled and managed by the Parliament and in turn by the House of Commons. The Parliament Act of 1911 entrusts more financial power on the House of Commons. This can be enlisted under the following heads

  i) A money bill and the budget can be introduced only in the House of Commons.
  ii) It is the prerogative of the Speaker of the House of Commons to decide whether a bill is money bill or not.iii) A money bill passed by the House of Commons goes to

the House of Lords which can only delay the bill for a maximum period of one month. After that, the bill is taken as passed by the House and sent to the Queen for her assent.

(iii) The Queen has no veto power to reject the bill. Thus the passage of the money bill depends entirely on the House of Commons.

iv) No tax can be levied or collected without the consent of the House of Commons.

iv) The House of Commons allocates funds to the different departments of the governments.

- **Executive Powers:** The House of Commons uses its power over the real executive of the country. The executive body, i.e. the minister is individually and their cabinet is collectively responsible to the House of Commons. Through its various means the House of Commons puts a check on the ministries so that they cannot work arbitrarily.

  The most powerful way to ensure responsibility of the ministry is the no confidence motion taken by the House of Commons. Every decision of the Cabinet and every policy taken by the government must have the support of the members of the House of Commons; otherwise in every circumstances of the contrary view of the majority members, the House of Commons can take up this motion. By this way it may bind the government to resign in case the ministry fails to get majority support.

  The members of the House of Commons can put questions and supplementary questions to the ministers. The ministers are bound to reply to these questions. Questioning in the House of Commons fulfils the constant demand of information about governmental policies. It brings into light the work of various departments under public scrutiny.

  Debate on the reply to the King's (Queen's) "Gracious Speech" by the opposition also highlights the activities of the government. Discussion on the public finance, foreign policy also checks the authority of the executive. Investigation committee instituted by the House of Commons also scrutinizes the working of the governmental departments.
- **Judicial Powers:** The House of Commons in its judicial capacity recommends the Monarch to remove a judge. It can punish the person guilty of the contempt of the House. It can investigate all the cases involving breach of privileges of its members and punish the guilty.
- **Constituent Powers:** The House of Commons can pass a constitutional law just like

an ordinary bill. In this way it can amend the constitution.

Thus, the House of Commons exercises tremendous power, authority and influence in the Parliamentary system of Great Britain. It is one of the strongest lower houses in the world.

DECLINING THE ROLE OF PARLIAMENT

With the growth of the Cabinet system, the British Parliament is losing much of its earlier power and authority. Now the Parliament has to work much to the wishes of the Cabinet. The factors responsible for the declining role of the Parliament may be summarized as follows- The House of Commons cannot work efficiently as it has heavy burden of work and responsibility. That is why many functions earlier performed by the Parliament are now done by the Cabinet. The legislative works have increased and due to the lack of time some laws are left to be taken by the executive for the swift run of administration. Here comes the issue of delegated legislation. Again, the existence of two party system ensures a stable tenure for the government. So, the House of Commons cannot bind the ruling party to resign every time. But it does not necessarily mean that the Parliament is losing power and influence. In fact the use of no confidence motion, cut motion and parliamentary debates exhibit the influence of the Parliament even today.

CONCLUSION

The unique features of the British Parliament have been accepted by different countries including India. The Parliamentary system with its unitary form has assigned a higher position to the British Parliament. Today with the declining role of the House of Lords, the House of Commons has been used interchangeably with that of the Parliament itself. Even with the growth of delegated legislation, cabinet dictatorship, the political significance of the British Parliament has not been reduced. Even today also Parliament being a body, representing the wishes of the people occupies a higher position of power and responsibility and here lies the democratic value of the Parliament in the political system of Britain.

IMPORTANT FEAURES OF LEGISLATURE

Essential differences between the two systems

There is a natural tendency to compare the Parliament of India with the British Parliament.

But our Parliament and Parliamentary Institutions and procedures are not a copy of the Westminster system. There are fundamental differences between their system and ours.

British Parliament has grown through some three hundred years of history. In Britain, the Parliament can said to be the only institution, which exercises sovereign powers and on which there are no limits because there is no written constitution.

India, on the other hand, has a written constitution. Powers and authorities of every organ of the Government and every functionary are only as defined and delimited by the constitutional document.

The power of Parliament itself is also clearly defined and delimited by the Constitution. However, within its own sphere, the Parliament is supreme. Also, Parliament is a representative institution of the people.

But it is not sovereign in the sense in which the British Parliament is sovereign and can do or undo anything. The point is that in the sense of constitutional sovereignty, their powers are not limited by a constitutional document.

Moreover, our constitutional document provides for fundamental rights of the individual, which are justiciable in courts of law. And any law passed by the Parliament, which abridges any of the fundamental rights can be declared ultra vires by the courts.

The courts adjudicate the disputes and while doing so, they can interpret the constitution and the laws. Also, Parliament has the constituent powers and within certain limitations it can suitably amend the constitution.

The British Parliament is bicameral, that is there are two houses or chambers – The House of Lords (strength not fixed) and The House of Commons (strength fixed at 650 members). The House of Lords has hereditary members. Moreover, it has the largest number of Life Peers, Church/Religious peers (Ecclesiastical Peers) and Law Lords.

The House of Lords

The House of Lords is the second chamber, or upper house, of the United Kingdom's bi-cameral (two chamber) Parliament. Together with the House of Commons and the Crown, the House of Lords form the UK Parliament. There are four types of members of the house:

1. **Life peers:** These make up the majority of the membership. The power to appoint belongs formally to the Crown, but members are essentially created by the Queen on the advice of the Prime Minister. Life peers' titles cease on death.
2. **Law lords:** Up to 12 Lords of Appeal in Ordinary are specially appointed to hear appeals from the lower courts. They are salaried and can continue to hear appeals until they are 70 years of age.
3. **Bishops:** The Anglican Archbishops of Canterbury and York, the Bishops of Durham, London and Winchester and the 21 senior Diocesan Bishops from other dioceses of the Church of England hold seats in the House. This is because the Church of England is the 'established' Church of the State. When they retire the bishops stop being members of the House.
4. **Elected Hereditary peers:** The House of Lords Act, 1999 ended the right of hereditary peers to sit and vote in the House of Lords. Until then there had been about 700 hereditary members. While the Bill was being considered, an amendment was passed (known as the Weatherill amendment after Lord Weatherill who proposed it), which enabled 92 of the existing hereditary peers to remain as members.

   The House of Lords can propose and make changes, known as amendments. However its powers are limited; if it doesn't approve of a piece of legislation, it can only delay its passage into law for up to a year. After that, there are rules to ensure that the wishes of the House of Commons and the Government of the day prevail.

   In fact, the House of Lords could be labeled as one of the weakest upper house in the world. Since the passage of the Act of 1919 and 1949, the House of Lords has lost all real legislative powers. It is simply a delaying chamber now. It can delay an ordinary bill for a maximum period of one year and money bill for a maximum period of one month.

   In comparison to Rajya Sabha, the House of Lords is a weak house. Rajya Sabha has equal powers with Lok Sabha, as far as an ordinary bill is concerned (though, there is provision of a joint session, but it is an extraordinary device).

   Rajya Sabha has equal power with Lok Sabha as far as the amendment of the Constitution is concerned. Rajya Sabha is also a delaying chamber, like the House of Lords, as far as a Money Bill is concerned. Rajya Sabha can delay the bill for a maximum of fourteen days. Rajya Sabha does have some special powers, which are not available to Lok Sabha; for example: Articles 249 and 312.

Comparison between the House of Lords and Senate of USA

- Senate is called as the strongest Upper House. It enjoys equal power with the House of Representative in the context of an Ordinary Bill, a Constitutional Bill and even in passage of a Money Bill. It is customary to introduce Money Bill in the Lower House.
- The Senate also enjoys some special powers not available to the House of Representatives. For example, ratification of international treaties, ratification of higher appointments. The House of Lords did enjoy a privilege that it used to be the highest Court of Appeal in Britain. But this has now ceased to exist, as the Supreme Court has been created by the Constitutional Reform Act, 2005 (SC established in 2009).

THE HOUSE OF COMMONS

This is the lower chamber, but the one with most authority. It is chaired by the Speaker.

Unlike the Speaker in the US House of Representatives, the post is non-political and indeed, by convention, the political parties do not contest the Parliamentary constituency held by the Speaker. The number of members varies slightly from time to time to reflect population change.

In modern practice, the Prime Minister is the head of the Government and is always a member of the majority party or coalition in the House of Commons.

The Cabinet comprises primarily leading House of Commons Members of the majority, although Members of the House of Lords have served as Cabinet ministers. In fact, designating someone outside Parliament as a "life peer" has been one recent means of bringing someone essentially from private life into the Government.

The Prime Minister, although head of the Government and an MP, is now not usually the Leader of the House of Commons.

The Leader of the House of Commons, a member of the Government, is the chief spokesman for the majority party on matters of the internal operation of the House of Commons.

The Office of the Leader issues announcements of the impending House of Commons schedule, and a routine inquiry from the Opposition's counterpart serves as an occasion for the Leader to announce the business for the next two weeks of session.

In the House of Commons, party organizations (akin to the Republican Conference or Democratic Caucus) meet regularly to discuss policy, and to provide an opportunity for

backbench party members to voice their views to ministers or shadow cabinet members in a private forum.

The Position of Speaker of the House of Commons and its Comparison with the Indian and American Speaker

Features of British Speaker

The position of the Speaker is a position of great prestige and dignity. In UK, there is a convention that once a Speaker, always a Speaker. It means that a Speaker's constituency is unchallenged. Once a person is appointed as a Speaker he gives formal resignation from his political parties. He has a casting vote and ultimate disciplinary powers with respect to the conduct of the House and MPs.

US Speaker (Speaker of House of Representatives)

He is expected to be a party man, not expected to be neutral; instead he favours his party. He does not have final disciplinary powers, which lie with the House itself. In USA, the Speaker can vote in the beginning.

Speaker of Lok Sabha

Though our position is midway between the British and the US model, it is theoretically closer to the British model. But similar conventions do not exist. For instance:

- It is not necessary for the Speaker to resign from his party
- If he decides to resign, he will not be disqualified under the Anti-defection law.
- No convention in India that he will be elected uncontested.

Judiciary

Under the doctrine of Parliamentary sovereignty, the judiciary lacks the intrinsic power to strike down an Act of Parliament. However, the subordination of common law to statute law does not mean the subordination of the Judiciary to the executive. Courts in Britain retain certain powers:

- Of interpreting the precise meaning of a statute.
- Of reviewing the actions of ministers and other public officials by applying the doctrine of ultra vires (beyond powers).

- Of applying the concept of natural justice to the actions of ministers and others.

Because Parliament is sovereign, the government can seek to overturn the decisions of the courts by passing amendment legislation. The power of judicial review provides the judiciary with a potentially significant role in the policy process.

In recent decades, there has been an upsurge in judicial activism for several reasons:

- Judges have been more willing to review and quash ministerial action
- British membership of the EU
- The incorporation of the ECHR (European Convention on Human Rights) into domestic law
- Devolution of powers to elected assemblies in Scotland, Wales and Northern Ireland
- The creation of a Supreme Court in 2009.

Comparison between the Indian and British Judiciary

- **Differences**

1. In case of British system, the lack of concept of 'Basic Structure' makes amending power of the Parliament supersede any judicial pronouncement. Whereas, in case of the Indian Judiciary system, the concept of 'Basic Structure' has provided a potent tool to Judiciary by which it can scuttle down any Executive or Legislative action, which it deems as against the basic spirit of the Constitution.
2. British legal system is completely based on 'Common Law System'. Common Law System implies that law is developed by the judges through their decisions, orders, or judgments (also referred to as precedents). However, unlike the British system, which is entirely based on the Common Law System, where it had originated from, the Indian system incorporates the Common Law System along with the statutory and regulatory laws.

- **Similarities**

1. The actions of Executive can be declared ultra vires in both the systems
2. The judiciary is considered the highest interpreter of the Constitution
3. Off late, there has been a splurge in judicial activism in Britain and judiciary is becoming more and more active. A similar evolution of judiciary has been noticeable in the Indian case too

Note: By Constitutional Reform Act, 2005 the Supreme Court has come into existence as the highest Court of Appeal. A National Judicial Appointment Commission has also been introduced.

Brief Synopsis of comparison drawn above

British Constitution

1. Product of history and the result of evolution
2. There is a difference between theory and practice
3. Flexible and unitary constitution
4. Parliamentary government
5. Rule of law and civil liberties applicable

Indian Constitution	**British Constitution**
Written	Unwritten
Federal	Unitary
Power is divided between Centre and states	Power is the with the Centre
No Monarchy/Republic	Has King/Queen

Comparison between British Monarch and Indian President

British Monarch	**Indian President**
Position of the King is hereditary	Elected
King enjoys absolute immunity; it's said that King can do no wrong	In India the President can be impeached for violation of the Constitution
King has no discretionary powers. He is known as 'Golden Zero'	In India there was a lack of clarity w.r.t. the Indian President. There was confusion whether he has any discretionary power or is merely a Nominal. • 24th Amendment clarifies that he doesn't have any discretionary powers. Real power lies with the PM, while the President is merely a

	'nominal executive'. • 44th Amendment Act again changed the stand, providing some scope for Presidential discretion. He could now send the request back to the CoM, though only once.

Comparison between British Monarch and the US President

British Monarch	**US President**
King as titular head	US President is both – a real as well as titular head
Hereditary Elected and can be impeached	No discretionary powers Real executive powers, subject to checks and balance

THE CROWN

INTRODUCTION

The Parliamentary form of government is marked by the existence of two executives-the real executive and the nominal or titular executive. The nominal executive is represented by the Head of the State who may either be a hereditary or an elective one; legally, the Head of the State possesses all powers and privileges which the constitution and laws may confer upon him. But in practice, all powers are exercised by the real executive represented by the Cabinet headed by the Prime Minister. The Prime Minister is the Head of the Government. A classic example of this form of government is the UK where the King or Queen is the titular head (Head of the State) whereas the Cabinet headed by the Prime Minister is the real head (Head of the Government). It

is worth mentioning here that in the UK, a proper discussion of the role of the King or Queen can only take place in the context of the particular concept of the Crown.

In early days, all powers of the government were centered in the man who wore the crown – the state cap of royalty. In other words, all powers rested on the King as a person. However, in the course of history, those powers have entirely been transferred from the king as a person to a complicated impersonal organization called the "Crown." Therefore, the distinction between the King and the Crown is the distinction between the monarch as a person and monarchy as an institution. The Crown is not a living tangible person. It is an abstract concept. Thus, the distinction between the Crown and the King centres around the following points:

- The King is a person, whereas the Crown is an institution. The King is the physical embodiment of the Crown.
- The King is only a person using the powers of the Crown. All the powers of the State reside in the Crown as an institution.
- The King is mortal, but the Crown is immortal. The King as a person dies or may abdicate or may even be dethroned whereas the Crown as an institution is permanent. It is not subject to death nor abdication nor dethronement.

According to Dr. Munro, "The Crown is an artificial or juristic person. It is an institution and it never dies. The powers, functions and prerogatives of the Crown are not suspended by the death of a king even for a single moment." This distinction is well illustrated by the maxim, "The King is dead, long live the King." It implies that the person who occupies the throne may be dead but the office of Kingship as an institution survives. According to Blackstone, "Henry, Edward, George may die but King survives them all."

POWERS OF CROWN

The powers of the Crown are those which belong to the office of the king or the Kingship as an impersonal institution. These powers are never exercised by the Monarch himself. They are exercised in the King's name by Ministers who derive their authority form Parliament and are responsible to Parliament. The powers of the Crown are derived form two sources, i.e., prerogative and statute. Statutory powers of the Crown are those duties which have been

assigned to the Executive authorities by Acts of Parliament. Prerogative powers of the Crown refer to those powers which are derived from the Common Law. Some of these powers include the summoning of Parliament, declaration of war or neutrality, ratification of treaties, appointment to offices, etc. Now, let us discuss the powers of the Crown as follows:

Executive Powers: The Crown is the supreme executive authority. It appoints all the high executive and administrative officers, judges, bishops and the officers of the army, navy and air force; directs the work of administration and national service. It holds supreme command over the armed establishments. The Crown supervises and in some instances directs the work of local government, especially that of boroughs and counties. The Crown conducts the country's foreign relations with other countries; sends and receives ambassadors or other diplomatic agents and all negotiations are carried out in the name of the Crown. It deals with the colonies and dominions. The Crown is also the treaty-making authority and all international agreements are made in its name. It can even declare war or peace and conclude a treaty without consulting Parliament. Thus, it is seen that all executive authority is vested in the Crown.

However, all these powers are exercised by the ministers, or the Cabinet in the name of the Crown. It is they who decide who shall be appointed to office. They direct British foreign policy and conclude treaties. They even decide on the issue of war. In short, the Cabinet headed by the Prime Minister, and not the king, is the real wielder of authority.

- Legislative Powers: The Crown is not only an executive but also an integral part of the national legislature. The Crown summons prorogues and dissolves Parliament. When a new Parliament meets it is usually greeted by the Monarch in a speech from the Throne, which is usually delivered by the King or Queen in person from the Throne in the House of Lords (upper house of the British parliament) with the Commons (lower house of the British Parliament) present. Theoretically, no bill passed by the Parliament can become an act unless and until the King gives assent to it but once a bill is passed by the Parliament, the King does not exercise the right to veto.

  Practically, however, the King exercises all legislative powers as per the advice of the Cabinet. As a matter of fact, the speech from the throne is not the King's or Queen's speech. It is the government's speech. Again, the veto power of the King has become

obsolete. The assent of the King to the acts passed by the Parliament is never denied and is always given as a matter of course.

- Judicial Powers: The King is still described as the "fountain of justice." In fact, the Crown does so as the King. The King appoints the judges, including the Justices of Peace in the counties and boroughs. The Lord Chancellor, a member of the Cabinet, exercises general judicial supervision. All issues which come before the Judicial Committee of the Privy Council are decided by the Crown. All justice in England is rendered in the name of the King. Finally, the Crown exercises the prerogative of mercy and may grant pardon to persons convicted of criminal offences. This is done by the Home Secretary.
- Head of the Church: Besides, the Crown is the Head of the Church of England. The archbishops, bishops and other ecclesiastical officers are appointed by it. The appointments are made on the advice of the ministers.
- Fountain of Honour: The Crown is the fountain of honour. Each year, a list of peerages and other honors like knighthood is prepared by the Prime Minister in consultation with the Cabinet. At the request of the monarch, the Prime Minister may add a name or strike off a name. However, it is not obligatory for the Prime Minister to act according to the likes and dislikes of the King.

From the above discussion, it becomes amply clear that the powers of the British Crown are immense and important. In practice, the powers of the King have been transferred to the ministers who actually exercise these powers and are responsible for the day-to-day administration of the country.

"The King Can Do No Wrong"

An important maxim on which the British constitutional structure rests is "the King can do no wrong." This maxim has two important implications.

Firstly, it means that the King is above law and cannot be tried in any court of England for any wrongful act done by him. He enjoys complete personal immunity from the jurisdiction of the ordinary courts of law. For example, if the King commits any crime, there is no process known to English law by which he can be brought to trial.

Secondly, the maxim means that the King is above all the responsibility for every act performed in his name. For every act of the British government performed in the name of the king, it is the ministers who are responsible to Parliament. As a matter of fact, every order issued by the King is countersigned by the minister-in-charge who is politically responsible to the Parliament and legally responsible to the courts of law. Thus, the King can do nothing wrong or right, of a discretionary nature and having legal effect.

JUSTIFICATION OF CROWN

It is true that the King/Queen in England has long ceased to exercise the powers vested in him/her and is only a titular executive. However, it would be wrong to conclude that the monarch does not exercise influence in the government. In the words of Bagehot, the King has three rights-the right to be consulted, the right to encourage and the right to warn. He maintains close touch with the Prime Minister who in consultation with the King often drops a subject in hand before it is discussed in the Cabinet. For instance, King George V played an active role in the nation's affairs, especially in connection with the Irish question and the struggle over the Parliamentary Act of 1911. Though the ministers need not follow the advice of the King, yet they hardly disregard it. The exalted position of the King and the non-partisan character of the institution of kingship, lends weight to his advice.

Moreover, the King is a symbol of national integrity, providing leadership to the British society. During the Second World War, the King visited the various theatres of war and bombed areas of England, thereby inspiring the British people to mobilize and fight heroically at the war fronts. Monarchy therefore provides a useful focus for patriotism.

The King provides a symbol of Commonwealth unity. The King is the symbol of the free association of the members of the Commonwealth of Nations encompassing nations, states and races. Presently, the Queen as the head of the Commonwealth is a connecting link between the United Kingdom and nearly fifty other independent countries. Besides, the King of Britain is at once the King of Canada and other Dominions.

CABINET

The Cabinet is the core of the British constitutional system. The name Cabinet referred originally to a small body of ministers whom the later Stuart Kings began to consult in preference to the

Privy Council of their predecessors. Accordingly, the Cabinet is a part of a larger body or the ministry. While the ministry is a large body consisting of all the ministers of the Crown, the Cabinet constitutes an inner circle consisting of only such members of the ministry as the Prime Minister invites. The Cabinet headed by the Prime Minister contains the real leaders or chiefs. Thus, all Cabinet members are ministers, but not all ministers are Cabinet members. The Cabinet is thus, a wheel within a wheel. The Cabinet, in brief, is the driving and the steering force, with all its members holding important portfolios of the Government. According to Ramsay Muir, the Cabinet is "the steering wheel of the ship of the State."

The principles of the Cabinet system:

Exclusion of the King from the Cabinet:

The first important feature of the British Cabinet system is the exclusion of the King from the Cabinet. The whole of the political and executive power of the Crown is exercised in the King's name by the Cabinet. But the King stands outside the actual working of the Cabinet. He does not attend the Cabinet meetings and remains neutral and above party politics. It is true that the King commands a position to influence the decisions of the Cabinet, yet in the end of the day, the monarch is bound by the decision of the Cabinet.

Cooperation between Cabinet and Parliament:

The Cabinet system is marked by a close cooperation and harmony between the Cabinet and the Parliament. The Prime Minister is the leader of the majority party in the Parliament and all ministers are also its members. In modern times, they are generally from the House of Commons. If he is not, he becomes a member after his appointment. The membership of Parliament gives to ministers a representative and responsible character. It binds together the executive and legislative authorities together and there can be no working at cross purposes between the two organs. The ministers can get the desired legislation passed in the Parliament while the Parliament can secure information regarding the affairs of the administration through questions. This harmonious collaboration ensures a stable and efficient Government.

Ministerial Responsibility:

Ministerial responsibility is the most significant principle of the Cabinet system of government. Ministerial responsibility to Parliament has two aspects: the collective responsibility of ministers for the policies and actions of the government as a whole and their individual responsibility for the work of their respective departments of which they are in charge. Collective responsibility implies that the Cabinet as a whole is answerable for the acts of its members. All ministers, from senior Cabinet ministers to junior ministers stand for the political programme of the party and represent the uniformity of political opinion. They must, therefore, fall and stand together, because the fall of the Ministry is the fall of the party and, consequently, its political programme. Any minister who is not prepared to defend the Cabinet decision must resign. Anthony Eden resigned in 1938 because he was unable to agree with the foreign policy adopted by Prime Minister Neville Chamberlain and the Cabinet. At the same time, the Cabinet can remain in office only so long as it enjoys the confidence of the majority of the members of the House. This obligation to resign is collective. All the ministers must resign collectively. Implicit in the doctrine of collective responsibility is the solidarity of the Cabinet.

Individual responsibility of a minister implies that every Cabinet minister in charge of a department is answerable to the Parliament for all acts and omissions of his department and must bear consequences of any defect of administration with regard to his department.

Leadership of the Prime Minister:

The Cabinet system of government is marked by the leadership of the Prime Minister. According to Morley, “The Prime Minster is the key stone of the cabinet arch.” Although in the Cabinet, all its members stand on an equal footing, yet the dominance of the Prime Minister is evident. He is the Chairman of the Cabinet and is therefore the first among equals in relation to his Cabinet colleagues. He exercises a general supervision over the work of his colleagues and resolves differences among them. Although the ministers are appointed by the King, in actual practice, they are the nominees of the Prime Minister. He is the leader of the Parliamentary majority and all members work under his accepted leadership.

Secrecy and Party Solidarity:

Another important feature of the Cabinet system is the secrecy of the policy and party solidarity. The Cabinet is a secret body collectively responsible for its decisions. It deliberates in secret and its proceedings are highly confidential. All the ministers are expected to maintain complete secrecy with regard to the proceedings and policies of the Cabinet. The secrecy of Cabinet proceedings is safeguarded by law and convention. The Privy Councillors' Oath Privy Councilor's (oath taken on becoming a member of the Privy Council) imposes an obligation not to disclose Cabinet secrets. The Official Secrets Act of 1920, forbids communication to unauthorized persons of official documents and information. Secrecy combined with the leadership of the Prime Minister helps the ministers to present a solid and united face.

FUNCTIONS OF THE CABINET

According to the Report of the Machinery of Government Committee (1918), there are three functions of the Cabinet:

a. The final determination of policy to be submitted to Parliament

b. The supreme control of the national executive in accordance with the policy prescribed by Parliament

c. The continuous co-ordination and delimitation of the activities of the several Departments of the State.

The functions of the Cabinet may be described as follows:

Policy Determining Functions:

The Cabinet is primarily a deliberative and policy-formulating body. It discusses and decides all sorts of national and international problems. Once the Cabinet takes a decision on a particular national or international problem, all members are expected to abide by it, irrespective of their likes or dislikes. When the Cabinet has determined on a policy, the appropriate Department carries it out either by administrative action or by submitting a new Bill to Parliament and getting it enacted. Legislation is thus the handmaid of administration.

Legislative Functions:

The Cabinet is the instrument that links the Executive branch of government to the Legislative branch. The Cabinet ministers guide and control the work of Parliament. The Cabinet plans the

legislative programme at the beginning of every Parliamentary session and prepares the speech from the throne spelling out the legislative programme. They formulate and introduce bills in the Parliament on all significant matters which in their judgment require legislative attention. The Cabinet by virtue of its enjoying a majority in the House of Commons can get the bills passed in the Parliament as it can direct the Parliament for action in a certain way.

Supreme Control of the National Executive:

The Cabinet is the supreme national executive. Legally, all the executive power vests in the King. But in actual practice, the King is only a titular head. It is the Cabinet which really exercises all the executive powers vested in the King. The Cabinet ministers preside over the major departments of government and carry out the policy determined by the Cabinet and approved by Parliament. As heads of the departments, the Ministers are responsible for the policies pursued by their departments and for their administrative efficiency. They decide policy issues that arise in their departments, give instructions to their principal subordinates and supervise the departmental activities. The ministers are also answerable to Parliament for all acts of omission and commission and accordingly must ensure the efficient management of departmental business keeping in view the needs of the people.

The Cabinet may adopt the device of Orders-in-Council, instead of going to Parliament for approval to give effect to some more general line of policy including a declaration of war. Both the World Wars (World War I- 1914 to 1918 and World War II- 1939 to 1945) were declared by Orders-in-Council.

Cabinet as Coordinator:

The essential function of the Cabinet is to coordinate and guide the functions of the several departments of government. Though administration is divided into numerous departments, yet it is difficult to make a water-tight division among the various departments. The action of one department affects the work of another department. Infact, every important problem cuts across departmental boundaries. For instance, a foreign policy decision must often be made in relation to defence and trade policy. Similarly, an educational policy decision may concern other departments like the Treasury Department. In such cases, the Cabinet does the task of coordinating policy.

Determination of Finances:

The Cabinet is responsible for the whole expenditure of the State and for raising necessary revenues to meet it. The Cabinet decides as to what taxes will be levied, how these will be collected and in what manner these will be spent. The Cabinet takes decisions regarding the imposition of taxes and abolition or reduction of old ones. The Chancellor of the Exchequer is an important member of the Cabinet. He prepares the annual budget and the same is always discussed thoroughly in the Cabinet before it is presented to the Parliament.

From the above discussion regarding the functions of the Cabinet, it can be concluded that it occupies a central position in the British Parliamentary system. It formulates the policy, enforces the laws, runs the administration, prepares the budget and decides on matters of war and peace. In short, the Cabinet is the Government of the United Kingdom.

THE PRIME MINISTER

The Prime Minister is the corner-stone of the Constitution. The entire administrative and governmental machinery revolves around the Prime Minister. The powers and functions of the Prime Minister are many and varied. These are discussed below:

- Formation of the Cabinet: The first function of the Prime Minister is to make the Government. The Government is headed by the Prime Minister and the Prime Minister selects his own team to make a Government. Being the leader of the majority party in the House of Commons, he is called upon by the King to form the ministry. It may be noted here that although the Prime Minister is the sole authority in the matter of selection of his colleagues, yet he has to take a number of factors into account. For instance, in constituting his ministry, the Prime Minister has to accommodate the claims and views of

leading members of his party in both Houses. Nevertheless, it is for the Prime Minister to decide upon the size of the Cabinet and the ministers to be included in it and he enjoys a free hand in the matter. He may even select colleagues outside the ranks of his Party, or even outside Parliament if the Prime Minister feels that a particular person is specially suited fro the job. For example, in 1903 the then Prime Minister Balfour offered the Colonial Office to Lord Milner, when he was still the High Commissioner in South Africa and had no parliamentary experience to his credit.

- Distribution of Portfolios: The allocation of offices is also done by the Prime Minister in his discretion. However, a minister may decline what is given. But rarely the Prime Minister's final allocation is rejected.
- To Shuffle the Ministry: The Prime Minister, as the leader of the Cabinet, also has the right to appoint, reshuffle or dismiss his Cabinet colleagues so that the machinery of the government keeps working efficiently and effectively. He can review the allocation of offices among his colleagues and can make necessary changes if needed. The Prime Minister can reshuffle the portfolios of the ministers to this effect. He can request any of his colleagues to resign. He can also advise the King to dismiss a minister.
- In July 1962, the then Prime Minister MacMillan dismissed seven out of twenty ministers.
- Chairman of the Cabinet: The Prime Minister summons the meetings of the Cabinet and presides over them. The Prime Minister is the leader of the Party and his colleagues in the Cabinet owe him a personal as well as a party allegiance. He decides the agenda of the meetings. It is for the Prime Minister to accept or reject proposals for discussion submitted by ministers. If differences crop up in the Cabinet meetings, the Prime Minister as the Chairman of the Cabinet may impose a decision.
- As Coordinator: The Prime Minister has the responsibility to coordinate the policies of the different ministries. He has to see to it that the different departments do not work at cross purposes with each other. It is his responsibility to ensure that the government works as a unit. In short, the Prime Minister acts as the guide and coordinator of the Cabinet.
- Leader of the House of Commons: It is now an established precedent that the Prime Minister must belong to the House of Commons. He represents the Cabinet as a whole in

the House and acts as the Leader of the House. It is he who decides as to when the House is to be summoned and for what period .The Prime Minister, being the leader, guides and influences the entire legislation in the House of Commons. He makes authoritative statements and explains the Government's policy. He speaks on most important bills. He initiates or intervenes in debates of general importance, such as those on defence, foreign affairs and domestic issues of primary character. The party Whips in the House, through whom the Prime Minister issues orders to the members of the party in the House, are under the direct supervision of the Prime Minister.

- Power of Dissolution: The Prime Minister wields the supreme power of dissolution. He is the only person who is authorized to advise the King to dissolve the House of Commons. It means that the members of the House of Commons hold their seats at the mercy of the Prime Minister. Though the King can refuse dissolution to the Prime Minister, in practice it is highly unlikely that he would ever do so. During the last hundred years or so, there has been no instance of a refusal of dissolution when advised by the Prime Minister.
- Channel of Communication: The Prime Minister is the main channel of communication between the Cabinet and the King on matters of public concern. The Prime Minister informs the King about the opinions and decisions of the Government. He also carries the opinions of the King to his colleagues and thus acts as the link between the King and the Cabinet.
- Chief Adviser of the King: The Prime Minister is also the chief adviser of the King. He recommends the names of the persons on whom the honours are to be bestowed. The distribution of general patronage through the Honour list gives the Prime Minister an influence in many sectors of national life. He advises the King in matters of appointments and other matters of national importance. In this regard, the Prime Minister recommends to the Monarch for the appointment of Church of England Archbishops, bishops and certain other senior clergy as well as for appointments to high judicial offices.
- Representative of the Nation: The Prime Minister may occasionally attend and participate in international conferences or meetings. Lord Beaconsfield attended the Congress of Berlin, Lloyd George participated in the peace conference at Paris, Neville Chamberlain led the meetings in Germany preceding the Munich Agreement and Winston Churchill met President Franklin Roosevelt six times during the Second World War.

Prime Minister's position:

From the above discussion regarding the powers and functions of the Prime Minister, it becomes clear that the British Prime Minister stands at the very core of British administration and politics. His position has been variously summed up by writers. Lord Morley described him as primus inter pares, the first among equals. He said that although in the Cabinet all its members stand on an equal footing, speak with one voice, yet the head of the Cabinet, that is, the Prime Minister, occupies a position of exceptional and peculiar authority. Jennings is of the opinion that the Prime Minister in relation to his ministers is rather "a sun around which planets revolve."

As a matter of fact, the actual power of the Prime Minister depends in part on his own personality, in part on his own prestige and in part upon his party support. Prime Ministers like Disraeli, Gladstone, Lloyd George, Winston Churchill, Margaret Thatcher and Tony Blair dominated the British political scene due to their personalities and administrative calibre. Again, if the Prime Minister is a popular and dynamic figure, it is difficult for his colleagues to oppose him. In the ultimate analysis, the British Prime Minister is the most important person in the government of the country. Without him, the ministers have no existence. Nothing can take place in the government against his will. The authority of the Prime Minister is great, but, to a large extent, his authority is a matter of influence.

BITAIN JUDICIAL SYSTEM

The British judiciary is one of the most renowned judicial systems in the world. Britain has an impartial, well organized and independent judiciary and the British judiciary. It has been working as a guardian of the rights and liberties of the people. It has its unique organizational pattern along with some exceptional features not to be found anywhere in the world. In this chapter you will be able to learn the salient features of the British judiciary. Along with this you will also know the concept of Rule of Law which is so integrally associated with the judicial system of Britain.

At the same time, this unit introduces you to the party system prevailing in Britain. With the adoption of parliamentary form of government and universal adult franchise, political parties have become an indispensable part of the British political system. But like many other liberal

democracies political parties are not mentioned in the constitution or any other law of the United Kingdom. Thus political parties are extra constitutional growth, yet British political system cannot operate without them. Party system has become so integrated in the political process of the country that it is now impossible to run the country without these parties. British political system has been working very efficiently and successfully with a two-party system. In fact British constitution has developed much through the working of the two party systems.

FEATURES OF BRITISH JUDICIARY

The impartial and quick delivery of justice provided by the British judiciary has made it a model judicial system in the world. The salient features of the British judiciary can be discussed under the following heads-

- **No single form of organization:** One of the most important peculiarities of the British judiciary is the absence of any single uniform organization of judiciary all throughout the country. While the judicial systems of England and Wales are almost similar, the guiding principles, procedure and organization of judiciary in England, Scotland and Ireland differ from one another. Each of these three systems has its own distinctive characteristics. Earlier, there used to be a good number of judicial tribunals to decide the cases overlapping each other. It is only after the passage of the Judicature Acts of 1875-76 (as amended in 1925) that a well organized system came into being.

- **Absence of administrative courts:** Unlike France, United Kingdom does not have separate administrative courts. In France and some other continental countries there are two types of law i.e. ordinary law and administrative law and accordingly there are two types of courts- ordinary courts and administrative courts. The ordinary courts are for general citizens and the administrative courts are meant for government officials for certain acts committed by them under official capacity. But in the United Kingdom, under the provision of the Rule of Law, all British citizens are equal in the eyes of law and so there is no provision for separate court for the government officials or governmental matters. All cases are taken into account by ordinary court.

- **Two categories of lawyers:** There are two types of lawyers in Britain to deal with the case- the Barristers and the Solicitors. A case is prepared by the Solicitors and is taken by the Barristers to the court. The Barristers have the exclusive right to plead in the higher courts. The Solicitors on the other hand have to interact with the client, make case for them and also need to appear in the county and magistrates' courts on behalf of the client.

- **Absence of judicial review:** Supremacy of the Parliament does not allow any scope for judicial review for the courts. Parliament is supreme and is beyond any judicial review. The courts are not allowed to declare any law passed by the Parliament as ultra vires. The courts cannot declare any law of the Parliament as unconstitutional even if it breaks some provisions of the Magna Carta, Petition of Rights, or any earlier Act of the Parliament. But they can review delegated legislation just to see that these are according to the statutes of the Parliament.

- **Bifurcation between civil and criminal cases:** In Britain civil and Criminal cases are heard separately in separate courts. A criminal case is counted as a case between the crown and the accused, where the latter is charged with crimes like theft, murder etc. i.e. all kinds of activities that violate certain law of the land. A civil case is a dispute between two persons, groups, or institutions over property, breach of contract and the like.

- **Jury system:** The jury system is a special feature of the judicial system of Britain. The accused has the right to demand for a bench of jurors to decide his or her case in all British courts except the lowest and the highest court. Jurors are selected from the local area itself but they must not be related with legal practice. Barristers, judges, doctors, clergymen, commissioned officers, peers cannot act as jurors. The lawyers defending the accused can object to the name of not more than seven jurors without assigning any reason. It is obligatory for the jurors to attend the meetig whenever they are called for the same except on some medical ground. The number of jurors in the jury bench of England and Wales is 12, whereas for Scotland it is 15. In England the jurors have an unanimous decision, whereas in the case of Scotland it must be a majority decision. In the failure of the decision, the judges will form a new jury bench for hearing the case. The concerned judges always listen to the views of the jury bench in deciding the case. Jury system is a

successful system and the jurors have been playing their role in the adjudication process in a most fearless and impartial manner over the decades.

- **Independence of judiciary:** In Britain, the judges are provided with statutory security. They are appointed by the Crown from among the middle age group members of the bar. The King appoints them with the consultation of the Lord Chancellor. Thus, the judge need not appease any one. Besides, this security is guaranteed through the provision that a county court is never promoted to High court and though promotion from High court to the Court of Appeal is possible, but it does not add much except a raise in income or dignity. Judges hold office during good behavior.

  Quality of justice: Speedy trial of the cases have granted quality justice to the British citizens. It is due to the following two reasons-

- i) The Judges in the United Kingdom have the discretion in dealing with cases.
  ii) Judicial rule procedures are made by the specialised rule committee consisting of Lord Chancellor and ten persons eminently familiar with legal procedure.

  The presence of highly qualified lawyers with discritionary power at hands allows rapid movements of cases. Thus, there is no delay in providing justice to the people in Britain.

- **Rule of Law:** It implies that every British citizen is equal in the eyes of law. No one can be punished except for some breach of law and that also must be proved in the court. Under the Rule of Law the judiciary is the guardian of all rights and liberties of the British citizen. Many rights like freedom of speech and expression and freedom of worship are guarenteed by convention and useage and enforced by the courts.

RULE OF LAW

Rule of Law is one of the most striking features of the British constitution that ensures rights and liberties to its people. In the absence of any constitutionally recognized rights, it secures enormous rights to its people. It is based on the common law of the land and is the result of centuries of struggle of its people for the recognition of their inherent rights. Rule of Law has

been working as the guiding principles in the functioning of judiciary through which justice is delivered to every section of the society.

Rule of Law means the supremacy of law under which all are equal and are amenable to the same law. It implies that no one can be punished unless and until his guilt has been proved. Again, it also means that the government is subject to the Parliament and through Parliament to the people.

A.V. Dicey has given a classical formulation of the concept of Rule of Law. He interprets it in three ways which can be discussed under the following way-

- In its first meaning Dicey says "that no one is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in ordinary courts of the land…" It implies that no one in the United Kingdom can be punished arbitrarily. His or her guilt must be proved in the court. The accused must have the opportunity to have a lawyer of his/her own choice. Judgment should be made in open court and the accused should have the right to appeal in the next higher court. It guarantees security of life, liberty and property.

- In its second meaning Dicey holds that "not only with us is no man above the law, (but what is a different thing) here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals". In simple words it means that irrespective of their social and official status all citizens are equal before law and that everyone is amenable to the ordinary court for any violation of the law. That is why there is no separate administrative court for the government officials in Britain.

- In its third meaning it means that "the general principles of the constitution are…, the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts." In Britain the rights of the people do not flow from the constitution but from the judicial decisions from the courts.

Criticisms of Dicey's concept of Rule of Law:

There a number of criticisms leveled against Dicey's formulation of the Rule of Law. The major criticisms against Dicey's interpretation are-

On the first meaning of Rule of Law, the critics say that –

- Absence of complete discretionary power is in fact not possible. For the proper implementation of the programme the civil servants must have some discretion.
- The frequent use of the delegated legislation by the executive adds to the discretionary power at the hands of the government.
- The growth of modern welfare states has increased the works of the government. Now, many of the departmental cases are settled in the department itself. It has limited the scope of judiciary in Britain.

On its second meaning the critics argue that-

- The King or Queen is above law. He or she cannot be tried in any court of law.
- It is a myth that every one in Britain is equal in the eyes of law. There are certain special immunities extended to its public officers. For example- Public Authority Protection Act of 1893 as amended in 1939 declares that all public officials for the excess, neglect or default of the public authority must be started within six months of the act, otherwise the proceeding would lapse.
- There are certain rights and privileges not available to the ordinary citizen, but to the civil servants such as that they are not to be arrested without the consent of the respective department whereas an ordinary citizen can be arrested at any time.
- The diplomatic envoys and ambassadors enjoy some special privileges and also immunities.
- No action can be taken against judges for lapses that might be committed by them during the course of giving judicial decisions.
- In respect of a tort no action can be taken against the trade union under the Trade Dispute Act of 1906. Even if they resort to strikes or boycotts no action can be taken.

On the third meaning of Rule of Law as given by Dicey, critics argue that British citizens do not avail rights only from judicial decisions, but there are also a number of conventions and usages that also secure them their right.

Though these criticisms are of great importance which Dicey himself accepted later on, the inherent implication of the Rule of Law serves as the guiding principle of the British Constitution. The judiciary in Britain very carefully protects the virtue in it and thus enhances the scope and availability of justice in the country.

PARTY SYSTEM IN BRITAIN

HISTORY OF POLITICAL PARTIES IN UNITED KINGDOM

The question of a political party did not come to the forefront till the Parliament stopped working as an advisory body to the Monarch. The first seed of political party was sown during the Tudor period when the Puritans started behaving as an organized group against the religious toleration shown by Queen Elizabeth I. The Long parliament summoned by King Charles I also depicted a sharp division between the Cavaliers or Royalists and Roundheads or Parliamentarians. The former wanted the expansion of the power of the King while the latter was in favour of shrinking down the powers of the King with the interference of the parliament. The issue of limiting further power of the Monarch led to a division among the members of the parliament. Hence there emerged two groups, known as Whigs and Tories. Whigs wanted reform and cut in the power of the Monarch, while Tories supported Monarchy. Both of these were active during the Glorious Revolution of 1688 wherefrom the sovereignty of the parliament was accepted. This is a milestone in the growth of political party in the United Kingdom as it gave a formal recognition to the country's political parties.

Throughout the 18th century the Whigs and Tories group remained very active and held power from time to time. Towards the end of the same century, Whigs strongly supported democratic reforms while the Tories wanted to restore Monarchy. After the passage of the Reform Act of 1832, Whigs were named as Liberals and Tories were come to known as Conservatives.

The Labour Movement started to grow after the Industrial Revolution. Thereafter many organizations were formed in the United Kingdom like Social Democratic Federation in 1881, Fabian Society in 1883, and Independent Labour Party in 1893 and they started to assert due

labour representatives in the Parliament. For this purpose Labour Representative Committee was set up in 1899 which came to be known as Labour Party from the year 1906.

By the first part of the 20th century, United Kingdom had four parties- the Conservative Party, Liberal Party, Labour Party and Unionist Party. At the beginning the first two parties were prominent, but since 1922 election when the Labour Party got the second largest majority in the House of Commons, the influence of the Liberal Party came down. Since then either the Conservative party or the Labour party has been in power to form the government. Thus bi-party system is prevailing in Britain even though there are some minor parties like Communist Party, Social Democratic Party and so on.

FEATURES OF POLITICAL PARTIES IN UK

The major features of the party system of United Kingdom can be discussed under the following heads-

- **Bi-party system:** A significant characteristic of the British party system is the existence of the two well organized political parties since the 17th century when political parties can be said to have come into existence. Earlier, there was a contest between Conservative and Liberal Party and now the Labour party has come to the limelight by overriding the Liberal party. It is not that there is not a third party in Britain, but these are always insignificant. The Englishmen are more familiar with the two party culture. The role of some minor parties like Social Democratic party, Communist party and now Liberal party is not very significant. The two party system has provided stability and permanence to the political system of Britain. People are now habituated with this bi-party system with the elections centering on a clear contest between the Conservative party and the Labour party.

- **Extra -Constitutional Entity:** Political parties are extra constitutional growth in Britain. These are not mentioned either in the constitution or any law of the country. Political parties have emerged gradually throughout the history of the British political system.

- **Highly Centralized Political Party:** In the United Kingdom, the political parties are highly centralized. Each major party has a strong organization both at the national and local levels. Each party has a high degree of leadership and the members of the party follow the party leaders. Members of all the parties follow strict discipline as envisaged by their respective party leaders. The candidates for elections are nominated by the central rather than local units. If a member votes against the wishes of the party he is likely to be expelled from the party.

- **Moderation and Compromise:** The political parties of Britain are characterized as very moderate in their attitude. Just as the Conservative Party does not comprise only the rich and the business classes, the Labour party has also some other members drawn form sections other than the working class people. All workers do not necessarily vote for the Labour party, nor all businessmen vote for the Conservative party. The Conservatives have liberalized their conservatism while the Labour party has moderated its socialism. Today, the Labour party also supports market economy, free economy and globalization. Even in the House of the Parliament political parties are never aggressive and the opposition party always provides constructive criticisms.

- **Strong Organizational Structure:** Political parties in the United Kingdom are also characterized by the existence of strong party organizations. There are regular party elections and their inner party discipline is very strong.

- **Organized Opposition Party:** The opposition party in Britain is also no less important than the ruling party. The organized opposition with its 'shadow cabinet' acts as an instrument of control over the ruling cabinet. It has vigilance over the working of the government. It brings into light the omission and lapses of the ruling party. The leader of the opposition is regarded as the next alternative Prime Minister and his views are respected by the ruling government.

- **Continuity in Operation:** The political parties in Britain remain active in both electoral and political activities throughout the year. As soon as an election is over all the political parties begin to prepare for the next election. In this way they keep a good look at the

wishes of the people all the time. This has contributed to the success of the British democracy as an institution that caters for the needs of people for all time.

MAJOR POLITICAL PARTIES IN THE UK

LABOUR PARTY

The Labour Party is the political expression of the working class movement in England. It came into existence in 1906 and from then it has been growing rapidly. It emerged as the second largest party in 1922 general election. The Labour Party is the product of two forces i.e. trade unionism and socialism.

1. Organization of the Labour Party

It is composed of four organizations- socialist and semi socialist societies, intellectual and professional men, trade unions and co-operatives, and local organizations of the party. It has an elaborate organization with many labour organizations like local trade union organizations, young socialist society, and local socialist society.

In the beginning, Labour Party used to give limited membership. Prior to 1918, Labour Party was not a national organization having branches open to individual members in every constituency; rather it was a federation of trade unions, trade councils, and socialist society. During that time any individual who desired to be the member of the party must have the membership of all these components. But after the end of the First World War its membership was opened for all- men and women alike "who are individual members of the local labour party and who subscribe to the constitution and programme of the party". At present there are broadly two ways to get party's membership- firstly, by taking membership of an affiliated organization and secondly, by direct membership and subscribing to a local constituency organization. The membership for the party is open for all sections of the society including teachers, businessmen, officers, Bishops, agriculturalists, etc.

Annual Party Conference: The basic organization of the Labour party is the Annual Party Conference composed of all the delegates from the member organizations. Resolutions adopted in the Party Conference determine the party's policy. It formulates the principles and instructions

to be carried out by the National Executive Committee of the Party, its affiliated organizations, its representatives in the Parliament and the local authorities.

National Executive Committee: It is the administrative organization of the party. It is elected by the Annual Party conference, responsible for the management of party affairs. National Executive Committee is very powerful as it directs wide range of activities of the party and no one can carry the party label in an election without its approval. It can also expel any member or disaffiliate any organization from the party. But these actions must be put before the Party conference for review.

Parliamentary Labour Party (PLP): It consists of all the elected members of the party to the House of Commons. When the Labour Party gets majority in the House of Commons its leader forms the ministry and becomes the Prime Minister. When the party forms the opposition, the leader of the PLP organizes the 'shadow cabinet' working as an instrument of opposition against the ruling government. When working as opposition, the PLP elects three persons at the beginning of each parliamentary session- the chairman and leader of the party, the vice chairman and deputy leader and the chief whip of the party. In addition to this PLP elects 12 members and thus forming a total of 15 that constitutes the Parliamentary Committee of the Party.

National Council of Labour: Besides these, there is another organ of the Labour Party, which is basically a coordinating agency, known as National Council of Labour. It coordinates activities and policies of the party at different fields of participation. Consisting of 21 members, it has representatives seven from Trade Union Congress, five from NEC, four from PLP and four from Co-operative Union.

(ii) Objectives of the Labour Party: The following are the major objectives of the Labour Party:

- Along with the elimination of class struggle, labour party wants to establish a welfare state in the United Kingdom.
- It wants to democratize the institution of Monarchy and House of Lords.
- It holds that all private property and enterprises should be brought under the control of the state. The key industries need to be nationalized.

- It is opposed to the communist philosophy in the sense that it believes that the regulation and control that a socialist economy require, should not impinge on the basic liberties of citizens. Freedom of discussion and criticisms should be properly safeguarded.
- It speaks for self government in Colonies and Dependencies under the British Empire
- In the arena of politics as well as economics, the Labour party has been advocating the policy of Liberalization since 1990s.
- In international relations, the dream of the party is to set up a Socialist Commonwealth in the long run, but for the time being it wants to build close ties with the United Nations and build up collective security.

CONSERVATIVE PARTY

The Conservative Party is the successor to the Tories which was founded in 1678. It is the party of the aristocratic, wealthy, rich and upper middle class of the British society. It favors the old institutions like the Crown, Church, House of Lords, private property and the like. It entrusts great power in its leader and hence the leader of the party has dominant power over the policies and working of the party.

(i) Organization of the Conservative Party:

The organization of the Conservative party is not as elaborate as that of the Labour party. At the top there is the National Union of Conservatives and Unionist Associations (NUCUA). There are separate Unionist Associations for Scotland and North Ireland. NUCUA is a federal organization to which constituency associations are affiliated. It has a Central Council and Executive Committee.

The Central Council consists of 15 categories of members like university graduates, constituency association, and central association. The Central Council or Central Office carries out all administrative functions of the party. The Central office is headed by the chairman of the party who is nominated by the party leader. Besides controlling nomination of the party candidates, it manages the party's financial affairs. The Central office or Central Council is the governing body of the NUCUA. It organizes the party's annual conferences. It organizes the local party

groups, conducts publicity campaigns, raises party funds and conducts some other party works. The Central Office functions as the secretariat of the leader of the party and it is controlled by the party's leader. The Executive Committee of the NUCUA is basically an advisory body. It looks after the affairs of the party during the intervals of the meetings of the central office.

The leader of the Conservative Party exercises tremendous power and authority. He alone has the exclusive responsibility for the formulation of policies and programmes of the party. He is informed by the Central Office about the position of the party in the constituency. Once elected, he continues to hold office for life. He nominates his successor.

The Parliamentary Party is the policy making body of the party. It is composed of all party members elected to the House of Commons. The leader of the party is elected by it. When the party forms the government, he becomes the Prime Ministers. When it works as a minority in the House of Commons, it works as opposition and the leader becomes the leader of the Opposition.

(ii) Objectives of the Conservative Party: The following are the major objectives of the Conservative Party-

- It does not believe in class-struggle; rather, for the Conservatives, the differences based on quality can give the best result and bring unity in the state.
- It wants to retain all the traditional and cultural heritage of British society like the church, monarchy or property.
- This party is a strong advocate of the Laissez-Faire theory according to which every individual should have the right to pursue his or her own ends and the state need not interfere in the affairs of the individual. In other words, it favours market economy. The conservatives do not support the nationalization of any industry.
- The members of the party want to safeguard the British Imperial interest throughout the world. They do not believe in the self government in the British Colonies or Dependencies.

Besides these two parties that have been playing a major role for the last many decades, British party system also has some minor parties. Liberal Democratic Party which was known as Liberal party used to be of great significance before the rise of the Labour party. The lukewarm reform

policy propagated by the party could neither attract the labour class nor the capitalist class. They advocate liberty of all forms like religious liberty or political liberty like equal franchise right.

The Communist party consists of the members who follow the ideology of Marx. They want to abolish capitalism and set up the rule of the worker. Its significance in Britain is very limited as the interest of the working class is very carefully taken care of by the Labour party.

There was split in the Labour party in 1980s and that led to the formation of the Social Democratic party. The members of this party advocate for mixed economy and continuity of Britain's membership in the European Union. It does not support trade unionism and socialism.

ROLE OF OPPOSITION IN BRITISH PARTY SYSTEM

The opposition party has got a special recognition in the United Kingdom and it is known as "Her Majesty's Opposition". The leader of the Opposition is taken as the next prospective Prime Minister. The Opposition works in a disciplined and organized manner. The criticisms made by the opposition are always constructive. Under the prevailing bi-party party system no party remains an opposition for all the time. For example, the Conservative party was in power from 1979-97, whereas the Labour party was working as opposition. The same case is now for Conservative party that is working as the Opposition, and the latter working as ruling party since 1997. The Opposition in Britain is as strongly organized as the ruling cabinet. It renders all kinds of co-operation to the government in national crisis.

The role performed by the Opposition can be outlined in the following way-

- By criticizing governmental policies and policy makers, it makes the government responsible and accountable for every action it takes. Along with criticizing the governmental programme through questions and debates in the Parliament, the Opposition provides alternative solutions and strategies to the government.
- It controls the ruling government through parliamentary debates, privileges and rules of procedure.
- It keeps the public abreast of every step taken by the government. It helps in the formation of vibrant public opinion.

Thus, the Government rules and the Opposition in the Parliament evaluates and inspects its rule through constructive criticism.

CONCLUSION

Thus British judiciary with its adequate independence, transparency and efficiency has become a very successful institution in guaranteeing the rights of the people. Through its various judgments judiciary has given new interpretation of the constitution and protected the rights of its citizens. British democracy is known for its quick delivery system of justice. The prevailing system of Rule of Law and jury system have added to the successful operation of judiciary in the United Kingdom. Moreover, we have also learnt about the role of political parties in the parliamentary system of the United Kingdom. The success of British political system is largely the outcome of the existence of two major parties that guarantees stability to the government. The moderate and compromising approach, strict discipline and principle of the political parties are the key to the success of British political system. The British party system has become a role model for all the countries following the parliamentary form of government.

AMERICAN CONSTITUTION

UNIT II

THE CONSTITUTION OF THE UNITED STATES OF AMERICA DEVELOPMENT AND SALIENT FEATURES

1. Introduction
2. Development of the Constitution of the United States of America
3. Salient Features of the Constitution of the United States of America
4. Sources of the Constitution of the United States of America

5. Conclusion

INTRODUCTION

This unit introduces you to one of the greatest democracies of the world, namely, is the United States of America. The history of the U.S.A. is only four hundred years old. It has its own importance for the student of constitutional history and politics. It is in this Constitution that the famous principle of Separation of Powers founded by Montesquieu was for the first time accepted and strictly adhered to. The American Constitution is the oldest among the written constitutions of the world. It was again the first modern government to adopt the federal form of government. Most of the countries having federal form of government derived inspiration from the United States. Presently the United States has been able to achieve the status of a super power because of her continuous and stable developmental process which began in the year 1776. Till 1776, it was a combination of thirteen (13) separate colonies. But the attempt of the people of these colonies to establish their independence led to the birth of U.S.A. Today it is a country of fifty (50) States.

DEVELOPMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The history of the emergence of United States of America as a sovereign independent republic is a very interesting account. A study of the history of the Constitution of U.S.A. reveals that it was a peculiar set up of thirteen (13) colonies which ultimately led to the rise of the federation. America was discovered by Columbus in 1492. In the 17th century, the British established their colonies in North America. By the 18th century, there were thirteen such British colonies. These colonies were under the supreme control of the British Crown. Through different Royal Charters, England established three different types of colonies in America: Royal or Crown Colonies- which were directly controlled by the King through his Governors; Proprietary Colonies- which belonged to individual proprietors and their heirs, and the British King exercises some control over some aspects of their administration; Charter Colonies- in which authority was in the hands of the colonists as a group and not in the hands of any individual proprietor (owner). These colonies enjoyed a measure of independence in internal administration but were under the power of the British Crown and the Government of Britain. The British government started imposing taxes upon the colonies as it thought that the colonies should bear a part of the expenses of administration and defence of the colonies. People of these thirteen colonies objected to such a

move of the British government as they were not represented in the British Parliament. The people of the colonies declared “no taxation without representation.” The war of words turned into an open conflict of arms. The British Government dealt firmly with this opposition coming from the colonies giving rise to a big reaction which turned into a revolt in 1776. In order to give a fight to the British forces, the colonies decided to organize a common army. The colonies formed a body called the Continental Congress to manage the common affairs of the colonies. In 1775, the Congress appointed George Washington as the Commander- in- Chief of the armed forces of the colonies. In 1776, George Washington emphasized the issue of independence. The Continental Congress appointed a committee to prepare a declaration of independence. The Declaration of Independence adopted on July 4, 1776 announced the birth of new nation. It declared the Colonies as States, each independent of the Crown and politically independent of others. At the same time, the Declaration of Independence contained four basic declarations.

(a) A belief in the natural and inalienable rights and freedoms of the people.
(b) An affirmation of the right and duty to revolt against absolute despotism.
(c) Right of the people to redress their grievances by peaceful negotiations.
(d) The declaration of independence of the Colonies from the domination of British Imperialism and rule.

The Declaration was a landmark because it laid the foundation stone leading to the birth of the American nation.

The Declaration of Independence adopted by the colonies led to a war with Britain. The Revolutionary war known as the War of Independence continued for about six years. Ultimately, the colonies came out victorious which made the colonies independent States.

The Continental Congress formed during the early stages of the Revolution had met and functioned without any constitution or fundamental law. In order to remove this weakness, the Congress appointed another committee consisting of one member from each colony to prepare the basis of a Confederation. This committee submitted its report in the form of Articles of Confederation. With the ratification of all the States, the Articles of Confederation became effective on 1st March1781. The Articles of Confederation constituted the first Constitution of the United States of America.

The first Article named the Confederation 'the United States of America.'The second Article stated that each State retained its sovereignty, freedom, independence and every power, jurisdiction and right, which was not by this Confederation expressly delegated to the Congress. It was gradually becoming clear that the Confederation was a loose 'Union of States.' The Articles of the Confederation were nothing more than conventions. They had no binding force. Moreover, the Congress was also given only a few specific powers. The responsibility to implement the decisions of the Congress was vested in the states. No executive organ was created. The Congress did not have the power to tax, and thereby no independent source of income.

Therefore, to remove such problems, the Philadelphia Convention was held on May 15, 1787. It was basically a constitutional convention as it was charged with the purpose of revising the Articles of Confederation. It was composed of 55 members. George Washington was unanimously selected as the Chairman of the Convention.

The Convention accepted that there were three objectives which were to be realized:

(a) Creating a strong and stable Central Government;
(b) Preserving as much as possible the autonomy of the States.
(c) To protect the right of property of an individual along with other civil liberties.

After long discussions spanning for about sixteen weeks, a brief document embodying the Constitution of the new government of the United States was signed unanimously by the States present on September 17, 1787. The Constitution was ratified and finally adopted on June 21, 1788 and came into effect on March 4, 1789. George Washington took the oath of office as the first President and John Adams as the first Vice-President of the U.S.A.

The Constitution radically changed the character of the United States. It established a Federal Government allowing maximum liberty to the States. At the time of the adoption of the Constitution some of the States kept themselves out of the new federation, but later joined it. Thus, the old Confederate was replaced by a new Federal Republic.

With the adoption of the Constitution, the US began its march towards stability, strength and development and within a span of 175 years the USA has been successful in enlarging itself from a small federation of 13 colonies to a strong and powerful federation of 50 States.

SALIENT FEATURES OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Since 1789, the US Constitution has been successfully guiding the destiny of the American nation. It is a Constitution based upon the ideology of liberalism, democracy, capitalism, limited government, federalism and separation of powers. It gives full guarantee to the rights and freedoms of the people. Over the years, it has demonstrated fully its ability to provide a strong, stable and efficient system of governance both in times of peace and war. The main features of the US Constitution are:

1. Written Constitution : The American Constitution is one of the oldest written constitutions of the world. It is in the form of a document. It is a self-made constitution of the people of USA. From the day of its inauguration on May 25, 1787 till the final passing of the Constitution on September15th, 1787 the constitution framers worked day and night to give a written, acceptable, desired and popular constitution. The founding fathers took great care to fulfill the interests and aspirations of the Americans while framing the Constitution. Before the Constitution was inaugurated, it was submitted for ratification, after which the Constitution became operational on March 4th, 1789. As such, the US Constitution is a written constitution, duly adopted and enacted by the people of the USA.

2. Brief Constitution : It is a brief document of 15 pages containing only 4000 words. If we add the amendments, the total number of words becomes 6000. The Constitution consists of just 7 Articles and only 27 amendments. When we compare it with the Constitution of India, Constitution of Japan, Constitution of Switzerland, and other major Constitutions of the world, we find the American Constitution a very brief constitution. The makers of the Constitution made it brief to avoid any controversies which may unnecessarily lead to further problems. Since the Constitution is brief it has helped it to mould itself according to the changes of time.

3. Rigid Constitution : It means that the process to amend the Constitution is very difficult. There are two stages in the amendment process. But we must not forget that even though the process of amendment is difficult it has grown and developed over the years and has kept pace with the times. With the help of several other means like conventions, judicial decisions,

Presidential interpretations, it has been continuously evolving. The rigidity of the Constitution is evident from the fact that only 27 amendments have been made so far in the Constitution.

4. A Large number of Conventions: Like the British Constitution conventions also play a very significant role in the American Constitution. Since the Constitution is a brief and a rigid Constitution it has been responsible for creating situations which have given rise to many conventions. The institution of Presidential Cabinet, the office of the Speaker of the House of Commons, Senatorial Courtesy, direct election of the President etc., have all originated and continued to function through conventions. Conventions have also played a crucial role in the evolution of the Constitution.

5. Federal Character: The American constitution is federal in character. There are 50 states in America each with its own government, and then there is the central government for the whole country. The US Constitution has all the features which are essential for a federation: division of powers, supremacy of the constitution, independent judiciary, bicameral legislature, and dual citizenship. Both the federal government and state governments exercise authority within their respective spheres as demarcated for them by the Constitution.

6. The Preamble affirms faith in Popular Sovereignty: The Preamble clearly mentions that people are the real and ultimate source of all power. It is through free, fair, secret and regular elections that the people exercise their sovereign power and choose their representatives. The representatives exercise authority on behalf of the people and that too for a fixed term.

7. Supremacy of the Constitution : In the US, the Constitution is supreme. No other law is above the Constitution. No law can violate the Constitution of USA. The government of United States derives all its powers from the Constitution. Government cannot carry out any work by violating the provisions of the Constitution. The Supreme Court protects the supremacy of the Constitution by exercising the power to reject any law or policy, which is against the spirit of the Constitution. No State constitution can contain any provision against the US Constitution. In case a State law violates the provisions of the US Constitution, that law is declared as null and void by the Supreme Court.

8. Separation of Powers : The US Constitution is based on the principle of separation of powers which means that the three organs of government, the executive, legislature and judiciary

carryout their functions independently without interfering in the area and working of the other organs. The Constitution framers were greatly impressed by the ideas of Montesquieu and therefore accepted the concept of Separation of Powers. The Constitution provides a clear cut separation of powers, where the law making power lies in the hands of the legislature; executive power with the President and judicial power in the hands of the Supreme Court and other inferior courts.

9. Bill of Rights : It means that the American constitution guarantees fundamental rights to its citizens. The Government has been denied the power to limit or take away the rights and freedoms of the people as granted by the Bill of Rights. The Supreme Court acts as the protector of the rights of the American people. At the time of its making, the US Constitution did not contain a formal Bill of Rights for which the Constitution was criticized by some states. To remove such criticisms ten amendments were made in the Constitution after which a Bill of Rights was incorporated in it.

10. Democratic Republic: The Constitution provides for a democratic republic. Ultimate power lies in the hands of the people. It is a democracy because the government is elected by the people and is responsible to them. People enjoy fundamental rights and freedoms. It is a republic because the Head of the State is an elected head of the State who remains in office for a fixed term. The US Constitution makes it compulsory for the states of the federation to adopt democratic republicanism.

11. Presidential form of Government : In the United States Presidential form of Government has been at work. The constitution-framers decided to have a government which was strong and yet limited. It means that the President is the head of the state as well as the government. President neither is responsible to the legislature nor is the legislature responsible to the President. The President remains in office for a fixed term. At the same time President cannot dissolve the legislature before the expiry of its full term.

12. Bicameral Legislature : Legislature of United States is known as the Congress, comprising of two houses. The upper House is known as the Senate and the lower House is known as the House of Representatives. The lower House is a directly elected chamber constituting of 435 members. It has a fixed but a short tenure of only two years. The upper House consists of 100

members. Two Senators are elected by each of the 50 states. The Senate is a quasi-permanent House and 1/3rd of its members retire after every two years. A Senator's tenure is of six years. In case of ordinary law making and amendment of the constitution both the houses enjoy equal powers. In the sphere of financial legislation, the Senate has the final say.

13. Independent Judiciary : The courts in the USA, whether federal or state courts, are independent of the control of the legislature and the executive. Supreme Court is the highest court of appeal in the USA. The judges of the Supreme Court are appointed by the President with the approval of the Senate. The judges hold office for a very long term, and can be removed from office only through a difficult process of impeachment. Judges are men of high qualifications and they get good salaries and other service benefits.

14. Judicial Review Power of the Supreme Court : This is a very significant feature of the U.S Constitution. It is the power of the Supreme Court to reexamine the laws made by the legislature, and the policies made by the President. If it finds any law or any policy unconstitutional it can reject such laws and policies. This power of the judiciary has enhanced the position of the American judiciary. It has the power to finally determine the meaning and scope of the Constitutional provisions.

15. Dual Citizenship : Each American enjoys the common citizenship of the United States of America as well as the citizenship of that state of the federation to which he/she belongs. For example a resident of the state of Florida is a citizen of Florida and a citizen of United States of America at the same time. This feature enables each state to maintain its individuality.

16. Bi-party System : The US political system has naturally provided an opportunity for the rise and development of several political parties, out of which two parties have become dominant and major political parties. They are the Republican and the Democratic. These two parties are directly and continuously involved in the struggle for power in the US political system. They have made it possible for the Americans to work their democratic system in a successful and efficient way.

17. Checks and Balances : Even though the principle of Separation of Powers prevails in the US yet complete separation is neither possible nor desirable. Therefore, the framers of the Constitution created a system of mutual checks and balances among the three organs of

government. For example, appointments and treaties made by the President require the approval of the Senate. Likewise, the bills passed by the Congress become law only when signed by the President. Again, the Supreme Court can reject any law made by the Congress or any policy made by the President as unconstitutional by exercising its power of judicial review. In fact, the Constitution provides a net-work of checks and balances among the three organs of the government.

The above mentioned are the salient features of the US Constitution which were designed by the constitution-framers in such a way so that it satisfies the needs ands aspirations of the American people. This Constitution has served well, continues to serve well, and is destined to serve well in future the people of the United States of America.

CONCLUSION

A. The history of the emergence of United States of America as a sovereign independent republic is a very interesting account. A study of the history of the Constitution of U.S.A. reveals that it was a peculiar set up of thirteen (13) colonies which ultimately led to the rise of the federation.

B. Through different Royal Charters, England established three different types of colonies in America

C. The British government started imposing taxes upon the colonies as it thought that the colonies should bear a part of the expenses of administration and defence of the colonies. People of these thirteen colonies objected to such a move of the British government as they were not represented in the British Parliament. The people of the colonies declared “no taxation without representation.” The war of words turned into an open conflict of arms.

D. In order to give a fight to the British forces, the colonies decided to organize a common army. The colonies formed a body called the Continental Congress to manage the common affairs of the colonies. In 1775, the Congress appointed George Washington as the Commander- in- Chief of the armed forces of the colonies.

E. In 1776, George Washington emphasized the issue of independence. The Continental Congress appointed a committee to prepare a declaration of independence. The Declaration of Independence adopted on July 4, 1776 announced the birth of new nation. It declared the

Colonies as States, each independent of the Crown and politically independent of others. The Declaration was a landmark because it laid the foundation stone leading to the birth of the American nation.

F. The Declaration of Independence adopted by the colonies led to a war with Britain. The Revolutionary war known as the War of Independence continued for about six years. Ultimately, the colonies came out victorious which made the colonies independent States.

G. The Constitution was ratified and finally adopted on June 21, 1788 and came into effect on March 4, 1789. George Washington took the oath of office as the first President and John Adams as the first VicePresident of the U.S.A.

H. With the adoption of the Constitution, the US began its march towards towards stability, strength and development and within a span of 175 years the USA has been successful in enlarging itself from a small federation of 13 colonies to a strong and powerful federation of 50 States.

I. The American Constitution is one of the oldest written constitutions of the world. It is in the form of a document. It is a self-made constitution of the people of the USA.

J. It is a brief document of 15 pages containing only 4000 words. If we add the amendments, the total number of words becomes 6000. The Constitution consists of just 7 Articles and only 27 amendments.

K. Like the British Constitution conventions also play a very significant role in the American Constitution. Since the Constitution is a brief and a rigid Constitution it has been responsible for creating situations which have given rise to many conventions.

L. The US Constitution has all the features which are essential for a federation: division of powers, supremacy of the Constitution, independent judiciary, bicameral legislature, and dual citizenship.

M. The Preamble clearly mentions that people are the real and ultimate source of all power. It is through free, fair, secret and regular elections that the people exercise their sovereign power and choose their representatives.

N. The US, the Constitution is supreme. No other law is above the Constitution. No law can violate the Constitution of USA. The government of United States derives all its powers from the Constitution.

O. The US Constitution is based on the principle of separation of powers which means that the three organs of government, the executive, legislature and judiciary carryout their functions independently without interfering in the area and working of the other organs.

P. The American Constitution guarantees fundamental rights to its citizens. The Government has been denied the power to limit or take away the rights and freedoms of the people as granted by the Bill of Rights. The Supreme Court acts as the protector of the rights of the American people.

Q. In the United States Presidential form of Government has been at work. It means that the President is the head of the state as well as the government. The President is not responsible to the legislature. The President remains in office for a fixed term. At the same time President cannot dissolve the legislature before the expiry of its full term.

R. The courts in the USA, whether federal or state courts, are independent of the control of the legislature and the executive. Supreme Court is the highest court of appeal in the USA. By virtue of the power of judicial review, the Supreme Court can reexamine the laws made by the legislature, and the policies made by the President. If it finds any law or any policy unconstitutional it can reject such laws and policies.

S. The US Constitution has changed considerably since its inception. The means by which the US Constitution has grown are amendments, Congressional laws and interpretations, executive interpretations and orders, development by the Supreme Court, doctrine of Implied Powers, conventions.

THE EXECUTIVE

THE PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES OF AMERICA

1. Introduction

2. The President of the United States of America

3. Election Procedure of the American President

4. Qualifications, Tenure and Removal of the President

5. Powers of the American President - Presidential Powers

6. The Vice-President of the United States of America

7. Election Procedure of the American Vice-President

8. Functions of the Vice-President

9. Position of the Vice-President

10. Conclusion

INTRODUCTION

This unit introduces you to the executive organ of the American government. The United States of America has a Presidential form of government where the executive is independent from the legislature. You will come to know that there is an office of the President who is both the head of the state as well as the government. The American presidential form of government also has the office of the Vice President. This unit will also enlighten you regarding the election procedure of the President and Vice President, what are the qualifications required, term of office, removal method etc. The enormous powers that the President exercises will also be mentioned in this unit. After going through the powers of the President as discussed in this unit, you will be able to understand why the American President's office is regarded as one of the strongest democratic offices in the world. Along with that the functions and position of the Vice-President will also be highlighted in this Unit.

THE PRESIDENT OF THE UNITED STATES OF AMERICA

The President of USA is the head of the state as well as government. He/she has enormous power under the Constitution of that country. In the following sections we shall discuss election procedure, qualification, tenure, removal process and powers of the American President.

ELECTION PROCEDURE OF THE AMERICAN PRESIDENT

We all know that USA is a Republic; therefore, the head of the state is an elected head. The framers of the American Constitution felt that a direct election of the President may cause disorder and confusion. They wanted a President to be elected in an orderly and a dignified manner. Hence in the Philadelphia Convention it was decided that the President should be elected by a Presidential Electoral College, the members of which will be elected by the people.

A. Nomination of Candidates : At first the political parties nominate their respective candidates for the office of the President. Each political party holds a National Convention for choosing its Presidential nominee. These conventions are held sometime in the months of June-July of the year of election.

B. Election Campaign : Election Campaign starts after the National Conventions end. It is an important factor in the process of Presidential election. During the campaign process, the country witnesses one of the most colourful and exhaustive political scenario. The mass media is most actively involved during this period.

C. Composition and Election of the Electoral College : The Presidential Electoral College comprises as many as the total number of the members of both houses of the American legislature, (435 members of the House of Representatives + 100 members of the Senate = 535members). After the 23rd Amendment, three more seats have been given to the District of Colombia, and, as such, the membership has increased to 538 (535 + 3 = 538).

The American political system moves according to calendar pattern. The members of the Electoral College are elected by the voters on Tuesday after the first Monday in the month of November of every leap year. These electors meet in the capital of each State on the first Monday after the second Wednesday in December and cast their votes for electing the President. On the day of voting, the people of the country do not vote directly for a particular candidate but for a slate of electors pledging to vote for a specific Presidential and Vice-Presidential candidate.

The Presidential Electoral College is a special body formed after every four years for electing the President. It gets dissolved after performing this function. Separate ballot papers are provided for casting votes separately by each member of the Electoral College.

D. Counting of Votes and Declaration of the Result : The ballots are sealed and sent to the Chairman of the Senate, where counting is done and the results announced. The Presidential candidate securing a clear majority of votes (270 votes out of 538), gets elected as the President.

E. Oath of Office : The elected President is administered the oath of office on the 20th of January by the Chief Justice of the Supreme Court.

As a student of political science a question may come to your mind as to what would happen if a Presidential candidate fails to get a clear majority. The answer to this question is that under such circumstances, the responsibility for electing the President is passed on to the House of Representatives. The House of Representatives has to elect one of the first three candidates getting the highest number of electoral votes. Voting by the House is done state wise with representatives of each state acting as a bloc and exercising one vote. By following this practice whosoever gets the maximum number of votes is elected as the President.

Qualifications, Tenure and Removal of the President

In this section, we will discuss the qualifications and tenure of the President of the United States as well as the question as to how he or she can be removed.

Qualifications : A person in order to become the President of America has to have certain qualifications—

(a) The candidate must be a natural born American citizen.

(b) The candidate must be at least thirty-five years of age.

(c) He/she must have lived in the United States for not less than 14years.

It is important for us to remember one thing that a naturalized citizen cannot contest for the post of President.

Tenure : The President of the United States is elected for a term of four years by an electoral college. The Constitution framers took this decision because they felt that the term should be neither too long nor too short. The Constitution originally did not put any restriction on the re-election of a President. George Washington, the first President was elected twice but he refused

to contest election for the third time. Since then a convention has been developed which stops the re-election of a President for more than two consecutive terms. In case a President dies before the completion of his term, the Vice-President succeeds the President.

At this point of time a question may come to your mind that what happens if both the offices of the President and VicePresident become vacant on account of death, resignation or removal? The answer to this question would be that, in case the Vice-President is not available to fill the vacancy the line of succession would be: (a) The Speaker of the House of Representatives, (b) The President Pro-Tempore (for the time being) of the Senate, (c) The Secretary of the State followed by other members of the Cabinet. However such an opportunity has never arisen to this day in the history of the American political system.

Removal of the American President: The President can be removed from office before the expiry of the normal term through the process of impeachment. He/she can be impeached if found guilty of treason, bribery or high crime. The impeachment process is initiated by the House of Representatives. For this, the House has to pass the impeachment resolution mentioning the charges by a majority of votes. The resolution thus passed then goes to the Senate.

The Senate then sits as the court of investigation. Such a meeting of the Senate is presided over by the Chief Justice of the US Supreme Court. The Senate investigates the charges and the President is given full opportunity to clarify his position and defend himself/herself. If however, the Senate, after full deliberations, also passes the impeachment resolution by a 2/ 3rd majority, the President stands impeached.

The impeachment method is a difficult method. Till today only two Presidents, Mr. Andrew Jackson (1868) and Mr. Bill Clinton (1998) had to face it. However, the two were not impeached because the impeachment resolution failed to get passed.

POWERS OF THE AMERICAN PRESIDENT

The U.S. Constitution creates a Presidential System of Government. It provides for the office of the President and makes him/her both the head of the state as well as government. He/she is

neither a member of the Congress nor responsible to it. He/she holds a stable, fixed and definite term of four years.

As already mentioned the President is both the head of the state and the government and therefore, the President enjoys vast powers in the U.S.A. His/her office is one of the most powerful and strongest democratic offices in the world. The powers of the President may be discussed under the following heads: executive, legislative, judicial, powers as head of the state and powers as leader of his/her party. Before discussing the powers of the President, let us discuss about the sources of President's powers.

The powers of the American President can be explained under the following heads.

A. Executive Powers: Among all the powers that the President exercises his/her executive powers are immense. He/she exercises executive powers in the following ways :

i. As Chief Administrator : The President is the head of national administration. It is his/her duty to see that the Constitution, laws and the treaties of the United States and the judicial decisions given by the federal courts are properly implemented throughout the country. He/she is assisted in carrying his/her functions by the entire federal bureaucracy. In case a Republican government is threatened in a particular state or if there is a danger of invasion of that state, the President has got the right to act on his/her own initiative.

ii. As Commander-in-Chief : The President being the Supreme Commander of the armed forces of the United States is responsible for the defense of the country. He/ she appoints military officers with the advice of the Senate and can remove them at will. Although the power to declare war lies in the hands of the Congress yet the President can make war unavoidable and necessary by his/her conduct in administration. As Commander-in-Chief, the President decides where troops are to be located and stationed. Every action of the armed forces on land and sea is carried out according to the orders of the President.

iii. Power of Appointment : As administrative head, the President appoints, with the advice and consent of a simple majority of the Senators present, Ambassadors, Ministers, Federal Judges and other officers of the United States whose appointments are not otherwise provided for in the Constitution.

iv. Power of Removal : The President enjoys unchecked authority to remove persons he/she disapproves as executive members. This power, however, does not cover the officials appointed by the commissions. It is to be remembered here that regarding the removal of the judges the President enjoys limited powers.

v. Treaty-making Power : The President has the power to make treaties with sovereign states. However, all such treaties have to be approved by a 2/3rd majority of the members present and voting in the Senate.

vi. Conduct of Foreign Policy : The US president is the chief architect of the US foreign policy. He/she does not only make the foreign policy but also conducts foreign affairs of the USA. The foreign policy decisions of the US President create an impact upon all the nations of the world.

B. Legislative Powers: Even though the US Constitution has vested the legislative powers in the hands of the Congress, yet, the President has been given some role in the legislative sphere. Some of the legislative powers of the US president are–

i. Messages to the Congress : The President can send messages proposing some legislative measures which is generally not ignored by the Congress, as it comes from the highest authority of the State. The President also reports to the Congress on the state of union and on problems which he/she believes require immediate action on the part of the Congress. Such message is sent both to the Congress and the people and it is communicated through the television.

ii. Exercise of Veto Power : The Constitution mentions that every bill passed by the Congress requires the consent of the President to become a law. The President has to sign within ten days of submission failing which the bill becomes a law even without the President's signature.

However, the President can check the passing of laws disliked by him/her by exercising the veto power. The veto power is of two types- Suspensory Veto and Pocket Veto. Under suspensory veto, the President can return a bill before expiry of 10 days. The two houses have to again pass it by 2/3rd majority. In case the bill fails to get this majority, the bill stands rejected. But if it qualifies the requirement it becomes a law and President has to sign. Under pocket veto if the President withholds his consent and the 10days term expires, the bill becomes a law even without the consent of the President, provided the Congress is still in session. But if the Congress is

adjourned before the expiry of 10 days term, in such a case, the bill is killed which is called as pocket veto.

iii. Making of Executive Orders : Under this head, it can be stated that the President has the power to issue executive orders in order to meet the needs of administration arising out of unforeseen circumstances. Moreover, it is the responsibility of the President to implement the laws made by the legislature. This power has been extensively used by the US President.

iv. Power to call special sessions of the Congress : Special sessions of the Congress can be convened by the President on extra-ordinary occasions. To hold such sessions, President has to give in writing the reason. Once special sessions are convened, it depends upon the Congress to decide the duration of such sessions and when it is to be adjourned. However, if the two houses fail to decide the date of adjournment because of serious differences, the President can fix the date. But it is generally seen that the two Houses never give such an opportunity to the President.

v. Budgetary Power: The Budget and Accounting Act of 1921 gives him or her power over the preparation of the national budget which he/she submits to Congress with his or her annual budget message.

C. Functions as the Leader of the Nation: The President is regarded as the symbol of the nation. He/she acts as the single most powerful leader of the American nation upon whom people depend for peace, security and developmental needs. The President guides the people in times of war as well as peace.

D. Judicial powers: Like all other chief executive heads, the President of the United States has the power to grant mercy or pardon to all offenders proved guilty of violating the federal laws. The President appoints the Chief Justice of the Supreme Court and thereby enjoys some judicial powers.

E. Powers as Head of the State: The U.S. President is not only the head of the government, but also the head of the state and performs like the Indian President the ceremonial functions. The functions of the head of the state and government are combined in his or her person. As such, we can say that the office of the US President is of great dignity and prestige.

F. Functions of the President as the Leader of his/her party: The President also acts as the leader of his/her party. His/her control over the party is a source of strength. The President plays a key role in carrying out the work of his or her party. He/ she nominates even the chairperson of his/her party and helps the party to select a new candidate, in case he/she own has either completed his/her two terms as President or is not interested in running for a second time for the office of the President.

From the above mentioned powers and functions of the President, we can say that US Presidency has become the most powerful office in the world. He/she is the maker and director of the U S foreign policy and Americas' relations with other nations. Not only in the national sphere but also in the international sphere, the President's leadership is of the greatest importance. Because of his/her key role in international relations some scholars describe the President as the most powerful ruler in the world. In fact, the US President holds one of the most powerful offices ever created by a democratic nation.

THE VICE-PRESIDENT OF THE UNITED STATES OF AMERICA

The US Constitution provides for the office of the Vice President. To hold that post he/she must be a citizen of America and above the age of 35 years and must have resided in America at least for fourteen years. Moreover, he/she should not be a resident of the state or the region to which the President belongs.

If the office of the President becomes vacant due to sudden death, resignation or impeachment of the President, then Vice-President resumes the post of the President. Thus he/she plays a very important role if the post of the President falls vacant in the middle of the term. He/she has to take up the responsibility then.

Election Procedure of the American Vice President

The process of electing the Vice- President is similar to that of the President. Before the 12th amendment of the Constitution was passed, there used to be the system of single ballot and the candidate securing the maximum number of votes used to become the President and the next candidate in order of votes polled used to become the Vice-President. But this system creates problems when two candidates secure equal votes. Hence the 12th amendment was passed which

provided for separate ballots for the two offices of the President and the Vice-President. Thus two elections are held separately for the two posts. The people elected to the Presidential Electoral College elect the President and the Vice-President. When a party nominates its candidate to contest the election for the office of the President, it also gives to its presidential candidate the power to nominate his/her running mate for the office of the Vice-President. The campaign in favor of a presidential candidate is also a campaign in favor of the vice presidential candidate. People decide who shall be their next President and along with it they also vote for his/her running mate as Vice-President. Even at the party level, the person who secures the nomination of his/her party as the candidate for presidential election gets the right to nominate the candidate who is to contest election for the office of Vice-President. The President can then nominate a Vice-President and if the Congress approves his/her name, he/she can work as the Vice-President. The Vice-President also holds office for a term of four years. The Constitution has not placed any restrictions on the number of times he/she can contest for the post. The Congress can remove the Vice-President by means of impeachment.

Functions of the Vice-President

The functions of the Vice-President can be discussed as follows:

Potential Functions : The main potential function of the VicePresident is to become a successor to the President in case of a sudden vacancy caused by death, resignation, removal or because of his/her incapacity. When a permanent vacancy occurs in the office of the President, the Vice-President works as President for the remaining term. In case the President of the United States becomes incapable of rendering his/her duties because of illness or any other reasons, the Vice-President can take over as the acting President and continues in the same capacity till the President becomes capable of taking over charge.

Normal Functions : During normal times the Vice-President acts as the ex-officio chairperson of the Senate. Though not a member of the Senate, the Vice-President presides over its meetings and conducts its proceedings as its Chairperson. However his/her functions are limited in this capacity. The debates in the Senate are regulated by the Senators. The VicePresident is considered as an outsider in all such sittings. The Vice-President does not exercise any voting power. But in case there is a tie the Vice-President has a casting vote.

Miscellaneous Functions : In the present times the President always utilizes the services of the Vice-President. The VicePresident can attend cabinet meetings if the President so permits. The President can assign the Vice-President any role as his/her representative or otherwise. The Vice-President is a member of the National Security Council. In most cases the Vice-President acts as chairperson of several committees and councils.

Position of the Vice-President

An analysis of the office of the Vice-President reveals that this office is devoid of glamour and authority. Under normal circumstances the Vice-President has little role to perform except sit in the Senate as its ex-officio Chairperson. However during times of crisis the Vice-President plays an important role, by stepping into the Presidents shoes. The President chooses the Vice-President as his/her representative to carry out foreign relations.

CONCLUSION

A person in order to become the President of America has to have certain qualifications- the candidate must be a natural born American citizen, the candidate must be at least thirty-five years of age, he/ she must have lived in the United States for not less than 14 years.
The President of the United States is elected for a term of four years by an electoral college.

The President can be removed from office before the expiry of the normal term through the process of impeachment.

The powers of the President may be discussed under different heads : executive, legislative, judicial, powers as head of the state and powers as leader of his or her party.

The Vice-President of the United States is elected for a term of four years. The Vice-President can be removed from office before the expiry of the normal term through the process of impeachment.

The most important function of the Vice-President is that if the office of the President becomes vacant due to sudden death, resignation or impeachment of the President, then Vice-President resumes the post of the President. Beside this the Vice-President also performs other functions.

THE LEGISLATURE

THE AMERICAN CONGRESS

A. Introduction

B. The US Congress : Its Structure and Organisation

C. The House of Representatives

D. The Senate

E. Powers of the House of Representatives

F. The Senate: Its Special Powers

G. Senate as the Most Powerful Second Chamber in the world

H. Conclusion

INTRODUCTION

In Article 1 of the American Constitution it is very well laid down that all the legislative powers of the American Federation will be in the hands of the Congress. This unit will elaborately discuss the organization of the Congress, the powers and functions exercised by both the Houses and will also let you know about the upper House which is more powerful than the lower House. This unit will also try to make a comparative study between the upper House of the American Legislature and the upper House of the British Legislature. After going through this unit you will get a clear picture of the legislature of the American Government and the role it plays in the law making process and in the over all working of the government.

THE US CONGRESS : ITS STRUCTURE AND ORGANSATION

The American Legislature as we all know is called the Congress. It is a bicameral legislature comprising two chambers. The Upper House is known as the Senate and the Lower House is known as the House of Representatives. The framers of the American Constitution opted for a bicameral legislature because of the following factors:

I. Their Familiarity: The framers of the Constitution were more familiar with bicameral legislatures than with those of a unicameral legislature.

II. To guard against despotism: The Constitution makers thought that a single house legislature may lead to misuse of powers and, therefore, they opted for a bicameral legislature so that it checks the misuse of powers.

III. To provide stability: The preference for a bicameral legislature at the Philadelphia Convention was influenced by the desire to provide stability in government. The country at that time had passed through a period of chaos and uncertainty. The fathers of the Constitution wanted a government which would be able to maintain peace in the country. Thus, a bicameral legislature was established.

The House of Representatives

The House of Representatives is the lower and directly elected House of the US Congress. This House represents the people of the United States.

Composition : The total strength of the House of Representatives is 435. All the members of this House are directly elected by the people.

Qualifications for Membership : Any person with the following qualifications is eligible for membership of the House of Representatives—

i. He or she should be a citizen of the USA.

ii. He or she must be at least of 25 years of age.

iii. Must be a resident of the country for at least seven years.

iv. He/she must be a resident of the district which he wants to represent.

v. He /she should not hold any office of profit. m He/she must not be charged of treason, bribery etc.

Tenure : The members of the House are elected for a term of two years. They are eligible to get re-elected and there is no time limit on it. The House has a fixed term of two years. It cannot be dissolved before the expiry of its full term.

Privileges : The members of the House of Representatives are entitled to certain privileges. (a) They have the privilege of freedom from arrest during the sessions. But, it is to be remembered here that it does not protect them from arrest in a civil suit while the House is not in session. (b) They have complete freedom of speech or debate in the House and they cannot be questioned for it by any court of law.

Sessions: The 20th Amendment of the American Constitution has made it compulsory for the Congress to hold one session every year. The session begins on 3rd January each year. The two Houses meet simultaneously and mostly adjourn their sessions on the same day. In case of disagreement between the two Houses regarding the date of adjournment of the session of the Congress, the President decides the date.

Chairperson of the House: The Speaker is the Chairperson of the House who is elected by the House. He/she presides over the meetings of the House and conducts the proceedings of the House. The Speaker always belongs to the majority party.

THE SENATE

The Senate is the upper House of the US Congress. Unlike other upper chambers of the world, the Senate is more powerful than the lower House of the American Congress. In fact, it is regarded as the most powerful second chamber in the world. The Senate occupies an important position in the constitutional system of America.

Composition of the Senate: The Senate represents the States of the US Federation. Each state, irrespective of its size and population, sends two members to the Senate and this provision is not amendable. This chamber gives equal status to all the States of the US Federation. There are 50 States in the US federation. Each State sends two representatives to the Senate. Thus, the Senate is composed of 100 members (2 x 50 =100).

Qualifications for Membership: Any American can become a member of the Senate, in case he has the following qualifications—

i. He/she is a citizen of the USA.
ii. He / she is not less than thirty five years of age.
iii. He/she is an inhabitant of the State which he/she wants to represent.
iv. He/she is a resident of the United States for at least nine years, but not essentially consecutive.
v. He/she satisfies the rules of membership which the Senate prescribes.

Method of Election : At the initial stages the Constitution provided for an indirect election of the Senators. But this system was found to be undemocratic and harmful, because it led to the election of undesirable persons as Senators. Accordingly, in 1913, the Seventeenth Amendment was adopted providing for the direct election of the Senators by the people of the United States. This change has made the Senate a popular directly elected House and has given a new strength and status to the Upper House.

Tenure: The term of a Senator is six years and the Senators are eligible for re-election. It is a continuous body with one-third of its members retiring every two years. Since the Senators enjoy a long tenure of six years and there is the provision for re-election, they acquire experience and a certain measure of leadership.

Sessions: The sessions of the Senate are held simultaneously with those of the House of Representatives. The regular annual session of the Senate begins on 3rd January each year and runs till the end of July. The date of adjournment is decided by the Congress. But, in case there is disagreement between the two Houses regarding the date of adjournment then it is the President who decides the date of adjournment. However, it is important to remember that till date no President has ever got an opportunity to exercise this power.

Privileges: The privileges enjoyed by the Senators are—

i. No Senator can be arrested in a civil case during the sessions of the Congress.
ii. During the sessions of the Congress, a Senator cannot be compelled to act as a witness in the courts of law.
iii. The Senate has the power to regulate its own debates and make its own rules and conduct the business of the House.
iv. Full freedom is enjoyed by the Senators to carry out discussions in the House. No restriction is imposed upon individual speeches made by the Senators. Therefore there is full freedom of debate in the Senate.

Presiding Officer of the Senate: The Vice-President of the United States is the presiding officer of the Senate. He or she is not a member of the Senate and is neither the spokesman of the House nor its leader. It is the Senate which regulates the debates of the House and not the Vice-President. The Vice-President has the power to vote only in the case of a tie.

POWERS OF THE HOUSE OF REPRESENTATIVES

We all by now know that the Senate represents the States, and the House of Representatives represent the US citizens and is directly responsible to them. This House of the American Congress is entrusted with certain powers and functions which are enumerated below:

Legislative Powers: In the sphere of law-making, the House of Representatives has legally an equal share with the Senate. Any bill can be introduced in it. After getting passed from it, the bill goes to the Senate. In case the Senate also passes it, the bill goes to the President for his or her signatures. If the President does not sign the bill and ten days elapse, the bill becomes an act. If any conflict arises between the two Houses and it remains unresolved, a Conference Committee comprising equal members from each house is appointed which gives the final verdict of the bill.

Financial Powers: Money bills can originate only in the House of Representatives. The budget, too, is first introduced in the House. The money bills and the budget are first passed in the House and then sent to the Senate, which has the power to make any change in them. As such, the Senate determines the final shape of every money bill. l Constituent Powers— The passing of an amendment bill by the Congress requires approval by 2/3rd majority in both the Houses. House of Representatives as such has equal role in initiating amendments to the Constitution.

Executive Powers: The House of Representatives has a few and minor executive functions. It can appoint investigating committees for investigating the work of various government departments. The House along with the Senate has the power to declare war. Besides this, the House has not been entrusted with any other executive powers.

Admission of New States: The Constitution empowers the Congress to admit new States to the Union. The House of Representatives shares with the Senate equal power to admit new States to the Union.

Judicial Powers: The House of Representatives along with the Senate, has the power to create new Federal courts and decide their jurisdictions. It shares with the Senate the power to impeach the President, Vice-President, the Judges of the Supreme Court and other high officials. The House of Representatives begins the impeachment process. However, it is the Senate which sits as the Court of Impeachment and gives the verdict.

Electoral Functions: If in a Presidential election no candidate secures absolute majority, the responsibility to elect the President falls on the shoulders of the House of Representatives. It elects one out of the first three candidates securing the highest votes in the Presidential Electoral College as the President of the United States.

The above mentioned powers of the House of Representatives show that this chamber of the American Congress enjoys less power than the Senate. The House has a weak role and its very short tenure in deed, makes it a weaker house. Even though it enjoys certain powers along with the Senate, yet in reality it reveals that the final power lies in the hands off the Senate. The Senate plays a more dominant and leading role in the American political system. The House of Representatives in this regard is a less powerful chamber of the US Congress.

THE SENATE: ITS SPECIAL POWERS

As mentioned already, the Senate is a powerful House. As such, it enjoys a vast amount of power and authority in the law making and financial sphere. It is entitled to enjoy some special powers. The powers of the Senate can be mentioned under the following heads: l

Power to Check the President: This power of the Senate is visible in the following matters:

Role of Senate in Appointment-Making: All appointments made by the President require the approval or confirmation of the Senate. No appointment is valid unless approved by the Senate. It is essential to remember that the Senate rarely rejects the appointments of the executive heads of the departments made by the President. It, however rejects the appointment of a federal official if, before announcing his or her appointments, the President fails to consult the Senators of his or her party who represent the state for which the particular appointment is to be made. This practice is known as Senatorial Courtesy.

Power to Ratify Treaties: All the treaties made by the President becomes operative only when it is ratified by 2/3rd majority members of the Senate. By exercising this power the Senate greatly exerts its influence on the foreign relations conducted by the President of the USA. The President is helpless if the Senate refuses to ratify a treaty. For example, in the year 1999, the Senate refused to ratify the CTBT (Comprehensive Test Ban Treaty), which had been signed by the US President. This clearly shows the influence of the Senate in foreign relations and decisions of the United States.

Senate alone sits as the Court of Impeachment: When impeachment proceedings take place, the House of Representatives frames charges and the Senate sits as the court of impeachment for investigating and finally deciding the case. After investigations and hearings, if the Senate

accepts and passes the impeachment resolution by a 2/3rd majority, the person concerned stands impeached. A person convicted in an impeachment by the Senate cannot be granted pardon even by the President.

Election of the Vice-President in a Special Case: If a VicePresidential candidate fails to secure absolute majority votes in the electoral college, it becomes the responsibility of the Senate to elect the Vice-President from amongst the first two candidates.

Legislative Powers: The Senate enjoys equal legislative powers with the House of Representatives. Any non-money bill can originate in the Senate. After a bill is passed in the Senate, it goes to the House of Representatives. If it also passes it, the bill goes to the President for his or her signature and it becomes a law if signed by the President or even if the President fails to sign and 10 days elapse. However, in case of a conflict between the two Houses, a Conference Committee consisting of members of both the Houses is constituted to resolve the deadlock. The decision of the committee finally settles the fate of the bill.

Financial Powers: Senate plays a very important role in the passing of a Money Bill. Even though a Money Bill originates in the House of Representatives, yet it is not of much significance because the Senate has vast amending powers. It may strike out everything except the title of the bill. Thus, the final shape of the money bill depends upon the wishes of the Senate.

Investigation Powers: This is another important power of the Senate according to which the Senate has the power to investigate the working of various executive departments. This power is fully used by the Senate to exercise control over government departments and federal officials. The investigating committees of the Senate have always served as powerful instruments of control over the administration.

Constituent Powers: Regarding the proposals for amendment of the Constitution, it can be initiated by 2/3rd majorities in both Houses of the Congress. The Senate enjoys equal powers with the lower House in this regard.

The above mentioned powers of the Senate have proved beyond any shadow of doubt that this House of the American Senate exercises enormous powers. Its special powers have been a source

of great strength and authority. The Senate enjoys a centrally important place in the US political system. There are many things which the Senate and the House of Representatives do together. There are several things which the President and the Senate do together. But there is little that can be done without associating the Senate. It is also important for us to know that, the Senate is the only branch of American Government which never dies. It is looked upon as the backbone of the whole federal system. Thus, it can be said without any doubt that the Senate is one of the most powerful and important institutions of the American political system.

CONCLUSION

- The American Legislature as we all know is called the Congress. It is a bicameral legislature comprising two chambers. The Upper House is known as the Senate and the Lower House is known as the House of Representatives.
- The House of Representatives is the lower and directly elected House of the US Congress. The members of the House are elected for a term of two years.
- The Speaker is the Chairperson of the House who is elected by the House. He or she presides over the meetings of the House and conducts the proceedings of the House.
- The Senate is the upper House of the US Congress. The Senate is regarded as the most powerful second chamber in the world.
- The Vice-President of the United States is the presiding officer of the Senate.
- A comparative study of the American Senate (which is the world's most powerful second chamber) and the British House of Lords (which is the world's most weakest second chamber) shows that the Senate enjoys far greater powers and legislative responsibilities.

THE AMERICAN SUPREME COURT

1. Introduction
2. Structure and Organisation of the American Supreme Court
3. Jurisdiction of the Supreme Court
4. Judicial Review of the Supreme Court
5. Conclusion

INTRODUCTION

This unit introduces you to the judicial organ of the American political system which is a well-organised, efficient and independent judiciary. The framers of the US Constitution, by implementing the principle of separation of powers, have kept the judiciary separate from the executive and the legislative organs of government. At the apex of the American judicial structure stands the Supreme Court. It is the creation of the Constitution. This unit will help you get a clear picture about the various dimensions of the American Supreme Court and its importance in the overall functioning of the American political system.

STRUCTURE AND ORGANISATION OF THE AMERICAN SUPREME COURT

Courts are essential in all organized societies. Their organization and role differ with the form of government, political theories, social and economic systems, traditions and customs. The Supreme Court stands at the apex of the American judicial pyramid. The Judiciary Act was enacted in 1789 and since then, the American Judicial system has well evolved into a well-organised, powerful and independent system. The Supreme Court of the United States is specially armed with extensive powers to defend the Constitution.

Organisation and Composition of the US Supreme Court

Article III, Section 1, of the American Constitution specifically mentions that the Supreme Court is the creation of the Constitution. It is the highest judicial tribunal in the federation. The Constitution vests all the judicial powers of the federation in this court and other inferior courts to be established by the Congress. The Supreme Court stands at the apex of the American judicial pyramid. It is the highest court of appeal in the United States. The Constitution has granted the power to the Congress to provide the details regarding the organization and structure of the Supreme Court and other Federal Courts. The Congress exercised its authority by enacting the Judiciary Act of 1789, which still governs the organization of the US Supreme Court and other Federal Courts. The Constitution has not fixed the number of judges. At first, it consisted

of a Chief Justice and five Associate Justices. The number has been changing from time to time, but at present the Supreme Court comprises a Chief Justice and eight Associate Justices.

Appointment of Judges

Like all high ranking appointments, the judges are appointed by the President with the consent of the Senate. The Constitution mentions no qualifications for the judge. The President is free to appoint anyone provided the Senate confirms the nominations of the President. The Judiciary Committee of the Senate makes a careful examination of the nominations made by the President. The report submitted by the committee is then considered by the Senate as a whole. When 2/3rd majority of the members of the Senate give their approval, the President makes the appointments. As a result of this procedure, the judges of the Supreme Court have been, with a few exceptions, lawyers of distinction and men of a great calibre although no regular qualifications are prescribed in the Constitution.

Tenure

The Constitution sets no term of office for judges. They hold office during good behaviour and are removable by impeachment only. A judge may retire, if he or she wishes, when he or she reaches the age of seventy or at any time thereafter. He or she can retire with full salary and all the benefits to which he or she is entitled when in office, provided he or she has served the Bench for ten years. This has been done to attract voluntary retirements at the age of seventy or after the completion of ten years of judgeship.

Method of Removal

The judges as already mentioned can be removed only by impeachment. The power of impeachment is in the hands of the Congress. The House of Representatives frames charges, the Senate investigates and gives the verdict. In case the verdict is against the Judge, he or she stands impeached. Till today no judge has been impeached.

Salaries of the Judges

The salaries of the Supreme Court Judges are determined by the Congress. However, the Constitution provides that the salaries of the judges shall not be diminished during their continuance in office.

Sessions of the Supreme Court

The Supreme Court holds one regular session every year beginning on the first Monday in October and ending in the month of June of the following year. It meets in Washington in its magnificent white marble building. The Court conducts its hearings on Tuesday, Wednesday, Thursday and Friday. On Saturday, the Judges confer among themselves and register their opinions. On Monday, judgments are delivered in public. Special sessions may be called by the Chief Justice when the Court is adjourned, but the occasion must be of unusual importance and urgency.

Quorum for the meetings of the Supreme Court

A quorum of six judges constitute a sitting of the Supreme Court but almost all the judges sit together and reach a decision by majority. The Chief Justice is just like other judges and has only one vote. However, if he or she is a man of ability, talent and experience, he or she can exert additional influence.

JURISDICTION OF THE SUPREME COURT

The Constitution of United States has also given certain powers to the Supreme Court. The Supreme Court is vested with original and appellate jurisdiction.

Original Jurisdiction: The Supreme Court has original jurisdiction in several types of cases.

(i) Cases affecting diplomats including ambassadors, public ministers and consuls accredited to the United States.
(ii) Cases in which the United States or a State is a party
(iii) Conflicts between citizens of different states. These cases in reality are very few in number and a few cases come to the Supreme Court under its original jurisdiction.

Appellate Jurisdiction : The great majority of the work that comes before the Supreme Court is in the form of appeals that come to it against the decisions of either the lower federal courts or highest courts in the States. As an Appellate Court, the Supreme Court receives cases directly from the State Courts, Federal District Courts. In some cases it can review the decisions of the Courts of Claims and the Courts of Customs and Patent Appeals (these are the lower courts of appeal of the judicial hierarchy of America). In all cases which the Supreme Court hears and decides, no appeal can be made anywhere else. The judgements of the Supreme Court are final and no appeal lies against them.

No Advisory Jurisdiction: It is important to mention here that the Supreme Court of America does not perform any advisory function. It has refused to advise the executive as well as pass judgement upon political questions. It acts only when a law has been violated and the matter is raised in a specific suit.

The above mentioned powers of the Supreme Court clearly reflect that it is an institution of great importance in the American Federal System. In fact, Prof. Laski has mentioned that it is one of the most successful institutions of the American Federal System.

CONCLUSION

- The Supreme Court stands at the apex of the American judicial pyramid. The Judiciary Act was enacted in 1789 and since then, the American Judicial system has well evolved into a well-organised, powerful and independent system.
- The Constitution has not fixed the number of judges. At first, it consisted of a Chief Justice and five associate judges. The number has been changing from time to time, but at present the Supreme Court comprises a Chief Justice and eight associate judges. The judges are appointed by the President with the consent of the Senate.
- The Constitution sets no term of office for judges. They hold office during good behaviour and are removable by impeachment only. A judge may retire, if he or she wishes, when he or she reaches the age of seventy or at any time thereafter.
- The judges can be removed only by impeachment. The power of impeachment is in the hands of the Congress. The House of Representatives frames charges, the Senate investigates and gives the verdict.
- The Supreme Court holds one regular session every year beginning on the first Monday in October and ending in the month of June of the following year.

- A quorum of six judges constitutes a sitting of the Supreme Court but almost all the judges sit together and reach a decision by majority.
- The Supreme Court is vested with original and appellate jurisdiction. The Supreme Court of America does not perform the advisory function.
- The Supreme Court has the power to interpret it and preserve its supremacy by preventing its violations by the Congress and the President. This provision has been the basis of the judicial review power of the Supreme Court. It has come to be recognized as the most distinctive attribute and function of the Supreme Court.

PARTY SYSTEM IN USA

1. Introduction
2. The American Party System
3. Main Features of the American Party System
4. Party Organization in USA : The Republican Party and the Democratic Party
5. Conclusion

INTRODUCTION

This unit introduces you to the party system that is prevalent in the United States. After going through this unit, you will get a clear idea regarding the party system of the United States and its importance in the functioning of the American political system. The salient features of the US party system will also be elaborately discussed in this unit.

THE AMERICAN PARTY SYSTEM

Political parties are indispensable to the working of democratic governments. They constitute the backbone of democracy.

The history of political parties in America can be traced to the days when the Philadelphia Convention was framing the Constitution. The political opinion got divided between the Federalists who supported a strong central government; and the Anti-Federalist, who advocated maximum autonomy for the states. George Washington the first President of the USA himself belonged to the Federalist group. By 1828 the American political system started heading for a

two party system spearheaded by the Republican Party and the Democratic Party. These two political parties still dominate the political scene in America.

MAIN FEATURES OF THE AMERICAN PARTY SYSTEM

As we all know, in the United States, there are two major political parties, the Republican Party and the Democratic Party. There have been a few minor third parties in American history from time to time and some of them have left an imprint on the country's political system. But they have never been powerful enough to challenge the supremacy of the two great parties. The important features of the American Party system are mentioned below:

Bi-party System : The American political system has a two-party system. But we have to remember here that there are not just the two parties. There are a large number of smaller parties in the United State but, since the Republican and the Democratic parties totally dominate the political scenario, therefore, the smaller parties are often forgotten.

Similar Memberships : If we take the present time into consideration, there is no such difference in the nature of the Republicans and the Democrats. Initially the Republican Party was supported by the industrialists and the Democratic Party got the support of the agriculturists. But at present there is no such difference. Both the parties enjoy support in all sections of the American society.

Both the Parties have similar Policies and Programmes: Regarding the policies and programmes of the American political party system, it is seen that there is little to distinguish between the political and economic policies of the two parties. It is difficult to point out the fundamental differences between the Democratic and the Republican parties. The lines of distinction between the two are not clear. At the initial stages there were differences between the two parties. But the 20th century brought a tremendous change to the American society, whereby, the lines which divided the parties earlier, now became blurred. The parties now cut across all social groups and seek the support of all economic groups. Both the parties uphold capitalism and free enterprise, support to a certain extent, governmental regulation of economic life, do not believe in isolationism and both want to extend American influence through economic and military pacts.

Dominant Actors in Politics: The Republican Party and the Democratic Party are the two parties which play an active role in American politics. These parties keep the people informed on public

affairs, select candidates for the public offices, keep an eye over the working of the government, compromise and resolve interest group demands etc. Finally, it can be said that the political parties of the USA serve as a cementing factor uniting the people of different races, religions, cultures and occupations, and thereby playing a key role in the working of the US Constitution.

Existence of Strong Interest Groups within each Political Party: Another significant feature of the American party system is that within each party there are several interest groups which try to protect their interest by exerting political pressure.

Absence of Political Parties based on Race and Religion: American society consists of diverse races, cultures and religions. But an interesting fact to be noticed here is that no party is based on race and religion. There are several national level parties besides the Republicans and the Democrats, but no party stands organized on narrow lines.

Local Domination: The local organizations of both the major parties play more dominant roles than the national level organizations which become active only during the Presidential election year. But the local level organizations remain active continuously.

We have mentioned above some of the important features of the American party system which has made it unique in its own way. It is because of such features that the American parties play an unusually important role in the American political structure and administrative functioning.

PARTY ORGANISATION IN USA: THE REPUBLICAN PARTY AND THE DEMOCRATIC PARTY

Let us know that before discussing the organization of the two major parties, the Republican Party and the Democratic Party, there are various areas in which both these parties are much similar to each other. At the same time we must not also the conclusion that both the parties are the two sides of the same coin. The two parties are highly competitive organizations and each of the two parties continuously keep trying to dominate the other in the struggle for power. They are similar but not the same.

However, the party organization of the Republicans and the Democrats are quite similar and as such can be mentioned simultaneously under one heading as described below.

Decentralization: Regarding the party organization, the two major parties are highly decentralized. There is decentralization in nominations and elections. Candidates for important posts are chosen not by the party bosses but by voters directly through party primaries. The National Committee is merely a delegate body and does not possess any executive or compulsory authority.

Heterogeneity and Representativeness: The two major parties do not represent distinct and separate social or class groups. Both the parties enjoy the support of different sections of society but difference is that of degree and not of kind. The Republicans enjoy more support among the richer sections while the Democrats enjoy more support among the poorer ones. Each political party claims to represent all the people and all points of view in the country.

Local Party Organizations are more powerful than National Party Organizations: Both the parties are national parties, but the organizational centre of importance of both the parties lies in the states and in the cities and counties. It is in the local levels that the party organization usually attains a maximum detail and efficiency. The reason behind the local party organizations being more powerful is the federal nature of the system as well as the principle of regulating and conducting elections by the states.

Almost Self-contained Party Units: The American political parties stand hierarchically organized. However, the top level organization that is, national level party organizations have less control over the lower level, that is, state and local level organizations. But the Party structure of each level is self-contained and party organizations at higher levels do not exercise much control on those below. The national committees do not dictate to the state committees and the state committees do not dictate to the county and city committees. Thus, it can be said that there is no flow of authority either up or down the scale.

Three Tier Party Organization: The party organization in the United States is a three tier organization. Each party has local, state and national level party organizations. Each level is quite self-contained. The inter-level relationship is governed by the federal spirit.

Local Level Party Organization: At the lowest level is the Precinct Committee or the polling district. Its size is determined by the population density and the number of voters. There are about 1,30,000 precincts in the country. Each precinct has between 1 and 500 voters. The Chairman of the party precinct unit is responsible for a direct contact of the party with the voters. He looks into their difficulties and provides services so that they may vote for the party on the day of election.

State Level Party Organization: The party organization at the State level consists of a State Central Committee headed by a Chairperson. The State Central Committees are differently organized in different states. The function of the State Central Committee is to see that the local party organizations are kept alive and active. It also looks into the matters relating to registration of voters. When the time of election in the state draws near, the State Central Committee makes the party's campaign plans, determines when and where the party convention shall be held, and how funds shall be raised.

National Level Party Organization: At the top of the party organization stands the National Committee. The National Committee of the Democratic Party consists of two members, one man and one woman, from each state. The National Committee of the Republican Party also consists of two members, one man and one woman, from each state, and in addition to it, the Chairmen of the State Central Committees.

The National Committee is the highest permanent party organ at the national level. It wields great authority but only during the year of presidential election. Most of its work is confined to six months before a presidential election. The National Committee of each party fixes the time and place for holding the National Convention. It plans the election campaign, prepares the campaign literature, arranges meetings, raises campaign funds, organizes canvassing for party candidates and makes it sure that the voters turn out on the election day. Once the presidential election is over, the National Committee's work comes to an end, until the next election comes around.

To direct the work of the National Committee and to look after all the matters during the presidential campaign, a Chairman is by convention selected by the presidential nominee and formally elected by the committee.

The above explanation of the party organization in the United States clearly shows the pyramidal structure of each party with the National Chairman and the National Committee at the apex and the precinct committees at the grass root level. The most interesting feature of the US party organization is the powerful position of the local level party organization than the national level party organization.

Non-ideological character: Unlike Europe, where parties are organized on ideological basis, in the US, there has been no labour, socialist or communist party of any national relevance. Neither party is committed to any specific ideology or philosophy. As a matter of fact, both the two parties, the Republicans and the Democrats, are very close to each other in ideological terms. They both stand for democracy, capitalism, free trade, human rights and nationalism, and are opposed to communism and socialism.

CONCLUSION

The American party system is a bi-party system. The two major political parties - Republican Party and the Democratic Party dominate the political scenario of USA.

There are some peculiar features of the American party system for which the American political party system has become unique in itself. These features are- it is a bi-party system, both the parties, i.e. the Republican Party and the Democratic Party enjoy support in all sections of the American society, both the parties have similar policies and programmes, both the parties are dominant actors in politics, existence of strong interest groups within each political party, absence of political parties based on race and religion, local organizations of both the major parties play dominant roles.

Regarding organisation, both the political parties, i.e. the Republican and Democratic parties have some common principles. These principles are- decentralization, heterogeneity and representativeness, strong local party organizations than national party organizations, almost self-contained party units, three tier party organization, non-ideological character.

A study of the American party system and the British party system reveals that there are some differences between the American and the British political parties.

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UNIT III

FRANCE POLITICAL SYSTEM

EUROPE AND FRENCH REVOLUTION

INTRODUCTION

The French Constitution of October 4, 1958 is about to enter its third year and it is already possible to give a comprehensive opinion of the form of government which it has instituted. The current government is popularly called the Fifth Republic though there has been no break, with regard to fundamental principles, from the government which preceded it. A reading of the text submitted to public referendum on the 28th of September might already have shown what idealogical basis the new constitution had in the mind of General de Gaulle. It indicates also

what precedents in recent parliamentary projects or in comparative constitutional law were influential. But for two years this text, more than any other, has been put to the test of events. To be sure, in constitutional law, practices, customs, traditions and habits play a role almost as important as the text itself. And it is always in the first years of a regime that these practices are created and this custom is born. The government which arose from the constitution of 1958, however, has taken a direction rather different from what one might have suspected from simply reading it. This evolution is no doubt due in part to the personality of General de Gaulle, who was elected president of the Republic. But it is due perhaps just as much to a general tendency of the present era, in democratic countries, to strengthen the executive branch of government, a tendency which owes as much to technological motives as to the general evolution of the position of nations in the world. In this study it is proposed to undertake a general examination of the French political system, taking into consideration the text as well as constitutional practice. This order is characterized first of all by a new arrangement of the relationship between the government and the Parliament, with the aim of assuring an equilibrium which the French application of the parliamentary system had not often enjoyed. But it emerged quite as much-and perhaps more so in the eyes of the average observer-as a strengthening of the presidential office. These are the two parts which this study will include. Juridical and political problems involving the community which the French Republic forms with overseas nations will be omitted; first of all because I propose to study only the French political order, and secondly because this community is in the process of being formed and it is impossible to give a final opinion about it.

1958 Constitution

France's current republic, the Fifth Republic, was established with the adoption of a new constitution on October 4, 1958, with direct presidential elections introduced in 1962. The Constitution of the Fifth Republic strengthened de Gaulle's powers as head of state at the expense of parliament and the judiciary. The Constitution also draws inspiration from the first French Constitution, and incorporates the Declaration of the Rights of Man and the Citizen by a reference in its preamble.

Features of the Constitution of the French Fifth Republic

The Constitution of the Fifth Republic has been in operation since October 4, 1958. It has been successful in securing constitutional stability. In this way, it has acted as a source of continuous

development of France. It was framed by a Constituent Assembly which drew inspiration from General De Gaulle.

All the members of the Constituent Assembly acted under the strong influence of General De Gaulle and they made the Constitution in accordance with his views. It has been because of this fact that this constitution came be described as De-Gaulle's contribution to the French system of government. In the words of De Gaulle himself: "The new constitution provides for a government made to govern."

One of the key objectives of the new Constitution was to eliminate the chances of constitutional instability which had reigned menacingly during the period of the Fourth Republic. It has been successful in achieving this objective.

The Constitution of Fifth Republic incorporates a mixed Presidential-Parliamentary model of government. It reconciles the republican and democratic principles of Enlightenment philosophy (liberalism) with the need for a strong and stable executive.

Main Features of the Constitution of Fifth Republic France:

1. Written, Brief and Enacted Constitution:

The Constitution of the Fifth Republic is a written and enacted Constitution like the Constitution of the United States of America. Initially it consisted of a Preamble and 92 Articles. However, after Algerian independence and dropping of the provision regarding French Community, the total number of Articles came down to 89. These now stand divided into XVII Titles (Chapters). Each title contains provisions covering a particular institution/feature of the constitutional system.

The details are as follows:

Title I Art 2 to 4 Provisions regarding Sovereignty.

Title II Art 5 to 19 The President of Republic

Title III Art 20 to 23 The Government

Title IV Art 24 to 33 Parliament

Title V Art 34 to 51 Relations between the Parliament and Government

Title VI Art 52 to 55 Treaties and International Agreements

Title VII Art 55 to 63 The Constitutional Council

Title VIII Art 64 to 66 Judicial Authority

Title IX Art 67 to 68 The High Court of Justice

Title X Art 68-1 to 68-3 Criminal Liability of the members of Government

Title XI Art 69 to 71 The Economic and Social Council

Title XII Art 72 to 75 Territorial Units

Title XIII Repealed

Title XIV Art 88 Association Agreements

Title XV Art 88-1 of 88-4 European Communities and European Union

Title XVI Art 89 Amendment of the Constitution

Title XVII Repealed

The Constitution of the Fifth Republic is an adopted and enacted constitution. It was made by the Constituent Assembly of France. It was also approved by the people of France in a referendum. It has been a self-made constitution of the people of France which has been successfully guiding their march towards progress and prosperity.

2. Preamble of the Constitution:

The Constitution opens with a Preamble which projects the objectives and ideals underlying the enactment of the Constitution. It reads: "The French people solemnly proclaim their attachment to the rights of man and to the principles of national sovereignty as defined by the Declaration of1789 and confirmed and completed by the Preamble to the Constitution of 1946."

"By virtue of these principles and that of the free determination of people, the Republic offers to those overseas territories which express a desire to accept membership of the new institutions founded on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic evolution."

Art 2 states that the motto of the Republic is Liberty, Equality and Fraternity.

3. Popular Sovereignty:

Like the constitutions of India and the U.S.A., the French Constitution of 1958 affirms belief in the sovereignty of the people. Article 3 declares: "National Sovereignty belongs to the people, who exercise it through their representatives and by way of referendum. No section of the people and no individual may claim to exercise it…." Further, the Constitution in its Article 2 declares: "Its principle is Government of the people by the people and for the people."

4. Constitution is the Supreme Law:

The French Constitution is the supreme law of the land. Every organ of the government derives its powers from the Constitution. Acts and Laws of all the authorities are subject to the review of the Constitutional Council which can reject anything that it finds to be unconstitutional.

5. France is a Secular State:

France, like India, is a secular polity. Article 2 declares: "France is an indivisible, secular, democratic and social Republic. It ensures equality of all citizens before law without distinction of origin, race or religion. It respects all beliefs…… The motto of the Republic is liberty, equality and fraternity."

France is now trying to eliminate distinctive religious symbols from the social life of France. It has now banned the wearing of religious symbols as a part of the dress. Some sections of the people are opposed to all this. Sikhs in France have been asserting their right to wear turban and carry all sacred symbols of Sikh religion.

6. A Rigid Constitution:

Under Title XVI and Art. 89, the method of amendment of the French Constitution has been laid down. The method of amendment that has been prescribed is a rigid method. The power to propose an amendment is with the President cum the Prime Minister, and with the members of the Parliament. The power of amendment is with the Parliament.

Art. 89 reads: "The initiative for amending the constitution shall belong both to the President of the Republic on the proposal of the Premier and to the members of the Parliament. The Government or the Parliamentary Bill for amendment must be passed by the two assemblies in identical terms. The amendment shall become definite after approval by a referendum".

"Nevertheless, the proposed amendment shall not be submitted to a referendum when the President of the Republic decides to submit it to the Parliament convened in Congress; in this case, the proposed amendment shall be approved only if it is accepted by a three fifth majority of the votes cast "

In this way, we find that for amending the Constitution, it is essential that the proposed amendment should be passed by the two houses of the Parliament in identical terms and then it should be submitted to the people for approval in a referendum. There is another method of amendment stipulated in this very Article.

According to it, if a Government Bill is proposed by the President in the joint bill sitting of the two Houses and if it is passed by a 3/5th majority, then the proposed bill becomes an amendment even without having been approved by the people in a referendum.

As such, the French Constitution is a rigid Constitution. Both the methods of amendments are rigid in nature and content. The method of amendment has an inbuilt ambiguity. As Maurice Duverger puts it, "Article 89 has an inbuilt ambiguity. It is ambiguous in that it does not make clear whether the President's decision not to submit a proposed revision to a referendum renders the first stage unnecessary or is taken only when this has been completed."

The Article is further inadequate as it does not specify as to how the proposal for revision is to be passed by the Parliament. The term 'identical terms' also lacks clarity as it fails to specify the method of resolving conflict between the two Houses over an amendment proposal. Like the U.S. constitution, there are two limitations imposed on the amendment of the French Constitution.

These are:

(i) The amendment cannot be initiated at a time when the integrity of the nation is under attack, and

(ii) The republican form of the constitution cannot be changed.

7. Republican Constitution:

Like the Indian and American constitutions, the French Constitution too is a Republican Constitution. The head of the State is the President of France who is directly elected by the people of France. Article 6 declares: "The President of the Republic is elected for seven years by direct universal suffrage."

8. Democratic Constitution:

The Constitution of the Fifth Republic provides for a democratic state in its true spirit. All the essential features which constitute a democratic state are present in the French Constitution. These democratic features are: popular sovereignty, universal adult franchise, periodic and free elections, right to form political associations, regular elections, direct elections, secret voting, representativeness responsible and accountable government, etc. Thus, the French Constitution is a liberal democratic constitution.

9. Mixture of Parliamentary and Presidential Systems of Government:

The French Constitution provides for a mixed type of government in France. It combines the features of both Parliamentary and Presidential forms. The President is the head of the state but he is neither a purely nominal head of the state like the Indian President nor an all powerful executive like the U.S. President.

In France, executive powers have been divided between the President and the Prime Minister. The President exercises some real executive powers. The President has been made an arbiter between the Parliament and the Government (Ministry).

In times of emergency, he becomes very powerful. Normally also, he appoints the Prime Minister and presides over the meetings of the Council of Ministers. Along with this, it has been stated in Art. 21 that, the Prime Minister is in-charge of the work of Government. He directs the operation of Government. He is responsible for the national defence. He ensures the execution of laws. He deputises for the President of the Republic whenever necessary. He can delegate certain of his functions to the ministers.

The Prime Minister and other Ministers are not members of the Parliament (Article 23). However Art. 49, makes it responsible before the Parliament. The Parliament can pass a vote of no confidence or a censure motion against the Prime Minister or the Government and can force the Prime Minister to resign forthwith (Art. 50). The Prime Minister can also recommend to the President, the need for the dissolution of the Parliament.

Moreover, ministers not members of the Parliament, but they can take part in its work in every way except when the Parliament comes to vote on a measure. Thus, the French executive represents a mixture of Parliamentary and Presidential executives.

Brogan has rightly stated, “The French Constitution is neither a Presidential Constitution of American type nor a Parliamentary Constitution of English type, it is a mixture of the two.” Analyzing the nature of the Parliamentary executive in the Fifth Republic, C.F. Strong points out that it has two basic features of the parliamentary form: “That the President should appoint the Prime Minster on whose proposal, he should appoint the other members of the Government (Art. 8)” and “that the Government (Ministry) should be responsible to the Parliament (Art. 20)”. To that extent, France under the Fifth Republic has a Parliamentary form.

However, there are several features which make the system a semi-Presidential system based on the principle of separation of powers.

Firstly, the President is now directly elected by the people and enjoys some real executive powers.

Secondly, the ministers are not members of the Parliament and thus are not subject to the discipline of the parties and the pressure of the electors.

Thirdly, the President is "the chief executive and active head of state.

Fourthly, the President has the right to dissolve the Parliament and call for new elections.

Finally, the Constitution gives to the President the authority to take drastic emergency measures when there develops a threat to the institutions of the Republic, independence of the nation, the integrity of its territory or the execution of its international obligations. These features reflect the 'Presidential nature' of the executive under the Fifth Republic.

All this brings out the fact that the French system is neither purely parliamentary nor purely presidential.

10. Bi-cameral Parliament:

The Constitution establishes a Bi- Cameral legislature in France. Art. 24 declare: "Parliament is composed of the National Assembly and the Senate." The National Assembly is the lower, popular, directly elected and more powerful House of the Parliament. The Senate is the upper, less popular, quasi-permanent, indirectly elected and less powerful House. In it, representation has been given to the territorial entities of France and the French citizens residing abroad.

In the text of the Constitution, the membership of the two Houses, the tenure of the two Houses, the qualifications and disqualifications of the members of the Parliament, have been left to be decided by organic laws. Under Arts 26 and 27, the members of the Parliament have been given certain privileges.

11. Rights of the French People:

In the body of the Constitution, a separate list of the rights and freedoms of the people has not been included. But this does not mean that the French have no rights. The Preamble to the Constitution declares that the French people continue to enjoy all those rights and freedoms which they had been enjoying under the Constitution of 1946 and which had been mentioned in the Declaration of Rights. Moreover, Art. I declares the objectives of the Republic as liberty,

equality and fraternity and Articles 3 and 4 give them their political rights viz. the right to vote and right to form political associations.

12. Constitutional Council-the Institution for Judicial Review:

Under the French Constitution, a special institution has been formed to determine the validity of laws and orders made by the Parliament and the Government. This power, which in other countries like India and the U.S.A. has been given to the courts, has been given in France to the Constitutional Council. It consists of 9 members, each having a tenure of 9 years. One third of the members retire after every three years.

The President of France, the Presidents of both the National Assembly and the Senate nominate 3 members each to the Constitutional Council. In addition to these nine members all former Presidents of the Republic are ex- officio life members of the Constitutional Council. The President of the Constitutional Council is appointed by the President of the Republic.

This Council has been given the power to judge the constitutionality or unconstitutionality of organic laws before their promulgation and the ordinary laws and the rules of procedure of the parliamentary assemblies before their application.

This Council also acts as the Election Commission and the Election Tribunal in parliamentary elections.

This is a unique French institution. It has been copied by the Constitution of Russia.

13. Economic and Social Council:

Under Title XI and Articles 69, 70 and 71, a new council the Economic and Social Council has been created. The Government can seek its advice on any law. Any plan or any bill of economic and social character can be submitted to it for its opinion. The members of this Council can present their opinions on any bill which is under discussion in the Parliament.

14. Provisions Regarding Territorial Units of French Republic:

The territorial units of the French Republic are: the communes, the departments and the overseas territories. These are self-governing units and each has an elected council. The delegates of the Government of France, have the responsibility to secure national interests and to mountain administrative supervision over the departments and territories. The overseas territories have

their own particular organizations. For each such territory an Act of the Government of France lays down the organization and functions of its administrative organization.

15. Provisions regarding European Communities and European Union:

Title XV (Articles 88-1 to 88-4) contains provisions relating to the French membership of the European Communities and the European Union. (EU) France is a member of the European Union and its three communities. It actively participates in the formulation and execution of the policies and decisions of these communities and the EU.

After becoming party to the Treaty on European Union on 7th February 1992, France has transferred some of its powers for establishing the European economic and monetary union as well as for the formulation of rules relating to crossing of external borders of the member states of the European Union.

Citizens of the members states of the European Union, who are residing in France have been given the right to vote and contest elections to the municipal councils of the local areas. However, they are not eligible to become Mayors or Deputy Mayors or to get elected as senators. All resolutions of the European Union come before the French Parliament for its approval.

16. System of Administrative Law and Administrative Courts:

Art.2 of the Constitution declares equality of all citizens before law. However, as Dicey puts it, a distinction is made between ordinary citizens and civil servants in respect of treatment before law. In France, the civil servants are under Administrative Law and can be sued only in Administrative Courts whereas ordinary citizens are under ordinary laws and are sued in ordinary courts.

This feature is in sharp contrast to the system prevailing in Britain and India. In both these countries there is a single system of law enforced by one type of courts. No difference is made between ordinary citizens and civil servants. Taking into account this difference, Dicey declares that the rule of law does not exist in France. However, Dicey's observation is not really valid.

17. Unitary Constitution:

Like Britain, France is also a unitary state. All powers of administration of France have been vested in the Central Government which exercises them for all the people and over whole of the French territory. Local Governments derive their powers not from the Constitution but from the Government of France.

18. Multi-Party System:

Like our own country, in France also a Multi-party System is in operation. The French enjoy the constitutional right to form political associations. Unlike the Indian Constitution which presupposes the existence of political parties but never mentions it, the Constitution of France makes a mention of political parties.

Art. 4 declares: "Parties and political groups play a part in the exercise of the right to vote. The right to form parties and their freedom of action are unrestricted. They must respect the principles of national sovereignty and of democracy." The last sentence constitutes two democratic limitations upon the organization and activities of political parties. Several political parties are actively present in the French Political System.

From the study of these features of the Constitution of the Fifth Republic France we can say that a bold and constructive attempt has been made by the French acting through their constitution to wipe out the evil of political instability that had previously plagued their political life. The present constitution decidedly constitutes an improvement over all the previous constitutions.

In this Constitution, the framers have tried to put together the experiences of the past. Although it has been labeled by some of the French writers, as: 'Tailor-made for General De Gaulle', 'Quasi-Monarchical', 'Quasi-Presidential', 'A Parliamentary Empire', 'Unworkable', "the worst drafted in French Constitutional history", yet it must be admitted on the basis of its working, that it has been successful in giving France a consistently stable republican government.

The Constitution of the Fifth Republic contains a good synthesis of the features of Parliamentary and Presidential forms of government. It has already been in operation for about six decades and its practicability has been amply proved.

Initially its biggest defect used to its incomplete nature because in it a number of questions were left to be decided by organic laws. That defect is no longer there. A network of organic laws has already supplemented it. It appears quite certain that this Constitution of France is going to live a very long life.

FRANCE EXECUTIVE

THE PRESIDENT OF THE REPUBLIC

It was said of the constitution of 1875 that it was "a Senate." It may be said of the constitution of 1958 that it is "a President." This pre-eminent position of the President of the Republic is

formally expressed, moreover, since the articles which concern him head up the constitution (art. 5-19).

Nor has General De Gaulle ever hidden the conception that he had of the Republic; but it seems that under the pressure of circumstances and perhaps also through the evolution of his thought, such a conception has been transformed in the direction of an increase in the rights accorded to the Chief of State.

In the speech given at Bayeux on June 16, 1946, at the time when the Constituent Assembly was deliberating on the draft which was going to become the constitution of 1946, General De Gaulle stated: It is from the Chief of State, placed above parties, elected by a college which includes the Parliament but is much broader and composed in such a way as to make him President of the French Union as well as of the Republic, that the power of the executive should proceed. It is up to the Chief of State to serve the general interest in the choice of men with an orientation independent of the Parliament. His is the authority for naming ministers and first of all, of course, the Premier who is to direct the policy and the work of the Government. It is the function of the Chief of State to promulgate the laws and make decrees, which commit the state. His is the task of presiding over the councils of government and exercising that influence of continuity without which a nation cannot get along. His is the power of serving as arbiter over political contingencies, either normally through the council, or, in moments of serious confusion, by inviting the country to make its sovereign decision known through elections. It is up to him, if the country should be in peril, to be the guarantor of national independence and of treaties concluded by France.

But in the very text of his m6moires published in 1959, General De Gaulle has a more precise notion of the presidential office. In my opinion, the State must have a head, that is to say a chief, in whom the nation may envisage, above fluctuations, the man in charge of the essentials and the guarantor of its destinies... Beyond the circumstances in which it would be up to the President to intervene publicly, government and Parliament would have to collaborate, the latter controlling the former and being able to overthrow it, but the national magistrate exercising his arbitration and having the power to appeal to that of the people.

Bearing in mind such a conception of the Presidency it behooves us to study what the office of President of the Republic is according to the text of the constitution and what the practice has been since 1958.

THE PRESIDENT OF THE REPUBLIC ACCORDING TO THE CONSTITUTION OF 1958

If the position of the President of the Republic is preeminent in the text of 1958, it is nevertheless in conformity, on many points, with the classical conception of the Chief of State in the parliamentary system. It departs from it, however, on certain points concerning personal powers not to be expected in a parliamentary regime.

I. Designation of the President of the Republic

Republican parliamentary systems have never been able to solve satisfactorily the problem of the Chief of State. Born into a monarchical system, the parliamentary system needs a monarch who assures the continuity of the state though he exercises no effective governmental powers. Under the Third and Fourth Republics the President of the Republic was elected by the two houses of Parliament. It must be said that, even in the cases in which the election was difficult, this manner of designation had never harmed the moral authority of the President, as much because of the idea which he had of his duties as because of a sort of implicit agreement among the parties.

Following in this respect the ideas of General De Gaulle expressed in the speech at Bayeux, the authors of the Constitution of 1958 nevertheless preferred election by an enlarged electoral college composed of the members of Parliament (695), the members of the departmental assemblies (3,149), and the representatives of the municipal assemblies (72,466). This Electoral College had the effect of giving an advantage to the municipalities, particularly the rural ones, of approximately 80,000 electors; there were roughly 31,000 mayors of small communities.

In theory the make-up of this Electoral College seems rather representative of France and perhaps of such a nature as to reinforce the position of the President of the Republic. It certainly has no drawbacks when the candidate is a personality of first rate stature who is known throughout the whole nation. 3 But in the case in which no personality could really impose itself, the run-off elections (art. 7) can give surprising results as a consequence of the rather incoherent electoral body. When the election was the task of the two chambers of Parliament, an agreement could be reached more easily.

In fact this electoral system will lead the parties or their coalitions to seek, as in the United States, candidates who are sufficiently symbolic and who can exercise great authority on the country as a whole. However that may be, if it is continued, it will bring about a radical change of political customs in this area.

II. Powers of the President of the Republic

The powers of the President are summed up in article 5 of the constitution: "The President of the Republic sees to it that the Constitution is respected. He guarantees, through his arbitration, the regular functioning of public powers as well as the continuity of the state. He is the guarantor of national independence, of territorial integrity, of respect for community agreements and treaties." This text, however, does not point out that the powers of the President-and this is perhaps the essential innovation of the constitution-are of two kinds. Some are traditional in the parliamentary system and thus require a ministerial counter-signature. But the others are personal and already show a profound change in the conception of the presidential office.

A. Powers Submitted to Countersignature

In principle, these powers are nominal, for the countersignature is the sign of ministerial responsibility. Article 20 of the constitution states, moreover, that the government "determines and conducts the policy of the Nation" and that it is responsible before Parliament. It does not seem necessary to dwell at length on these powers which are traditional in the parliamentary system: the promulgation of laws, signature of ordinances and decrees, nomination of public officials, etc ....

B. Personal Powers

These powers are the more important because the President of the Republic has not yet used them. Their personal character results from the fact that they are not submitted to countersignature (art. 19). Certainly the nomination of the Prime Minister (art. 8) may be left out of the discussion, for in the traditional conception of the parliamentary system, this choice belongs to the Chief of State. The countersignature, when it exists, has no formal significance and does not modify this power to choose. But it is otherwise with other personal powers of the president.

1. The referendum (art. 11)

On the proposal of the government during sessions or on the joint proposal of the two assemblies, the President may submit for referendum any bill "bearing on the organization of public powers, bearing on the approval of a Community agreement or tending to authorize the ratification of a treaty which, without being contrary to the constitution, would have effects on the functioning of its institutions."

It is obvious from the text that the President is not legally required to defer to the petitions which are submitted to him. This power of submitting a bill to referendum permits the country to decide on important texts, in regard, for example, to European organization. There is a danger, however, that by means of the referendum the nation may be placed in opposition to the Parliament, which is legally its representative.

2. The right of dissolution (art. 12)

This right is the very essence of the parliamentary system since it permits the people to settle the differences which might exist between the government and the Parliament. But in the traditional parliamentary system this right is granted to the government and is expressed in the countersignature as is the case in England. As soon as the exercise of the right of dissolution is no longer combined with the countersignature, it may be considered, though wrongly, as a means for the President of the Republic to have his personal policies approved. If the new elections decide against him he thus risks a considerable loss of prestige which would make his constitutional position difficult. Such was the case when Marshal MacMahon decided to dissolve the Chamber of Deputies.

It is possible, however, that the use of the right of dissolution may be henceforth considered in the perspective of the "national arbitration" which the President wishes to guarantee. To General De Gaulle, for example, is often attributed the intention of dissolving the assembly if its present government should lose its majority. It is a fact that this intention, which is quite hypothetical, is a factor in the stability of the government. But at the same time, such a dissolution, though it would have an obvious political significance, would not have as an aim, (if the developments during the last two years are considered), the maintenance of a governmental team in power at any cost. In other words there is perhaps in this arrangement the beginning of an element of transformation of the parliamentary system toward more stability.

3. The powers of the President in exceptional times (art. 16)

The President may dispose of all powers, without control, if "the institutions of the Republic, the independence of the nation, its territorial integrity, or the execution of international commitments are threatened in a serious and immediate manner and if the regular functioning of public constitutional powers is interrupted."

In the minds of the authors of the constitution this disposition is destined to permit the functioning of the system in case of events of exceptional gravity, as, for example, those of 1940. But inevitably the abuses that such a text might permit spring to mind, abuses such as those allowed by article 14 of the Charte de 1814 or article 48 of the Weimar Constitution. Everything obviously depends on the man who will use the powers, but their very existence, without guarantees, might legitimately cause anxiety, all the more so because in exceptional cases the court has always approved broader powers for the government.

It is quite symptomatic that the President of the Republic has not as yet used these personal prerogatives. Nevertheless the regime instituted in 1958 has followed a development different from that which the texts seemed to indicate and this development is principally due to the personal attitude of General De Gaulle and the concept he has of the Presidency of the Republic.

THE EVOLUTION OF THE PRESIDENTIAL OFFICE AND OF THE REGIME SINCE 1958

It is essential to make a certain number of preliminary remarks. First of all it is inaccurate, starting from a few unhappy precedents, to consider that the role of the Chief of State in a parliamentary regime is a role of pure representation. From his very position he is capable of having a considerable if unnoticeable influence on the action of the government, of watching over the permanent interests of the State and assuring the functioning of the institutions. Under the Fourth Republic no one had a clearer conception of this role of the Presidency than M. Vincent Auriol Next it must be stated that today more than ever, and even in the most democratic regimes, the power of the president is personified in a man. Moreover, as we have already noted, the re-enforcement of the executive is a general tendency of representative systems. The traditional elements of the representative system might have been conceived in a stable world but they seem inadequate in the presence of the major problems with which the nations find themselves confronted every day. The evolution of British parliamentarianism in this respect is significant.

Such being the case it appears incontestable that the function of "arbitration" provided for by article 5 has taken a significance which could not be attributed to it in 1958. In this respect the speech delivered at Brest on September 7, 1960 by General De Gaulle is significant: "... France finds itself in a situation in which the Chief of State directs the State, the government governs

and the Parliament deliberates and legislates. "This "direction of the State" is obviously something else than the simple moral magistracy to which the office of Chief of State was reduced in a parliamentary regime.

It would be desirable at this point to draw up a list of the practices followed since 1958 in the relationship between the President of the Republic and the Parliament as well as in purely governmental action.

The President of the Republic and the Parliament

Here we are confronted with an area in which the action as such of the President of the Republic has least manifested itself. Nevertheless two, facts are particularly important and deserve to be pointed out. Following the events of Algiers in January, 1960 the government asked the Parliament, in conformity with article 38, for the right to issue ordinances in legislative matters to assure the maintenance of order and the security of the State. Thus the law of February 4, 1960, which was mentioned above, was passed. But the Parliament deemed it necessary to stipulate that these ordinances would be made "under the signature of General De Gaulle, President of the Republic." The mention was useless since by virtue of article 13 the ordinances passed by the Council of Ministers are, in fact, signed by the President of the Republic (and also countersigned by the Prime Minister and the minister concerned). But by this arrangement the Parliament intended to show that it placed confidence in the person of General De Gaulle and by this very fact it placed itself outside the constitutional framework since the President of the Republic is not responsible (art. 68).

According to article 29 of the constitution, the Parliament is called into extraordinary session at the request of the Prime Minister or the majority of the members of the National Assembly. The session is opened and closed by decree (countersigned) by the President of the Republic (art. 30).

In the month of March, 1960 a majority of the deputies having requested an extraordinary session on agricultural problems, the President of the National Assembly referred it to the President of the Republic; but the latter refused to call Parliament into session, stating that a premature meeting would be inopportune.

Such a decision was certainly contrary to the constitution, for both precedent and the text of article 29, as well as previous practice and the spirit of the system of sessions itself, showed that the power of the President could not be discretionary. Doubtless in the name of national

arbitration General De Gaulle wished to make sure that the Chief of State refused to accept this interpretation.

The French Council of Ministers

The French council of ministers is composed of the Prime Minister and other ministers. In the language of the constitution, this council is the Government of the Republic. The President appoints the Prime Minister, and on the proposal of the Prime Minister appoints other ministers. The Prime Minister and other members of the government are not members of parliament. The council of ministers is a collective body and its decisions are the decisions of all of its members. The council of ministers are responsible to parliament. The National Assembly can defeat the government either on its programme or on a declaration of general policy. In such a situation, the government as a whole resigns. The President presides over the council of ministers. Functions The council of ministers determines and directs the national policy. It has at disposal the administration and directs the policy of the nation. Ministers direct operations of the government. He is responsible for national defense. He ensures the execution of the laws. The Prime Minister has the right to initiate legislation. Government bills are first discussed in the council of ministers and then filed with the secretariat of one of the two assemblies. The government may, in order to carry out its programme, ask parliament to authorize it, for a limited period, to take through ordinance measures that are normally within the domain of law. The Prime Minister has the right to propose amendments to the constitution through the President of the Republic. The Cabinet plays a major role in determining the agenda of the parliament houses. It can propose laws and amendments during parliamentary sessions. It also has a number of procedures at its disposal to expedite parliamentary deliberations.

FRANCE LEGISLATURE

INTRODUCTION

On the basis of relationship between the executive and legislature, the modern democratic governments are classified into parliamentary and presidential forms of governments. The parliamentary system of government is also known as cabinet or responsible governments. In a parliamentary government there exists very close relationship between the executive and the legislature. The legislature exercises control over the executive and the executive members are

bound to function in accordance with the wishes of the legislature. It has the power to remove the executive. A prominent feature of parliamentary government is that it consists of two executive authorities, the nominal and real executives. Technically speaking, the nominal executive is the head of the state and authority is exercised in his name. He is the titular head of the state without any real power and authority. The entire administration is carried out in his name, but not by him. The cabinet or the council of ministers performs all the administrative duties of the nominal head. Thus the real executive is the cabinet, and its head is the prime minister. The cabinet, which exercise the real executive power, can remain in power only as long as it commands the confidence of the legislature particularly the lower chamber. In a parliamentary system, there is no separation of powers. The executive and legislature are brought into a close and intimate relation. They are closely connected. The ministers, who constitute the real executive in a parliamentary form of government, are collectively responsible to the lower house of the legislature. The nominal executive may be elected president as in India or a hereditary monarch, as in Great Britain. Unlike the parliamentary system, the presidential form of government is based on the principles of separation of powers, not on the fusion of executive and legislature. The executive is constitutionally independent of the legislature and is the actual head of both the state and the government. In the presidential system there is only one executive and that is real. The president is the head of the state and the real executive. Both the roles of the chief of the state and the chief executive are united in the office of the president. Executive is not a member of the legislature, and do not take part in its deliberations. The chief executive appointed for a fixed term. USA is the classical example of a presidential executive.

France is a unitary republic with a bicameral legislature composed of the National Assembly and the Senate. The French constitutional system is often described as semi presidential, and is characterized by a structure of interconnecting powers between the legislative and executive branches. The checks and balances between the legislative and executive branches include the President's power to dissolve the National Assembly, and the National Assembly's power to dismiss the Prime Minister, shared authority to initiate legislation between the Parliament and the Prime Minister, and the absence of any veto power on the part of the President. The Parliament's powers are strictly enumerated by the Constitution, which lists the matters that can be the subject of legislation.

Members of the National Assembly are called deputies and are elected directly, in contrast with senators, who are chosen by indirect elections. Deputies are elected for five-year terms. Senators are elected for six-year terms, but elections are held every three years to elect an alternating half of the chamber. Both chambers are organized in a similar manner, with a chamber president, a governing bureau, commissions, and formal political groups. Bills are submitted either by the Prime Minister or by members of either chamber. Once submitted to one of the two chambers, a bill is first discussed, amended if need be, and voted on in commissions before being discussed, amended, and voted on by the chamber as a whole. The bill must then go to the other chamber, where it follows the same procedure: discussion, possible amendment, and vote in commission followed by discussion, possible amendment, and vote in the chamber's plenary session. A bill must be adopted by both chambers with identical language before it can be signed into law by the President of the Republic. If the two chambers disagree on the terms of the bill, a joint commission comprised of seven deputies and seven senators is tasked with finding a compromise draft, although that compromise draft must still be voted on by both chambers. In extreme cases of deadlock, the National Assembly may have the final say.

I. Background

The French Parliament was born in one of the opening acts of the French Revolution: on June 17, 1789, representatives of the Third Estate (i.e., commoners; the First Estate referred to the clergy and the Second Estate referred to the nobility) declared themselves to be the Assemblée nationale (National Assembly), and asserted themselves as the embodiment of national sovereignty and of the will of the French people. The constitutional history of France was tumultuous, however, and the names and forms of the French legislature changed many times, especially during the century following the Revolution. The French legislative branch ran the gamut from an elected unicameral body (as in the Constitution of 1791), to an appointed tetra cameral body (under Napoleon Bonaparte). It was not until the Third Republic, shaped by the Constitutional Laws of 1875, that the notion of a democratically-elected bicameral legislature finally took root in an enduring manner. From then on, with the tragic exception of the Vichy Régime period (1940–1944), French legislative power always remained in the hands of an elected Parliament.

The current constitutional system is known as the Fifth Republic, and is founded on the Constitution of October 4, 1958. As described below, the Constitution gives crucial powers to Parliament, making it an institution of vital importance in modern French politics.

II. Constitutional Status and Role

A. Type of System

France is a unitary republic. The Constitution officially describes it as an "indivisible, secular, democratic and social Republic." The Fifth Republic is often considered to be a "semi presidential" regime. This is in contrast to parliamentary regimes such as the United Kingdom and France's own Third and Fourth Republics, where the government truly revolves around the legislative branch, but also in contrast with presidential regimes such as the United States, which are characterized by a more strict separation of powers. France's semi presidential system features a two-headed executive: a President of the Republic, who is directly elected and holds considerable power, and a Prime Minister, who is appointed by the President but is accountable to the Parliament. Another term often used to describe the French constitutional arrangement is "rationalized parliamentarism." In any case, the drafters of the 1958 Constitution sought to preserve the generally parliamentarian character of France's government, while at the same time limiting the Parliament's power enough to avoid the chronic governmental instability of the Third and Fourth Republics.

B. Parliament's Place in the French Governance Structure: the Relationship and Overlap between the Executive and Legislative Branches

The relationship between the legislature and the executive is perhaps more complex in France than in purely parliamentarian systems or presidential systems. The French Parliament does not enjoy the primacy that the British Parliament enjoys in the United Kingdom, and must engage with the executive as a separate branch of government. Yet at the same time, the branches of government are not as strictly separated in France as they are in the United States, for example. Both the French and the American systems of government rely on checks and balances, but whereas the American system is defined by separation of powers, the French constitutional arrangement rests on a structure of interconnecting powers. The main features of this structure of interconnecting powers are the following:

1. Impeachment

The office of President is largely shielded from both parliamentary and judicial interference. Indeed, the President may not be prosecuted while in office except by the International Criminal Court, nor can he be held liable for acts carried out in his official capacity or be compelled to testify before any court or administrative authority. Furthermore, the Parliament may only impeach the President for "breach of his duties patently incompatible with his continuing office," something which has never occurred so far under the current Constitution.

2. Dissolution

The President may dissolve one of the two chambers of Parliament—the National Assembly (the Senate, however, cannot be dissolved). Elections for a new National Assembly must occur no less than twenty days and no more than forty days following such a dissolution, and the President is barred from dissolving the National Assembly again for a year following these elections. This prerogative was used twice by President Charles de Gaulle (in 1962 and 1968), twice by President François Mitterand (in 1981 and 1988), and once by President Jacques Chirac (in 1997).

3. The Prime Minister and Votes of No Confidence

The office of the Prime Minister, and more broadly the cabinet of which he is the head (usually referred to as "the Government" in France), is the main institution where the President's and the Parliament's powers meet and overlap. The Government is in charge of the day-to-day administration of government, and of carrying out the nation's policies. Furthermore, most of the President's instruments of power (such as decrees) must be signed by the Prime Minister and by any other minister who might be involved in carrying out the measure in question. Thus, the President cannot do much without the Prime Minister.

The Prime Minister and all cabinet ministers serve at the President's discretion. It is the President who appoints and dismisses them, and he/she can legally choose whomever he/she wishes. However, the Prime Minister needs the support of the Parliament. Not only is that support needed to pass legislation, but the National Assembly also has the power to force the Government's resignation. This is done in one of two ways: either on the Prime Minister's own initiative, or on the National Assembly's initiative.

In the first scenario, the Prime Minister demands a vote of confidence after making a policy statement (either a detailed policy program or a more general statement). Prime Ministers usually call for such votes of confidence as a way to test legislative support for their political

program, and/or as a way to solidify support, by "forcing" allied legislators to either go on record as supporting the Government or cause a political crisis. The Prime Minister and his/her Government must resign if they lose the vote, but will generally come out politically strengthened if they win. Many Prime Ministers have demanded votes of confidence throughout the history of the Fifth Republic, and none has lost so far.

In the second scenario, a group representing at least one-tenth of the members of the National Assembly can call for a vote of confidence in the Government. The vote then takes place at least forty-eight hours after the resolution has been tabled, and only votes cast in favor of the no-confidence resolution are counted. In order to prevent the abuse of such no-confidence resolutions, no member of the National Assembly may sign more than three during a single ordinary session, or more than one during a single extraordinary session. This instrument has been widely used by opposition parties to express their disapproval of government policies, but it is in practice more symbolic than effective: out of the many no-confidence resolutions that have been considered since 1958, only one was successful, on October 9, 1962 (the resulting political crisis led then-President Charles de Gaulle to dissolve the National Assembly four days later).

4. Shared Legislative Initiative

The authority to initiate legislation is shared between the Prime Minister (who is appointed by the President, as mentioned above) and the members of the Parliament. The terminology changes a bit according to whether a bill is initiated by the Prime Minister (in which case the term used is projet de loi – "law project"), or by a member of the Parliament (the term then used is proposition de loi – "law proposal").

5. The Absence of Presidential Veto Power

Contrary to the President of the United States, the French President does not have the power to veto legislation. He/she is required to promulgate Acts of Parliament within fifteen days of their final passage. The most he/she can do is ask the Parliament to reopen the debate on the Act or any part thereof.

C. Constitutional Powers and Areas of Responsibility

The Constitution states that the role of Parliament is to "pass statutes," "monitor the action of the Government," and "assess public policies." The Parliament does not have the authority to legislate on anything it wishes, however. Indeed, the Constitution explicitly defines what can be

the object of a statute. The areas that fall under the Parliament's legislative authority include the following:

- Civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties; freedom, pluralism and the independence of the media; the obligations imposed for the purposes of national defense upon the person and property of citizens;
- Nationality, the status and capacity of persons, matrimonial property systems, inheritance and gifts;
- The determination of serious crimes and other major offences and the penalties they carry; criminal procedure; amnesty; the setting up of new categories of courts and the status of members of the Judiciary;
- The base, rates and methods of collection of all types of taxes; the issuing of currency.
- The system for electing members of the Houses of Parliament, local assemblies and the representative bodies for French nationals living abroad, as well as the conditions for holding elective offices and positions for the members of the deliberative assemblies of the territorial communities;
- The setting up of categories of public legal entities;
- The fundamental guarantees granted to civil servants and members of the Armed Forces;
- Nationalization of companies and the transfer of ownership of companies from the public to the private sector.

Statutes shall also lay down the basic principles of :

- The general organization of national defense;
- The self-government of territorial communities, their powers and revenue;
- Education;
- The preservation of the environment;
- Systems of ownership, property rights and civil and commercial obligations;
- Employment law, Trade Union law and Social Security;

In addition, the French Parliament is responsible for authorizing declarations of war, and for authorizing the extension of a state of siege beyond twelve days (the Council of Ministers, presided over by the President, has the authority to decree a state of siege for those first twelve days). The Constitution specifies that this list may be completed by an "institutional Act" (Loi organique). However, any subject that is not enumerated as a legislative matter by the

Constitution or an "institutional Act" is considered to be a matter for regulation by the executive, but not for legislation by the Parliament.

The Parliament may also adopt resolutions on any topic, so long as the resolution cannot be considered as an injunction to the Government or a motion of no confidence in the Government. These resolutions are seen as a means of expression for the Parliament and are not binding.

III. Structure and Composition

A. Structure

1. Overall Structure

France has a bicameral Parliament, composed of the National Assembly and the Senate. The two houses both sit in Paris, but in separate places: the National Assembly at the Bourbon Palace (Palais Bourbon), and the Senate at the Luxembourg Palace (Palais du Luxembourg).

The National Assembly has 577 members, called deputies (députés), and the Senate has 348 senators.

2. The National Assembly

a. The President of the National Assembly

At the beginning of each legislative term, the National Assembly elects a President of the National Assembly. The President of the National Assembly has important powers, and is ranked as the fourth most important figure in the French government hierarchy under the rules of protocol (the first three being the President of the Republic, the Prime Minister, and the President of the Senate).

In addition to presiding over the National Assembly's sessions, the President of the National Assembly has a crucial role in organizing the National Assembly's workload and agenda. Furthermore, he/she appoints three of the nine nonpermanent judges on the Conseil constitutionnel (Constitutional Council, which verifies the constitutionality of French laws), as well as one or several members of various independent agencies such as the Conseil supérieur de l'audiovisuel (Superior Council on Audiovisual Media, France's main regulatory agency for electronic media), the governing council of the Banque de France (the French central bank), the Autorité des marchés financiers (Financial Markets Authority), and several others. He/she also has the authority to ask the Conseil constitutionnel to evaluate the constitutionality of a bill

before it becomes law (the only others who may do that are the President of the Republic, the Prime Minister, the President of the Senate, or a group of sixty deputies or sixty senators).

b. The Bureau of the National Assembly

The President of the National Assembly is the head of the Bureau of the National Assembly, and the only member of that body to be elected for an entire legislative term. The other members (six vice-presidents, three quaestors, and twelve secretaries) are elected at the beginning of each year. The National Assembly Rules call for the deputies to choose a bureau that is gender-balanced and that reflects the political composition of the National Assembly as a whole, thus ensuring that opposition parties are adequately represented.

The Bureau is responsible for organizing the National Assembly's workload and agenda, and for managing the institution's day-to-day operations.

c. Permanent Commissions

The National Assembly has eight permanent commissions: the Education and Cultural Commission; the Economic Commission; the Foreign Relations Commission; the Social Issues Commission; the National Defense and Armed Forces Commission; the Sustainable Development and Territorial Organization Commission; the Finance, General Economy, and Budgetary Control Commission; and the Commission for Constitutional Laws, Legislation, and the General Administration of the Republic. Additionally, the National Assembly can also create temporary special commissions. A deputy may not be a member of more than one commission at a time.

The main role of these commissions is to prepare bills for full deliberation. Indeed, the Constitution requires that bills be discussed by a commission before being debated and voted on by the full National Assembly. Commissions have the power to amend a bill. Furthermore, in addition to this crucial legislative role, the permanent commissions are supposed to monitor the actions of the government, and to act as the National Assembly's principal fact-finding bodies.

d. Political Groups

Deputies may organize into political groups, although such groups must have at least fifteen members to be officially recognized. These groups represent "the organized expression of the political parties and formations within the Assembly, and allow deputies to group themselves according to their affinities." A deputy may only belong to one political group at a time.

Currently, out of the 577 members of the National Assembly, 287 are affiliated with the Socialiste, républicain et citoyen (Socialist, Republican and Citizen, related to the Socialist Party) political group, 199 are affiliated with Les Républicains (The Republicans, named after the main center-right party that most of its members hail from), and twenty-nine are affiliated with the Union des démocrates et indépendants (Union of Democrats and Independents, related to the centrist political party of the same name) group. Fifty-one deputies are affiliated with one of three smaller political groups, and eleven deputies are unaffiliated.

3. The Senate

The Senate is organized in a manner very similar to the National Assembly.

a. The President of the Senate

The President of the Senate is elected every three years, after each partial renewal of the Senate (see Part IV, "Elections," below). He/she is in charge of ensuring the Senate's security and proper operation, and has a key role in organizing the institution's workload and agenda. He/she appoints three of the nine nonpermanent judges on the Conseil constitutionnel and, as noted above, he/she is one of the few individuals with the authority to ask the Conseil constitutionnel to evaluate the constitutionality of a bill before it becomes law.

Although he/she is third under the rules of protocol, the President of the Senate is actually next in the line of succession as Head of State in case of absence or incapacity of the President of the Republic. If the President of the Republic is declared permanently absent or incapacitated by the Conseil constitutionnel, the President of the Senate takes on his/her role until new elections are held (at least twenty days, and no more than thirty-five days, after the declaration of vacancy or incapacity). The only presidential prerogatives that the President of the Senate cannot exercise as interim Head of State are the ability to dissolve the National Assembly and the ability to call for a national referendum.

b. The Bureau of the Senate, Commissions, and Political Groups

The Bureau of the Senate is composed of twenty-six members: the President of the Senate, eight vice-presidents, three quaestors, and fourteen secretaries. A new Bureau is formed every three years, with the election of a new President of the Senate. Senate Rules require that the Bureau reflect the political composition of the Senate. Like its equivalent in the National Assembly, the

Bureau of the Senate is responsible for organizing the institution's workload and agenda, and for managing day-to-day operations.

The Senate has seven permanent commissions: the Economic Commission; the Foreign Relations, Defense, and Armed Forces Commission; the Social Issues Commission; the Culture, Education, and Communications Commission; the Territorial Organization and Sustainable Development Commission; the Finance Commission; and the Commission on Constitutional Laws, Legislation, Universal Suffrage, Rules, and General Administration. The Senate also has a Commission on European Affairs to monitor the activities of European Union institutions, and can create special commissions and fact-finding commissions for specific issues. The Senate's commissions have the same powers and responsibilities as their National Assembly equivalents.

Senators can organize into political groups in the same manner as their National Assembly colleagues, except that the threshold number to be officially recognized as a group in the Senate is ten. Currently, 144 senators are affiliated with the Groupe Les Républicains, 110 are affiliated with the Groupe socialiste et républicain, forty-two are affiliated with the Groupe Union des Démocrates et Independants, forty-six senators are affiliated with one of three smaller political groups, and six senators are unaffiliated.

IV. Elections

Deputies are elected by direct universal suffrage for terms of five years (unless the President ends a term prematurely by calling for early elections). Senators, by contrast, are elected by indirect suffrage: they are considered the representatives of the local and regional communities (communautés territoriales) of France, and as such are elected by an electoral college of approximately 160,000 "great electors" (grands electeurs), 95% of whom are members of the municipal councils of France's 36,767 cities, towns, and villages. Senators are elected for terms of six years, with elections for alternating halves of the Senate being held every three years.

Deputies are elected to discrete, single-seat legislative districts. The number of legislative districts in each department (the main administrative subdivision of French territory) varies according to census population. Thus, the number of deputies per department varies from one (in the more rural departments such as Creuse or Lozère) to twenty-one (in the Nord, France's most populous department). Deputies are elected through a two-round voting system.

Senators are distributed by department, with the number of senators per department varying from one for each of the more rural departments, to eleven for Nord and twelve for Paris. Departments that have only one or two senators elect them via a two-round voting system, but those that have three or more senators elect them through a proportional representation system.

Legislative districts are defined by law, as is the number of senators per department. However, the Conseil constitutionnel has ruled that, under the principle of equality of suffrage, these questions must be defined according to neutral, "essentially demographic" criteria. This constitutional rule therefore makes it impossible for any dominant party to engage in gerrymandering.

Contrary to the United States, French citizens residing abroad are represented in Parliament, by eleven deputies and twelve senators.

Although deputies and senators are elected by discrete legislative districts or departments, they are not considered to be the representatives of their specific districts or departments. Rather, the constitutional mandate of every deputy and senator is to be a representative of the French Nation as a whole.

V. Legislative Process

The French legislative process has three basic phases: submission, discussion, and promulgation.

A. Submission

A bill may be submitted by the Prime Minister, by a deputy or group of deputies, or by a senator or group of senators. However, only the Prime Minister may submit a bill or an amendment which, if it were to be adopted, would cause either a reduction in public resources or an increase in spending. In practice, the majority of bills are submitted by the Prime Minister.

The Prime Minister, the President of the National Assembly, or the President of the Senate may block the submission of a bill that does not fall within the enumerated matters that, under the Constitution, may be the subject of legislation. The Conseil constitutionnelis the arbiter of any disagreement between the Prime Minister and either chamber of Parliament on whether a bill falls within the proper ambit for legislation.

Appropriations bills, and bills on the financing of social security, must be submitted to the National Assembly first, while bills regarding the territorial organization of France must be submitted to the Senate first.

B. Discussion

Upon submission to either the National Assembly or the Senate, a bill is published and sent to either a permanent commission or a special commission, which studies it and prepares a report. The commission may reject the bill, adopt it as is, or amend it except for constitutional reforms, appropriations bills, and bills on the financing of social security, which may not be amended in commission. If the bill is approved by the commission (either in its original draft or as amended), or if the commission fails to act on the bill, it is then discussed in a plenary session, where it may again be rejected, adopted as-is, or amended. If the bill is adopted in plenary session, it is then sent to the other chamber of Parliament, where it follows the same basic procedure (discussion and vote in commission, and then in plenary session).

A bill must be adopted in identical terms by both chambers of Parliament to become law. If the two chambers of Parliament fail to adopt an identical bill after two rounds (or one round if the Prime Minister opted for an accelerated procedure and the Presidents of the National Assembly and of the Senate do not jointly deny the Prime Minister's motion), the bill may be sent to a joint commission made up of seven deputies and seven senators. The joint commission is supposed to negotiate and elaborate a common draft for the parts of the bill that the two chambers disagree on. If a compromise is found, it is sent to both the National Assembly and the Senate for final votes, and no further amendment is possible without the Prime Minister's approval. If the joint commission's compromise draft is again rejected by one of the two chambers of Parliament, the Prime Minister may, after a new reading and vote in each chamber, ask for the National Assembly to take a final vote either on the joint commission's final text, or on the last draft that the National Assembly voted on, as amended by the Senate. If the joint commission fails to come to a compromise, the Prime Minister may, after a new reading and vote in each chamber, ask for the National Assembly to take a final vote on the last draft that the National Assembly voted on, as amended by the Senate.

Since 1959, approximately 20% of bills have had to go to a joint commission, and the joint committees have been able to find compromises approximately 60% of the time. Thus, while the National Assembly ends up having the last word in cases of extreme deadlock, such situations have historically been rare.

C. Promulgation

When a bill has been adopted by both chambers of Parliament, the President of the Republic has fifteen days to either promulgate it, or to ask the Parliament to reexamine it. This second option has been very rarely used since 1958. Furthermore, the President of the Republic, the Prime Minister, the President of either chamber of Parliament, or a group of sixty deputies or sixty senators, may ask the Conseil constitutionnel to review a bill's constitutionality before promulgation. The Conseil constitutionnel normally has one month to review the bill, during which time the fifteen-day timeframe to promulgate the bill is temporarily suspended.

The President of the Republic promulgates a new law by signing a promulgation decree, which certifies that the law has been adopted according to the proper constitutional procedure, and which authorizes its publication in the official gazette. The new law then usually comes into force either on the date specified in the law if it contains an effective date provision, or on the day following its publication in the official gazette if the law is silent on that question.

FRANCE JUDICIAL SYSTEM

While the Minister of Justice, le Garde des Sceaux, has powers over the running of the justice system and public prosecutors, the judiciary is strongly independent of the executive and legislative branches. The official handbook of French civil law is the Civil Code.

In France, judges are considered civil servants exercising one of the sovereign powers of the state, and, accordingly, only French citizens are eligible for judgeship. France's independent judiciary enjoys special statutory protection from the executive branch. Procedures for the appointment, promotion, and removal of judges vary depending on whether it is for the judicial, administrative, or audit court stream. A special panel, the High Council of the Judiciary, made up of other judges from receiving court, must approve judicial appointments. Once appointed, judges serve for life and cannot be removed without specific disciplinary proceedings conducted before the Council conducted in due process. The Ministry of Justice handles the administration of courts and judiciary including paying salaries or constructing new courthouses. The Ministry also funds and administers the prison system. Lastly, it receives and processes applications for presidential pardons and proposes legislation dealing with matters of civil or criminal justice. The Minister of Justice is also the head of public prosecution, though this is controversial since it is seen to represent a conflict of interest in cases such as political corruption against politicians. At the basic level, the courts can be seen as organized into: ordinary courts, which handle

criminal and civil litigation and administrative courts (ordre administratif), which supervise the government and handle complaints The structure of the French judiciary is divided into three tiers: Inferior courts of original and general jurisdiction; Intermediate appellate courts which hear cases on appeal from lower courts; Courts of last resort, which hear appeals from, lower appellate courts on the interpretation of law.

The Constitutional Council

The Constitutional Council , le Conseil constitutionnel, exists to determine the constitutionality of new legislation or decrees. It has powers to strike down a bill before it passes into law, if it is deemed unconstitutional, or to demand the withdrawal of decrees even after promulgation. The Council is made up of nine members, appointed (three each) by the President of the Republic, the leader of the National Assembly, and the leader of the Senate, plus all surviving former heads of state.

NOVEL FEATURES OF THE FRENCH JUDICIARY

The French Judicial System presents some novel features which can be described as under:

1. Subordinate Position of Judiciary:

The principle of separation of powers did not find favour with the framers of the French Constitution. As such, in the Constitution of the Fifth Republic, Judiciary has been given a subordinate position, subordinate to the executive. The composition of the Judiciary has been left in the hands of the Government. Judges in France work under the Minister of the Judicial Department. However, after the creation of the Higher Council of Magistracy and a special statute for the membership of the judicial bodies, the independence of the Judiciary has been somewhat strengthened.

2. Codified Laws:

A special feature of the French Judicial System is the existence of laws in the form of codes. The credit for the codification of all the laws goes to Napoleon for it was he who ordered the codification of all laws of France.

The law codes of France are of the following five types:

1. Penal Code,

2. Civil Code,

3. Commercial Code,

4. Criminal Procedure Code, and

5. Civil Procedure Code.

3. No Separate Courts for Civil and Criminal Cases:

Unlike the practice being followed in India and Britain where separate courts for civil and criminal cases exist, in France each court can hear both civil and criminal cases. Only one court, the Cassation Court is an exception to this rule.

4. Principle of College-ability:

Another feature of the French Judicial System is that here the system of hearing cases by a minimum of three judges prevails. In every court, several judges collectively hear the case and give judgment. This is known as the principle of college-ability. This principle has been accepted in view of the French belief that one judge and not a number of them can be corrupted.

5. Difference between Ordinary Laws and Administrative Laws:

In sharp contrast to the practice prevailing in India and Britain, two categories of laws operate in France-one for ordinary citizens and the other for government servants. Ordinary citizens are under ordinary laws and ordinary courts while the civil servants are under the Administrative law and the administrative courts. Thus, in France, a distinction is made between ordinary citizens and government servants. Dicey believes that this constitutes a violation of the principle of the Rule of Law.

6. Difference between Ordinary (Judicial) Courts and Administrative Courts:

Corresponding to the existence of two separate systems of laws for ordinary citizens and administrative officials, there are in operation two types of courts, Ordinary courts and Administrative Courts. Ordinary courts decide cases involving ordinary citizens and

Administrative Courts decide cases involving government servants. The former apply ordinary law and the latter administrative law.

7. Right of Judicial Review with the Constitutional Council:

Contrary to the practice prevailing in India and America, the right of judicial review has not been given to regular courts in France. On the other hand, this right has been given to a special council the Constitutional Council. This Council is a semi-executive and semi-judicial body.

8. Special Courts:

Another feature of the French judicial system is that there exist some special courts which resolve several specific disputes through compromises and agreements. These can be compared to the Arbitration Tribunals operating in other countries.

These special courts include:

(i) The Courts of the Justices of Peace,

(ii) Industrial Disputes Tribunals,

(iii) Commercial Tribunals, and such other courts.

9. Judgeship is a Profession:

In France, judges are not appointed from amongst the lawyers. A student of Law in France has to choose for himself whether he would like to become a lawyer or to embrace the profession of a judge. Judgeship is a separate profession in France. For the appointment of judges, there exists a Higher or Superior Council of Judiciary.

10. Standing Judiciary:

A novel feature of the French Judiciary has been the institution of Standing Judiciary. Standing Judiciary is a department of the State Attorney which is a part of the Law Department. Standing Judiciary consists of civil officers who strictly follow the orders and directions of the Law Ministry and the State Attorney.

It represents the interests of the state. In fact, officers of the Standing Judiciary can be favorably compared with the public prosecutors of India or in some ways; they can be compared with the Procurators who used to work under the constitution of the erstwhile USSR. From a study of the

features mentioned above, it becomes apparent that the French judicial system is a unique system.

Constitutional Council

The constitution of Fifth Republic establishes three principal judicial organs in addition to the regular courts. In the first place, there is the constitutional council. It consists of nine members whose term of office lasts nine years. One third of membership is renewed every three years. The President, three by the president of National Assembly and three by the president of the Senate appoints three of members. Former Presidents of France are ex-officio members for life of the constitutional council. The President of France appoints the president of the constitutional council.

High Council of Judiciary

Article 64 of the constitution provides that the President of the Republic shall be guarantor of the independence of the judicial authority. He is assisted by High Council of the judiciary. He presides over the council. The high council presents nominations for judges of the Supreme Court and first presidents of courts of appeal. It is consulted on questions of pardon. The council is also acts as a disciplinary council for judges.

The High Court of Justice

Article 67 of the constitution provides for a High court of Justice. It is composed of members of parliament elected, in equal number, by National Assembly and Senate, after general or partial election to these assembles.

The Ordinary Court System

The lowest court in France is the tribunal d' instane (tribunal for instance). There are 454 such tribunals. These tribunals consist of only one judge. He decides minor civil and criminal cases. Above these are 23 courts of appeal. They hear appeals against the judgments of the lower courts.

The highest court in France is the Court of Cessation (Supreme Court of appeal). The judges of this courts are appointed by the President on the recommendation of the High Council of the Judiciary. It only hears appeal and has no original jurisdiction.

Administrative Courts

A peculiar feature of the French judicial system is that there are separate, administrative courts. These courts administer what is known as administrative law. Dicey defines administrative law as that "body of rules which regulate the relations of administration or administrative authority towards private citizens".

Administrative law deals with the liability of the state and municipal bodies for the wrong done to private individuals or property. There are separate courts in France to decide suits brought by private individuals against officials. There are 23 administrative tribunals. These are the courts of first instance for deciding cases involving administrative law. Each administrative tribunals consist of a President and four members appointed by the Minister of Interior.

The Council of State is the highest administrative court. It is composed of 15 members who are appointed by the President of France. It is divided into several sections. The judicial section is further divided into chambers in which five councilors decide cases. They hear appeals from administrative tribunals. The council has also original jurisdiction in certain matters.

The council of state has got other powers as well. Government bills are discussed in the council of state. The government enacts ordinances after consultation with the council of state.

Rule of Law and Administrative law

There are certain differences between the concepts of rule of law and administrative law. Under rule of law there is a single system of courts. All cases are tried in the same kind of courts. But under administrative law, there are two sets of courts, known as ordinary courts and administrative courts.

The basic idea of rule of law is equality of all citizens in the eyes of law. But under administrative law, the government officers are above ordinary citizens.

FRANCE PARTY SYSTEM

INTRODUCTION

France is a multi-party political system which means that often no one party wins a majority of seats in the Assembly. Indeed the major parties themselves are often very fractional with shifting personal allegiances.

French politics has historically been characterised by two politically opposed groupings but, more recently, a third force has emerged and, in the few years, a fourth movement has sprung into prominence, so that elections are now a much more complicated battlefield.

The earlier bi-polar model consisted of two groups:

- One Left-wing centered around the French Socialist Party with minor partners such as Europe Ecology – The Greens (EELV) and the Radical Party of the Left
- The other Right-wing and centered around what was the neo-Gaullist Rally for the Republic (RPR), then its successor the Union for a Popular Movement (UMP), and now - since 2015 - the renamed Les Republicans, with support from the New Centre.

The growing third movement is building on the support of the Right-wing, anti-immigrant Front National (FN) which first made waves in the European Parliament elections of 1984 when it won almost 11% of the votes. More recently, it did particularly well in the local elections of March 2014, actually topped the polls in the European elections of May 2014, and went on to win the first round of the regional elections in December 2015 (with almost 28% of the vote). The party is led by Marine Le Pen who came second the first and second rounds of the presidential election of 2017. The party has now been renamed the National Rally (RN).

The new fourth movement is called La Republique En Marche or La REM (The Republic On The Move) which was founded just over a year before the last Presidential and National Assembly elections by Emmanuel Macron who had never been elected to any office but was a finance minister in the Socialist Government. Macron won the presidential election in May 2017 and his new party won the National Assembly elections in June 2017.

Other significant players include the hard left La France Insoumise (France Unbowed), which is increasingly challenging the collapsing Socialist Party, and the Communist Party, which in recent local elections has created joint lists with the Socialist Party.

For the first time in the history of the Fifth Republic, in June 2012 the Socialist grouping held all three elected arms of government: the Presidency, the National Assembly and the Senate. But this did not last long: in the Senate elections of September 2014, the Left lost control of the upper house. Now La REM holds the Presidency and the National Assembly.

The last Assembly elections were held on 11 and 18 June 2017. La Republique En Marche (La REM) - a party which did not exist a year ana half before - won a stunning victory, taking 308 seats and, once one adds the 42 seats secured by the allied Democratic Movement (MoDem), there is an overall majority in the Assembly. The main opposition group, Les Repubicains, won only 112 seats. Although with allies that number rises to 137. The Socialist Party ended up with just 29 seats and the hard left La France Insoumise (France Unbowed) has 17 seats. The hard right National Front has 8 seats.

In France, unlike most other democracies, the majority of national politicians are former civil servants (often high-ranking). Most Presidents, many Cabinet members and a very large number of parliament members graduated from the same prestigious school, the Ecole Nationale d'Administration.

The French take their politics seriously and voter participation can be very high (it was 79.48% in the 2012 Presidential election). However, voter participation varies significantly across elections. Abstention was at a 56% high in the 2014 European elections and about 50% in the first round of both local elections of 2015. In the Assembly election of 2017, turnout was only 43%.

Salient Features of the French Party System

Its salient features are as under:

1. Multi-Party System:

Like India, in France also a multi- party system is in operation. There are as many as six major political parties and a number of small political parties. All these parties contest elections and play a significant role in the political life of France. The French are emotional by nature and their allegiance to their respective parties is very deep. As one writer has beautifully remarked: "Politics for the Englishmen and the Americans is a game white it is a battle for the French."

2. Constitutional Recognition of the Role of the Parties:

Unlike the American Constitution which is totally silent about the role of political parties, the French Constitution accepts the role of parties and political groups. Art. 4. reads: "Parties and political groups play a part in the exercise of the right to vote. The right to form parties and their freedom of action are unrestricted. They must respect the principles of national sovereignty and of democracy."

3. The Practice of Parliamentary Groups:

Another feature of the French Party System is that after the elections, the members of the Parliament combine together to form parliamentary groups. In each parliamentary group there are a number of members belonging to different political parties. Frequently, the members defect from one parliamentary group to another.

That is why Ogg and Zink call these groups ever-shifting parliamentary groups bearing little or no relation to the divisions among the voters. In the commissions of the Parliament, representation is given to these parliamentary groups.

4. Existence of Regional Parties:

Like our own country, in France also there are present a number of regional political parties. They have no national organization and these work only in their respective regions.

5. Political Defections and Frequent Changes:

In another way, the French Party- System is similar to the Indian party system. In France also the evil practice of political defections prevails. Frequently, the members of one political party defect to another or other political parties. A number of political parties of France have similar ideologies and that is why the members of one political party do not hesitate to defect to another political party. In the words of Dorothy Pickles, "French parties come and go in bewildering numbers, sometimes within a very short time."

6. Leftist and Rightist Parties:

Almost all the French political parties can be categorized under two heads:

(i) Leftist Parties, and

(ii) Rightist Parties.

The Leftist Parties have socialist leanings. They favour state control over industry and state intervention in the interest of planned economy. The Rightist Parties are opposed to both these measures. However, many rightist parties support state action for assisting small and uneconomic producers. The Communist Party and the Socialist Party belong to the first group and the Conservative Party and the Central Democratic Group belong to the second category.

7. Organizational Diversity:

The organization and policies of different political parties exhibit great diversities. The parties cover a very large range extending from commission on the left to anti-parliamentary and even fascist groups on the extreme right. Some of the parties attach great importance to political principles and doctrines while others have no agreed principles or even coherent policies.

Some of the parties are very well organized parties, while others have loose organizations. The leftist parties are highly organized while the right wing parties have no permanent organizations outside the Assembly.

The organized leftist parties are well disciplined parties and these formulate their policies at the national level party congresses attended by delegates representing local federations and in the meetings of parliamentary groups. The right wing parties are continuously changing parties. Their ideology and principles are not definite. Their parliamentary groups take every decision.

8. Domination of the Party Leader:

Another unique feature of the French Party System is that most of the parties revolve round the personalities of their respective leaders. For popular support, the members of the party depend upon the personality of their leader or some leaders. The leader is the source of party unity. The members are united because of common allegiance to a particular leader.

The French Party System has been working with all these features. The working of the Fourth Republic west seriously limited and strained due to the defects of the multi-party system. It acts as a primary factor responsible for the political instability that came to dominate the French Political System under the Fourth Republic.

As a result of such a bitter experience, the framers of the Constitution of the Fifth Republic decided to reduce the role of the political parties in the French political system. Consequently, the scheme of a semi-Presidential system was chalked out in which the parliament and the

cabinet were assigned a decreased role in the functioning of the government. Correspondingly, there came to be a decrease in the role of the political parties.

The French multi-party system was freed from its harmful fangs. It was now made to play a relatively low profile-role in the political system-a role limited to the sphere of law-making and deliberations in the Parliament. However, the French Party System has been a rapidly changing party system and the legacy of lack of political continuity in the past continues to be a source of fluidity in the French party politics.

UNIT IV

SWISS CONSTITUTION

INTRODUCTION:

Federalism constitutes a complex governmental mechanism for the governance of a country. Federalism is the existence of dual government. It seeks to draw a balance between the power in

the Centre and those of number of units. A federal Constitution envisages a demarcation of governmental functions and powers between the Centre and the regions by the sanction of the Constitution, which is a written document. Federalism in some form or other has its roots in the remote past, for it was not unknown among some of the city-states of Ancient Greece. We find it again in the middle Ages among some of the cities of Italy, and indeed, since the thirteenth century its history has been continuous in the development of the Swiss Confederation, which was born when the three Forest Cantons banded themselves together for protection in 1291. The federal type of constitution is adopted by a number of newly emergent nations in Africa, Asia and Latin America as a response to their often widely diversified cultural, territorial, and political traditions. Federalism varies in from place to place and from time to time. In its loosest from it is a congeries of states which in fact do not make a state at all.

A federal state requires two conditions for its formation. The first condition is a sense of nationality among the units federating. The second condition is that the federating units, though desiring union, do not desire unity. The federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and state sovereignty. The division of power, however, it may in the various federations of the modern world be carried out in detail is the essential characteristic of the federal state. Basically three ways in which federal states may vary from one another, first as to the manner in which the powers are distributed between the federal and state authorities, secondly as to the nature of the authority for preserving the supremacy of the constitution over the federal and state authorities if they should come into conflicts with one another, and thirdly as to the means of changing the constitution if such change should be desired.

The powers may be distributed in one of two ways, either the constitution states what powers the federal authority shall have and leaves the remainder to the federating units, or it states what powers the federating units shall posses and leaves the reminder to the federal authority. This remainder is generally called the ‘reserve of powers’. The object of stating the powers is to define and hence to limit them. When federal constitution defines the powers of the federating units the aim is to strengthen the federal authority at the expense of the separate members of the federation. Such sates are less federal in nature. Where constitution defines powers of the federal authority, as in the case of US, the object is to check the power of the federal authority as against the federating units. They want a federal state with a real power, through which they can express

their common nationality, but they want at the same time to maintain their individual character as states as far as possible. The division of powers implies that both the legislature of the federation and that of the federating units are limited in their scope and that neither of them is supreme. There is something above them, the constitution. In truly federal state the power to maintain equilibrium between centre and states is granted to a supreme court of judges whom should ensure the protection of constitutional provisions.

The word Federalism derived from the Latin word 'foedus' which means treaty or agreement. The term is usually used to mean an association of states. The term "federalism" is used to describe a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units such as states or provinces. Federalism is a system based upon democratic rules and institutions in which the power to govern is shared between national and provincial/state governments, creating what is often called a federation. A federal state is a system of two sets of governments within a single state. It represents a compromise between large state and small states.

Federal system: Meaning and Dynamic Implications

Political system of the world are either federal or unitary or a mixture of both. While countries like USA, Switzerland, Canada and India should be placed in the category of federal states, others like Britain, France, Sri Lanka and China are examples of unitary states. Different from both, some countries having a system based on the principles of the division of powers along with very high level of concentration of powers in the hands of central government are treated as quasi-federal.

According to Finer a federal state is one in which part of authority and power is vested in the local areas while another part is vested in the central institution deliberately constituted by an association of the local areas.

According to Daniel J. Elazara, "Federalism provides a mechanism which units separate polities within an over-arching political system so as to allow each to maintain its fundamental political integrity.

"Dicey defines federation as "political contrivance, intended to reconcile national unity and power with the maintenance of state rights". In the words of Hamilton a federal state is an association of states that forms a new one.

According to Garner "federal government is a system in which the totality of government power is divided and distributed by national constitution as the organic act parliament creating it, between a central government and the governments of the individual states or other territorial subdivisions of which the federation is composed.

Swiss Federation

In the Swiss Confederation, we have the oldest of existing federal states. In spite of its name it's now a true federation and not a confederation. When Europe was plagued by revolutionary uprisings, the Swiss drew up a constitution which provided for a federal layout, much of it inspired by the American example. This constitution provided for a central authority while leaving the cantons the right to self-government on local issues. Giving credit to those who favored the power of the cantons the national assembly was divided between an upper house (the Swiss Council of States, 2 representatives per canton) and a lower house (the National Council of Switzerland, representatives elected from across the country). Referendum is made mandatory for any amendment of this constitution.

In some respects the Swiss confederation afford an even more striking example than the United States of how conflicting state interests can be overcome, without annihilating state identity, by the political device called federalism. Even the language difference is officially recognized in the federal legislature where a member may speak in German, French or Italian. The Swiss confederation for example speaks of the Swiss 'nation', a word unknown to the American Constitution, but at the same time, it divides the powers in such a way as to leave the 'reserve' with the cantons. Yet, it shows at some points both an incomplete nationalization and an incomplete federation. In the election to the upper house, the constitution leaves every detail to the cantons, whereas in US the constitution lays down a uniform method. As to the judiciary, the two houses of the legislature sitting together as one tribunal elect members of the Supreme Court of judges for six years. However, they may be, and often are reelected. This Supreme Court, however, has no powers of interpreting the constitution comparable to those of the Supreme Court in the US, for the Swiss court cannot declare any federal law invalid as infringing some provision of the federal constitution. That power is expressly left to the legislature, which passes the law. However, the Supreme Court does decide in cases of conflict between cantons and it is the court of final appeal in all cases.

To summarize, we may say that, in the Swiss confederation, the powers are divided so that 'reserve of powers' is left with cantons; the constitution is supreme, but it is left open at every point to an absolute democratic check by the instruments of the referendum and the popular initiative; and finally the federal judiciary has no power of interpreting the constitution.

CONSTITUTIONAL DEVELOPMENT IN SWITZERLAND AND SALIENT FEATURES OF THE CONSTITUTION OF SWITZERLAND

1. Introduction
2. Development of the Swiss Constitution
3. Salient Features of the Swiss Constitution
4. Conclusion

INTRODUCTION

The Republic of Switzerland, known by the formal title of Swiss Confederation, is situated in the heart of Western Europe. The country is surrounded by three powerful neighbours France, Italy and Germany. The people of the country belong to different religious, racial and linguistic communities. Inspite of all these differences, the Swiss constitute a thoroughly coherent nation. A high sense of democracy has developed in Switzerland. It may be mentioned here that Switzerland is known for its healthy tradition of self-government which has been established on Swiss soil for the last seven hundred years. This unit introduces us to the process of development of Swiss Constitution as well as its unique characteristics.

DEVELOPMENT OF THE SWISS CONSTITUTION

Like many constitutions of the modern world, the Swiss Constitution has also passed through various stages. In this section we shall deal with the development of the Swiss constitution.

Originally Switzerland consisted of a number of sovereign States without any coordinating central authority. In the later part of the 13th century the various communities of these states entered in to a league of mutual defence to protect their common rights. After the treaty of Westphalia in 1648, the confederation got recognition of its independent existence. However, the confederating units were very much sovereign in administering the internal affairs. The

confederation had jurisdiction only over foreign relations, matters relating to peace and war and inter-Cantonal disputes.

After the French Revolution, some changes were brought in the Swiss system and the Congress of Vienna gave to Switzerland the old Confederate and added three more Cantons to it. However, the cantons maintained their internal autonomy. The new constitution further established a Diet which was empowered to declare war and conclude peace. Again, the act of Mediation added 6 more Cantons. Three more French speaking cantons were added in 1815 by the Federal Agreement of 1815 resulting in the present configuration of Switzerland.

Influenced by the Liberal Revolution of French of 1830, in Switzerland a liberal renewal movement known as 'regeneration' began. This movement emphasized on implementing democratic principles and resulted in abolition of aristocratic rule in as many as 12 cantons. However, religious differences were quite evident and in 1845, the seven Catholic Cantons formed a separate league called the Sonderbund. Such formation resulted in a Civil War where these seven Cantons were defeated. It paved the way for national integration and the Swiss Diet approved a new constitution for establishing a stronger and organized government in Switzerland in 1848. Modeled after the various provisions of the United States of America, the Constitution of 1848 transformed the Swiss Political system into a Federal system.

Swiss Federal Constitution of 1848 :

The Federal Constitution of 1848 advocated for a centralized government and, therefore, took over many rights and duties which were earlier enjoyed by the cantons. However, the cantons continue to enjoy their rights of self determination. The important features of this Constitution are as follows:

Declaration of fundamental rights of the citizens: The new Constitution gave citizens a number of rights and freedoms, including the freedom of the press, freedom of religion, and the right to choose their place of residence.

Elected two-chamber Federal Assembly: The Constitution vested legislative power in a Federal Assembly of two chambers; the Council of States and the National Council.

Establishment of Federal Council: The executive power of the country was vested in a Federal Council, known as Bundesrat consisting of seven members elected by the Federal Assembly.

Establishment of Federal Tribunal: According to the Constitution, a federal court of justice known as Federal Tribunal should be established to settle dispute between the Cantons.

The new constitution was accepted with a majority of 15½ cantons and Berne was designed as the Federal capital. The constitution of Switzerland was partially revised in 1866 and then totally revised in 1874.

The Federal Constitution of 1874:

The constitution of 1848 remained in force for 26 years. During this period, the demand for more centralization was made from many quarters. Some internal problems of the country also led to the growth of Radical movements. It resulted in the mobilization of public opinion leading to the revision of the Constitution of 1848. The new constitution came in to force on May 29, 1874.

The new constitution has given the Federal Government centralized control over military matters. It provided for nationalization of railway under federal ownership. The central administration became more important compared to the cantons. Moreover, the powers of the Federal Tribunal were considerably enhanced. The constitution has been amended a number of times since its adoption. The separate judicial systems of the Cantons were abolished.

The Federal Constitution of 1999:

This Constitution of 1999 is the third federal constitution of the country and the administration of the country is presently run according to this constitution. At present there are 26 cantons constituting the Swiss federation. The new constitution came into force on 1st January 2000. It is a complete revision of the constitution without changing the structure of the Swiss federation as provided for by the 1874 Constitution.

SALIENT FEATURES OF SWISS CONSTITUTION

The Constitution of Switzerland has its own unique characteristics. Now let us read the important characteristics of the Constitution:

Written and Lengthy Constitution:

The Constitution of Switzerland is lengthy and deals with various matters including details relating to matters like fishing and hunting, cattle diseases, gambling houses and lotteries.

Usually, much of these issues belong to the sphere of ordinary laws and not constitutional laws. But such detailed discussions have been made to avoid any ambiguity regarding the division of powers between the federal and cantonal governments. Though, the constitution is a written one, certain conventions have also grown in course of time.

A Dynamic Constitution:

The Constitution of Switzerland is dynamic as it is changing with the changing time. The constitution has been amended several times to meet the new demands of the people. In this unit, we have found that the Swiss constitution of 1848 has been amended in 1874. Thereafter the constitution has undergone various changes.

Rigid Constitution:

The Swiss constitution may be classified as rigid as its amendment procedure is complex. The method of constitutional revision is discussed in detail in Chapter III of the Constitution of 1874. For amending the constitution, the instruments of Constitutional Referendum and the Constitutional Initiative are used. The Swiss constitution may be partially or totally revised. A total and partial revision of the Constitution can be made if both the Houses of Federal Assembly approve of the amendment and the same is also approved by a majority of the Swiss cantons and a majority of the citizens of Switzerland. Moreover, the citizens of Switzerland can also take initiative in the amendment of the constitution. For the total amendment of the constitution at least 50000 people should put their signature.

Republican Constitution:

The Constitution of Switzerland is Republican in character. In fact, Monarchy never existed in Switzerland. It is also believed that Switzerland is the first to experiment with republican institution in the world. According to Article 6 of the constitution, the Cantonal constitutions must ensure the exercise of political rights according to republican forms. Article 4 provides that the Swiss citizens are equal before law. The constitution prohibits discrimination of the people on the basis of birth and there is equality on the basis of law. Thus every Swiss man and woman attaining the age of 20 years and who is not excluded from the rights of active citizenship, has the right to determine his government. Being a Republic, all political institutions of Switzerland Federal, Cantonal and Communal are elective in character. All Swiss citizens participate directly in the affairs of the government from election to amending the constitution.

Rights of the citizens:

The Swiss citizens are given certain rights by both the Federal and Cantonal constitutions. Though, the Constitution does not contain a formal Bill of Rights, yet some two dozen Articles scattered throughout the document deal with the rights of individuals. These rights are protected by the court of law. The Swiss citizens are entitled to various rights viz, right to equality, right to freedom of press, right to freedom of association and petition, freedom of belief, right to marriage, right to form associations, right to petition, etc. The Constitution of 1999 further increases the rights of Swiss citizens. It now contains nine fundamental rights of the citizens. Besides, the new constitution also contains certain 'social goals' which are not directly enforceable by the court of law but they aim at ensuring social security, health care and housing.

Provision of three-fold Swiss citizenship: A citizen of Switzerlandλ has three- fold citizenship Communal, Cantonal and Federal. A person before becoming a citizen of Switzerland must be a citizen of Canton and he cannot be a Cantonal citizen without becoming a citizen of a Commune. Therefore, the federal constitution of Switzerland says that every citizen of a Canton is a Swiss citizen. Again, it is only by being a citizen of a Canton that one acquires the citizenship of Switzerland. An individual can acquire Swiss citizenship in a number of ways, like, by birth and by naturalization.

Provision of Federalism:

The Swiss Constitution provides for the establishment of federalism though Article 1 describes it as a Confederation. However, the Preamble of the Constitution states that to achieve the solidarity of the Swiss nation, a 'federal Constitution' has been adopted. The constituent units of Swiss Federalism are known as Cantons. Article 2 of the Constitution states the aim of the Constitution which 'is to preserve the outward independence of the fatherland, to maintain internal peace and order, to protect the freedom and the rights of the confederates and to promote their common prosperity'. The Swiss constitution declares the Cantonal sovereignty and they can amend their own constitutions. The federal government has been given the exclusive control over foreign relations, despatch and reception of diplomatic agents, declaration of war, conclusion of peace treaties, management of the Swiss military system, maintenance of peace and order, ownership and control of railways, currency, banking, postal and telegraph, higher education etc. In the later period, various amendments made to the constitution further increased the power of the federal government. However, local autonomy is still guaranteed in Switzerland. The cantons still possess residuary powers and it is still from the cantons that the federal government draws

authority and derives its constitutional usages. The constitution guarantees to the cantons their territory, their sovereignty, their constitutions, the liberty and rights of their people and the constitutional rights of citizens, and the rights and powers conferred by the people on the authorities. Thus, the cantons are regarded as the pre-existing and constituent members of the state. The Council of States of Switzerland represents the cantons and each canton, irrespective of its population or area, sends two representatives. Again, the approvals of cantons are required for the amendment of the constitution. However, amendments of the Swiss constitution made from time to time have contributed to the process of centralization. There are four main factors responsible for such rise of federal power is: war, economic depression, the demand for ever increasing social services and the mechanical and technological revolution in transport and industry.

Plural and non-partisan Executive:

Another unique feature of the Swiss Constitution is the provision for a plural executive, known as Federal Council or Bundesrat. Therefore in Switzerland one cannot find either a Parliamentary form of government like England or a Presidential form of Government like USA. The constitution of 1848 introduced the provision for a plural executive and it continues till date. Accordingly, the executive consists of 7 members and one amongst of them is elected by the Assembly to serve as its chairman and is designated as the President of the Confederation. Moreover, the members of the Federal council do not belong to a particular political party; rather they form a heterogeneous group belonging to four different political parties. Thus, the plural executive of Switzerland is a combination of ministerial responsibility and permanence of tenure.

Democratic Constitution: The practice of democracy in Switzerlandλ is very old. Therefore, James Bryce has opined that among modern democracies which are true democracies, Switzerland has the highest claim to be studied. Presence of democratic values in Switzerland is evident from the fact that the various small communities had popular governments from ancient period. All Swiss citizens are equal before law and every citizen has been given the right to vote. The Swiss faith in democracy as a political principle is most characteristically revealed in the people's extensive use of the instruments of direct popular government. The country is known for its practice of direct democracy. The origins of Direct Democracy can be traced back to the late middle ages. The modern system of direct democracy with frequent use of referendum was started in the 19th century. Although various provisions for centralization of power have been

made in Swiss constitution, democratic principles still prevail in the country. The method of Referendum and Initiative are frequently used as instruments of direct popular government. The most ancient of these instruments of direct democracy is Landsgemeinde or open town meeting in which every male adult can speak, make his own laws and elect officers. This method is still prevalent in five Cantons. Therefore, it is often said that democracy and Switzerland are synonymous. The principle of Swiss democracy is to be communal before being cantonal and to be cantonal before being federal. The opinions of all Swiss citizens are given equal weightage and the popular will is formed from bottom upwards. Moreover, the Swiss constitution was adopted by the people by their direct vote and can be amended only by the people themselves.

CONCLUSION

Like many constitutions of the modern world, the Swiss Constitution has also passed through various stages.

Originally Switzerland consisted of a number of sovereign Statesλ without any coordinating central authority.

In 1845, the seven Catholic Cantons formed a separate league called the Sonderbund. Such formation resulted in a Civil War where these seven Cantons were defeated. It paved the way for national integration and the Swiss Diet approved a new constitution for establishing a stronger and organized government in Switzerland in 1848. Modelled after the various provisions of the United States of America, the Constitution of 1848 transformed the Swiss Political system into a Federal system.

The Federal Constitution of 1848 advocated for a centralizedλ government and, therefore, took over many rights and duties which were earlier enjoyed by the cantons.

The constitution of 1848 remained in force for 26 years. During thisλ period, the demand for more centralization was made from many quarters. Some internal problems of the country also led to the growth of Radical movements. It resulted in the mobilization of public opinion leading to the revision of the Constitution of 1848. The new constitution came in to force on May 29, 1874.

The Constitution of 1999 is the third federal constitution of the country and the administration of the country is presently run according to this constitution. At present there are 26 cantons constituting the Swiss federation. The new constitution came into force on 1st January 2000. It is

a complete revision of the constitution without changing the structure of the Swiss federation as provided for by the 1874 Constitution.

The features of the Swiss Constitution include Written and Lengthy Constitution, Dynamic Constitution, Rigid Constitution, Republican Constitution, Rights of the citizens: Provision of three-fold Swiss citizenship, Provision of Federalism etc.

THE EXECUTIVE: THE FEDERAL COUNCIL

1. Introduction
2. Organization of the Swiss Executive: the Federal Council
3. Unique Characteristics of the Federal Council
4. President of the Swiss Federation
5. Functions of the Federal Council
6. Conclusion

INTRODUCTION

This unit introduces us to the federal executive of the Switzerland. In the previous unit, we have learnt that one of the unique features of the Swiss constitution is the provision for a plural and non-partisan executive. This unit, therefore, deals with the organizational structure and method of election of the Swiss executive. Besides, it also introduces us to the President of the Swiss federation and the powers and functions of the Swiss executive as a whole.

ORGANIZATION OF THE SWISS EXECUTIVE: THE FEDERAL COUNCIL

As mentioned earlier, the federal executive of Switzerland is a plural body known as the Federal Council or Bundersrat. The Federal Council was instituted by the 1848 federal Constitution. The authority of the federal executive is vested in the council of seven members. Theses seven members of the council thus exercise the supreme directing authority of the confederation. The members of the federal council are elected for a period of four years from among the Swiss citizens who are eligible to be elected to the National Council of the Federal Assembly. Amongst the seven members of the Federal Council, one is elected by the Assembly as the President while another member is elected as the vice-President of the Swiss federation. The Swiss constitution also prescribes that, ‘no more than one person from each canton may be chosen for the Federal

Council'. Though the members of the federal council are elected for a period of 4 years, they are re-elected as many times as they desire to be elected.

UNIQUE CHARACTERISTICS OF THE FEDERAL COUNCIL

The federal executive of Switzerland possesses certain unique characteristics. We have already learnt that this executive is a plural one. Besides, it has certain other uniqueness. Therefore, this section of the unit deals with these unique characteristics of the Swiss executive.

Plural in character:

The executive power of the Swiss confederation is vested in a plural executive consisting of seven members known as Federal Council. According to Article 177 of Swiss constitution, the Federal Council is a collegial body, in which every member enjoys equal power and status. This system has proved to be very advantageous with the merits of the Cabinet system. The Swiss executive is representative of all opinions and areas of the country, which makes democracy more meaningful in Switzerland.

Non-partisan executive:

The Federal Council is a heterogeneous group of politicians belonging to four different parties. They are chosen for their capacity as administrators. Therefore, Lord Bryce has remarked that the Federal Council, 'stands outside party, is not chosen to do party work, does not determine party policy, yet is not wholly without some party colour'. The Swiss citizens elect those persons as the executive who possess administrative skill, mental grasp, good sense, tact and temper but not the good speakers. Therefore, it is often said that in Switzerland, the office must seek the candidate, not the candidate the office. All differences among the members of the Federal Council arising out of their different party background or ideologies are sorted out through compromise as public opinion in Switzerland expects everyone to subordinate his own feelings to the public good. Therefore, Lowell has remarked that the Federal Council 'depends to a great extent on the confidence in its impartiality, and hence its position is fortified by anything that tends to strengthen and perpetuate its non-partisan character'.

Long tenure of the Councilors:

We have already read in the previous section that in Switzerland though the councilors are elected for a term of 4 years, they tend to remain in office for a longer period or until they desire to leave the office. It is possible for several reasons. First of all, the role of political party in the

formation of the government is minimum. Secondly, Swiss people prefer those persons in the affairs of the government with good temper, dedication and administrative skills. As a result of it, the Federal Council is unique in its stability and becomes a permanent body though virtually chosen after every four years. The average period of service is more than 10 years, while some has served as the councilor up to 32 years. Therefore, the Federal Council is regarded as the most stable government in the world.

Neither Parliamentary nor Presidential:

The Swiss Federal Council is neither Parliamentary nor Presidential. It is not parliamentary because, in a parliamentary system the cabinet implies a degree of party solidarity that the Swiss body does not possess. Party solidarity also implies political homogeneity and in the parliamentary government all the members of the cabinet belong to the same party. The members of the cabinet are responsible to the legislature, individually and collectively and can remain in office so long as it retains its confidence. On the other hand, though the Swiss Council is elected by the federal assembly, yet the Councilors are not required by the Constitution to be members of the Assembly. They become Councilors not because they belong to the Parliamentary majority party or are the leaders of the political parties, but in their capacity as administrators. Again, Federal Council is not a homogeneous whole and differences of opinion among Councilors are permitted and allowed to become known. Such differences cannot exist in a cabinet government. Unlike the cabinet government, the resignation of one councilor does not bring a crisis in the government. The Federal Councilors do not resign collectively or individually when their measures or policies are rejected.

Swiss Executive is neither presidential type:

In a Presidential government, the executive is separated from the legislature. The administrative heads of different departments constitute the President's Cabinet and are appointed by the President; they remain in office so long as he wishes them to continue. The office of the President does not depend upon Congress. He is popularly elected for a term of four years. In Switzerland, there is a plural executive. Though the Swiss constitution provides for a President, he is not like the head of the state of a presidential form of government. The Swiss Federal Council is not a separate branch of government with an independent policy of its own. Thus, Switzerland provides to the world a unique type of executive which is neither parliamentary nor presidential.

Stability of the Council:

The Federal council is known for its stability. The non-partisan character of the Council helps in its stability. Moreover, the Parliament cannot vote a Federal Council out of office. In Switzerland, the concept of vote of 'no-confidence' does not exist which can force a government or a member to resign. For all these reasons the executive or the federal council is very stable in Switzerland. Stability of the executive in Switzerland secures continuity in policy and permits traditions to be formed.

PRESIDENT OF THE SWISS FEDERATION

The President of the Swiss federation, whose constitutional title is the "President of the Confederation," is one of the seven Councilors and is chosen, as also the Vice-President, by the Federal Assembly from among the members of the Federal Council for a term of one year.

However, it must be remembered that the Position of the Swiss President is not like the American President or the Prime- Minister of the UK. He does not enjoy any special power as the President of the Confederation. Like other members of the Council, he is given the charge of a department of federal administration.

The Swiss President is elected from the seven members of the Federal Council for a period of one year. No President can be re-elected for two consecutive years. However, he or she may be re-elected after a break of one year. The President as well as the Vice-President is elected on the basis of rotation. As the President of the country, he or she enjoys some precedence over his or her colleagues. However, this precedence is merely a formal one. The President is not even regarded as the chief administrator as he or she has no more power than his or her colleagues and therefore is no more responsible than other councilors for the administration of the country. All the decisions come from the Federal Council as a single authority.

The President of Swiss Confederation acts as the Chairperson of the Council. He or she presides over the meetings of the Council and has a casting vote in case of a tie. He or she also presides on ceremonial occasions. He or she also acts as a link between the various departments under the various members of the council. The functions of the President are laid down in the Law on the organization of Federal Administration of 1914 and it gives him or her certain very limited emergency powers, general supervisory powers, and the responsibility of the Federal Chancellery. It also states that 'the President represents the confederation at home and abroad'.

Moreover, he or she performs all the ceremonial functions as the head of the state. Thus, though vested with no special power, the office of the Swiss President is the highest office open to Swiss politicians.

From the above discussion it is clear that all the members of the Federal Council occupy an equal status and equal powers. The members of the Federal Council are not chosen by the President. Therefore, the Swiss President performs only certain ceremonial functions and cannot be termed as the chief executive of the country.

FUNCTIONS OF THE FEDERAL COUNCIL

Article 95 of the Constitution describes the Federal Council as 'the supreme executive and governing authority of the confederation'. Therefore, all the executive powers of the confederation are vested on the Council. Article 102 contains a list of the major functions and duties of the Federal Council. These are:

The Federal Council conducts the affairs of the Confederation in accordance with federal laws and decrees.

It should ensure due observance of the Constitution, the laws and decrees of the Confederation, and Federal Treaties. The Federal Council is empowered to intervene and take necessary action, either on its own initiative or in response to an appeal against a grievance, if Cantonal Governments do not co-operate in the proper execution of federal laws or decrees or other treaties.

According to a constitutional provision the Cantons must have their Constitutions and alterations sanctioned by the Federal Assembly. It is the duty of the Federal Council to supervise the 'guarantee' of Cantonal Constitutions. The guarantee is granted provided that the Cantonal Constitution contains nothing contrary to the provisions of the Federal Constitution.

The Constitution empowers both the houses of Federal Assembly, to each member of either House, to each Canton and a half-Canton and the Federal Council to initiate legislation. However, in practice, it is the Federal Council which really initiates major portion of the legislation to be enacted. Again, a Councillor is assigned to guide the bill all the way through the legislative process. The bill is examined in the committee in his or her presence and he or she gives advice and comments.

As a result of the growing legislation and increasingly complex nature of governmental activities the Federal Assembly delegates to the Federal Council a great deal of discretion in the administration of the Federal laws. The Federal Council then issues rules and regulations which have the force of laws.

The Federal Council takes part in the legislative process in the following ways:

- Leading the preliminary proceedings of legislation
- Submitting federal acts and decrees to the federal Assembly
- Enacting ordinances in so far as the Federal Constitution or federal law empowers it to do so.

The Federal Council examines the laws and ordinances of the Cantons that are required to be submitted for its approval. It also supervises the branches of Cantonal administration where such Supervision is incumbent upon it.

Federal Council looks into the execution of judgments of the Federal Tribunal and also of the agreements and arbitration awards upon the disputes between Cantons. The execution of the decisions of the courts and many provisions are left to the Cantons. However, if the cantons fail to carry out these obligations, then, as the last resort, the appeal is made to the Federal Council.

Federal Council also performs the function of appointing. The Federal Council in practice delegates its right of appointment in very many cases to the various branches of administration and other independent authorities.

According to the Constitution of Switzerland, the Federal Council should examine the agreements of the Cantons among themselves and with foreign states. The Council is also empowered to sanction them if they are in accordance with the constitution and law. If the treaties violate the rules and regulations of the Constitution, then it may declare the treaties null and void. All kinds of official relationships with foreign governments are established through the agency of Federal Council.

The Federal Council conducts the foreign relations of Switzerland. Besides conducting the foreign relations of Switzerland, the Federal Council also safeguards the external interests of the Confederation, ensures external safety of the country and also maintains her independence and neutrality. Thus, the Federal Council manages the external affairs of the government. The Federal Council also negotiates treaties and ratifies them after approval of the Federal Assembly.

Federal Council is also entrusted with the power of looking after the internal security of the Confederation and maintenance of peace and order. Federal Council also looks after the measures to be implemented if internal peace is disturbed in the cantons.

In the time of emergency, when Federal Assembly is not in session, the Federal Council is empowered to call out troops and employ them wherever it finds necessary.

Being the executive, the Federal Council is entrusted with the charge of the military affairs of the Confederation and of all branches of the federal administration.

The Federal Council also examines the laws and decrees of the Cantons which require its approval and supervise such branches of Cantonal administration as are placed under its control.

The Federal Council also performs the important function of administering the Federal finances and prepares the budget and submits accounts of federal receipts and expenditure.

The Federal Council supervises the official conducts of all officers and employees of the Federal administration.

The Federal Council gives an account of its work to the Federal Assembly in each ordinary session. It also presents a report on the internal conditions in the country as well as foreign relations to the Federal Assembly. In that report, the Council may also recommend certain measures for the promotion of general welfare. If the Federal Assembly demands, the Council may also submit special reports to it.

The Federal Council also exercises certain judicial powers. It hears appeals of private individuals against a decision of the Federal Railway Administration. It has also appellate jurisdiction over the decisions of the Cantonal governments in cases relating to discrimination in elementary schools, differences arising out of treaties relating to trade, patents, military taxation, question about occupation and settlement, Cantonal elections etc.

CONCLUSION

- The executive power of the Swiss confederation is vested in a plural executive consisting of seven members known as Federal Council. According to Article 177 of Swiss constitution, the Federal Council is a collegial body, in which every member enjoys equal power and status.
- There are certain unique features of the Swiss Executive.

- The Federal Council is a heterogeneous group of politicians belonging to four different parties. They are chosen for their capacity as administrators.
- In Switzerland though the councilors are elected for a term of 4 years, they tend to remain in office for a longer period or until they desire to leave the office. It is possible for several reasons. As a result of it, the Federal Council is unique in its stability and becomes a permanent body.
- The Swiss Federal Council is not a separate branch of government with an independent policy of its own. Thus, Switzerland provides to the world a unique type of executive which is neither parliamentary nor presidential.
- The Federal council is known for its stability. The non-partisan character of the Council helps in its stability. Moreover, the Parliament cannot vote a Federal Council out of office. In Switzerland, the concept of vote of 'no-confidence' does not exist which can force a government or a member to resign. For all these reasons the executive or the federal council is very stable in Switzerland.

THE LEGISLATURE: THE FEDERAL ASSEMBLY

1. Introduction
2. Organization of the Federal Assembly

a. The Council of States

b. The National Council

3. Powers and Functions of the Federal Assembly

4. Conclusion

INTRODUCTION

The Federal Legislature of Switzerland is known as Federal Assembly. The Federal Assembly is bi-cameral. The Federal Assembly exercises the supreme power of legislation in Switzerland. The Swiss legislature is supreme and the Constitution expressly states that 'subject to the rights of the people and of the Cantons……The supreme power of the Confederation shall be exercised by the Federal Assembly." Thus, Federal Assembly of Switzerland exercises supreme powers in matters of legislation. This unit is going to deal with the different aspects of the Swiss Federal Assembly - its organization, the composition of the both Houses of the Assembly and its powers and functions along with a discussion on the position of the Council of States.

ORGANIZATION OF THE FEDERAL ASSEMBLY

As mentioned earlier, the Federal Assembly is bi-cameral in nature. The two chambers of the Federal Assembly are: 'Counsil des Etates' or the Council of States and 'Counsil National' or the National Council. In this section we shall deal with the organization and powers and functions of the two Houses of the Federal Assembly. The Federal Assembly can be legally dissolved only after the adoption of a popular initiative calling for a complete revision of the Constitution.

THE COUNCIL OF STATE

Composition and Method of Election: The Council of States is the upper House of Swiss Federal Assembly like the Rajya Sabha of Indian Parliament. The Council of States of the Swiss Federal Assembly represents the component units of the Confederation on the basis of equality. Every Canton, irrespective of its size or population, is entitled to two representatives and every half-Canton one representative. Twenty cantons send two representatives each while six half cantons send one each. Therefore, the Council of States is now composed of 46 Councilors. There is no uniform procedure in all the cantons for the election of the members of the Council of States and the same varies from canton to canton. Each canton by its own laws determines the mode of election of the Deputies, the length of their term of office, and also the allowances to be paid to them. In certain Cantons the members are elected indirectly, while in some others they are elected directly. Therefore, in Switzerland, there is no uniform method of election, or a similar

tenure of office or an equal fixed salary However, as we have already studied/learnt, the membership of the Council of States is usually stable as most of the members are re-elected for as long as they wish to serve.

Sessions:

The Council of States must meet once a year in ordinary session on a day. However, the Swiss Constitution has also made a provision for calling of special session either by Federal Council, or on the request of one-quarter of the members of the National Council or of five Cantons. The Council of States elects its own Chairperson and Vice Chairperson for each ordinary and extra-ordinary session. The Chairperson presides over the meetings of the House and is responsible for the determination of the day to day business of the house. He/she can also vote in case of a tie.

Position of the Council of States:

The Council of States possesses equal power and responsibility with the National Council. All legislative measures may be introduced in either of the Houses and should be approved by both the Houses. In financial matters also, both the Houses enjoy equal powers. Thus, the framers of the Constitution wanted to give equal powers to both the Houses. In the initial years both the Houses exercised equal powers but in the later period, it is experienced that the experienced and talented persons prefer to go to the National Council. The members of the Swiss Council of States are not entrusted with any special power. Besides, the tenure of office of the members are not equal also. All these have made the Swiss Council of State a weaker state in comparison to the National Council.

However, it cannot be said that the Council of States enjoys a subordinate position like the second chamber of the Parliamentary government. In India we have a Parliamentary type of government where the upper chamber or the Rajya Sabha enjoys a subordinate position. In Switzerland, laws can be originated in either House. In financial matters also, both the Houses are given equal powers. The annual budget is prepared by both the Houses alternatively. Moreover, the Council of States is not a submissive body; it can disagree with the measures taken or passed by the National Council. The National Council does not enjoy veto power over the legislative or financial powers of the Federal Assembly.

The Council of States, therefore, has its own entity. Because of its smaller size, its deliberations are more detailed than those of the National Council.

THE NATIONAL COUNCIL

The National Council is a representative House of the Swiss people. It is the lower House of the Swiss Federal Assembly. The total strength of the National Council is not fixed by the Constitution and is changed from time to time with the change in population.

Composition and method of election:

The National Council is the larger chamber of the Federal Assembly. The total strength of members of the National Council is 200. The composition and organization of the National Council is regulated by the Federal Constitution. All the Swiss citizens who have attained the age of twenty and who have not been deprived of his or her political rights by the legislation of the Confederation or of the Canton where he or she is the resident has the right to participate in federal elections and other federal polls as the referendum. Article 72(2) of the Swiss Constitution has provided that the seats of the National Council should be distributed among the Cantons and half-Cantons in proportion to their resident population, each Canton and half-Canton being entitled to one seat at least. The main objective of such provision is to safeguard the interests of the people living in any particular canton. Zurich, which is the largest Canton of Switzerland, has the highest number of seats in the Council numbering 34 seats.

The members of the National Council are elected by direct ballot on the basis of proportional representation. The members of the Council are elected for a period of four years. To become a member of the National Council, a person should possess all the qualities of a Swiss voter.

The National Council elects its own Chairperson and Vice Chairperson for each ordinary or extra-ordinary session. The Chairperson is elected for one year. The election of the Chairperson is made in such a way as to guard against the concentration of power in one man, or one party or Canton or linguistic group. The Chairperson has a casting vote which he/ she exercises in case of a tie.

Sessions:

The National Council meets in regular sessions at the beginning of December. The Council generally has four sittings. In case of an emergency, the Federal Council may summon an extraordinary session. The sessions of the Council are usually very short lasting only about three weeks. During the sessions of the Council attendance of the members is regular and a member

absenting himself without strong reasons is deemed neglectful of his duty. The members of the Council may speak in any of the four national languages.

According to the Swiss Constitution the Council should conduct business only when an absolute majority of their respective members is present i.e. 101 in case of National Council. It needs to be mentioned here that the concept of official opposition is absent in Switzerland. The National Council cannot displace the Federal Councilors because the latter are not the members of the legislature.

Joint sessions:

The two houses of the Swiss Legislature i.e, the Council of States and the National Council usually sit separately. However, they meet in a joint session for three definite purposes—

- To elect the Federal Council, the Federal Court, theμ Federal Insurance Tribunal, the President of the Federal Council as also the Vice-President, the President and the Vice-President of the Federal Court and of the Federal Insurance Tribunal, the Chancellor of the Confederation and the Commander in Chief of the Army.
- To exercise the federal power of pardon,
- To resolve conflicts of jurisdiction between the majorμ federal organs.

Thus, from above discussion it is evident that the National Council is a very powerful second chamber.

POWERS AND FUNCTIONS OF THE FEDERAL ASSEMBLY

The Constitution gives right to introduce legislation to both the Houses of the Federal Assembly the Council of States and the National Council, to each member of the Houses, to each Canton and half-Canton and the Federal Council. Article 84 of the Swiss Constitution provides that the National Council and the Council of States 'shall deal with all matters which the present Constitution places within the competence of the Confederation and have not been attributed to another Federal authority.' Thus, there are very few constitutional limitations on the powers of the Federal Assembly within its jurisdiction. Moreover, both the houses work in coordination with each other. Now we shall discuss the powers and functions of the Federal Assembly:

Legislative Powers: The Legislative powers of the Federal Assembly are as follows:

The Federal Assembly, as a legislative body is competent to enact all laws and decrees dealing with matters which the Constitution assigns to federal authorities, and make laws dealing with the organization and mode of the election the federal authorities.

The Assembly determines and enacts necessary measures to ensure the due observance of the Federal Constitution; the guarantees of Cantonal Constitutions and the territory of the Cantons, the fulfillment of Federal obligations; adopts measures ensuring the external safety of the country, her independence and neutrality; the internal safety of Switzerland, and the maintenance of peace and good order, enacts the annual budget of the Confederation, approves State accounts and decrees authorizing loans.

- The Federal Assembly can demand all kinds of information, which it deems necessary, on the administration of the Confederation.
- The Constitution of Switzerland also states that all laws passed¬ and resolutions adopted by the Federal Assembly must be submitted to the people for their acceptance or rejection if the law is not urgent. It is the duty of the Federal Assembly to decide what laws or resolutions are urgent.

Executive Powers:

Besides the legislative powers, the Federal Assembly also performs various executive powers. These are as follows:

- The two Houses of the Federal Assembly at their joint sitting, elect the seven members of the Federal Council, its President and Vice-President.
- The members of the Assembly also appoint judges of the Federal Court, the members of the Federal Insurance Court and the Commander-in-Chief.
- The Federal Assembly supervises the activities of the civil service, and even decides administrative disputes and conflicts of jurisdiction between federal officials. It determines salaries and allowances of the members of Federal Departments.
- The Federal Assembly is also vested with the power of controlling the Federal Army. It declares war and concludes peace, ratifies alliances and treaties. All treaties concluded by the Cantons between themselves or with foreign States must be confirmed by the Federal Assembly.
- If the Cantons fail to execute federal laws or obligations, the Federal Assembly decides on the nature of intervention against the offending Canton or Cantons.

- It also sees the relationship between the Confederation and the Cantons. The Assembly also guarantees the Cantonal Constitutions.

Judicial Powers: Main judicial powers of the Federal Assembly are

- The Federal Assembly grants pardon in joint sessions.
- It also hears appeals against the decisions of the Federal Council relating to administrative powers.
- The Assembly also supervises the performance of the functions¬ of the Federal Tribunal.

Financial Powers:

The Federal Assembly of Switzerland also enjoysλ some financial powers. They are

- By making laws, the Assembly can levy taxes.
- The Assembly decides on the public expenditures of the Confederation. It votes the annual budget as well as approves the annual account of the country.

Power of Constitution Amendment:

In Switzerland, the power of the Constitution is exercised by the Federal Assembly as well as by the citizens of the country. The powers of the Federal Assembly in regard to constitutional amendment are as follows:

The Federal Legislature may initiate either total or partial constitutional amendment.

- When both the Chambers agree to revise the Constitution, the proposed revision is submitted to the people for their acceptance or rejection.
- If one Chamber does not agree to the proposed revision, then the matter is referred to the people for final decision.

Besides the above powers, the Federal Assembly has also been entrusted with the power of deciding foreign policies for the country and supervising Switzerland's relations with foreign countries.

These are the important powers and functions of the Federal Assembly of Switzerland. The Swiss constitution has given the supreme authority of the Confederation to the Federal Assembly. The laws made by the Federal Assembly cannot be vetoed by the President of the

Confederation. Neither of these laws can be declared unconstitutional by the Swiss judiciary. The two Houses of the Federal Assembly works in harmony. By their activities and performances, these Houses have attracted talented and honest statesmen. However, over the years, it is believed that the process of direct legislation has contributed towards the decline of the powers of the Federal Assembly.

CONCLUSION

a. The Federal Legislature of Switzerland is known as Federalλ Assembly. The Federal Assembly is bi-cameral in nature. The two chambers of the Federal Council are: 'Counsil des Etates' or the Council of States and 'Counsil National' or the National Council.

b. The Council of States is the upper House of Swiss Federal Assembly like the Rajya Sabha of Indian Parliament. The Council of States of the Swiss Federal Assembly represents the component units of the Confederation on the basis of equality. Every Canton, irrespective of its size or population, is entitled to two representatives and every half-Canton one representative.

c. The National Council is a representative House of the Swiss people. It is the lower house of the Swiss Federal Assembly. The total strength of the National Council is not fixed by the constitution and is changed from time to time with the change in population.

d. The Federal Assembly exercise enormous powers, such as legislative, judicial, executive, financial and constitutional amendment powers.

THE SWISS FEDERATION

1. Introduction
2. Historical Background of Federalism in Switzerland
3. Nature of Swiss Federalism
4. Centralization of Powers in Switzerland
5. Conclusion

INTRODUCTION

This unit introduces to you the nature of federalism in Switzerland. It is a small and successful federation of Western Europe, having only 0.15% of the world's total surface area. The population of Switzerland offers considerable diversity in religious, linguistic, regional and cultural lines. This diversity again acts as a strong source of successful federation too. In this unit we shall learn about the historical background, nature of Swiss Federation and centralization of powers in Switzerland.

HISTORICAL BACKGROUND OF FEDERALISM IN SWITZERLAND

The historical background of Swiss federation can be traced in the following phases

First Phase (Till 1291):

Originally, some small tribes were the inhabitants of Switzerland. They were in small and separate Cantons. In the 9th and 10th Century, they took part in wars as being parts of Roman Empire. Later, these Cantons were occupied by Germans. By 1240, three of their Cantons got independence from the Empire through certain agreements. In 1291, those three Cantons joined into a Perpetual League to secure common defense for selfpreservation. It is the starting of a confederation.

Second Phase (Till French Revolution):

The confederation of thoseλ three Cantons became more strengthened by the joining of another five Cantons in 1353. By 1513, the numbers of Cantons increased into the Confederation to 13. Now the Cantons retained their sovereign status and recognized their confederation by signing the Treaty of Westphalia. The French enemies conquered the confederation in 1798.

Third Phase (Till Sonderbund War):

After winning the Swiss system by the French revolutionaries, it established a unitary state under the Helvetic Republic. That centralized tradition was a total opponent of Swiss local governance system and its autonomy. Hence, a strong opposition from the Swiss people led to the Act of Mediation (1803) and the constitutions of the cantons were restored. Accordingly, the old Confederation was renewed and modified and a new Federal Pact was signed. The

Vienna Congress recognized the Swiss Confederation. It incorporated six more cantons and in 1815, another three cantons joined in the confederation.

The period from 1815 to 1848, witnessed struggle between the centripetal and centrifugal forces, known as the Radicals and Federalists. To secure cantonal autonomy and freedom from the confederation, seven catholic cantons formed an armed league, Sonderbund. It resulted in a civil war between Sonderbund and military deputed by the Swiss Assembly, in 1847. After the victory of federalists in the war, full-fledged federal state was established in Switzerland. It carried a new Constitution too in 1848.

Fourth Phase (first Written Constitution-1848-1874):

After the victory of the federal forces, the Swiss Diet (Assembly) put stress on revision and formation of a constitution which was to settle the weaknesses proved by the Pact of 1815. A Committee of Revision was set up and the new Constitution after approved by the Assembly, send to people for a popular referendum. Majority of the people and the cantons approved the new Constitution leading to an effective unification of cantons into a real federal state.

The first Constitution of 1848 recognized the sovereignty of the Cantons in the matters not granted to the federal government. Besides, the structures like Bi-cameral Federal Parliament, Collegial Executive, the institutions of Referendum and Initiative, the federal court and a common uniform citizenship for all the citizens of all the cantons were restored by that Constitution.

Fifth Phase (total revision of the Constitution in 1874 to January 2000):

In 1874, a total revision of the Constitution was made for strengthening centralization in Switzerland. It was approved by 2/3 majority of the constituents. By 1874 revision, an integrated judiciary for all the cantons and federation was established. The federal tribunal was strengthened and made a powerful federal court. Further, it provided for the nationalization of railways under the ownership of the federal government and lay down that legislation was to be referred to the Swiss people, not as inhabitants of cantons. This revised Constitution was used up till 2000, when it was again totally revised.

Sixth Phase (current era since 2000):

On 18th December, 1998, the Swiss Federal Parliament adopted a draft for a total revision of the Constitution of 1874. After putting a referendum, the people and cantons of Switzerland adopted the total revision of the Constitution on 18th April, 1999. In 1st January, 2000, the new

totally revised Constitution came into force. The new Constitution consolidated the old Constitution and all the amendments which had been made in it between 1874 to 1999. The new Constitution had 196 Articles and incorporated a detailed Bill of Rights of the Swiss people as well as the enumeration of the social goals before the Swiss Federation. It developed a detailed discussion about the federal cantonal relations. This new Constitution tends to secure the cultural plurality of Swiss society.

NATURE OF SWISS FEDERATION

Article 1 of the new Constitution of Switzerland declares that the Swiss Federation consists of the Swiss people and the Cantons. Actually, Swiss federation grows from the state of confederation to federation. The new Constitution which was in operation from 1st January, 2000, proposed to protect the liberty and rights of the people and safeguard the independence and security of the country. Title I (General Provisions) of the new Constitution offers the basic structure of the Swiss federation and Title 3 entails a detailed discussion about the relationship between the federation and cantons and the system of cooperation between them. The Basic structure of the Swiss federal political system can be understood through the following Table.

Basic structure of the Swiss federal political system

TYPE OF GOVERNMENT	EXECUTIVE POWERS	LEGISLATIVE POWERS	JUDICIAL POWERS
Federation	Federal government consists of seven federal councilors elected by federal Parliament for a period of 4 years. One of the councilors acts as President. Rotation is made every year for the post of the President.	Federal Assembly is bi-cameral. National Council is the lower House. It consists of 200 members elected by the people. Number of representatives of each canton depends upon population and size of the cantons.	Federal Supreme Court is of about 38 Judges. They are elected by the Federal Assembly.

		Council of States is the upper House offering equal representation to all cantons. 46 State Councilors elected by the cantons. Each (Half) canton elects two (one) representatives.	
Cantons	Cantonal government is of 5 to 7 members, elected by the Cantonal people for every 4-5 years.	Cantonal Parliament, elected by the cantonal people very 4-5 years.	Cantonal court elected by Cantonal Council or Parliament.
Communes/ municipalities/ cities	Local government elected by the People.	Large Communes (cities) Parliament elected by the people.	District Court elected by authority or the people of the district.

The political autonomy of the sub-national units is ample. It is guaranteed through different institutional devices. The cantons have their own constitutions. Cantonal constitutions must respect principles of democracy, must guarantee fundamental rights and rule of law as prescribed in the Federal Constitution, but they allow the cantons to have their own political organizations, their own political authorities free from the influence of the federal government and give them an ample autonomy in legislation, in preferences for their own policies of public goods and services, for taxation and financial policies as well. The communes/local units (municipalities) have a right of existence protected by the Supreme Court. Communes have their own political organizations, their own policies with regard to the production and distribution of local public goods. Most important, they have a large autonomy in questions of local taxes and in their financial policy.

Hence, structural and functional division of powers determines the nature of the Swiss federation. It can be well-understood with the following list of basic characteristics of Swiss federal system-

Due to historical legacy of Switzerland, it was declared as a confederation in its inception. But the new constitution of 2000, declares it as a federation instead of confederation.

Switzerland comprises of 26 Cantons. It incorporates 20 full cantons and 6 half cantons. They are non-sovereign units which together form the Swiss federation. The Cantons were uniting for their common safety and preservation of their liberty and interdependence against all foreign aggression as well as to preserve internal peace and order.

The Swiss federation also accepts the sovereign equality of all the Cantons whether big or small. Each full Canton sends two representatives and half-Canton one representative to the upper house of the Swiss Federal Assembly-the Council of States. The Cantons enjoy the right to determine the method of election and the tenures of their respective Councilors.

Swiss Federal system has the non-centralized division of powers. It is characterized by several forms of vertical and horizontal co-operation between the different levels.

The institutional provisions such as equal representation of each canton in the Council of States, the upper House of the Swiss Federal Assembly shows the traditionally strong position of the Cantons in federal decision making system.

Within the constitutional framework of the cantons, also the municipalities retain a strong position in the federal system, based on the bottom-up development of the federation.

The decentralized division of powers is also mirrored in the fiscal federal structure giving the cantonal and municipal level own tax bases.

An important reason for a federalist nation building in the 19th century lies in the fact that the Swiss society is composed of different religious and linguistic groups. Federalism promised to combine national unity with multicultural diversity.

Switzerland has a written Constitution offering clear division of powers between Swiss federation and Cantons. Distribution of powers between Federal system, Cantons and Municipalities is also one of the main characters of Swiss federation. It can be better realized with the following table

Distribution of powers between federal units, cantons and local governments

Federal Powers (based on	**Cantonal Powers (based on**	**Municipal powers(based on**

federal Constitution)	Cantonal Constitution)	Cantonal Legislation)
Organization of federal authorities	Organization of cantonal authorities (own constitution, own anthem, own flag)	Education (Kindergarten and primary schools)
Foreign relations Cross	border cooperation Waste management	Foreign relations Cross
Use of Army and Army Service Tax Maintenance of law and order	courts and court procedures Municipal streets	Use of Army and Army Service Tax Maintenance of law and order
National traffic, road traffic, protection of Alpine Transit, regulation of rail traffic (Highways)	Inter-cantonal treaties for regional interests, participate in decisions of foreign policy	Local infrastructure
Nuclear energy, energy policy and transportation of energy	Elections, local government, regulation of liberal professions,	Local Police
Postal services and Health and sanitation telecommunication Zoning	Postal services and Health and sanitation telecommunication Zoning	Postal services and Health and sanitation telecommunication Zoning
Monetary policy	Cantonal Streets	Citizenship
Social security (pensions, invalids)	Forests, water, natural resources	Municipal taxes
Civil law, criminal law	Education (Secondary schools and Universities)	
Civil and criminal procedure	Protection of the environment	
Civil defense and Customs	Protection of the nature and heritage	
Education (Technical Universities)	Citizenship	
Scientific research, data statistics, support for education	Cantonal taxes	
Protection of the environment, public works,		
Citizenship, labour, social security, Residence and domicile of Foreigners		
Federal taxes		

The new Constitution from its Article 54 to 135, describes in detail theλ distribution of powers between the federal and cantonal governments. The Cantons have the residuary subjects and have retained the powers which have not given to the federation. The federal government

has been given powers in respect of subjects of national and common interest and importance enlisted in the concurrent subjects. In case of the conflict arises regarding the laws on the concurrent list subjects, between the federal government and the canton/cantons, the federal laws prevail over the cantonal laws. Article 3 of the Constitution upholds that the cantons are sovereign in so far as their sovereignty is not limited by the Federal Constitution. In Switzerland, each Canton has the right to constitute their own republican constitution. The cantonal constitution cannot violate the Federal Constitution.

The principle of rigidity is maintained in the Swiss Constitution. Noλ amendment can be done in the Constitution without popular approval. The proposal for amendment of the Constitution can be initiated either by the Federal Assembly or by 100,000 of Swiss voters. No amendment gets incorporated in the Swiss Constitution without the approval of the majority of Swiss voters and without consent of the majority of the Cantons.

The Swiss Constitution grants a uniform citizenship of Switzerlandλ to all the people. In addition to it, the people have the citizenship of their respective cantons and communes. In other words, the Swiss Constitution accepts the provision of three-fold citizenship.

Hence, the growth in the powers of the federal government and a tendency towards centralization stands fully accepted by the Cantons as a national necessity. Conducive Federal-Cantonal relations in Switzerland provides necessary environment for the development of the Swiss Nation.

CENTRALISATION OF POWERS IN SWITZERLAND

The total revision of the Swiss Federal Constitution in 1874 was guided by the objective of centralization and since then it was continuing. The total revision of 1999 recognized the matter and followed the trend. The rise of a social-welfare administrative state has strengthened the hands of the Swiss federation. The federal government has more revenue resources and the Cantons are depended upon its grants-in-aid. The federal court has the power to conduct judicial review over the cantonal laws also strengthen the federation. Again, the supremacy of the federation is restrained in respect of laws of the concurrent list. Here, the cantonal laws go to secondary position. In order to understand it, we have to study the nature of the division of powers in Switzerland.

In Switzerland division of power is not very rigid and fully clear.

In Switzerland, the federal laws relating to the federal subjects are executed and administered by the cantonal governments. The federation has a limited bureaucracy and handles the administration relating to a few subjects. They are customs, coinage, posts, telegraph and telephones. Other subjects are administered by the cantons. Again, Article 46 of the constitution states that the Cantons shall implement federal laws in conformity with the Constitution and statutes. The decisions of the federal court are executed by the cantonal bureaucracies.

The Swiss Constitution accepts the concept of autonomy of the cantons and it is declared in Article 47 of the Constitution. The Cantons have the custodian of all powers, which have not been delegated to the federation. Equal representation to the Cantons in the Council of States, due role to the Cantons in the amendment process and the system of allowing the Cantons to have their constitutions and limited armies etc. are some of the examples that highlight autonomy of each Swiss Cantons.

Limitations on the Swiss Cantons are as follows

1. Cantons have no right to secede from the federation.
2. Cantonal constitutions should be in conformity with the federal Constitution.
3. The constitution of a Canton has to be a republic/democratic or representative constitution.
4. The Cantons cannot individually or collectively, make any political treaty or alliance with any foreign country.
5. The federal court has the right to exercise the power of judicial review over cantonal laws with a view to determine whether or not these are in conformity with the federal Constitution and laws.
6. No Canton can restrict the free passage of armed forces through its territory.
7. For the maintenance of law, order and security, the federal government can send troops to any Canton.
8. The federation shall ensure that the Cantons respect federal laws.

Article 3 of the Constitution records that Swiss Cantons are sovereign in all matters other than which have been vested with the Swiss Federal Government. The federation enjoys several defined powers and rights. The Cantons continue to enjoy all such rights which have not been transferred to the federation or which have not been prohibited to the Cantons by the Swiss Constitution. The Swiss Federation enjoys defined and definite powers and the residuary

powers i.e. all other powers are still enjoyed by the Cantons. However, the Cantons are the non-sovereign units of Swiss Federation. Sovereignty belongs to Switzerland as one nation state. Nevertheless, the Constitution still refers to the sovereign powers of the Cantons which are enjoyed by them under the Swiss Constitution.

The Swiss Constitution in its Article 42 states that "the federation shall accomplish the tasks which are attributed to it by the Constitution", and "the Cantons shall define the tasks which they will accomplish within the framework of their power." It clearly means that in the exercise of its powers as stand allotted to it, the Federal Government performs appropriate and necessary functions. The Cantons are expected to define their own tasks and functions by their respective constitutions. However, while doing so they are to be bound by the Constitution of Switzerland. The constitution of a Canton can in no way violate any provision of the Swiss Constitution. In case of a conflict between any cantonal law and a federal law, the latter gets precedence, i.e., the federal law enjoys priority over the cantonal law. At the same time the Swiss Constitution calls upon the federation to respect and protect the cantonal constitutions and their security. The boundaries of a Canton cannot be changed without the consent of the concerned Canton. Each Canton enjoys internal autonomy of administration and legislation but within the limitations defined by the Swiss Constitution.

CONCLUSION

- The evolution of constitutionalism in Switzerland was took place by passing through several phases.
- The first Swiss Constitution of 1848 recognized the sovereignty of the Cantons in the matters not granted to the federal government. In 1874, a total revision of the Constitution was made for strengthening centralization in Switzerland. Again, the people and Cantons of Switzerland adopted the total revision of the Constitution on 18th April, 1999. In 1st January, 2000, the new totally revised Constitution came into force.
- Article 1 of the new Constitution declares that the Swiss Federationλ consists of the Swiss people and the cantons. Switzerland comprises of 26 Cantons. They are non-sovereign units which together form the Swiss Federation.

- Swiss Federal system has the non-centralized division of powers. It is characterized by several forms of vertical and horizontal cooperation between the different levels.
- Switzerland has a written Constitution offering clear division of powersλ between Swiss federation and Cantons. The federal government has been given powers in respect of subjects of national and common interest and importance enlisted in the concurrent subjects. In case of the conflict arises regarding the laws on the concurrent list subjects, between the federal government and the canton/cantons, the federal laws prevail over the cantonal laws.
- With the Swiss constitutional framework, the Cantons enjoy strong position. Within the constitutional framework of the Cantons, also the municipalities retain a strong position in the federal system, based on the bottom-up development of the federation. The Swiss federation also accepts the sovereign equality of all the Cantons whether big or small. Each full Canton sends two representatives and half-canton one representative to the upper house of the Swiss Federal Assembly-the Council of States. In a true federation like Switzerland, each Canton has the right to constitute their own republican constitution, that cannot violate the Federal Constitution. It must provide for amendment by a popular vote.
- The decentralized division of powers is also mirrored in the fiscal federalλ structure giving the cantonal and municipal level own tax bases.
- The Swiss constitution grants a uniform citizenship of Switzerland to all the people. In addition to it, the people have the citizenship of their respective Cantons. In other words, the Swiss Constitution accepts the double citizenship.
- Division of power is not very rigid and fully clear in Switzerland. The federal laws relating to the federal subjects are executed and administered by the cantonal governments. The federation has a limited bureaucracy and handles the administration relating a few subjects. They are customs, coinage, posts, telegraph and telephones. Other subjects are administered by the cantons. The decisions of the federal court are executed by the cantonal bureaucracies.
- Limitations of the Swiss Cantons are that Cantons have the no right to secede, cantonal constitutions should be in conformity with the federal constitution, the cantons cannot

individually or collectively, make any political treaty or alliance with any foreign country.

- The federal court has the right to exercise the power of judicial review over cantonal laws with a view to determine whether or not these are in conformity with the Federal Constitution and laws.

THE SWISS JUDICIARY: THE FEDERAL TRIBUNAL

1. Introduction
2. Structure and Organisation of the Federal Tribunal
3. Jurisdiction of the Federal Tribunal
4. Comparison of the Swiss Federal Tribunal with the American Supreme Court
5. Conclusion

INTRODUCTION

The Swiss federal court is known as the Federal Tribunal. It is the youngest of the three organs of the Swiss Federal Government since it was created by the Constitution of 1874. The Constitution of 1848 provided for a court for the administration of justice in the Federal sphere, but it was not vested with the power of resolving conflicts between the Confederation and the Cantons or among the Cantons themselves. Such cases were heard and decided by the Federal Assembly. The Federal Court had no fixed location for the transaction of business and it lacked qualified professional personnel. The Constitution of 1874 did not bring about radical changes in the powers and jurisdiction of the existing court. But in actual practice, its powers were considerably increased. The subsequent constitutional amendments further increased its powers. The Court, as at present constituted, first assembled in 1875. It was established at Lausanne. In this unit we shall discuss the various aspects related to the Federal Tribunal.

STRUCTURE AND ORGANISATION OF THE FEDERAL TRIBUNAL

Composition and Organisation:

The Constitution clearly statesλ that the organization of the Federal Tribunal, the number of its members and deputy members, their term of office and pay will be fixed up by law of the

Federal Assembly. The law fixed the number of judges between 26 and 28 and the number of alternates or substitutes between 11 and 13. At present, however, the number of full time federal judges is 38 and the number of deputy judges is 19.

The term for which the judges of the Tribunal are elected is six years. However, the judges may be and often are re-elected. In practice, judges resign at the age of seventy.

The Tribunal has its own President and Vice-President elected for two years. They are not, however, immediately re-eligible.

The Constitution does not prescribe any judicial qualifications for the judges. It only says that any Swiss citizen who is eligible for contesting election for the National Council is allowed to contest for a seat in the Federal Tribunal. The Constitution, however, imposes two restrictions- firstly, the members of the Federal Assembly and the Federal Council and the officials appointed by these authorities may not at the same time be members of the Federal Court; and secondly, members of the Federal Court may not hold another office, be it in the service of the federation or in the Cantons, nor any other profession or industry.

According to the Constitution, the Federal Assembly while electing judges and alternates (deputy judges) must see that all the three official languages are represented in it.

It may be mentioned here that despite the absence of prescribed qualifications for the members of the Federal Court and their substitutes, due care is taken to select men of legal learning and ability. Generally, legal luminaries have been elected as the judges.

The Federal Tribunal is the only national court in the country. There are no inferior Federal Courts. It does not have its branches in the Cantons, unlike that of the American Supreme Court which has its branches in the States. The Federal Tribunal is, however, divided into assizes for criminal cases. The Tribunal has no staff for the execution of its awards unlike the American Supreme Court which maintains its own staff for the execution of its awards. The Federal Council itself executes the decisions of the Tribunal

Seat of the Tribunal: The Tribunal has been established at Lausanne the capital of Vaud which is a French-speaking Canton.

Working of the Tribunal: The Tribunal is divided into three divisions, each consisting of at least eight judges for trying cases pertaining to civil laws and public laws. Criminal cases dealing treason are decided by the Tribunal with the assistance of a jury which consists of twelve members. Records of the court are maintained in three languages.

JURISDICTION OF THE FEDERAL TRIBUNAL

The Federal Tribunal is vested with both original and appellate jurisdiction. Its original jurisdiction extends to civil, criminal, administrative and constitutional cases. The Tribunal has no power of interpreting the Constitution and declaring a federal law invalid. It cannot question the validity of laws passed by the Federal Assembly. It can, however, inquire into the constitutionality of Cantonal laws and actions of Cantonal executives and sometimes Federal executives.

Original Jurisdiction: The original jurisdiction of the Federal Tribunal can be sub-divided into the following:

Civil Jurisdiction:

The civil jurisdiction of the Federal Tribunal extends to cases involving conflicts between the Confederation and the Cantons or between the Cantons themselves. It hears cases where a private person or corporation sues the Confederation or a Canton or where the Confederation or a Canton sues a private person or corporation if the object of the dispute is of such importance as shall be determined by the federal legislation and if such corporations or persons are plaintiffs.

The Federal Tribunal, further, takes up cases relating to loss of nationality (Statelessness) and also disputes between Communes of different Cantons concerning questions of citizenship. The Tribunal has been empowered to ensure the uniform application of laws concerning commerce and transactions affecting moveable property, suits for debt and bankruptcy, protection of copyrights and industrial inventions, including designs and models. The Constitution confers a general power on the Confederation to legislate in any fields of civil law. This all embracing power conferred on the Confederation enlarges the civil jurisdiction of the Federal Tribunal.

Criminal Jurisdiction:

With regard to the original criminal jurisdiction of the Tribunal it tries the following cases:

Cases of high treason against the Confederation, revolt and violence against federal authorities;

Crimes and offences against the Law of Nations;

Political crimes and offences which are the cause and consequence of disorders, necessitating armed federal intervention;

Offences committed by officials appointed by a Federalμ authority when brought before the Court by that authority.

The Constitution provides that the Federal Tribunal shall pass judgment on the aforementioned criminal cases with the assistance of a jury to give a verdict on facts. The Court also has original jurisdiction over other serious crimes such as counterfeiting and voting frauds.

The Constitution empowers the Confederation to legislate in the field of criminal law. In criminal cases, the Court holds assizes from time to time at fixed centers in which the country is divided for this purpose. In theses assizes, a section of court consisting of three judges, sits with a jury chosen by lot from the neighboring villages. Concurrence of five-sixths of the jury is necessary to convict an accused person.

The Federal Tribunal sits in four chambers for exercising its criminal jurisdiction: the Federal Criminal Court, the Court of Accusation, the Court of Cessation and the Extraordinary Court of Cessation of seven judges. The Federal Court of Accusation prepares the business for the Federal Criminal Court and decides if there is prima facie case and decides the place of criminal jurisdiction.

Constitutional Cases:

The Federal Tribunal has a limited constitutional jurisdiction. It adjudicates:

a. Conflicts of competence between the federal authorities on one side and authorities of the Cantons on the other side; In all such cases of conflict of competence it is the duty of the Federal Court to uphold the Federal Constitution against the Cantonal and the Cantonal Constitution against ordinary laws and decrees of the Cantons.

b. Disputes between Cantons in the field of the constitutional rights of citizens as well as individual complaints concerning the violation of inter-Cantonal agreements and international treaties.

In all the aforesaid disputes, the Federal Tribunal applies the laws and generally binding decrees adopted by the Federal Assembly as well as the international treaties approved by the Federal Assembly.

Administrative Cases:

It possesses limited jurisdiction in this field as well. Earlier, these cases used to be taken up by the Federal Council. Since 1925, these powers have been transferred to the Federal Tribunal. In

this capacity, it decides disputes relating to the legal competence of public officials and also hears railway suits and administrative disputes in matters of taxation.

Appellate Jurisdiction (Civil Cases):

The Federal Assembly has equipped the federal court with appellate authority by allowing it to hear appeals from the cantonal courts, in cases arising under federal laws provided that they involve a particular sum of money (previously 8000 frank or more).

As Guardian of the Constitution:

The federal courts are generally the guardian of the Constitution. The Swiss Tribunal, however, possesses limited powers of judicial review. It is empowered to declare a cantonal law unconstitutional if it comes into conflict with the Federal Constitution or even a cantonal Constitution. It thereby upholds the Federal Constitution and statutes against cantonal constitutions and laws. It even protects the cantonal Constitution against cantonal laws and administrative acts. The Swiss Federal Tribunal does not possess the power to declare a federal law unconstitutional if it violates the Constitution. This right is reserved for the Federal Assembly subject to the final verdict of the people through Referendum.

CONCLUSION

A. The Swiss federal court is known as the Federal Tribunal. It was created by the Constitution of 1874.

B. The Constitution clearly states that the organization of the Federal Tribunal, the number of its members and deputy members, their term of office and pay will be fixed up by law of the Federal Assembly. At present, however, the number of full time federal judges is 38 and the number of deputy judges is 19.

C. The Tribunal has been established at Lausanne the capital of Vaud which is a French speaking Canton.

D. The Federal Tribunal is vested with both original and appellate jurisdiction. Its original jurisdiction extends to civil, criminal, administrative and constitutional cases.

E. The Federal Tribunal has no power of interpreting the Constitution and declaring a federal law invalid. It cannot question the validity of laws passed by the Federal Assembly. It can, however, inquire into the constitutionality of Cantonal laws and actions of Cantonal executives and sometimes Federal executives.

DIRECT DEMOCRACY IN SWITZERLAND: REFERENDUM AND INITIATIVE

INTRODUCTION

Switzerland is one of the best examples of direct democracy in today's world. In most other countries of the world where democracy is established, representative form of government exists. It is the chosen representatives of the people who make laws on their behalf. In Switzerland, on the other hand, the legislature do not have the final say in matters of legislation. The people through the devices of referendum and initiative take direct part in the legislation of the country. In this unit we shall learn about the two devices of direct democracy, namely, referendum and initiative as they exist in Switzerland.

REFERENDUM

In its literal sense, the word "referendum" means "must be referred." It means the process by which the verdict of the citizens eligible to vote is sought on a legislative measure proposed or already passed by the legislature. The voters can either approve or reject the legislative measure.

Referendum is basically an instrument of negative action. There are two kinds of referendum-compulsory or obligatory and optional or facultative. In the case of compulsory referendum, a bill passed by the legislature does not become law until and unless it has been approved by the people at a referendum. In the case of optional referendum, on the other hand, the bill is referred to the people if a demand is made for that purpose by a specified number of voters.

Compulsory or Obligatory Referendum

All amendments to the Federal and Cantonal Constitutions are subject to compulsory or obligatory referendum and without such a process no constitutional change becomes final. The obligatory referendum for all changes in the Federal and Cantonal Constitutions was introduced in1848 and this provision has been continued in the Constitution of 1874. If both the Houses of the Federal Assembly agree to revise the Constitution, either wholly or partially, they draft the proposed new Constitution if it is a total revision, or the particular amendment or amendments if it is a partial revision as the case may be and the same is then placed before the citizens who are entitled to vote and the Cantons at a referendum. If the majority of those voting and the majority of the Cantons approve of it, the said revision becomes valid. The vote of each Canton or half-Canton is determined by its popular vote.

If one of the Houses of the Federal Assembly does not agree to the proposed amendment or revision, the matter whether such an amendment is necessary or not, is referred to the people at a referendum. If the people approve of it by a majority vote, the Federal Assembly is dissolved and new elections take place. After the elections, the newly elected Assembly proceeds to consider the proposed revision and after duly passing it, the same is placed before the people and the Cantons at a referendum for their acceptance or rejection. If the majority of the people and the Cantons pass it, the said amendment comes into force.

Besides constitutional amendments, compulsory or obligatory referendum is also needed in the case of the following:

a. The entry into organizations for collective security or into supranational communities (the proposal for Switzerland joining the United Nations was submitted for Referendum)

b. Federal statutes declared urgent which have no constitutional basis and whose validity exceeds one year, such statutes must be submitted to the vote within one year after their adoption by the Federal Parliament

c. Compulsory referendum for the total revision of the Federal Constitution.

d. Compulsory referendum for partial revision of the Federal Constitution in the form of general suggestions which were rejected by the Federal Parliament.

Optional Referendum

Optional Referendum was introduced by the Constitution of 1874. It is resorted to for the passage of federal laws and general binding federal decrees. Since 1921, it has also been used with regard to those international treaties which are concluded for an indeterminate period and cannot be denounced as well as those international treaties which provide for entry into an international organization. The federal laws which are not declared urgent by the Assembly are to be submitted to the Referendum if 30,000 Swiss voters or eight Cantons so demand it. However, a constitutional amendment in 1949 provided that 50,000 voters or eight Cantons can call for a Referendum even on a law certified by the Assembly as urgent with a validity exceeding one year. Accordingly, at present the figure stands at 50,000. Such a law will cease to operate if within a year, it is not approved by the popular vote.

Referendum in the Cantons

Constitutional Referendum (referendum in the case of Constitutional amendments) is compulsory in all Cantons. All Cantons, except those ruled by Landsgemeinde, provide for legislative referendum (referendum in the case of a federal law or general binding federal law, whether or not declared urgent). In some, it is obligatory while in others it is optional. As a matter of fact, legislative referendum is obligatory in ten full and one half Cantons.

Procedure for Obtaining Signatures

Every federal law or international treaty is published in the Federal Official Journal and sent to the Cantons to be circulated through the communes. Within ninety days of circulation, 50,000 citizens entitled to vote or eight Cantons may demand their submission to a referendum. Similarly, 50,000 citizens or eight Cantons may demand submission of international treaties, as specified above, to a referendum for approval or rejection. It may be noted here that the Cantons have never deemed referendum. The citizens do usually demand it. The requisite signatures of the citizens are now often collected by sending reply-paid postcards through the post to voters, who merely need to sign and drop the card into a letter box. When the requisite numbers of

signatures reach the Federal Council, the law in question is published and circulated among the people. Four weeks after the publication and distribution of the law, a Sunday is fixed for the voting. Meetings are held at which members of the Federal Assembly and others advocate or oppose the law. Articles on the main provisions of the law appear in the press. The arrangements for voting are made by the Cantonal authorities, but ballot papers are supplied by the Federal Government. The voting is held on a Sunday and takes place on the same day over the whole country.

INITIATIVE

The referendum is essentially an instrument of negative action as it enables the voters to reject measures passed by their representatives. The instrument of initiative on the other hand, is a positive device whereby a portion of the electorate brings about a proposal for a law or a similar measure which may or may not be approved subsequently by the legislature but which, in any case, is usually submitted to the decision of the voters at a referendum. The initiative may also take two forms: formulative and unformulative, i.e., embedded in general terms. When the demand is unformulative, i..e., laid down in general terms, it is the obligation of the legislature to draft, consider and pass the laws as desired by the required number of citizens, subject to the ratification of the people. If the proposal is formulative, i.e., formulated in the form of a bill complete in all respects, it is the duty of the legislature to consider the measure as it is and vote has to be taken on that text.

Constitutional Initiative

In Switzerland, the right of constitutional initiative (initiative for constitutional amendments) exists both in the Confederation and the Cantons. Prior to 1977, a revision of the Constitution (total or partial) could be demanded by 50,000 Swiss citizens entitled to vote. In 1977, the figure of petitioners was raised from 50,000 to 1, 00,000 and this figure has since remained intact.

Total Amendment or Revision of the Constitution through Initiative:

As has already been mentioned above, 1,00,000 Swiss citizens entitled to vote can demand a total revision of the Constitution. The question as to whether such a revision should take place or not must be submitted to the vote of the Swiss people at a referendum. If majority of the citizens voting at the referendum favour the total revision of the Constitution, the Federal Assembly is

dissolved and new elections are held. Approval of the Cantons is not required at this juncture. The newly elected Assembly drafts the new Constitution and if it approves of it, it is referred it to the vote of the people and the Cantons at a referendum. If majority of the people and the Cantons pass it, the total revision of the Constitution comes into effect.

Partial Amendment or Revision of the Constitution: 1,00,000 Swiss citizens entitled to vote can demand a partial revision of the Constitution.

- Partial Amendment or Revision of the Constitutionμ through Unformulative Initiative:

If the initiative for partial revision is unformulated and if the Federal Assembly ratifies it, the Assembly frames the amendment and refers it to the Swiss citizens entiled to vote and the Cantons for their effect.

Partial Amendment or Revision of the Constitution:

1,00,000 Swiss citizens entitled to vote can demand a partial revision of the Constitution.

- Partial Amendment or Revision of the Constitutionμ through Unformulative Initiative:

If the initiative for partial revision is unformulated and if the Federal Assembly ratifies it, the Assembly frames the amendment and refers it to the Swiss citizens entiled to vote and the Cantons for their approval. If majority of the citizens and the Cantons approve of it, the amendment comes into effect. If the Federal Assembly does not approve of the proposed amendment, the question as to whether partial revision be made or not is referred to the Swiss citizens eligible to vote for their decision. If majority of the people voting favour the revision, the existing Federal Assembly which had earlier disapproved of the amendment, drafts the amendment as per the initiative and then submits the same to the Swiss citizens entitled to vote and the Cantons at a referendum. If the majority of the citizens and the Cantons approve of it, the said partial revision comes into effect.

Partial Amendment or Revision of the Constitution through Formulative Initiative:

If the proposal for partial amendment is a formulated one, i.e., in the form of a complete draft and if it is approved by both the Councils of the Federal Assembly, it is submitted to the Swiss citizens entiled to vote and the Cantons for adoption or rejection at a Referendum. If the majority of the citizens and the Cantons approve of it, the said partial revision comes into effect.

If the Councils of the Federal Assembly disagree and do not approve of the draft proposal initiated by the people, the Councils may prepare their own draft or recommend the rejection together with the draft proposed by the initiative to the decision of the people and the Cantons. Whichever proposal the people and the Cantons accept is implemented. If both are approved, they may indicate their preference. In case one draft is approved by the people and the other by the Canton, neither of them shall come into force.

Legislative Initiative

The Swiss Constitution provides for legislative initiative (initiative for non-constitutional or ordinary legislations) only at the Cantonal level and not at the Federal level.

No Legislative Initiative in the Confederation:

The Swiss Constitution does not provide for initiative for non constitutional or ordinary legislation at the Federal level. Instead, the constitutional initiative has been used to place all kinds of matters in the Federal Constitution, for instance provisions relating to the prohibition of animal slaughtering, production of wheat, old age insurance, stoppage of gambling houses, etc. Accordingly, it is seen that ordinary legislative revisions are initiated by the people under the guise of constitutional revisions. There is indeed, no recognized criterion for determining whether a proposed measure is a constitutional amendment or ordinary law.

Existence of Legislative Initiative in the Cantons:

Except Geneva and the Cantons where laws are made in their Landsgemeinde, all other Cantons have provided for both legislative and constitutional initiatives. For legislative initiative, a prescribed number of citizens may either propose a new law or submit to the Cantonal legislature the principle on which they desire a new law to be based. In the latter case, the Council refers the question to the vote of the people. If the people approve of it, then, the Cantonal Council prepares the law and it is submitted to the people for their acceptance or rejection. If the proposal is formulated, it goes straight to the people. But the Cantonal Council may suggest counter-proposals and refer them to the people for their decision along with the original popularly initiated proposal.

CRITICAL ESTIMATE OF WORKING OF REFERENDUM

Advantages of Referendum

a. It upholds the sovereignty of the people:

The principle of popular sovereignty finds real expression in direct legislation rather than in a representative system. In a representative democracy, public opinion is moulded and shaped by the partisan influences of the press, the platform and the propaganda. Hence, the best way to know the genuine public opinion is through the device of referendum as it enables the people to express their opinions and ideas directly.

b. Importance of political parties minimized:

The instrument of referendum ensures that the ultimate authority of passing and rejecting a measure rests with the people. This curtails the role and importance of the political parties and discourages partisan spirit.

c. Safeguard against tyranny of the majority party:

In a representative democracy, the majority party rules. Minorities are often ignored or they remain at the mercy of the majority party. Through the technique of referendum, they get an opportunity to adequately express their opinion and defeat a measure by popular vote.

d. Imparts political education to the masses:

It serves as a valuable method for imparting political training to the Swiss citizens. When the people feel and realize that they are the real legislators, their patriotism and their sense of responsibility are fully stimulated. This leads to real political education of the citizens.

e. Great moral value of referendum:

The making of laws or their ratification demands from the people a great moral standard. A law passed by the people themselves is more willingly obeyed by them than the one passed by the legislature. Such a law commands greater moral authority than the one emanating from the legislature.

f. Veto power must rest with somebody:

In order to check the vagaries of the legislature, veto power must rest with somebody. In Switzerland, the people have been given the privilege of directly giving verdict on a bill passed by the legislature through the means of referendum.

Disadvantages of Referendum

a. Status and Authority of legislature undermined:

The status and authority of the legislature are likely to suffer when a bill passed by the legislature is rejected by the people. Its sense of responsibility vanishes as it may lose its earnestness in passing measures as it deems fit fearing that the same might be rejected by the people.

b. Legislation is too complex a matter to be left to laypersons:

Modern legislation is a highly complex and technical affair. A common man is not competent enough to express his verdict on a legislation which baffles even the parliamentarians. The common people may not have the knowledge needed to enable them to judge the implications of the proposed legislation.

c. Small size of the votes:

It is pointed out that the result of the ballot in the case of a referendum does not fairly represent the popular opinion, because in most cases the opponents of the measure who aim at defeating it go to the polls in larger numbers than its supporters. The number of large abstentions at referendum also proves that many voters either cares little for his civic duties or find themselves incompetent to understand the complex legislation.

d. Partisan spirit is intensified:

The referendum intensifies political rivalry and partisan spirit, though this tendency has not been so prominent in Switzerland because of the habits of the people. There is no justification to hold that direct legislation lessens the evils of party system. As a matter of fact, political parties become more active when frequent voting takes place.

e. Expensive:

Critics are of the view that Referendum involves a great deal of expense. The cost per signature of securing the petition of 50,000 citizens is very high even as a lot of money is wasted on pamphleteering and other means adopted for procuring votes.

f. Social, economic and political progress retarded:

According to Lord Bryce, referendum retards political, social and economic progress. Sir Henry Maine developed this point and it particularly impressed the Englishmen who had associated the masses with conservatism. Accordingly, there is a possibility that people may sometimes stand against the progressive measures passed by the legislature by making use of the instrument of referendum.

CRITICAL ESTIMATE OF WORKING OF INITIATIVE

Advantages of Initiative

Development of the idea of popular sovereignty:

The initiative is credited to be the necessary development of the concept of popular sovereignty. It is argued that the people cannot really be sovereign if they act through representatives constituting the legislature. The representatives have to act according to the party programmes and the party whip which may even lead to misrepresentation of the people's will. The initiative gives them the positive right of framing laws which they feel they actually need.

Removal of the apathy of legislatures:

It is pointed out that legislatures are generally apathetic to the needs of the people .They do not feel the pulse of the nation which is why they lag behind the public opinion. The initiative pulls up the legislators and reminds them of the needs of the masses as expressed in the initiated measures.

Greater sanctity behind popularly initiated laws:

A law initiated by the people is the manifestation of their own will. Such a law is held in greater sanctity and is more willingly obeyed than the one passed by their chosen representatives.

Chances of political upheavals minimized:

The initiative minimizes the possibility of political upheavals. The people do not have to wait for the legislature to pass legislations which the people deem essential for their welfare. They act immediately and on their own initiative rather than to depend on the initiative of the legislature. This adds stature and stability of the government as chances of public discontentment and political upheavals are minimized.

Disadvantages of Initiative

Authority and responsibility of the legislature is undermined:

The initiative reduces the authority and responsibility of the legislature. The legislature would not like to take up the responsibility of introducing controversial or even important legislation expecting the people to initiate measures of importance and public interest.

Drafting of a bill requires expert knowledge:

Drafting of a bill is not the job of a man in the street. It is a difficult task which requires specialized knowledge and mature judgment which the experts associated with the work and the members of the legislature acquire only by long experience. It may so happen that the language used in the popularly initiated bill is seriously defective and liable to many interpretations.

Not effective for bringing about reforms:

Initiative has not proved to be a device for bringing about reforms in the Cantons where the legislative initiative has been much more freely used. Instead, unwise legislation has been sometimes encouraged.

CONCLUSION

a. Switzerland is one of the best examples of direct democracy in today's world. The people through the devices of referendum and initiative take direct part in the legislation of the country.

b. There are two kinds of referendum- compulsory or obligatory and optional or facultative. In the case of compulsory referendum, a bill passed by the legislature does not become law until and unless it has been approved by the people at a referendum. In the case of optional referendum, on the other hand, the bill is referred to the people if a demand is made for that purpose by a specified number of voters.

c. All amendments to the Federal and Cantonal Constitutions are subject to compulsory or obligatory referendum and without such a process no constitutional change becomes final. The obligatory referendum for all changes in the Federal and Cantonal Constitutions was introduced in1848 and this provision has been continued in the Constitution of 1874.

d. If both the Houses of the Federal Assembly agree to revise the Constitution, either wholly or partially, they draft the proposed new Constitution if it is a total revision, or the particular amendment or amendments if it is a partial revision as the case may be and the same is then placed before the citizens who are entitled to vote and the Cantons at a referendum.

e. If the majority of those voting and the majority of the Cantons approve of it, the said revision becomes valid. The vote of each Canton or half-Canton is determined by its popular vote.

f. Optional Referendum was introduced by the Constitution of 1874. It is resorted to for the passage of federal laws and general binding federal decrees. Since 1921, it has also been used with regard to those international treaties which are concluded for an indeterminate period and

cannot be denounced as well as those international treaties which provide for entry into an international organization.

g. The instrument of initiative is a positive device whereby a portion of the electorate brings about a proposal for a law or a similar measure which may or may not be approved subsequently by the legislature but which, in any case, is usually submitted to the decision of the voters at a referendum.

h. The initiative may take two forms: formulative and unformulative. In Switzerland, the right of constitutional initiative (initiative for constitutional amendments) exists both in the Confederation and the Cantons. Prior to 1977, a revision of the Constitution (total or partial) could be demanded by 50,000 Swiss citizens entitled to vote. In 1977, the figure of petitioners was raised from 50,000 to 1, 00,000 and this figure has since remained intact.

i. 1,00,000 Swiss citizens entitled to vote can demand a total revision of the Constitution. The question as to whether such a revision should take place or not must be submitted to the vote of the Swiss people at a referendum.

j. If majority of the citizens voting at the referendum favour the total revision of the Constitution, the Federal Assembly is dissolved and new elections are held. Approval of the Cantons is not required at this juncture.

k. The newly elected Assembly drafts the new Constitution and if it approves of it, it is referred it to the vote of the people and the Cantons at a referendum. If majority of the people and the Cantons pass it, the total revision of the Constitution comes into effect.

THE SWISS PARTY SYSTEM

1. Introduction
2. History of Political Parties in Switzerland
3. Features of the Swiss Party System
4. Programmes of different Political Parties in Switzerland- An Overview

5. Interest Groups

6. Conclusion

INTRODUCTION

Political parties constitute an integral part of the Swiss political system which is marked by the functioning of a variety of political parties. In this unit we shall read about the different aspects of the Swiss party system including the history of political parties in Switzerland, programmes of the various political parties, features of the Swiss party system, as well as the role of the interest groups in the political system of Switzerland.

HISTORY OF POLITICAL PARTIES IN SWITZERLAND

The Swiss Constitution, like that of the United States, makes no mention of political parties. Political parties in Switzerland have extraconstitutional growth. The political parties came into existence in Switzerland with the adoption of the Constitution of 1848. At that time, federal affairs were dominated by two groups of politicians whose main support came from the Protestant German Cantons and from the Protestant French Cantons. These groups subsequently became known as the Liberals and the Radicals respectively. The Liberals had in their ranks, older politicians who advocated a liberal political philosophy based on laissez- faire principles. The Radicals were comparatively younger politicians with progressive views advocating a more advanced form of liberalism. Nevertheless, despite their differences, the Liberals and the Radicals actively collaborated in framing the Federal Constitution of 1874 which incorporated the points of view of both the groups. The Catholic Conservative People's Party was opposed to both the Radicals and the Liberals. It consisted mainly of those elements which had formed the Sonderbund (a League of seven Catholic Cantons formed in 1845) in 1846 and brought about the War of Secession in 1848. Thus, at the advent of 1874, there were three political parties. At present , apart form these three parties, there are some other parties too which are operating in the Swiss political system.

FEATURES OF THE SWISS PARTY SYSTEM

Some of the main features of the Swiss party system are discussed below:

A. Multi-party system:

The Swiss political system is characterizedλ by the existence of a multiplicity of political parties. Switzerland is a country of diversities in terms of racial character, of religion, of speech, of forms of industry and of conflicting economic interests. All these diversities are a breeding ground for the growth of political parties and their frequent regrouping. However, it must be stated that there do not exist extreme differences in the political philosophy and social composition of the political parties and the multi-party system has not affected the stability and order of the Swiss political system.

B. Loose organization of the political parties:

The Swiss parties are loosely organized. The political outlook in Switzerland is more Communal and Cantonal rather than federal. As a result, the political parties, too, are not nationally organized. They are constituted on cantonal rather than on national basis. They fight for local interests and are mostly concerned with local elections and local politics. There are no nationwide elections for a national office such as that of the President. Elections to the Federal Assembly generally revolve around local affairs. There are no nationwide elections for a national office such as that of a President. This is one of the reasons for the lack of a strong party organization in Switzerland.

C. Representation of minority parties:

Switzerland does not believe in the argument that democratic government cannot work unless there is a definite majority or a coalition of parties. Minority parties find representation in the Federal Council and in the Executive Councils of almost all the Cantons. This enables them to take direct part in the conduct of public affairs.

D. Absence of party machinery:

Another feature of the Swiss party system is that there are no national committees or elaborate system of party caucuses and general conventions with regard to the Swiss political parties. The Radicals, the Clericals and the Socialists do occasionally hold their Congresses, but they have no resemblance with the party meetings in the UK, India or other countries. There is also absence of strict party control in the Federal Assembly and party lines are rarely drawn except on measures that have an immediate bearing on party interests or on religion.

E. Absence of party leaders:

An important feature of the Swiss party system is that there are no party leaders. The absence of party leaders is partly due to the non-partisan executive at the Centre as well as in the Cantons.

Besides, the parties are divided on local rather than on national issues. As a result, the influence of the leaders consequently finds expression in their own Cantons and their power is local rather than national. Moreover, administration has attained in Switzerland a stage of business-like efficiency. It is not influenced by partisan politics. Demagogy and hero worship have no place in the Swiss political system. The Swiss while electing their representatives rise above party enthusiasm and vote on the basis of the honesty and integrity of the candidates concerned.

F. Expenditures kept to the minimum:

Politics in Switzerland is a much less costly affair than anywhere else in the world. Money for party purposes is needed only when the party requires scientific organization, meetings to be held for nursing the constituencies and distributing party literature.

G. Absence of politicking:

Politics in Switzerland is unadulterated. A sportsmanlike spirit dominates the rules of politics. There is complete absence of the motive of personal profit. Personal ambition is less conspicuous and there is no attempt at capturing the government. There is no attempt at defeating a party leader in the elections, nor is it desired or manipulated. Furthermore, the form of government in Switzerland is a combination of presidential and parliamentary systems. This feature and the presence of direct democratic devices have minimized the role of political parties in the country.

H. Distinctiveness of Cantonal Politics:

The parties in the Cantons are not the same as in the Confederation. They do not always even bear the same names. The cantonal elections are contested on cantonal and not on national lines. In the mountainous and agricultural regions of Switzerland, it is the local issues which predominate. The people are therefore preoccupied with local issues. In the industrial parts of the country, political parties are more active as the issues and problems in those areas are diverse and numerous.

POLITICAL PARTIES IN SWITZERLAND- AN OVERVIEW

Let us now discuss the programmes of different political parties in Switzerland:

Liberal Party:

It is one of the oldest of the existing Swiss parties. It played a major role in shaping the political development of the country in the initial stages. It was instrumental in framing the Swiss

Constitution of 1874. It advocated a liberal political philosophy based on the lassiez- faire doctrine. It stood for moral and cultural freedom for all and republican political institutions.

Radicals (Radical Democratic Party):

It was contemporary of the Liberal Party mentioned above. The party advocated liberalism of a more advanced type. It sought to extend political democracy through the institutions of the initiative and the referendum and stood for a policy of economic liberty with a certain degree of State intervention. It collaborated with the Liberals in framing the Federal Constitution of 1874. Centralized Federation, secularism, constitutionally guaranteed personal freedom have been some of the main tenets of the party.

Catholic Conservative People's Party:

The Catholic Conservative People's Party presently draws its members mainly from the Cantons where Catholic Christians are in a majority. It is the best organized of the Swiss political parties. The party still opposes certain provisions of the Federal Constitution that they regard as anti-Catholic or as anti-Clerical. It is opposed to centralization and to an all powerful State and advocates the rights of the individuals in regard to family, school and the church.

The Swiss People's Party:

The Swiss People's Party is a conservative political party in Switzerland. It is also known as the Democratic Union of the Centre. The party was founded in 1917 representing farmers. It was formally organised in 1936 as the Party of Farmers, Traders and Independents. In 1971, the party merged with the Swiss Democratic Party and became the Swiss People's Party. The policies of the Swiss People's Party include preserving the political sovereignty of Switzerland, opposing the accession of Switzerland to the European Union, adoption of tough immigration laws as well as taxation and social welfare policy.

The Social Democratic Party:

The Social Democratic party emerged in the Swiss political scene after 1880. The development of industrialization and the growth of such industrial centers as Zurich, Winterthur and Basel paved the way for propagating the socialist doctrines and the party grew rapidly. It derives support mainly from industrial workers, civil servants and other professional classes. The party stands for a healthy blend of capitalism and socialism. It advocates public planning in the economic field and nationalization of monopolistic industries, bank and credit institutions. It also advocates direct democracy and women suffrage.

Communist (Labour) Party:

It is the only leftist party in the country. It has its support base among the urban industrial workers and intellectuals. During World War II, the party was banned both by the Federal Government and by some of the cantonal governments. After the removal of legal restrictions, the Communist Party could gain some ground.

Other Parties:

Besides the above mentioned major parties, there are some other minor parties or splinter groups of the major parities such as the Liberal Socialists, the Independent Social Democrats, the Nicole Group which broke away from the socialists in 1939, the National Fronts, Young Liberals, the National League, Peasants League, Green Party, Humanist Party, People's Party, Freedom Party and Protestant People's Party.

INTEREST GROUPS

Interest groups activity in Switzerland is deeply associated with the normal political process. This is primarily because of the presence of the multi party system. Although there is no fundamental difference in the philosophy of the various Swiss political parties, they have different attitudes and approaches towards many of the major economic, social and political problems confronting the country. Accordingly, interest groups find a party whose attitude conforms to their own approach to the problems and its solution and join hands with the relevant political party. If such a party does not exist, a new party comes into existence both on the national as well as Cantonal levels by way of the Swiss system of proportional representation.

The interest groups are always active at the legislative referendum. If the law passed by the legislature comes into conflict with the views and interests of a particular interest group, it attempts to force a legislative referendum. Four of the most powerful interest groups are the Swiss Union of Commerce and Industry, commonly called the VOVORT, the Swiss Peasants Union, the Swiss Federation of Trade Unions and the Swiss Association of Arts and Crafts. By and large, the interest groups have been able to enjoy the support of the Swiss people as they feel that these groups help in determining as to what is in the national interest.

CONCLUSION

a. Political parties constitute an integral part of the Swiss political system which is marked by the functioning of a variety of political parties.

b. The Swiss Constitution makes no mention of political parties. Political parties in Switzerland have extra-constitutional growth. The political parties came into existence in Switzerland with the adoption of the Constitution of 1848.

c. Some of the important features of the Swiss party systems are- it s a multi-party system, loose organization of the political parties, representation of minority parties, absence of party machinery, absence of party leaders, expenditures kept to the minimum, absence of politicking, distinctiveness of Cantonal Politics.

d. Some of the important political parties of Switzerland are- Liberal Party, Radicals (Radical Democratic Party) , Catholic Conservative People's Party, Swiss People's Party, Social Democratic Party, Communist (Labour) Party, Liberal Socialists, the Independent Social Democrats, the Nicole Group which broke away from the socialists in 1939, the National Fronts, Young Liberals, the National League, Peasants League, Green Party, Humanist Party, People's Party, Freedom Party and Protestant People's Party.

e. In Switzerland interest groups play a very important role. Four of the most powerful interest groups of Switzerland are the Swiss Union of Commerce and Industry, commonly called the VOVORT, the Swiss Peasants Union, the Swiss Federation of Trade Unions and the Swiss Association of Arts and Crafts.

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UNIT V

INTRODUCTION TO INDIAN CONSTITUTION

CONSTITUTIONAL BACKGROUND DURING THE BRITISH PERIOD

Among the many foreign countries, the Portuguese were the first to visit India. Gradually the Dutch, the French and the British merchants became the rivals of the Portuguese in India. The British came to India in 1600 as traders under the name of the East India Company. After defeating the rivals the British became rulers in India. They followed a policy of conquest, annexation and consolidation in India. Initially, they were busy with trade and commerce only. But, after the death of Aurangzeb in 1707 the British Company took some active interest in the Political matters in India. Their imperialistic attitude to rule India became clear after the Battle of Plassey in 1757. In this battle British defeated Siraj-Ud-Daulah, Nawab of Bengal. The Battle of Buxar (1764) and the annexation of Punjab (1849) completed the task of British imperialism in India.

Thus, by the middle of nineteenth Century most of India was controlled by the British, either directly by the East India Company or through the system of treaties and alliances with the Princely States. During this period certain measures of constitutional reforms were introduced. During the reign of Warren Hastings, the Regulating Act (1773) and Pitts India Act (1784) were passed.

Regulating Act (1773): The main provisions of this Act were-

i) The Governor of Bengal was made the Governor General. The first man to be appointed to this post was Warren Hastings.

ii) For the assistance of the Governor General an executive Council of four members was created.

iii) A Supreme Court was set up at Calcutta, with a Chief Justice and three assistant judges.

iv) The number of the Directors of the Company was fixed at 24.

The Regulating Act initiated the process of centralization in India.

Pitts India Act (1784): This Act introduces many important changes in the Constitutional history of India. The number of members of the Governor General's Council was reduced to three and the Commander-in-Chief was to be one of them. A special court was established for better trial of the Company's officials in England for offences committed by them in India. By this Act, the real power in India passed from the Directors of the Company to the British Parliament.

The Regulating Act of 1773 made a provision that the Charter of the Company would be

reviewed every 20 years. Therefore, from time to time, Acts of 1793, 1813, 1833 and 1853 reviewed the Charter Act of the Company and brought about some changes here and there. The first Law Commission was established after the Charter Act of 1833.

The Rule of the East India Company was terminated when the British Parliament passed the Indian Councils Act of 1858. The power to govern India was transferred from the Company to the Crown and India was to be governed by and in the name of 'Her Majesty'. Again, the Indian Councils Act of 1861 was passed by the British Parliament. This Act is very important in the Constitutional history of India because it has created decentralization system of administration in India. The members the Governor-General's Executive Council was increased from the four to five. The work of administration was also distributed among ts different members. The Legislative members of the Bombay and Madras Government were restored. The British Parliament passed Indian Councils Act of 1892 and the principle of indirect election was introduced. The elected members could ask questions and seek other information from the Government.

The Indian Council Act of 1909 : The Indian Council Act of 1909 which is mostly known as Morley-Minto Reforms of 1909 is a significant event in constitutional history of India. The important provisions of this Act were-

i) Enlargement of the size of the Central and Provincial Legislative Councils. The number of members was raised to 60 in central Legislature and the provincial Legislative Councils were to consist of 30 to 50 members,

ii) Powers and functions of the Central and Provincial Councils were also increased,

iii) Provision for the appointment of an Indian member in the Executive Council of the Governor General

iv) Introduced the system of Communal representation.

Government of India Act of 1919: The British Parliament passed the Government of India Act of 1919 which is also known as Montague-Chelmsford Reforms. The Act made many important changes in the Central and provincial Government. The Act introduced a bicameral legislature at the centre. The two Houses were- Legislative Assembly (Lower House) and Council of States (Upper House). The term of Legislative Assembly and Council of States were five and three years respectively. But the Governor-General could alter this term. The powers and functions of both the Houses were also increased. The number of Indian members in the Executive Council of

the Governor General was raised from one to three. The system of direct election was introduced.

The Act made many changes in the provincial Government too. A system of Dyarchy was introduced in the Provinces. The subjects which were dealt with by the Provincial Government were divided into two sets: Transferred and Reserved Subjects. The Governor administered the Reserved Subjects with the help of the Ministers chosen by him from the elected members of the legislature. The Governor General could shift a subject from Transferred to Reserved Part. The Act created two lists of Subjects (departments) and divided them into Central and Provincial Governments. The Central List included the subjects such as Defence, Currency, Commerce, Commerce, Communication, Telegraph, Foreign Relations, Customs, Civil and criminal law etc. were given to the Central Government. On the other hand, the Provincial List which were of provincial interest such as Local-Self Government, Education, Public Works, Agriculture, Public Health, Revenue, Irrigation, water Supplies etc. were given to the provincial Government. The Act created a post of a High Commissioner for India. The term of his office was six years. The Act of 1919 was an important landmark in the constitutional development of India which opened a new era of responsible Government.

Government of India Act of 1935: The British Parliament passed the Government of India Act of 1935 which was so valuable and important that most provisions of this Act were taken by the framers of the Indian Constitution. The Act was a very lengthy written document. The Act proposed to form an All India Federation. All the provinces were to be members of a federation.

The Government of India Act of 1935 provided a bicameral legislature at the Centre consisting of Federal assembly (Lower House) and Council of States (Upper House). The total number of members of the Federal Assembly were 375 (250 were elected by the people of British Provinces and 125 from Indian States). The Council of States consisted of 260 members (150 elected from the British Provinces, 104 nominated by the rulers of the States and 6 were nominated by the Governor- General).

The Act introduced Dyarchy system at the Centre. The Central Subjects were divided into the Reserved and the Transferred subjects. The Act provided Division of powers by creating Federal list; Provincial List, Concurrent List and also a provision for Residuary Subjects. 59 subjects were included in Federal List consisting of Defense, Currency and Coinage, post and Telegraphs, Foreign Affairs etc. Provincial List included 54 subjects such as Police, Administration of

Justice, Education, Agriculture, Industry, Land revenue etc. There were 36 subjects in Concurrent list. These were Newspaper and Printing Press, Marriage and Divorce, registration, Criminal Procedure Code etc. The subjects which were not included in any of the above lists were residuary subjects. They were looked after by the Governor General.

The Act established a Federal Court at Delhi. Federal Court was to decide inter-state disputes and also heard appeals against the decisions of the High Courts.

The system of Dyarchy was replaced by the Provincial autonomy in the Provinces. The Act introduced a bicameral legislature (viz, Legislative Assembly and Legislative Council) in six out of total eleven provinces. These six provinces were- Bengal, Bihar, Bombay, Uttar Pradesh, Madras and Assam. Rest five Provinces Punjab, Central Provinces, Orissa, and North-West Frontier Provinces (N.W.F.P.) and Sind were to have Legislative Assembly only. The Legislative Council was the Upper Chamber and the Legislative Assembly was the Lower Chamber. The Legislative Council was to be a permanent body and one third of its members were to retire every three years. The members of the Legislative Assembly were elected for five years. Governor was the executive head of the Provinces. The India Council of the Secretary of State for India was replaced by an Advisory Council. A Federal Public Service Commission was established.

The Cripps Mission: The Second World War started in 1939 and Great Britain was fully involved in this war. In 1942, the Cripps Mission was sent to India from Great Britain under the leadership of Sir Stafford Cripps. The Cripps Mission provided some proposals to Indian people. Some of them are-

i) After the Second World War, dominion status would be granted to India.

ii) For framing a Constitution for India, an elected body would be set up in India, after war.

iii) The Indian states would also participate in the Constitution making body.

iv) The British Government was to accept the Constitution so framed. But a Province or a Princely State may or may not accept it. The Provinces were given a right to finalize their Constitution in consultation with the British Government.

v) The Princely States would have the freedom to join Indian Union.

vi) During the World war and until the new constitution was framed,

India would remain under the control of Her Majesty's Government. But the Cripps proposals were rejected by almost all the Parties and sections in India on different grounds. The Indian National Congress, Muslim League, Hindu Mahasabha and Sikhs rejected the Cripps Proposal.

The Cabinet Mission Plan: The appointment of Cabinet Mission Plan was another important step approved by the British Government in the process of Constitutional development. The chief proposals of Cabinet Mission Plan were -

i) To form a Union of India consisting of British Provinces and Indian States.

ii) To establish a Constituent Assembly having 389 members.

iii) An interim Government with fourteen representatives of the major Political Parties.

Initially, the proposals were accepted by the Congress but the Muslim League under the leadership of Md. Ali Jinnah rejected the proposals and left the Interim Government. The Muslim League observed 'Direct Action Day' on August 16, 1946. On that Hindu Muslim clashes and riots took place in various parts of the Country.

Disagreement and conflict between the Congress and Muslim League continued. At this juncture, Lord Mountbatten proposed a plan to Divide India into two parts- India and Pakistan. The Congress and Muslim League accepted the plan. On the basis of Mountbatten plan, the British Parliament passed the Indian Independence Act on July 18, 1947.and ultimately; in August 15, 1947 India became an independent State. According to the proposals of cabinet Mission Plan, a Constituent Assembly was framed as a representative body. It was accepted that the constituent Assembly would act as the Dominion Legislature until the Constitution was framed and India was administered according to the provisions of the Government of India Act, 1935 with some necessary modifications.

MAKING OF THE INDIAN CONSTITUTION

For the formulation of the constitution of a state, a Constituent Assembly is necessary. The demand for formulation of a Constituent Assembly was first raised by M.N.Roy in 1934. The Swarajist Party claimed a representative Constituent Assembly, representing all sections of the Indian people to frame an acceptable Constitution.

The Constituent Assembly for drafting the Constitution of India was constituted under the Cabinet Mission Plan, 1946. The members of the Constituent Assembly were indirectly elected, but it was a highly representative body.

The first meeting of the Constituent Assembly was held on 9th December, 1946. The Chairman of the Constituent Assembly was Dr. Rajendra Prasad. To draft the Indian Constitution, a Drafting Committee was constituted by the Constituent Assembly with seven members under the chairmanship of the Dr. B. R. Ambedkar. The Constituent Assembly constituted different Committees to deal with different aspects of the Constitution.

Jawaharlal Nehru on 13 December, 1946 moved the 'Objective Resolution' which contained the main objectives that were to guide the deliberations of the Assembly. In 1948, the first draft of the Constitution was submitted by Drafting Committee to the Constituent Assembly. Discussions were held on that draft of the Constitution. Many suggestions were also made by the people on that draft. A draft was prepared incorporating the required amendments, which were suggested by the people. The final draft of the Constitution was presented before the Constituent Assembly on November 3, 1949. The President of the Constituent Assembly was put his signature and finally on 26th November, 1949, the Constitution of India was adopted and on 26th January, 1950, it came into force in all over India except Jammu and Kashmir.

SOURCES OF THE INDIAN CONSTITUTION

The Indian Constitution is drawn from many sources. Keeping in mind the needs and conditions of India the framers of the Indian Constitution borrowed different features freely from the different constitutions of the world. Therefore, some critics have described the Indian Constitution as a "bag of borrowings" and a "hotch potch Constitution". The sources of the Indian Constitution are:

The British Constitution: The British Constitution influenced a lot on framers of the Constitution of India. The Parliamentary form of Government, the Cabinet System of Government, the superior position of the lower House as compared to the Upper House and the rule of law etc. were adopted by the framers of the Indian Constitution from the British constitution. In India, like the King of Britain, the head of the State, i.e. the President is only a nominal head and actually the real executive power is exercised by the Prime Minister with the help of the Council of Ministers who are accountable to the Parliament.

The Constitution of the United States of America: The Fundamental Rights which are incorporated in the Part III of the Indian Constitution are based on the "Bill of Rights" of the United States of America. The concept of independent, impartial and unitary form of Judiciary

and the functions of the Vice President of India are borrowed from the Constitution of the United States of America.

The Constitution of Canada: The term 'Union of India' which is in Article 1 of the Indian Constitution is taken from the Canadian Constitution. The framers of the Indian Constitution have borrowed our federal system from Canada though some of its features have been taken from the Australian and South African constitutions. Like the Canadian Constitution, in India, the Residuary powers have been vested in the hands of the Central Government.

The Irish Constitution: Our Constitution provides for the Directive Principles of State Policy under Part IV of the Constitution. These are derived from the Irish Constitution. The provision of nomination of certain members to the Rajya Sabha (Upper House) from different fields like, art, culture, science, social services etc. are taken from the Irish Constitution.

The Constitution of South Africa: The framers of the Indian Constitution were also greatly influenced by the Constitution of South Africa. The procedure of amendment and the provisions relating to the election of Rajya Sabha members reflect the influence of the Constitution of South Africa.

The Constitution of Germany:, The power of the President to suspend the Fundamental Rights during emergency was adopted from the Weimer Constitution of Germany.

The Government of India Act, 1935: The Government of India Act, 1935 is the biggest source of our Constitution. The framers of the Indian Constitution have adopted many provisions from this Act. The relations between the Union and the States and the three lists (Union, State and Concurrent) dividing governmental powers between them were taken from that Act. According to Prof. Jennings, "The Constitution derives directly from the Government of India Act, 1935, from which in fact many of its provisions are copied almost textually."

PHILOSOPHY OF THE INDIAN CONSTITUTION

1. Introduction
2. Philosophy of the Indian Constitution

3. Conclusion

INTRODUCTION

Every constitution has a philosophy of its own. Likewise the Constitution of India has a philosophical basis upon which the provisions of the Constitution are further developed. To understand the philosophy of the Constitution of India, we must look back to the historic Objective Resolution of Pandit Nehru which was adopted by the Constituent Assembly on January 22, 1947, which inspired the shaping of the Constitution through all its subsequent stages. The ideals embodied in the Resolution are faithfully reflected in the Preamble to the Constitution which summarizes the aims and objectives of the Constitution.

PHILOSOPHY OF THE INDIAN CONSTITUTION

The Preamble to the Constitution of India outlines the following principles and ideals of the Constitution which lay down the philosophical basis of the Constitution.

A. Source of Authority- Popular Sovereignty:

The Preamble to the Constitution of India begins with the words 'We the People of India' and ends with the words 'adopted, enact and give to ourselves this Constitution'. It thus declares the ultimate sovereignty of the people of India. The people of India are the source of all authority in India. All powers and authority of the country are derived from the people.

B. Sovereign State:

The Preamble to the Constitution declares India a Sovereign State. It means that the state enjoys independent authority and has the power to legislate on any subject. The power of the state is not subject to the control of any other State or external power.

C. Socialism:

Socialism is one of the core ideals of the Indian polity. The Preamble also declares India as a Socialist State by the inclusion of the term through the 42nd Amendment of the Constitution in 1976. The Indian variety of socialism implies that the State will be committed to secure Socialistic goals i.e. socio-economic justice and an egalitarian society. For the fulfillment of this goal of Socialism, the Indian state adopted the ideal of Welfare State. The state is committed to provide basic minimum living standards to all, ensuring equality among all in social, economic and political spheres. To secure this goal the State favours distribution of the benefits of the resources of the country among all. It favours national planned economic development,

nationalization of resources and limited freedom to private business and industries. For the realization of the ideal of Socialism, in the Indian Constitution there are some directives to the Indian State in the Part-IV of the Indian Constitution known as the Directive Principles of State Policy. Through these directives the Constitution stresses for the establishment of the Socialistic pattern of society in India.

D. Secularism:

The word Secularism was also incorporated in the Preamble to the Constitution of India through the 42nd Amendment in 1976 which declares in clear terms that India is a Secular State. The State protects all religions equally and does not itself uphold any religion as the State religion. At the same time, the citizens of the country will enjoy freedom of religion as a fundamental right.

E. Democratic State :

The Constitution of India adopts Democracy not only as a form of government but as a way of life. In other words, it envisages not only a democratic form of government but also a democratic society, infused with the spirit of 'justice, liberty, equality and fraternity'. As a form of Government, it envisages a representative democracy where people of India elect their representatives through a system of universal adult suffrage. In matters of public opportunities, there is equal opportunity to all irrespective of caste, creed and religion to avail these benefits.

F. Republic :

The Preamble declares in unequivocal terms that the State of India is a Republic. It means India has an elected President as the head of the State and all offices including that of the President will be open to all citizens.

G. Justice:

The Preamble to the Constitution of India declares that the Indian state will strive to establish justice among its citizens in their political, social and economic life. To establish political justice, every person in the territory of India, without any discrimination, is allowed to take part in the political process of the country through the system of universal adult suffrage. The Constitution ensures complete equality before the law. To establish social justice, it seeks to establish a democratic society in India aimed at securing the welfare of all. For that, the Constitution of India provides certain directives to the state through the inclusion of the provision of Directive Principle of State Policy. To establish economic justice it has directed the Indian State to remove poverty by enhancement of the national wealth and resources and equitable distribution of the

resources among all its citizens, and thereby to remove economic inequality from the Indian society.

H. Liberty:

Democracy, in any sense, cannot be established unless certain minimum rights, which are essential for a free and civilized existence, are assured to every citizen. The Preamble mentions these essential rights as 'Liberty of thought, expression, belief, faith and worship' and these are guaranteed by the Part-III of the Constitution in the form of Fundamental Rights.

I. Equality:

Guaranteeing of certain rights to each individual would be meaningless unless inequality is removed from all the social structure and each individual is assured of equality of status and opportunity. The Constitution of India tries to secure this objective by making illegal all discriminations by the State on the basis of religion, sex, race, caste or place of birth, and by guaranteeing equality before the law and equal protection of law.

J. Unity and Integrity of the nation by assuring Fraternity and Dignity of the individual:

Unity among the citizens of this vast country was the first requisite for maintaining the independence of the country. For the fulfillment of the ideal of unity and to ensure the integration of the people, the spirit of fraternity or brotherhood must be infused amongst the heterogeneous populations of India belonging to different races, religions and cultures. This can be achieved only by abolishing all communal, sectional, local, or provincial anti-social feelings. Fraternity can be ensured by generating the feeling of oneness among all the sections of people composed of so many races, religions, languages and cultures. Further, fraternity cannot be assured unless the dignity of each citizen is maintained. Therefore to secure the dignity of each citizen of India, the Constitution of India guaranteed equal fundamental rights to every citizen of India, which can be enforced in a court of law.

The ideal of fraternity which is professed in the Preamble is not confined within the bounds of national territory; rather it favours to extend that to foster the ideal of universal brotherhood. For this ideal India always pledge to promote international peace and security, maintain just and honorable relations between nations, foster respect for international law and treaty obligations and settlement of disputes by arbitrations among the nations.

From the above, one can easily comprehend that the Constitution seeks to constitute India as a Sovereign Democratic Republic. The Constitution upholds the democratic principles of freedom

of the individual, socio-economic equality and justice, and peace and brotherhood among all, with the people as the real sovereign. For the establishment of a just and democratic society the Constitution upholds the ideal of Secularism and Socialism. The Preamble to the Indian Constitution thus outlines the ideals, goals and the philosophical basis of the Constitution.

CONCLUSION

a. The philosophical and ideological basis of the Constitution is reflected in the Preamble to the Constitution of India itself. Popular sovereignty, socialism, secularism, democracy, justice, equality and fraternity are some of the essential ideals enshrined in the Preamble to the Indian Constitution.

b. Popular sovereignty indicates that people are the ultimate source of all authority and power in India. The Government derives power from the people.

c. The Constitution in its Preamble also declares India as a sovereign state. It indicates no other country or organization has the power or authority to exercise any control over India in its internal and external matters.

d. The inclusion of the term 'socialist' reflects that one of the prime object of India is to secure social, economic and political justice among all its people by eradicating exploitation of all forms and ensuring equitable distribution of wealth and resources.

e. India being a republic, the Head of the State in India, that is the President of India, is elected by its people through the representatives in the Parliament and State Legislatures.

f. The Constitution of India seeks to ensure justice- social, economic and political to all its citizens.

g. The Preamble of the Indian Constitution declares liberty of thought, expression, belief, faith and worship as the one of the main objective of the Constitution.

h. The Preamble of the India Constitution ensures equality of status and opportunities to its entire people.

i. The Preamble to the Indian Constitution declares fraternity one of its major objectives which is designed to secure dignity of the individual and unity and integrity of the nation.

CITIZENSHIP

A citizen can be defined as a person of a particular country who enjoys all political rights given by the constitution. He or she can take part in election and can also reside permanently in the country. A foreigner can live temporarily in a country but is not allowed to enjoy political rights. Before the French Revolution the term 'citizen' was used in a narrow sense to denote the resident of a city. The French Revolution has widened the base of citizenship by including all the adult members of a state.

Citizenship is a very vital issue for all countries in the world today. So, almost all constitutions of the world lay down the rules regarding granting of citizenship. Part II of the Constitution of India deals with the issue of Citizenship.

Before we discuss comprehensively about Indian citizenship, we need to know a few important things.

The Indian Constitution does not comprehensively deal with the issue of citizenship. Part II of the constitution dealing with citizenship, only talks about who can be the Indian citizens on the day of the commencement of the Constitution.

The comprehensive law regarding citizenship was enacted by the Indian Parliament in 1955, which is known as the Citizenship Act, 1955.

Indian constitution recognizes single citizenship.

All of you know that India was partitioned into two countries i.e. India and Pakistan on 15th August, 1947 i.e. the day of achievement of independence. The partition was followed by huge migration from one country to the other. So, it was really a difficult task to identify who would be an Indian citizen. Accordingly, the constitution only determined who would be the citizen of India on the day of commencement of the Constitution. The Constitution defined three categories of people, who were residing in India and fall within the following three categories:

1. who was born in India;
2. either of whose parents was born in India
3. Who had been ordinary resident in India and had lived in India for not less than five years before the commencement of the Constitution.

The comprehensive law regarding the Indian citizenship known as Citizenship Act 1955 provides five modes of acquiring the citizenship of India.

(a) By Birth:

Do you know why birth registration is compulsory today? It is because a person born in India is recognized as a citizen of India. The citizenship Act says that any person born in India on or after January 26, 1950 shall be a citizen of India by birth

(b) By Descent:

Do you have any relative, cousin, friend who was born outside India? Can they become a citizen of India? Yes, they can, but there is a condition. The condition is that a person born outside India on or after January 26, 1950 shall be a citizen of India by descent if his/her father or mother is a citizen of India at the moment of his/her birth.

(c) By Registration:

All of you know that Sonia Gandhi was not born in India. Is she an Indian citizen? The answer is yes, she is. But how? Sonia Gandhi is an Indian citizen by registration. According to the Citizenship Act, 1955, a woman, who is or has been married to an Indian citizen, can acquire Indian citizenship. There are a few other provisions through which a person can also become an Indian citizen by registration.

(d) By Naturalization:

All of you must have heard the name of Mother Teresa. Was she an Indian citizen by birth? No, she was not born in India. Neither was she married to an Indian. But, she was an Indian citizen. How? It is through naturalization. There are many provisions under naturalization through which a person born in a foreign country can apply for Indian citizenship and acquire the same. For example, if one renounces the citizenship of the country to which he/she belonged can be granted Indian citizenship. One person who has rendered distinguished service to the cause of science; philosophy, art, literature and world peace can also be granted Indian citizenship without fulfilling any other provisions. A person acquiring Indian citizenship under naturalization has to take an oath of allegiance to the India constitution and law established by it.

(e) By Incorporating Territory:

If any territory becomes a part of India, Indian Government may specify the persons who will be Indian citizens.

BASIC FEATURES OF THE INDIAN CONSTITUTION

1. Introduction
2. Basic Features of the Constitution of India
3. Concept of the Basic Structure of the Constitution: Judicial Interpretation
4. Conclusion

INTRODUCTION

Every constitution has some basic features that reflect its principles and philosophy. The basic features are the foundation of the Constitution. Keeping in mind the uniqueness of our country, the Constitution of India is framed on the basis of some strong philosophical foundations. In keeping with such a strong philosophical foundation, our Constitution incorporates certain salient features for which it has become one of the famous Constitutions of the World. In this Unit we shall discuss the features of the Indian Constitution. While discussing the features of the Constitution efforts will also be made to put light on the issue of basic structure of the Constitution.

BASIC FEATURES OF THE CONSTITUTION OF INDIA

The basic features of the Indian Constitution are as follows

1. Written and Detailed Constitution: The Constitution of India is a wholly written document. It is a detailed document consists of 395 Articles divided into 22 Parts with 12 Schedules.

2. Preamble of the Constitution: The Constitution of India has a Preamble which states the philosophy of the constitution. It gives an introduction to the Constitution and declares its ideals.

3. Popular Sovereignty: The Preamble of the Constitution of India is based on the idea of popular sovereignty. The people are the ultimate source of authority. The Government derives its powers from the people. The Constitution has its roots in the people.

4. Socialism: Although, right from the beginning, the Indian Constitution epitomized the spirit of Socialism, it was only in 1976 through the 42nd Constitution Amendment that the term was inserted in the Constitution. The aim of socialism is to secure justice – social, economic and political to all people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. This has to be done by peaceful, constitutional and democratic

means. It signifies the commitment to socio-economic justice which is to be secured by the state through the democratic process and organized planning.

5. Secularism: By the 42nd Amendment, the term 'Secular' was incorporated in the Preamble along with other features of Indian polity. As a state, India does not give special status to any religion. There is no such thing as a state religion of India. India adopts Secularism by guaranteeing equal freedom to all religions. The Constitution grants the right to religious freedom to all the citizens without any discrimination. The state does not interfere with the religious freedom of the citizens and prohibits the levying of taxes for religious purposes.

6. Democratic State: The Preamble of the Constitution declares India a Democratic State. The authority of the Government rests upon the sovereignty of the people. The people enjoy equal political rights. It is on the basis of these political rights that the people participate in the political process the country. For all its acts, the Government is responsible before the people. The Government in India enjoys limited tenure and defined, limited powers. No Government can remain in power which does not enjoy the confidence of the majority of the representatives of the people. The representative, responsible and accountable character of the government symbolizes the self-rule of the people.

7. Republic: The Preamble declares India to be a Republic. This means that India is not ruled by a monarch or a nominated head of state. India has an elected head of state who wields power for a fixed term. India is a Sovereign Republic. Membership of the Commonwealth of Nations is a voluntary act. It is a courtesy arrangement whereby India has decided to maintain her traditional friendship and links with other members of the Commonwealth who happened to be ex-colonies of British Empire but which are now sovereign independent states.

8. Federal Structure and a Unitary Spirit:

While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a 'Quasi Federation' (K.C. Wheare) or a federation with a unitary bias or even as a Unitarian federation. Like a federation, the Constitution of India provides for division of powers between the centre and the states, a written and rigid constitution, supremacy of the constitution, independent judiciary with the power of judicial review etc. but it also provides for a very strong Centre, single citizenship, emergency provisions, common All India Services etc. Hence, the Constitution of India is neither federal nor unitary but a mixture of the two. It is partly federal and partly unitary.

9. Mixture of Rigidity and Flexibility :

The Constitution of India is a mixture of rigidity and flexibility. Some parts of it can be amended in a very simple way and the amendment of some other parts is very complex. Article 368 of the Constitution provides for two special methods of amendment- i) The Union Parliament can amend some provisions of the Constitution by passing the Amendment Bill and ii) for the amendment of some specified provisions, a rigid method has been provided in which the Union Parliament passes the Amendment Bill which should be ratified by the State Legislatures.

10. Fundamental Rights :

The Constitution of India grants and guarantees six Fundamental Rights to its citizens. Initially there were seven Fundamental Rights but the Right to Property [Art. 19(1) (6) and Art. 31] was deleted from the category of the Fundamental Rights by the 44th Constitution Amendment Act of 1979. These rights are justiciable rights, which means that a citizen can approach the courts for the enforcement of his/her Fundamental Rights in case of violation of such rights by any authority or individual. The privilege of enforcing of Fundamental Rights itself is a Fundamental Right (Right to Constitutional Remedy).

11. Fundamental Duties :

Along with the Fundamental Rights the Constitution of India under its Part-IVA-Article 51A incorporated some fundamental duties (by the 42nd Constitution Amendment, 1976) for the citizens of India. However, these duties are not enforceable in the court but form a part of constitutional morality.

12. Directive Principles of State Policy : The Directive Principles of State Policy are one of the most striking features of the Indian Constitution. These are the instructions to the State for securing socio-economic developmental objectives through its policies and thereby make India a welfare state. However, these directives have no legal binding on the state yet the Government is bound to implement it for its political sanctions.

13. Parliamentary Form of Government :

The Constitution of India provides for a Parliamentary form of Government for both Centre as well as the States. Following the British pattern, the President of India is only the constitutional head of the State with nominal powers. The Union Council of Ministers headed by the Prime Minister constitutes the real executive. Ministers are essentially the members of the Parliament. The Council of Ministers is collectively responsible, for all its acts to the Parliament. l

14. Bicameral Parliament : The Constitution of India provides for a bicameral legislature: the Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower house, whose members are directly elected by the people of the country. The maximum strength of the Lok Sabha stands fixed at 545 where 543 members are directly elected by the people and 2 are nominated members by the President of India from the Anglo-Indian community. Normally the tenure of the Lok Sabha is five years but can be dissolved earlier by the President of India on the advice of the Prime Minister. The Rajya Sabha is the upper and indirectly elected House which represents the States. Its total membership is be 250. Out of these 238 are elected by all the State Legislative Assemblies through a system of proportional representation and 12 members are nominated by the President from amongst eminent persons from the fields of Arts, Science and Literature.

The Lok Sabha is more powerful than the Rajya Sabha. It alone has financial powers and it alone can remove the union cabinet from office. The Council of Ministers is collectively responsible to the Lok Sabha.

15. Universal Adult Suffrage:

Another notable feature of the Indian Constitution is the introduction of the universal adult suffrage. In this system, all the citizens enjoy equal right to vote without discrimination on any ground. Now the qualifying voting age stands at 18 years.

16. Single Citizenship:

Another notable feature of the Constitution of India is that all the citizens enjoy a common uniform citizenship which entitles them all to equal rights and freedoms and equal protection of the State.

17. Integrated Judiciary with the power of Judicial Review:

Though the Constitution provides for a federal structure, it establishes a single integrated judicial system common for the Union and the States. The Constitution provides the Supreme Court at the apex, High Courts at the State level and other subordinate courts under the High Courts. The Supreme Court is the highest court of the land. It controls and runs the judicial administration in India. The Constitution also provides the arrangements to make the judiciary independent from the control of other organs of the Government.

The Supreme Court of India and the High Court's enjoy the power of Judicial Review. The Supreme Court acts as the protector and interpreter of the Constitution and the guardian of the Fundamental Rights. For this purpose, it exercises the power of judicial review. By it, the

Supreme Court has the power to determine the constitutional validity of the acts of the legislatures and the orders of the executive. It can strike down the acts of the legislature and the orders of the executive if it finds it as unconstitutional.

18. Emergency Provisions:

The Constitution of India vests in the President of India some emergency powers. The Constitution stipulates three types of emergency powers: national emergency, constitutional emergency in a state and financial emergency. During the emergencies, the powers of the President, actually of the Prime Minister and the Cabinet, increase tremendously. However, there are certain set rules for using this power as well as several limitations upon the exercise of the emergency powers.

From the above discussion of the basic features of the Indian Constitution, it can be said that the Constitution of India is detailed one. It contains in details all the areas of Government. It is the fundamental law of the land which is to be obeyed by all in the country. All the acts of the Government should be according to the provisions of the Constitution.

CONCLUSION

a. The features of the Constitution of India reflect its ideals and philosophical foundation. Some of the basic features of the Constitution of India are- It is a written and detailed Constitution and has a Preamble.

b. Some other important features of the Constitution of India are- idea of popular sovereignty, socialism, secularism, democratic state, republic state, system of federalism with a unitary spirit, incorporation of Fundamental Rights, Fundamental Duties and Directive Principles of State Policy, parliamentary form of government, bicameral legislature, universal adult suffrage, single citizenship, integrated judiciary with the power of judicial review, emergency provisions of the Constitution etc.

c. The concept of basic structure implies that some basic provisions of the Constitution cannot be amended. The issue of basic structure of the Constitution has been one of the most debated one. Some of the important cases related to this issue are the case of Golak Nath (Golak Nath vs State of Punjab, 1967), Keshavananda Bharati vs State of Kerala.

d. After a long debate and discussion some important provisions are considered as the basic structure of the Constitution. Some of these are- supremacy of the Constitution, rule of law, the

principle of separation of powers, the objectives specified in the Preamble to the Constitution, judicial review, federalism, secularism, the 'essence' of other Fundamental Rights in Part-III, the concept of social and economic justice to build a welfare State; Part-IV in toto etc.

THE PREAMBLE

The philosophy and ideals of the Indian Constitution are reflected in the Preamble to the Constitution of India. Our Constitution may be said to be an expansion and explanation of the Preamble. Supreme Court Chief Justice, Justice Subba Rao opined, "Preamble contains, in a nutshell, its ideals and its aspirations." To understand the philosophy and ideals of the Indian Constitution, we must know the Preamble in the first place. Let us define and analyze the Preamble to the Indian Constitution.

The Oxford Advanced Learner's Dictionary defines the word "Preamble" as an introduction to a book or a written document. The Constitution of India starts with a Preamble. It is the most precious part of the Constitution. It is the soul of the Constitution. The Preamble of the Indian Constitution says:

"WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

From the Preamble we can understand the philosophy and ideals of the Indian Constitution. The philosophy and ideals of the Indian Constitution are discussed as follows:

Popular Sovereignty: Thes Preamble begins with the words "We the people of India" and ends with the words "adopt, enact and give to ourselves this Constitution". It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Constitution is regarded as the supreme law of the state, but the supreme power of the state is vested upon the people of India.

India as a Sovereign state: The Preamble declares India as a sovereign state. It is free from any external control. No foreign power can interfere in the internal affairs of India. India can determine her foreign affairs according to her free will.

India as a Socialist state: The word 'Socialist' has been added in the Preamble by the 42nd Amendment in 1976. It means the Constitution of India has a great objective to secure social and economic equality and fair distribution of wealth among all sections of people in the country. By inserting the term 'socialist', it has not only brought a feeling of equal status among the people but also strengthened the philosophical foundation of the Indian Constitution. Some socialistic principles are also distinctly reflected in the Articles 39, 41, 42 and 43 which are incorporated in the Directive Principles of State Policy.

India as a Secular state: The word 'Secular' has been included in the Preamble by the 42nd Amendment in 1976. The characteristic of Indian secularism is that India does not recognize any religion as the official or state religion and treats all religions equally. Moreover, different communities in India have the right to practise their own faiths. Thus, secularism is one of the ideals of the Indian Constitution.

India as a Democratic state: The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state. India is regarded as the largest democratic state in the World. According to Abraham Lincoln, "Democracy is by the people, for the people and of the people." The Constitution of India has established a parliamentary democracy in India marked by universal adult franchise, periodic election to choose the government, majority rule, rule of law, decentralization of power, rule of law, independence of the judiciary, etc.

India as a Republic: The Preamble declares India to be a republic. What it means is that the Head of the State in India, that is the President of India, is an elected head. He is not a hereditary ruler. The President of India who is the Chief Executive and nominal head of our country is indirectly elected by the people.

To ensure Justice: Justice implies that the Government will try to promote the welfare of all the sections of the people. The Preamble embraces three types of Justice- social, economic and political. To ensure Social Justice the Constitution has made special arrangements for the weaker sections of the society, abolished untouchability, provided free education up to a certain standard, etc. With a view to providing political justice, the Constitution has introduced the

principle of universal adult franchise and has given an equal right to all adult citizens to be elected or appointed to public services. Economic justice implies that the Constitution seeks to ensure economic security for the common people and to do way with unequal distribution of income and wealth.

To ensure Liberty: The other important philosophy and ideal of the Indian Constitution is to ensure liberty to its citizens for the all round development of their personality. Accordingly, the Preamble provides for liberty of thought, expression, belief, faith and worship. The Constitution of India provides a number of Fundamental Rights to the citizens and also protects theses rights.

To ensure Equality: Equality is the basis of a democratic state. Equality is necessary for the development of a society. Hence, the term 'equality' has been inserted in the Preamble to our Constitution. Equality has been guaranteed by the 'Rule of Law'. To establish equality, our Constitution has provided for the Right to Equality as a Fundamental Right. The Indian Constitution ensures equality before the eyes of law to all persons, citizens and non- citizens. The Constitution also prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them.

To promote Fraternity among the people: The term fraternity has been incorporated in the Preamble as a means of assuring the dignity of the individual and the unity and integrity of the nation. The term 'dignity of the individual' means that the personality of the individual should be recognized, because, the recognition of the personality and the dignity of the individual is an essential condition to promote fraternity among the people. To promote fraternity and a feeling of brotherhood among the people, certain attempts have been made for the removal of social distinctions and inequalities based on caste, class, creed, language, religion, region, etc. Without unity among its citizens, a state could not be successful. The framers of the Indian Constitution were fully aware of the diversities prevailing in the country. Accordingly, the word integrity was added in the Preamble by the 42nd Amendment to emphasize the fundamental unity of the country against the divisive forces of regionalism, communalism and the like.

India as a Welfare state: India is committed to the ideal of a welfare state and must establish socio- economic justice. The Preamble lays the foundation of a welfare state in India. Acharya Kripalini says, "The Preamble contains the mystic principle of a welfare state." India is committed to democracy and respects individual liberty, providing to all her citizens, the equality of status and opportunity. The Directive Principles of State Policy involving social, economic,

political and cultural goals are like instructions to the state. They, aim at establishing a welfare state in India.

The Preamble to the Indian Constitution has a great significance. It is important to mention here that, in the 'Biruberi Case' (AIR1960 SC 845) the Supreme Court held that the Preamble is not a part of the Constitution. But the famous 'Keshavananda Bharti – vs. - State of Kerala' (AIR 1973 SC 1461) has held that the Preamble is a part of the Constitution. It was also held in this case that, the Preamble could be amended by the Parliament under Article 368 but the 'Basic Structure' of the Constitution could not be changed. Thus, the Preamble can be amended but our Parliament cannot amend the Constitution in a way that it damages or destroys the objectives specified in the Preamble.

FUNDAMENTAL RIGHTS

1. Introduction

2. Concept of Fundamental Rights

1. Types of Fundamental Rights

2. Fundamental Rights under the Constitution of India

3. Concept of Freedom of Speech and Expression

1. Constitutional Guarantees and Limitations

4. Concept of Directive Principles of State Policy

1. Differences between Fundamental Rights and Directive Principles of State Policy

5. Conclusion

INTRODUCTION

In law, a 'right' is the legal or moral entitlement to do or refrain from doing something, or to obtain or refrain from obtaining an action, thing or recognition in civil society. Rights serve as rules of interaction between people, and, as such, they place constraints and obligations upon the actions of individuals or groups. While 'rights' bear certain obligations, legal or moral, 'Fundamental Rights' are the inalienable rights, i.e., rights that cannot be separated from a man since he is a human being. One such inseparable right is the 'freedom of speech and expression', which is important from the point of view of the media both print and electronic.

In this unit, you will learn about fundamental rights and its types. You will also learn about the guarantees and limitations as regards 'freedom of speech and expression'. Here we will also introduce you to the concept of the Directive Principles of State Policy that governs The Constitution of India. We hope that after going through this unit, you will have the basic understanding of the concept 'Fundamental Rights', 'freedom of speech and expression' and Directive Principles of State Policy.

In the next unit we will discuss the concepts of Emergency, State of Emergency, Parliamentary and Legislative Privileges. We will also explain the different provisions and types of Emergency and the types of Parliamentary and Legislative Privileges under the Constitution of India etc.

CONCEPT OF FUNDAMENTALRIGHTS

Though we have discussed about the fundamental rights in the first unit, here we will discuss in detail these topics. A fundamental right is a right that has its origin in a country's constitution or that is necessarily implied from the terms of that constitution. The fundamental rights usually include those rights which are considered natural human rights and these rights cannot be taken away from a man simply because he is a human being. As early as 1214 the English people were succeeded in getting a promise from King John to respect the ancient liberties in the form of Magna Carta which is a written document. This is the first written document relating to the fundamental rights of citizens. With this the King had to accede to different rights of his subjects from time to time. In 1989 the Bill of Rights was written declaring all important rights and liberties of the English citizens. In France, the Declaration of Rights of Men and the Citizen (1789) was introduced declaring the natural, inalienable and sacred rights of Man. Following the spirit of the English and French examples the Americans incorporated the Bill of Rights in their Constitution in 1791, giving the Bill of Rights a Constitutional status for the first time. In the most modern history of mankind, after the World War II there was gross violation of fundamental (human) rights, and there was cry for the protection of fundamental rights. The result was the framing of the United Nations Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights 1966 and gradually there developed the regional systems for protection of these right through the regional legislation namely American Convention on Human Rights 1969, European Convention of Human Rights 1950 and African Charter on Human and people's Rights 1981.

Keeping this background the framers of the Constitution of India included a full chapter dealing with fundamental rights. This chapter on fundamental rights is in an elaborated form basically echoes the provisions of the UN Charter. The inclusion of a chapter on the fundamental rights in the Constitution of India is a modern democratic trend to safeguard the liberties of individuals in a free society. In India, the fundamental rights were felt necessary to protect the rights and liberties of the people against the possible misuse of the power given by them to their government. They are considered as limitations upon the powers of the government, legislative as well as executive, and they are essential for the preservation of public and private rights. In fact, in India, these fundamental rights represent the basic values of the country since the Vedic period. These rights protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest.

These rights are considered fundamental because they are most essential for the attainment by the individual his full intellectual, moral and spiritual status.

TYPES OF FUNDAMENTAL RIGHTS

During the last three decades, a vast number of human rights have found place in the new constitutions and bills of rights of more than eighty countries. Countries which enacted these new constitutions have had the benefit of all the developments in the human rights laws which have been taking place since 1950. Some rights generally recognized as fundamental world over are: Right to life, Right to marry, Right to procreate, Right to raise children free from unnecessary governmental interference, Right to freedom of association, Right to freedom of expression, Right to equal treatment or equal protection before the law (fair legal procedures), Right to freedom of thought, Right to religious belief, Right to choose when and where to acquire formal education, Right to pursue happiness, Right to privacy, Right to vote etc.

In India, constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the Universal Declaration of Human Rights, 1948.

FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA

Rights literally mean those freedoms which are essential for personal good as well as for the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute. The fundamental rights related to press are subject to “reasonable restrictions” and after the National Emergency, in India in 1975, the Constitution of India was amended to incorporate the corresponding Fundamental Duties so that the fundamental rights of the citizens and also of the media/press are not misused. The Part III of the Constitution of India contains the Fundamental Rights which guarantees civil liberties so that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights. Violations of these rights result in punishments as prescribed in the Indian Penal Code (IPC), subject to direction of the judiciary. The Fundamental Rights are defined as basic human

freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex. They are enforceable by the courts, subject to certain limitations. These Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights, France's Declaration of the Rights of Man, Irish Constitution etc. The seven fundamental rights under the Constitution of India are:

Right to Equality (Articles 14-18)

Right to equality is an important right provided under the Constitution. It is the principal foundation of all other rights and liberties, and it guarantees equality before law, social equality and equal access to public areas, equality in matters of public employment, abolition of untouchability, abolition of Titles etc.

Right to Freedom (Articles 19-22)

The Constitution of India contains the Right to Freedom with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The Right to Freedom in Article 19 guarantees the following six freedoms:

1. Freedom of speech and expression, which enables an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
2. Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
3. Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
4. Freedom to move freely throughout the territory of India: reasonable restrictions can be imposed on this right in the interest of the general public; for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
5. Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect the indigenous and tribal peoples from exploitation and coercion.

6. Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

Right against Exploitation (Articles 23-24)

The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and forced labor, and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is considered a gross violation of the spirit and provisions of the constitution. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law.

Right to Freedom of Religion (Articles 25-28)

Right to freedom of religion provides religious freedom to all citizens of India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Cultural and Educational rights (Articles 29-30)

As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to conserve and develop them. No citizen can be discriminated against for admission in State or State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. But the right to administer does not mean that the State cannot interfere in case of maladministration.

Right to Constitutional Remedies (Articles 21-35)

Right to constitutional remedies empowers the citizens to go to a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of writs. These writs are habeas corpus, mandamus, prohibition, quo warranto and

certiorari. When a national or state emergency is declared, this right is suspended by the Central Government.

Right to Life and personal liberty (As per 86th amendment of 2002)

The constitution also guarantees the right to life and personal liberty under Article 20 and 21, with specific provisions in which these rights are applied and enforced:

1. Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. Moreover, no person accused of any offence shall be compelled to be a witness against himself. The other principle enshrined in this Article is that no person can be convicted twice for the same offence.
2. Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence.

CONCEPT OFFREEDOM OF SPEECH AND EXPRESSION

Freedom of speech and expression means the right to express one's own ideas and opinions freely by words of mouth, writing, printing, pictures or any other possible mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as, gesture, signs and the like. It means to speak freely without censorship. The freedom of expression also includes publication and thus, the freedom of press is included in this category. The right to freedom of speech is guaranteed under international law through numerous human-rights instruments, notably under Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights. In practice, the right to freedom of speech is not absolute in any country, although the degree of freedom varies greatly. Industrialized countries also have varying approaches to balance freedom with order. For instance, in the United States, First Amendment to their Constitution grants absolute freedom and on the other hand allows the State to impose limitation when the restriction of this freedom is felt necessary. In almost all liberal democratic countries, free expression is a recognised principle, but it generally comes with some limitations as exceptions.

Freedom of speech and expression is the most basic of all freedoms granted to the citizens of India under Article 19(1)(a). The freedom of speech and that of the press lie at the foundation of a democratic society, for without free political discussions, no public education is possible, which is so important for the proper functioning of the government. It allows us to express our ideas and thoughts freely through any medium such as print, visual, and voice. One can use any communication medium of visual representation such as signs, pictures, or movies. The freedom of publication is also covered under the freedom of speech. Freedom of speech serves four purposes:

a. Allows an individual to attain self fulfillment.

b. Assists in the discovery of truth.

c. It strengthens the capacity of a person to make decisions.

d. It facilitates a balance between stability and social change.

This right is not only about communicating your ideas to others but also about being able to publish and propagate other people's views as well. The fundamental principle involved here is the "people's right to know". Thus, freedom of speech and expression is linked to the people's right to know.

CONSTITUTIONAL GUARANTEES AND LIMITATIONS

The importance of freedom of speech and expression as a basic and valuable characteristic of a society cannot be underestimated. But the freedom of speech and of the press does not give you an absolute right to express without any responsibility. Ever since the first consideration of the idea of 'free speech' came up it has been argued that the right to free speech should be subject to restrictions and exceptions and some traditional restriction on the freedom of speech and expressions emerged which are sometimes considered an assault on this freedom. Restrictions on speech that are sometimes characterised as assaults on freedom of speech include defamation (slander and libel), obscenity, threats, lying in court (perjury), talk that causes contempt of court, speaking about a trial outside the court room after the judge forbids it, speaking publicly without permission, hate speech that is defamatory or causes incitement to violence, noise pollution, speech that contains a copyright infringement, Company secrets (trade secrets), political secrets, classified information sensitive or secret to protect the national interest, lies that cause a crowd to panic or causes clear and present danger, sedition, treason, blasphemy etc.

The Constitution of India also confers the Right to Freedom of Speech and Expression, but with certain restrictions as under Article 19 Clause 2, which states that "Nothing shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." These grounds for reasonable restrictions are in the same language as we find in the international norm and these can be noted under following heads:

- Security of the State
- Friendly relations with foreign States
- Public order
- Decency and morality
- Contempt of court
- Defamation
- Incitement to an offence
- Sovereignty and integrity of India

Reasonable restrictions on these grounds can be imposed only by a duly enacted law and not by executive action.

DIRECTIVE PRINCIPLES OF STATE POLICY

1. Introduction
2. Meaning of the Directive Principles of State Policy

3. Meaning of the Directive Principles of State Policy

4. Classification of the Directive Principles of State Policy

5. Implementation of the Directive Principles of State Policy

6. Constitutional Significance of the Directive Principles of State Policy

7. Differences between the Directive Principles and Fundamental Rights

8. Conclusion

INTRODUCTION

This unit introduces you about Directive Principles which are mentioned in Part IV from Article 36 to Article 51 of the Indian Constitution. These principles are meant for the State to follow them in matters of administration and in making of laws. Because the basic aim behind these principles is establish a welfare State. These principle are differ from fundamental rights which is discussed in earlier chapter. While fundamental rights are enforceable, Directive Principles are not enforceable by the courts. The courts cannot compel the govt. to follow these principles . But it is the duty of every responsible government to translate these principles in to action to promote social and economic justice among citizens. These principles are fundamental in the governance of the country.

MEANING OF DIRECTIVE PRINCIPLES

One of the distinctive features of Indian Constitution is the inclusion of the Directive Principles of State Policy or DPSPs. Borrowed from the Irish Constitution, the makers of our Indian Constitution incorporated these principles in Part IV of the Constitution from Art. 36 to Art. 51. These principles were deemed fundamental in the governance of the country which epitomized the hopes and aspirations of the Indian people. The Irish Constitution had greatly impressed the members of the Constituent Assembly . The members of the Constituent Assembly watched that most of the new constitutions that came in to being after World War I particularly of Germany and East European countries, had recognized that one of the chief functions of the State must be to foster and secure the social well-being of the citizens and the economic prosperity of the nation . Such attitude impressed our Constitution makers to incorporate these principles in our Constitution

The Directive Principles are some affirmative instructions to the State authorities to secure to all citizens justice- social, economic and political ; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation . These principles underline the philosophy of Democratic Socialism to secure the high ideals set forth in the Preamble to the Constitution. It is the duty of the State to follow these principles both in the matter of administration as well as in the making of laws because the basic aim of the Directive Principles is to establish a welfare state where economic and social democracy might flourish.

The Directive Principles of State Policy may be classified under several groups, covering socio-economic rights to statements of international policy of the country. Significantly, these principles are not justiciable in character. They cannot be enforced by the courts of law if the State does not follow these principles in matters of administration as well as in making of laws. But it is the duty of the State to follow them to promote fraternity and equality and to guarantee justice to the people of the country. Nevertheless, The Directive Principles are regarded as the basic foundation of democracy and welfare State. They are incorporated in the Constitution to meet economic and social aspirations of the people of our country. Political democracy requires for its success economic security. Therefore the makers of our Constitution incorporated the Directive Principles as supplement to the Fundamental Rights. The Directive Principles provide some economic principles to secure economic justice and security.

FEATURES OF DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy incorporated under Chapter-IV from Article 36-Article 51 possess the following features:

- Directive Principles of State Policy are some instructions to the State for achieving socio-economic development.
- Directive Principles of State Policy are not enforceable in the courts and no one can go near the court for its proper implementation.
- Directive Principles of State Policy are positive in nature. These principles increase power and functions of the State.
- Directive Principles of State Policy aims at establishment of a welfare state by securing social and economic justice. These principles are based on socialist thinking.
- These principles are indispensable for socio-economic development of our country .Because welfare and justice are the twin objectives of our Constitution.
- These principles have great moral value also. It constitutes the conscience of our Constitution. No responsible govt. can dare to go against these principles.
- Directive Principles of State Policy constitute the mirror of public opinion .These principles always reflect the will of the people .These are embodied in the Constitution to the meet the aspirations of the people .
- These are fundamental in the governance of the country. The State should follow these principles for progress of the country.

CLASSIFICATION OFDIRECTIVE PRINCIPLES OF STATE POLICY

(i) Socialist and Economic Principles: The socialist and economic principles always aim to shape our country in to a Welfare State. Art. 38(1) provides that the State shall promote the welfare of the people by securing and protecting as it may a social order in which justice – social, economic, and political shall inform all the institutions of national life. The State shall strive to minimize the inequalities in income and try to eliminate inequalities in status, facilities and opportunities among individuals and groups engaged in different vocations within the country (Art.38-2). Thus promotion of welfare of people by securing a social order where justice shall prevail is the objective of our constitution. To ensure such objectives the State shall direct its policy in securing-

a. adequate means of livelihood for all citizen irrespective of men and women equally;
b. equal distribution of wealth and resources among all classes ;
c. equal pay for equal work for both men and women ;
d. just and humane conditions of work, a decent standard of living , full employment, leisure and social and cultural opportunities;
e. participation of workers in the management of undertakings and establishments ;
f. protection of children, youth against exploitation and against moral and material abandonment.

The forty-two amendment altered this provision and provides that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against moral and material abandonment";

a. Provision of work and compulsory education for all people, relief in case of unemployment, old age, sickness and disability and other cases of undeserved want ;
b. equality of opportunity and status for all individuals ; level of nutrition and standard of living of the people ;
c. public health and enforce prohibition of consumption of intoxicating drinks and drugs;
d. environment safeguarding forest and wild life of the country ;
e. a uniform civil code throughout the country;
f. protection of adult and child labour.

(ii) Gandhian Principles: Principles enjoined under Gandhian principles in Article 40, Article 43, Article 47 and Article 48 are some ideals of Mahatma Gandhi followed during his life time. Our constitution framers wanted to implement these ideals to fulfill his dream. The State shall take steps-
a. to organize village panchayats and endow them power and authority to enable them to function as unit of self-government. ;
b. to promote cottage industries and village industries on an individual or co-operative basis in rural areas ;
c. to prohibit consumption of intoxicating and injurious drinks and drugs;

d. to promote educational and economic interests of the weaker sections of the people particularly SCs, STs to establish social justice and equity ;

e. to organize agricultural and animal husbandry on modern and scientific lines ;

f. to prohibit the slaughter of cows and other useful cattle ;

g. to protect and improve environment and safeguard the forests and wild life of the country ;

h. to protect, preserve and maintain places of national historical importance ;

i. to separate the judiciary from the executive.

(iii) International Principles: Principles enjoined in Art. 51 under international principles are some provisions to the State relating to ensure international peace and security. The State shall attempt

a. to promote international peace and security ;

b. to maintain just and honorable relations between nations ;

c. to foster respect for international law and treaty obligation ;

d. to encourage settlement of international disputes by arbitration.

IMPLEMENTATION OF DIRECTIVE PRINCIPLES

The constitution framers enshrined so many principles in order to establish a new social order in which justice – social, economic and political shall prevail. To ensure minimum basic necessities of citizen in civilized society and to establish a democratic setup rest on social justice, the constitution framers adopted peaceful and evolutionary method followed by constitutional reform. To fulfill basic objective, the State has been charged to make effective provisions for securing the Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want (Art.-41). To implement and translate such directives into action, the govt. has taken so many steps coloured by these directive principles. The government has enacted social, labour and economic legislations besides industrial, agricultural and taxation policies. For example, The Taxation Inquiry Commission, 1953 –54 was asked to examine the tax structure and to suggest measures to reduce the inequalities of income and wealth and some other related subjects. The industrial Development And Regulation Act 1954 and the establishment of the Monopolies Inquiry Commission in 1965 were aimed to achieve the objective outlined by the Taxation Inquiry

Commission. The Monopolies Commission made probing inquiries in to the causes and extent of concentration of economic power in private hands, the factors responsible for monopolies tendencies in the national economy and their social consequences. Similarly in the early years of the 1950s Land Reform Legislation was enacted to abolish intermediaries and zamindari system and now land, both rural and urban, is subject to ceilings and the surplus land has gone to the weaker sections of the community. In compliance with such laws, many States has enacted separate State act to prevent concentration of land holdings and fixed a ceiling for an individual owner. A large number of laws have been enacted to implement organization of village panchayat as a unit of self-govt. (Art.40) all over the country and specially, the govt. has enacted the historic seventy-third and seventy-fourth constitution amendment act. 1992 to build Panchayati Raj Institutions as an administrative unit. Now panchayats have been assigned 29 departments. With full power so that people of village can fulfill their long standing dreams by their sufficient support and participation . Most of the States has enacted their own State panchyat act with same spirit of the main act and devolved funds, functions and functionaries to make panchyat as an institution of self- government. For the promotion of cottage industries (Art.43), steps have been taken to encourage the masses. Besides the Government has established the All India Handicrafts Board, The All India Handloom Board, The Small –Scale Industries Board, The Silk Board, The Coir Board etc. for promotion of cottage industries. The National Small Industries Corporation, the Khadi and Village Industries Commission, have been set up for the development of the Khadi and Village Industries. Various measures including employment generation schemes have been undertaken to promote and uplift of SCs, STs and Other Backward Classes. Legislation for compulsory primary education (Art. 45) has been enacted. For raising the standard of living (Art.47) the Govt. of India adopted the first ever large scale programme called Community Development Project in 1952 for rural re-construction in the field of communication, transport, housing facilities, sanitation , agriculture, education etc. Regarding prohibition of intoxicating drinks and drugs (Art. 47) most of the States has enacted legislation and imposes some restrictions on it . Necessary legislation has been enacted to protect places and monuments of national importance. As to the separation of the executive form the judiciary (Art.-50) most of the States have taken legislative measures. Steps have been taken to assist and give free legal aid to needy village people. Lastly, the Government of India has enacted the National Rural Employment Guarantee Act (NREGA) to ensure hundred days work assistance to

rural people which is in conformity to the Right to work enshrined in the Directive Principles of State Policy of the Indian Constitution.

The principle of International peace and security enshrined in Art.51 finds its full expression in the external policy of India. After Independence, the Government. of India under the leading role of Pandit Jawahar Lal Nehru advocated many ideals of peace and mutual tolerance.

CONSTITUTIONAL SIGNIFICANCE

The Directive Principles have great constitutional significance. They have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws (Art-37). Though these principles are not enforceable in the courts, yet no government would dare to ignore them. Every government should take steps for implementing Directive Principles of State Policy as far as possible or else it would be criticized on the ground of non-fulfillment of the directives. These principles represent the deliberate wisdom of the nation and will act as a constant reminder to the State for its implementation. Inclusion of Directive Principles in the constitution always gives a constitutional recognition of the responsibility of the State to promote the social and economic welfare of the people. The 42nd and 44th amendments emphasized the socialistic goal of the Indian polity that every State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual.

DIFFERENCE BETWEEN DIRECTIVE PRINCIPLE AND FUNDAMENTAL RIGHTS

The Directive Principles of State Policy differ from the Fundamental Rights in the following respects, though both aim to ensure happiness among common people. The differences are discussed as follows –

1. Fundamental Rights are meant for the citizen while Directive Principles of State Policy are meant for the State. They are some socio-economic instructions for the establishment of a welfare State.

2. Fundamental Rights are individualistic and meant for individual citizens. On the other hand, Directive Principles of State Policy are socialistic in nature and want to establish equality and justice in the society.

3. Fundamental Rights are enforceable in the courts. Individual can move to the court seeking legal assistance if Fundamental Rights are usurped by force. On the other hand Directive Principles of State Policy are not enforceable and no one can go to the courts to compel the State for their proper implementation.

4. Fundamental Rights are automatically enforced. While Directive Principles, on the other hand, need legislation for their proper implementation so long as there is no law carrying out the policy laid down in the Directive Principles.

5. Fundamental Rights seek to establish political democracy while directive principles seek to establish social and economic democracy.

6. Some Fundamental Rights are positive and some are negative in nature. On the contrary, almost all Directive Principles are positive in character.

7. Fundamental Rights are political in character. These rights guarantee Some democratic rights to the citizen. On the other hand contrary, Directive Principles are economic in nature and want to ensure economic security of the people.

8. Some Fundamental Rights of the citizens remain suspended during national emergency. But the question of suspension of Directive Principles does not arise during emergency or in any time.

9. Fundamental Rights are not absolute and citizens are subject to reasonable restrictions. On the other hand, Directive Principles are not subject to any constitutional limitations. Based on political will the government may or may not implement them

10. Fundamental Rights are enforceable by the courts and the courts are bound to declare as void any law that is inconsistent with any of the Fundamental Rights On the other hand, Directive Principles are not enforceable by the courts and the courts can not declare as void any law which in conflict with any of the Directive Principles.

11. In case of conflict between Fundamental Rights and Directive Principles, the former gets supremacy in the court. Every legislation made to implement Directive Principles of State Policy is subject to scrutiny of the court to determine whether it is violative of the Fundamental Rights, particularly Article 14 and Article 19.

12. Fundamental Rights are more precise and concrete while Directive Principles are of wider significance.

13. Despite so many differences between two, Fundamental Rights and Directive Principles are closely connected to each other. Both concepts constitute an indispensable part of the Constitution and are fundamental for proper development of our country.

FUNDAMENTAL DUTIES

When the Constitution came into force in 1950, no Fundamental Duties were enshrined in the Constitution of India. By the 42nd Amendment to the Constitution of India in 1976, ten Fundamental Duties have been added to our Constitution. Through 86th Amendment Act Eleventh duty was added in 2002. These duties are important and necessary for the vital interest of our country. These Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution. Under this Article, it shall be the duty of every citizen of India –

(i) to abide by the Constitution and respect the National Flag and the National Anthem;

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(iii) to protect the sovereignty, unity and integrity of India ;

(iv) to defend the country ;

(v) to promote the spirit of common brotherhood amongst all the people of India ;

(vi) to preserve the rich heritage of our composite culture ;

(vii) to protect and improve the natural environment ;

(viii) to develop the scientific temper and spirit of inquiry ;

(ix) to safeguard public property ;

(x) to strive towards excellence in all spheres of individual and collective activity.

(xi) duty of the parent or guardian, to provide opportunities for education to his child, or as the case may be, ward between the age of six to fourteen years.

Fundamental Duties are like some noble advice of which some are civic duties and others are moral duties. They are not legally binding upon the citizens and even the courts cannot enforce them. So, Fundamental Duties are not enforceable by the courts of our country. No one can be punished if he/she does not perform his/her duties. Though there is no legal force behind these duties, yet they are integral part to the Constitution of India. These duties have moral impact and educative value upon the citizens. Therefore people obey these duties on moral obligation for

welfare of the people. After all inclusion of Fundamental Duties in the Constitution is considered necessary towards progress, peace and prosperity of the country.

Though there is no provision in the Constitution for direct enforcement of any of these duties nor for any sanction to prevent their violation, yet some Fundamental Duties are enforceable by the courts of the country. Duties like abide by the Constitution, respect the National Flag and the National Anthem, to defend the country and render National service when called upon to do so and safeguard public property etc. fall in this category and the courts can enforce them if it find reasonable relation with laws of the country. But there are some inherent draw backs of these Fundamental Duties. Actually Fundamental Duties are not binding upon the citizen. Duties inscribed in the Constitution are not exhaustive, while some duties are ambiguous. So, common people could not understand them. Yet these duties are important for National interest of our country. These duties have sanctity of its own. Besides these duties have moral and educative value upon citizen of our country. People fells that for proper enjoyment of rights, duties must be performed in a well manner. Because rights and duties are related to each other. Every right implies a corresponding duty towards individual and social welfare. Rights cannot be separated from duties and vice-versa. Therefore, both rights and duties are important for the prosperity of the country in a similar manner.

THE PRESIDENT OF INDIA

INTRODUCTION

The President of India is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authorities vested in the President are, in practice, exercised by the Council of Ministers (CoM).

THE EXECUTIVE

ARTICLE 52: THE PRESIDENT OF INDIA

There shall be a President of India.

ARTICLE 53: EXECUTIVE POWER OF THE UNION

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union Shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall –

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) Prevent Parliament from conferring by law functions on authorities other than the President.

ARTICLE 54 : ELECTION OF PRESIDENT

The President shall be elected by the members of an electoral college consisting of

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States. Explanation: In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

ARTICLE 55 : MANNER OF ELECTION OF PRESIDENT

(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the legislative Assembly of each state is entitled to cast at such election shall be determined in the following manner; –

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation: In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

ARTICLE 56 : TERM OF OFFICE OF PRESIDENT

(1) The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that –

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61.

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

ARTICLE 57 : ELIGIBILITY FOR RE-ELECTION

A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution be eligible for re-election to that office.

ARTICLE 58 : QUALIFICATIONS FOR ELECTION AS PRESIDENT

(1) No person shall be eligible for election as President unless he –

(a) is a citizen of India;

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 59 : CONDITIONS OF PRESIDENT'S OFFICE

(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

ARTICLE 60 : OATH OR AFFIRMATION BY THE PRESIDENT

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say – "I, A.B., do swear in the name of God / solemnly affirm that I will faithfully execute the office of President (or discharge the function of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

ARTICLE 61 : PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT

(1) When a President is to be impeached for violation of the Constitution, the charge shall be

preferred by either House of Parliament.

(2) No such charge shall be preferred unless –

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

POWERS AND FUNCTIONS

Powers of Indian President can be broadly classified under 8 headings. They are:

1. Legislative powers
2. Executive powers
3. Judicial powers
4. Financial powers
5. Diplomatic powers
6. Military powers
7. Pardoning Powers
8. Emergency powers

The President of India exercises wide ranging powers and functions. However, India being a parliamentary democracy, the President is, in reality, only a nominal head and all the powers vested in him are exercised by the President in accordance with the advice of the Council of Ministers headed by the Prime Minister.

1. Legislative Powers:

The President has the power to summon and prorogue the sessions of both Houses of the Parliament and to dissolve the House of the People (Lok Sabha). He can even dissolve the Lok Sabha. A bill passed by the Parliament can become a law only after receiving the signature of the President. The President can issue an ordinance when the Parliament is not in session.

Money bills can be introduced in the Lok Sabha only with the permission of the President of India. He also sees to it that the annual budget is laid in the Parliament in time. The Contingency Fund is placed at the disposal of the President from which he may make advances to meet unforeseen emergency situations.

2. Executive Powers:

All the executive powers of the Union Government have been given to the President by the Constitution of India. He appoints the Prime Minister and other Ministers of the Union Council of Ministers. He also makes important appointments of the Union Government like the Attorney-General of the Union, the Comptroller and Auditor General, Chief Justice and Judges of the Supreme Court and the High Courts, etc. The President administers the Union Territories through administrators. Besides the appointment of such high dignitaries, the President has the power to appoint the following administrative commissions: An Inter-State Council, the Union Public Service Commission and a Joint Commission for a group of States, the Finance Commission, the Election Commission, etc.

3. Judicial Powers:

The President of India exercises the power of "prerogative of mercy" He has the power to pardon offenders or reprieve or suspend or commute their punishments.

4. Military and Foreign Affairs:

The President is also the Supreme Commander of the armed forces in India. Declaration of war and peace is done in the name of the President. All matters relating to foreign affairs are conducted in the name of the President. Diplomatic envoys including High Commissioners and Ambassadors are accredited in his name. All treaties and international agreements are negotiated and concluded in the name of the President.

5. Emergency Powers:

The Constitution has given the President of India same special powers to meet emergency situations. He exercises this power under three conditions - i) National Emergency under Article

352 when the country is threatened by war, external aggression or armed rebellion ; ii) State Emergency under Article 356 when there is break down of constitutional machinery in a State‘ and iii) Financial Emergency under Article 360 when there is a threat to the financial stability and credit of India.

The above mentioned powers are given to the President by the Constitution of India. But they are, in reality, exercised by the Council of Ministers in his name.

Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence – (a) in all cases where the punishment of sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

POSITION FO THE PRESIDENT

The President is the Head of the State in India. But he is only a nominal head. The powers and functions of the President are actually exercised by the Council of Ministers headed by the Prime Minister. So, the President is not directly responsible for running the administration of the country. It is the Council of Ministers headed by the Prime Minister which is responsible to the Parliament and ultimately the people for administering the country. The role which the President can play in the Indian political system was initially a matter of wide controversy. Accordingly, the Constitution (Forty-second Amendment) Act, 1976, provided in Article 74(1) that the President in the exercise of his functions shall act in accordance with the advice of his Council of

Ministers. The Constitution (Forty-fourth Amendment) Act, 1978, made the position of the President unambiguously clear and definite. After this amendment, the President can now get the Council of Ministers to reconsider the advice tendered to him, but the President shall act in accordance with the advice tendered to him by the Council of Ministers after such reconsideration. Thus, the 42nd and the 44th Amendments of the Constitution made the position of the President very clear. These amendments provided that the President is bound to act in accordance with the advice of the Council of Ministers. He is the head of the state but not the real executive. He represents the nation but does not rule.

Though the President cannot exercise his powers in the real sense, yet he occupies the most prestigious position under the Constitution of India. He can exercise his influence upon the working of the Government of India. His views and opinions cannot be immediately ignored. The position of the President is also very much dependent upon his personality and how he conceives of his powers and functions. It is expected that the President should make the people feel that he is not a non- functionary but the Head of the State in India.

THE VICE-PRESIDENT OF INDIA (Articles 63-73)

Part V of the Constitution of India under Chapter I (Executive) also discusses about the office of the Vice-President of India. The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office. Let's see the articles 63-73 which deal with the qualifications, election and removal of Vice-President of India.

The Constitution of India provides for an office of the Vice President of India. His position is only next to that of the President of India. The importance of this lies in the fact when the office of President becomes vacant, the vice-President fills it up. He is also the ex-officio Chairman of the Rajya Sabha.

The Vice-President is elected by an Electoral College which consists of the members of both House of Parliament. The Vice-President is located by a system of proportional representation by means of a single transferable vote. In this election both the elected and the nominated members of the Parliament can take part unlike the election of the President.

The Vice-President is elected for a term of five years. He can be removed from his office by the process of impeachment by the Parliament. He may also resign his post before the end of his term.

ARTICLE 63 : THE VICE-PRESIDENT OF INDIA

There shall be a Vice-President of India.

ARTICLE 64 : THE VICE-PRESIDENT TO BE EX-OFFICIO CHAIRMAN OF THE COUNCIL OF STATES

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

ARTICLE 65: THE VICE-PRESIDENT TO ACT AS PRESIDENT OR TO DISCHARGE HIS FUNCTIONS DURING CASUAL VACANCIES IN THE OFFICE, OR DURING THE ABSENCE, OF PRESIDENT

(1) In the event of the occurrence of any vacancy in the office of the President by reason of this death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

ARTICLE 66: ELECTION OF VICE-PRESIDENT

(1) The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he –

(a) is a citizen on India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President of Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 67: TERM OF OFFICE OF VICE-PRESIDENT

The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that – (a) A Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

ARTICLE 68: TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF VICE-PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

ARTICLE 69: OATH OR AFFIRMATION BY THE VICE-PRESIDENT

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say – "I, A.B., do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will discharge the duty upon which I am about to enter."

ARTICLE 70: DISCHARGE OF PRESIDENT'S FUNCTIONS IN OTHER CONTINGENCIES

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

ARTICLE 71: MATTERS RELATING TO, OR CONNECTED WITH, THE ELECTION OF A PRESIDENT OR VICE-PRESIDENT

(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of

President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

ARTICLE 72: POWER OF PRESIDENT TO GRANT PARDONS, ETC., AND TO SUSPEND, REMIT OR COMMUTE SENTENCES IN CERTAIN CASES

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence – (a) in all cases where the punishment of sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

ARTICLE 73: EXTENT OF EXECUTIVE POWER OF THE UNION

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament,

extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Powers and functions of the Vice- President:

The office the Vice- President is an impartment office under the Constitution of India. But he has not been given any substantial power. The importance of this office lies in the fact that when the office of the President becomes vacant, the Vice-President can act as the President for six months, within which period, a new President should be elected.

The office of the Vice-President is regarded as the training ground for the President and many of the occupants of this office have became the President of the country later.

However, the main responsibility of the Vice-President is to act as the Chairman of the Rajya Sabha. He presides over the meetings of the House. He has to maintain order in the House. No bill is regarded as passed by the House unless it is signed by the Chairman. His decision is final in the House.

Prime Minister of India: Power and Position of the Prime Minister

The office of the Prime Minister is the most powerful office in India. If Cabinet is the strongest institution, the Prime Minister is the strongest person in the cabinet under the Constitution of India, the real centre of power is the office of the Prime Minister. He is the Head of the Government of India. He is the real custodian of all executive authority.

1. Appointment of the Prime Minister:

The Constitution simply lays down that the Prime Minister is to be appointed by the President. In doing so the President follows the rules of the parliamentary system. He appoints the leader of the majority in the Lok Sabha as the Prime Minister. Whenever a party gets a clear majority in Lok Sabha elections, the President plays a little role and he appoints the leader of such a party or

a coalition group as the Prime Minister. However, in case no party gets a majority and some parties are even unable to elect a common candidate as their leader, the President can play a real role in the appointment of the Prime Minister.

(a) Prime Minister need not be always from Lok Sabha:

Between 1950-96 the Prime Ministers always belonged to the Lok Sabha. But it was a convention and not a law. This convention was broken in June 1996, April 1997, May 2004 and May 2009. Since May 2004 (for the second consecutive time since May 2009) Dr Manmohan Singh has been the Prime Minster and he has been and still he is a member of the Rajya Sabha. Thus the convention that Prime Minister always belongs to Lok Sabha now stands broken. The Prime Minister can be from either House of the Parliament. The only essential condition is that he must be the adopted or elected leader of majority in the Lok Sabha.

(b) Prime Minister need not be a sitting member of the Parliament:

Further, that any person who is not a member of either House of the Parliament can also becomes a minister or the Prime Minister and e he can remain so for six months, within this period he has to essentially get the membership of either House. In case he fails to do so, he loses his office of Minister/Prime Minister.

(c) No Formal Qualifications:

The Constitution lays down no formal qualifications for the office of the Prime Minister. Since no person who is not a member or cannot become a member of the Parliament can be appointed as the Prime Minister, it can be said that the qualifications essential for the membership of the Parliament are also the essential qualifications for the office of the Prime Minister.

(d) Tenure:

Theoretically, the Prime Minister holds office during the pleasure of the President. It really means, so long as he enjoys the confidence of majority in Lok Sabha. Lok Sabha can pass a vote of no-confidence against him and in this case the Prime Minister either submits his resignation to the President or gets dismissed by the President.

Whenever it may appear that the Prime Minister's party has lost its majority in the Lok Sabha, the President can ask him to prove his majority in House.. A failure to do so compels the Prime Minister to either resign forthwith or face dismissal at the hands of the President.

POWERS AND FUNCTIONS OF THE PRIME MINISTER:

1. Formation of the Council of Ministers:

The task of formation of the ministry begins with the appointment of the Prime Minister by the President. After the appointment of Prime Minister, the President appoints all other ministers on the advice of the Prime Minister. The PM determines the strength of his ministry and selects his team of ministers. However this number cannot be more than 15% of the total membership of the Lok Sabha.

Normally, most of the ministers are drawn from Lok Sabha. Prime Minister decides who amongst them shall be the Cabinet Minister and who will be Minister of State or a Deputy Minister. He can, if he so desires, even have one or two Deputy Prime Ministers in his Council of Ministers.

2. Allocation of Portfolios:

It is an undisputed privilege of the Prime Minister to allocate portfolios to his ministers. Which particular department is to be given to which minister is determined by him. Any minister objecting to such an allotment invites the wrath of the Prime Minister and can get completely ignored from the ministry.

3. Change of Portfolios:

The Prime Minister has the power to change the departments (portfolios) of the ministers at any time. It is his privilege to shuffle and re-shuffle his ministry any time and as many times as he may like.

4. Chairman of the Cabinet:

The Prime Minister is the leader of the Cabinet. He presides over its meetings. He decides the agenda of its meetings. In fact all matters in the Cabinet are decided with the approval and consent of the Prime Minister. It is up to him to accept or reject proposals for discussions in the Cabinet. All ministers conform to his views and policies. There is scope for deliberations and discussions but not for opposition.

5. Removal of Ministers:

The Prime Minister can demand resignation from any minister at any time, and the latter has to accept the wishes of the former. However, if any minister may fail to resign, the Prime Minister can get him dismissed from the President. In April 2010 Mr. Shashi Throor had to submit his resignation because PM Manmohan Singh had asked him to do so.

6. Chief Link between the President and the Cabinet:

The Prime Minister is the main channel of communication between the President and the Cabinet. He communicates to the President all decisions of the Cabinet, and puts before the Cabinet the views of the President. This is the sole privilege of the Prime Minister and no other minister can, of his own convey the decisions or reveal to the President the nature or summary of the issues discussed in the Cabinet.

7. Chief Coordinator:

The Prime Minister acts as the general manager of the state and the chief coordinator. It is his responsibility to co-ordinate the activities of all the departments and to secure co-operation amongst all government departments. He resolves all differences, among the ministers.

8. Leader of the Parliament:

As the leader of the majority in the Lok Sabha, the Prime Minister is also the leader of the Parliament. In this capacity, it is the PM who, in consultation with the Speaker of this Lok Sabha, decides the agenda of the House. The summoning and the proroguing of Parliament is in fact decided by him and the President only acts upon his advice.

9. Power to get the Parliament Dissolved:

The Prime Minister has the power to advise the President in favour of a dissolution of the Lok Sabha. This power of dissolution really means that the members hold their seats in the House at the mercy of the Prime Minister.

No member likes to contest frequent elections as these involve huge expenditures and uncertainties. It has been rightly remarked that this is such an important weapon in the hands of the Prime Minister that it binds his party men, and even the members of opposition.

10. Director of Foreign Affairs:

As the powerful and real head of the government, the Prime Minister always plays a key role in determining Indian foreign policy and relations with other countries. He may or may not hold the portfolio of foreign affairs but he always influences all foreign policy decisions.

11. Role as the Leader of the Nation:

Besides being the leader of his party and the Lok Sabha, Prime Minister is also the leader of the nation. General elections are fought in his name. We know that it was the charismatic and charming personality of Pt. Nehru that used to sweep popular votes in favour of the Congress party. The personality of the Prime Minister and the respect and love, that he commands act as a

source of strength for his party as well as the nation. He leads the nation both in times of peace and war.

12. Power of Patronage:

All important appointments are really made by the Prime Minister. These appointments include Governors, Attorney-General, Auditor General, Members and Chairman of Public Service Commission, Ambassadors, Consular etc. All high ranking appointments and promotions are made by the President with the advice of the Prime Minister.

13. Role of Prime Minister during an Emergency:

The emergency powers of the President are in reality the powers of the Prime Minister. The President declares an emergency only under the advice of the Cabinet, which in reality means the advice of the Prime Minister. All decisions taken to meet an emergency are really the decisions of the Prime Minister.

The Prime Minister can get the imposition of President's rule in a State. The Presidential decision in favour of imposing an emergency in a state is always governed by the decision of the Prime Minister and his Cabinet.

Position of the Prime Minister:

(a) The office of PM is very powerful:

A study of the powers and functions of the Prime Minister clearly brings out the fact that he holds the most powerful office in the Indian. He exercises real and formidable powers in all spheres of governmental activity—executive, legislative and financial. The Prime Minister is the captain of the ship of state, the key stone of cabinet arch, the steering wheel of government, and the moon amongst lesser stars.

The whole organisation and working of the Council of Ministers depend upon the Prime Minister. The President always acts in accordance with the advice of the Prime Minister. The ministry-making is the sole right of the Prime Minister. The resignation or removal of the Prime Minister always means the resignation of the Council of Ministers. Hence, Prime Minister is the centre of gravity and the foundation stone of the Council of Ministers.

(b) The President of India always acts upon the advice of the PM:

The President always acts upon the advice of the Prime Minister. The constitution assigns to the latter the role of being the chief advisor to the President. All the powers of the President, both the normal powers and the emergency powers, are really the powers of the Prime Minister.

As the head of the government, leader of the Cabinet, leader of the majority, leader of the Parliament and the leader of the nation, the Prime Minister plays an important an powerful role in the Indian Political System. Indeed the Prime Minister occupies a very powerful rather the most powerful position in India.

(c) The PM cannot become a dictator:

Undoubtedly, the Prime Minister of India enjoys a very strong position, yet he can neither be a dictator nor even behave like a dictator. His office is a democratic office to which he rises only through an effective participation in the democratic process.

The party to which the Prime Minister belongs, his own ministerial colleagues who are also his competitors, the leaders of the opposition parties, the President of India, the Parliament, the Press, the Constitution, and the public in general, all act as limitations upon him. These prevent him from becoming a dictator and from acting in an arbitrary way. His personality and skills are continuously on test. Any failure or lapse can cause his exit.

The office of the Prime Minister of India is a powerful democratic office. Its actual working depends upon the personal qualities and political status of the person who holds this office. However no one can convert his office into an authoritarian or dictatorial office. A person can remain Prime Minister only so long as he follows democratic norms and values.

UNION COUNCIL OF MINISTERS

ARTICLE 74 : COUNCIL OF MINISTERS TO AID AND ADVISE PRESIDENT

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

ARTICLE 75: OTHER PROVISIONS AS TO MINISTERS

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

THE ATTORNEY-GENERAL FOR INDIA

ARTICLE 76: ATTORNEY-GENERAL FOR INDIA.

(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney- General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

INDIAN PARLIAMENT

You have read in the preceding lesson that India has a parliamentary form of government in which the Prime Minister and his Council of Ministers are collectively responsible to the lower House of the Parliament i.e. Lok Sabha. In a parliamentary form of government the Parliament is the most important organ. It is the people who elect their representatives to be members of the Parliament and these representatives legislate and control the executive on behalf of the people. The Prime Minister and his Council of Ministers remain at the helm of affairs so long as they enjoy the confidence of Lok Sabha. The Parliament (Lok Sabha) may dislodge them from power by expressing a no confidence against the Prime Minister and his Council of Ministers. Thus the Parliament occupies a central position in our parliamentary system.

COMPOSITION OF THE PARLIAMENT

The Parliament has two Houses Rajya Sabha and Lok Sabha. Rajya Sabha is upper House and represents the States of India while the Lok Sabha is lower House. It is also called popular House because it represents the people of India. The President is an integral part of the Parliament though he is not a member of the either House. As an integral part of the Parliament, the President has been assigned certain powers and functions, which is already been discussed in the previous topics.

Rajya Sabha: Membership and Election

Rajya Sabha or the Upper House of the Parliament is a permanent body as it cannot be dissolved. The membership of the Rajya Sabha cannot exceed 250. Out of these, the President nominates 12 members on the basis of their excellence in literature, science, art and social service and the rest are elected. At present its total membership is 245. Rajya Sabha is the body representing States in Indian Union. The elected members of the States' Legislative Assemblies elect the members of the Rajya Sabha on the basis of proportional representation through the single transferable vote system. But all the States do not send equal number of members to the Rajya Sabha. Their representation is decided on the basis of population of respective States. Thus the bigger State gets bigger representation and the smaller ones have lesser representation. While the big State like UP has been assigned 31 seats, the smaller states like Sikkim and Tripura send only one member each. Delhi Assembly elects three members of Rajya Sabha and Pondichery sends one member. Other Union Territories are not represented in the Rajya Sabha.

QUALIFICATIONS

The qualifications for becoming a Rajya Sabha member are as follows:

1. He/she should be a citizen of India and at least 30 years of age.
2. He/she should make an oath or affirmation stating that he will bear true faith and allegiance to the Constitution of India.
3. Thus according to the Representation of People Act 1951, he/she should be registered as a voter in the State from which he is seeking election to the Rajya Sabha. But in 2003, two provisions have been made regarding the elections to Rajya Sabha- (i) Any Indian citizen can contest the Rajya Sabha elections irrespective of the State in which he resides; (ii) elections are to be conducted through open voting system.

TENURE

Every member of Rajya Sabha enjoys a safe tenure of six years. One-third of its members retire after every two years. They are entitled to contest again for the membership. But a Structure of Government member elected against a mid-term vacancy serves the remaining period only. This system of election ensures continuity in the working of Rajya Sabha.

OFFICIALS OF RAJYA SABHA

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He/she presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha. As the Vice-President is an ex-officio Chairman and not a member of Rajya Sabha, he/ she is normally not entitled to vote. He/she can vote only in case of a tie.

MEMBERSHIP AND ELECTION OF THE LOK SABHA

Unlike Rajya Sabha, Lok Sabha is not a permanent body. It is elected directly by the people on the basis of universal adult franchise. It is also called the popular House or lower House. The maximum permissible membership of Lok Sabha is 550 out of which 530 are directly elected from the States while 20 members are elected from the Union Territories. Besides, the President may nominate two members from the Anglo-Indian community if he/she feels that the said community is not adequately represented in the House.

Certain number of seats have been reserved for Scheduled Castes and Scheduled Tribes in the Lok Sabha. Initially this provision was made for ten years from the commencement of the Constitution, which has been extended time and again for further ten years by various constitutional amendments. The 79th Amendment has extended it for sixty years from the commencement of the Constitution. Reservation of seats for the Scheduled Castes or Scheduled Tribes means the persons belonging to SC/ST will represent such reserved seats. That implies that only persons belonging to SC/ST can contest from the reserved constituencies. But we have joint electorate and all the voters of the reserved constituency vote irrespective of their caste/tribe. There is no separation of voters in terms of caste or tribe.

The representation to the Lok Sabha is based on population. Therefore UP which is the most heavily populated State in India sends as many as 80 members while smaller States like Mizoram, Nagaland and Sikkim send just one representative each to the Lok Sabha. Seven members represent Delhi.

For the purpose of elections to the Lok Sabha, the States are divided into single member constituencies on the basis of population.

QUALIFICATIONS

All the citizens of 18 years of age and above are entitled to vote in the elections to Lok Sabha subject to the laws made by the Parliament. Any Indian citizen can become a member of Lok Sabha provided he/she fulfils the following qualifications:

1. He/she should be not less than 25 years of age.
2. He/she should declare through an oath or affirmation that he has true faith and allegiance in the Constitution and that he will uphold the sovereignty and integrity of India.
3. He/she must possess such other qualifications as may be laid down by the Parliament by law. He must be registered as a voter in any constituency in India.
4. Person contesting from the reserved seat should belong to the Scheduled Caste or Scheduled Tribe as the case may be.

TENURE

The normal term of Lok Sabha is five years. But the President, on the advice of Council of Ministers, may dissolve it before the expiry of five years. In the case of national emergency, its term can be extended for one year at a time. But it will not exceed six months after the emergency is over. On several occasions Lok Sabha was dissolved prior to the end of its term. For example the 12th Lok Sabha elected in 1998 was dissolved in 1999.

OFFICIALS OF THE LOK SABHA

The Speaker and the Deputy Speaker:

The presiding officer of Lok Sabha is known as Speaker. The members of the House elect him. He/she remains the Speaker even after Lok Sabha is dissolved till the next House elects a new Speaker in his place. In the absence, a Deputy Speaker who is also elected by the House presides over the meetings. Both the Speaker as well as the Deputy Speaker can be removed from office by a resolution of Lok Sabha passed by a majority of all the then members of the House.

Some of the powers and functions of the speaker are given below:

1. The basic function of the Speaker is to preside over the house and conduct the meetings of the House in orderly manner. No member can speak in the House without the permission. He/she may ask a member to finish his speech and in case the member does not obey he/she may order that the speech should not be recorded.

2. All the Bills, reports, motions and resolutions are introduced with Speaker's permission. He/she puts the motion or bill to vote. He/she does not participate in the voting but when there is a tie i.e. equal number of votes on both sides, he/she can use his casting Structure of Government vote. But he/she is expected to cast her vote in a manner so that her impartiality and independence is retained.

3. His/her decisions in all parliamentary matters are final. She also rules on points of order raised by the members and her decision is final.

4. He/she is the custodian of rights and privileges of the members.

5. He/she disqualifies a member of his/her membership in case of defection. He/she also accepts the resignation of members and decides about the genuineness of the resignation.

6. In case of joint sitting of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting.

FUNCTIONS OF THE PARLIAMENT

The functions and powers of the Indian Parliament can be divided into legislative, executive, financial and other categories.

Legislative Functions

Basically the Parliament is a law-making body. In an earlier lesson you have seen that there is a division of power between the Centre (Union) and the States. There are three lists Union List, State List and the Concurrent List. Only Parliament can make laws on the subjects mentioned in the Union List. You know that the Union List has 97 subjects. Along with the State Legislatures, the Parliament is empowered to make laws on the Concurrent List. In case, both the Centre as well as the States make a law on the subject mentioned in the Concurrent List then the central law prevails upon the state law if there is a clash between the two. Any subject not mentioned in any list i.e. residuary powers are vested with the Parliament.

Thus the law making power of the Parliament is very wide. It covers the Union List and Concurrent List and in certain circumstances even the State List also.

a. The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.

b. In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.

c. The Parliament can also pass laws on items in the State List under the following circumstances:

d. If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.

e. As per **Article 249**, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by ⅔ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.

f. As per **Article 253**, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.

g. According to **Article 252**, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

Executive Functions

In a parliamentary system of government there is a close relationship between the legislature and the executive. And the executive is responsible to the legislature for all its acts. The Prime Minister and his Council of Ministers are responsible to the Parliament individually as well as collectively. The Parliament can dislodge a ministry by passing a vote of no confidence or by refusing to endorse a confidence motion. In India this has happened several times. This happened in 1999 when the Atal Bihari Vajpayee Government lost the confidence motion in the Lok Sabha by just one vote and resigned.

But the no-confidence motion or the confidence motions are the extreme ways of maintaining the accountability of the Parliament over the executive. They are employed in exceptional cases. Parliament also maintains its control over executive in a routine manner through several ways. Some of them are as follows:-

a. The members of Parliament can ask questions and supplementary questions regarding any matters connected with the affairs of the Central Government. The first hour of every working day of Parliament relates to the Question Hour in which the Ministers have to answer the questions raised by the members.

b. If the members are not satisfied with the Government's answer then they may demand separate discussion on the subject.

c. The Parliament also exercises control over the executive through several motions. For example calling attention notice or adjournment motion are such ways by which some recent matters of urgent public importance are raised. The government always takes these motions very seriously because the government's policies are criticized severely and their likely impact on the electorate whom the government would have to face ultimately. If the motion is passed then it means that the government is censured.

d. The Lok Sabha can express its lack of confidence in the executive by disapproving budget or money bill or even an ordinary bill.

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

a. By a vote of no-confidence, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.

b. The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.

c. Adjournment Motion: Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest. It is considered an extraordinary tool in Parliament as the normal business is affected.

d. The Parliament appoints a Committee on Ministerial Assurances that sees whether the promises made by the ministers to the Parliament are fulfilled or not.

e. Censure Motion: A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.

f. Cut Motion: A cut motion is used to oppose any demand in the financial bill brought by the government.

The Financial Functions

The Parliament performs important financial functions. It is the custodian of the public money. It controls the entire purse of the Central Government. No money can be spent without its

approval. This approval may be taken before the actual spending or in rare cases after the spending. The budget is approved by the Parliament every year.

Parliament is the ultimate authority when it comes to finances. The Executive cannot spend a single pie without parliamentary approval.

a. The Union Budget prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.

b. There are two standing committees (Public Accounts Committee and Estimates Committee) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature.

Judicial Functions

In case of breach of privilege by members of the House, the Parliament has punitive powers to punish them. A breach of privilege is when there is an infringement of any of the privileges enjoyed by the MPs.

a. A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Read more on privilege motion.

b. In the parliamentary system, legislative privileges are immune to judicial control.

c. The power of the Parliament to punish its members is also generally not subject to judicial review.

d. Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General, etc.

The Electoral Functions

The elected member of Parliament one members of the Electoral College for Presidential election. As such, they participate in the election of the President of India. They elect the Vice-President. The Lok Sabha elects its Speaker and Deputy Speaker and the Rajya Sabha elects its Deputy Chairman.

Power of Removal

Certain high functionaries may be removed from office on the initiative of the Parliament. The President of India may be removed through the process of impeachment. The judges of Supreme Court and of High Courts can be removed by an order of the President, which may be issued only if a resolution of their removal is passed by both Houses of Parliament by special majority.

Functions Regarding the Amendment of the Constitution

Most of the parts of the Constitution can be amended by the Parliament by special majority. But certain provisions only be amended by the Parliament with the approval of States. However India being a federal State, the amending power of the Parliament is highly limited. The Supreme Court has ruled that the Parliament cannot change the basic structure of the Constitution. You have already read about the amending procedure in another lesson.

Miscellaneous Functions

Besides the above-mentioned functions, the Parliaments also performs a variety of other functions. Some of them are as follows: -

a. While it is the power of the President to declare Emergency, the Parliament approves all such Proclamations of Emergency. Both the Lok Sabha and Rajya Sabha have to approve the Proclamation.

b. Parliament may form a new State by separating the territory from any State or by uniting two or more States. It may also change the boundaries and the name of any State. In the recent years (2000), new states of Chhattisgarh, Jharkhand and Uttarakhand were created.

c. Parliament may admit or establish new States in the Indian Union (Sikkim in 1975).

d. The Parliament can abolish or create Legislative Councils in the States. This is done only on the request of concerned States Assemblies.

Thus the Indian Parliament, though limited by the federal nature of the political system, has wide functions to perform. In performing its functions, it has to mirror the aspirations and needs of the people of India. It also has to function as an agency for resolving socioeconomic or political conflicts in the country. It also helps in building consensus on specific issues, which are crucial to the nation like foreign policy formulation.

LAW MAKING PROCEDURE IN THE PARLIAMENT

As pointed out earlier basically the Parliament is a law making body. Any proposed law is introduced in the Parliament as a bill. After being passed by the Parliament and getting the President's assent it becomes a law. Now you will study how the law is made by the Parliament. There are two kinds of bills, which come up before the Parliament:-(i) ordinary bill and (ii) money bill. Here we shall discuss the legislative procedure in each of these kinds of bills.

Ordinary Bills

Every member of the Parliament has a right to introduce an ordinary bill and from this point of view, we have two types of bills – government bills and private member's bills. A Minister moves a government bill and any bill not moved by a Minister is a Private Member's Bill, which means that the bill has been moved by a member of parliament but not a minister in the Government. The Government bills consume most of the time of the Parliament. The Bills pass through several stages. : -

(A) With the introduction of the bill, the First Reading of the bill starts. This stage is simple. The Minister wanting to introduce a bill, informs the presiding officer. He/she puts the question of introduction to the House. When approved, normally by voicevote, the Minister is called upon to introduce the bill.

(B) Second Reading: -This stage is the most vital stage. After general discussion the House has four options: -

(i) it may straightaway take the bill into detailed (clause-by-clause) consideration or

(ii) refer it to a select committee of the House or,

(iii) refers it to the Joint Committee of both the Houses or

(iv) circulate it among the people to elicit public opinion. If the bill is referred to a select committee of the House or the joint select committee of both the Houses, the concerned committee examines the bill very minutely. Each and every clause is examined. The committee may also take the opinion of professionals and legal experts. After due deliberations, the committee submits its report to the House.

(C) Third Reading:- After the completion of the second reading, the Minister may move that the bill be passed. At this stage normally no discussion takes place. The members may oppose or support the adoption of the bill, by a simple majority of members present and voting.

2. Bill in the other House: -After the bill has been passed by one House, it goes to the other House. Here also the same procedure of three readings is followed. The following consequences may follow: -

(A) It may pass it; then the bill is sent to the President for his assent.

(B) It may pass the bill with amendments. The bill will be sent back to the first House. In such a case, the first House will consider the amendments and if it accepts the amendments then the bill

will be sent to President for his assent. In case the first House refuses to accept the amendments, then it means there is a deadlock.

(C) It may reject it. It means there is a deadlock. In order to remove the deadlock between the two Houses, the President may call for a joint sitting of the two Houses. Such joint sittings are very rare in India and till now only three times such meetings have taken place. They were convened on the occasion of passage of Dowry Prohibition Bill 1959, Banking Service Commission (Repeal) Bill, 1978, and Prevention of Terrorism Bill, 2002.

(D) President's assent to the Bill:- After being passed by both the Houses or the Joint Sitting of both Houses, the bill is referred to the President for his assent. The President also has some options in this regard: -

(i) He may give his assent and with his assent, the bill becomes a law.

(ii) He may withhold his assent, but may suggest some changes. In such a case the bill is sent back to the House from where it had originated. But if both the Houses pass the bill again with or without accepting the recommendations Structure of Government of the President, the President has no option but to give his assent.

(iii) In 1986, the President Giani Zail Singh invented a new option. He neither gave his assent nor he returned it to the Parliament for reconsideration of the Postal Bill. He sought some clarifications, which were never provided. The bill thus, lapsed.

Money Bills

The money bills are such bills which deal with money matters like imposition of taxes, governmental expenditure and borrowings etc. In case there is a dispute as to weather a bill is a money bill or not, the Speaker's decision is final. The money bill has to undergo three readings like an ordinary bill but few considerations are also added here. They are

(i) Money bill can be introduced only in Lok Sabha and not in Rajya Sabha and that too with the prior approval of and on behalf of the President.

(ii) After being passed by the Lok Sabha, the bill goes to the Rajya Sabha. Rajya Sabha has 14 days at its disposal for consideration and report.

(iii) The Rajya Sabha cannot reject the money bill. It may either accept it or make recommendations.

(iv) In case Rajya Sabha chooses to make recommendations, the bill will return to Lok Sabha. The Lok Sabha may accept these recommendations or reject them. In any case the bill will not go back to Rajya Sabha. Instead it will be sent directly to the President for his assent.

(v) If the Rajya Sabha does not return the bill within 14 days, it will be deemed to have been passed by both the Houses of the Parliament and sent to the President for his assent.

The bill that deals with the money matters i.e. imposition, abolition, alteration of any tax or the regulation of the borrowing of money or giving of any guarantee by the Government of India or amendment of law with respect to any financial obligation undertaken by the Government of India or related to Consolidated Fund or Contingency Fund of India, is called a Money Bill.

The Budget

The Budget is an annual financial statement showing expected revenue and expenditure of public money. It is not a bill. Every year the budget is presented by the Finance Minister in the Lok Sabha. The budget – making is a big exercise. The Finance Ministry prepares the budget but it involves the entire government. The budget in India is presented in two parts- Railway Budget and the General Budget.

(i) Presentation of the Budget: - The railway budget is generally presented by the Railway minister in the third week of February, while the general budget is presented normally on the last working day of February. The general budget is presented along with the speech of the Finance Minister. The budget remains a closely guarded secret till its presentation. After the speech, the Finance Minister introduces the Finance Bill, which contains the taxation proposals of the government. The House rises thereafter and there is no discussion on the day of the presentation of the Budget.

A new system of departmental select committees has been introduced in India since 1993-94. The Lok Sabha sets up committees for all major Ministries and Departments of Union Government. The select committees consider demand for grants in details and submit their recommendations to the Lok Sabha. After general discussion on the budget, the Houses are adjourned for about three weeks. During this period select committees of Departments of Ministry scrutinise budget demands and may make recommendations.

This saves time of the full House. The full Lok Sabha now does not discuss demands for grants, one by one, in details.

Quorum means the minimum number of members required to be present to enable the House to meet. This is one-tenth of the total membership of the House. This means the meeting of the Lok Sabha or Rajya Sabha can take place only if one tenth of the total membership of the House is present.

RAJYA SABHA AND LOK SABHA - A COMPARATIVE STUDY

You have seen earlier that the two Houses of Parliament differ in their composition. From the federal point of view the Rajya Sabha represents the States in the Indian Union while the Lok Sabha is the representative of the Indian people. This is also the reason why the method of election differs. The members of Legislative Assemblies of the States elect the members of Rajya Sabha while the people directly participate in the elections to the Lok Sabha. Rajya Sabha is a permanent House while the Lok Sabha is constituted for a specified term of five years. From the constitutional point of view, the relationship between the two Houses can best be studied from three angles which are as follows: -

1. There are certain powers and functions in which Lok Sabha is superior to the Rajya Sabha. Introduction and adoption of money bills and removal of a cabinet by passing no confidence motion are two examples relevant here.
2. In certain areas Rajya Sabha has been vested with exclusive powers. It does not share these powers with the Lok Sabha. For example, it can declare a subject in state as a matter of national importance and facilitate a central legislation.
3. In several areas, both the Houses enjoy equal powers. The examples are adoption of bills other than money bills, approval of proclamation of emergency, moving of adjournment and other types of motions.

Members of both houses of Parliament get Rs. 2 Crore per annum from the Members of Parliament Local Development Fund. This fund is not directly allotted to the MP but to the respective district headquarters and the MP can use it for development projects in his area.

SUPREME COURT OF INDIA

Chapter IV under Part V of the constitution (Union) deals with the The Union Judiciary. The constitution and jurisdiction of Supreme Court is stated in detail from articles 124-147. Unlike the other two branches, executive and legislature, in India Judiciary is integrated. This means that even though there may be High Courts in states, the law declared by the Supreme Court shall be binding on all courts within the territory of India (Article 141). Now let's look into the details of each article dealing with the Union Judiciary.

The Supreme Court is the highest court of India. It is at the apex of the Indian judicial system. In the previous two lessons, you have learnt that the Union legislature, which is known as Parliament, makes laws for the whole country in respect of the Union and the Concurrent Lists and the executive comprising the President, Council of Ministers and bureaucracy enforces them. Judiciary, the third organ of the government, has an equally important role to play. It settles the disputes, interprets laws, protects fundamental rights and acts as guardian of the Constitution. In this lesson, you will learn that India has a single unified and integrated judicial system and that the Supreme Court is the highest court in India.

SINGLE UNIFIED AND INTEGRATED JUDICIAL SYSTEM

The distinct feature of our judiciary is that it is a single unified integrated judicial system for the whole country. A single judiciary represents a hierarchy of courts. The Supreme Court stands at the top of this single integrated judicial system with High Courts at the State level. Below the High Courts, there are several subordinate courts such as the District Courts which deal with civil cases and the Session Courts which decide criminal cases.

SUPREME COURT

↓

HIGH COURTS

↓

SUBORDINATE COURTS OR LOWER COURTS

THE SUPREME COURT

The Supreme Court is the highest judicial authority of India. It consists of the Chief Justice and 25 other judges. The Parliament may increase the number of judges if it deems necessary. To begin with, besides the Chief Justice, there were only 7 other judges. The Parliament has increased the number of judges from time to time. As in 2005, there are 25 judges besides the Chief Justice who is also called the Chief Justice of India.

The Chief Justice and other judges of the Supreme Court are appointed by the President of India. While appointing the Chief Justice, the President is constitutionally required to consult such other judges of the Supreme Court as he deems proper, but outgoing Chief Justice is always consulted. Normally, the senior most judge of the Supreme Court is appointed as the Chief Justice of India, although there is no constitutional requirement to do so. While appointing other judges, the President is bound to consult the Chief Justice and other senior judges, if he deems proper.

Whenever there is vacancy or a likely vacancy in the Supreme Court, the Chief Justice and four other senior most judges consider various names and recommend the names of the persons to be appointed as judges of the Supreme Court. This system is based on a ruling of the Constitutional Bench of a Supreme Court (handed down in 1993 and reinforced in 1999). Thus, while the Constitution still provides that the President is the appointing authority of the Supreme Court judges, the ruling of the Supreme Court, has since 1999, become virtually binding on the President. The power of selection of judges has passed on to a group of Supreme Court judges, called the Collegium of the Court. The President now performs the formality of appointing the nominee of the Supreme Court, after the Law Ministry formally recommends these names to him.

Qualifications, Tenure and Removal of Judges

A person is qualified for appointment as a judge only he/she is a citizen of India and if he/ she fulfils one of the following conditions:

a) he/she has been for at least five years a Judge of as High Court or two or more than two such courts; or

b) he/she has been for at least ten years an advocate of a High Court or of two or more than two such courts; or

c) he/she is, in the opinion of the President, a distinguished jurist.

The Chief Justice of India and other judges of the Supreme Court hold office till they attain the age of 65 years. A judge may voluntarily resign before expiry of his term. In exceptional cases a Supreme Court judge may be removed before the age of retirement, according to the procedure laid down in the Constitution. Thus a judge of the Supreme Court can be removed from office by an order of the President passed after an address by each House of the Parliament supported by a majority of total membership of the House and not less than two-third majority of the members of the House present and voting, passed in the same session, has been presented to the President for such removal on the ground of proved misbehavior or capacity. So far, proceedings for removal were initiated only in one case against a judge of the Supreme Court. But he/she could not be removed because the resolution could not be passed by the Parliament. It is clear that Supreme Court judges enjoy security of tenure, and the executive cannot arbitrarily remove them.

No person who has held office of a judge of the Supreme Court is allowed to plead as an advocate in any court or before any authority within the territory of India.

The judges of the Supreme Court are paid such salaries as are determined by the Parliament from time to time.

A Court of Record

The Supreme Court is a Court of Record. It has two implications. All its decisions and judgments are cited as precedents in all courts of the country. They have the force of law and are binding on all lower Courts, and indeed the High Courts. As a Court of Record, the Supreme Court can even send a person to jail who may have committed contempt of the court.

JURISDICTION OF SUPREME COURT

The scope of powers of Supreme Court to hear and decide cases is called its jurisdiction. The Supreme Court has three types of jurisdictions namely original, appellate and advisory. Let us now examine the three jurisdictions.

Original Jurisdiction There are certain cases which fall within the exclusive jurisdiction of the Supreme Court. It means that all such cases begin or originate in the Supreme Court, only. It also means that such cases cannot be initiated in any other court. The cases or disputes that come under the original jurisdiction are given below:

(i) (a) Disputes between the Government of India on the one side and one or more States on the other side.

(b) Disputes between the Government of India and one or more States on one side and one or more States on the other side.

(c) Disputes between two or more States.

(ii) The Supreme Court has been invested with special powers in the enforcement of Fundamental Rights. In this connection, it has the power to issue directions or writs.

(iii) Cases under Public Interests Litigation (PIL) can also be heard directly. (This is an extra Constitutional practice; there is no mention of PIL in the Constitution).

Appellate Jurisdiction

The power of a superior/higher court to hear and decide appeals against the judgment of a lower court is called appellate jurisdiction. The Supreme Court has vast appellate jurisdiction. It hears appeals against the judgment of the High Courts. Thus, it is the highest and the final Court of Appeal. If one of the parties to a dispute is not satisfied with the decision of the High Court, one can go to the Supreme Court and file an appeal. The appeals can be filled in Civil, Criminal and Constitutional cases.

(i) Appeals in Civil Cases

Disputes relating to property, marriage, money, contract and service etc are called civil cases. If a civil case involves a substantial point of law of public importance needing interpretatation of the Constitution or law, an appeal against the High Court decision can be made to Supreme Court. Earlier the financial limit of such civil cases was Rs. 20,000/ - but now according to the 30th Amendment of 1972, there is no minimum amount for taking a civil appeal to the Supreme Court. If substantial question of interpretation of law or Constitution is involved, appeal may be made against the decision of the High Court.

(ii) Appeals in Criminal Cases

An appeal may be brought to the Supreme Court against a High Court decision in a criminal case in a number of situations. Firstly, if a High Court sets aside an appeal or an order of acquittal passed by a lower court and awards death sentence to the accused, he may bring an appeal to the Supreme Court by right.

Secondly, appeal can also be made to the Supreme Court if the High Court withdraws a case from a lower court to itself, declares the accused guilty and awards death sentence. In this situation also appeals can be made as a matter of right and without certificate from the High Court.

The appeal in cases other than these two categories may also be brought to the Supreme Court provided the High Court grants a certificate that the case is fit for appeal to the Supreme Court.

In case where the High Court refuses to certify a case to be fit for appeal to the Supreme Court, one may seek special leave to appeal from the Supreme Court itself. The Supreme Court may grant such a special leave in its discretion but only in rare cases.

(iii) Appeals in Constitutional Cases

A constitutional case is neither a civil dispute, nor concerning a crime. It is a case arising out of different interpretations of Constitution, mainly regarding the fundamental rights. In such Constitutional Cases an appeal can be taken to the Supreme Court only if a High Court certifies that the matter in dispute involves a substantial question of law.

If the High Court denies a certificate of fitness to appeal to the Supreme Court, the Supreme Court can use its discretion and grant special leave to appeal to itself in any case it deems fit.

Advisory Jurisdiction

This power implies Court's right to give advice, if sought. Under advisory jurisdiction, the President of India may refer any question of law or public importance to Supreme Court for its advice. But the Supreme Court is not bound to give advice. In case, the advice or the opinion of the Court is sent to the President, he may or may not accept it. The advice of the Court is not binding on the President. So far, whenever the Court has given its advice, the President has always accepted it. The Court refused to give its advice on the question whether a temple existed at the spot, where Babri Masjid was built at Ayodhya.

Article 124: Establishment and Constitution of Supreme Court

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office

until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that –

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provide in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and –

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I: In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court of before any authority within the territory of India.

Article 125: Salaries, etc., of Judges

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.
(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:
Provided that neither the privileges not the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Article 126: Appointment of acting Chief Justice

When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Article 127: Appointment of ad hoc Judges

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.
(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office to attend the sittings of the Supreme Court at the time and for the period for which his

attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Article 128: Attendance of retired Judges at sittings of the Supreme Court

Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who as held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

Article 129: Supreme Court to be a court of record

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 130: Seat of Supreme Court

The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Article 131: Original jurisdiction of the Supreme Court

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute –

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State of States on one side and one or more other States on the other; or

(c) between two or more States.

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad of other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement or which provides that the said jurisdiction shall not extend to such a dispute.

Article 131A: Executive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws {…} —Repealed.

Article 132: Appellate jurisdiction of Supreme Court in appeals from High Court in certain cases

(1) An appeal shall lie to the Supreme Court from any judgment, decree of final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) {…}

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation: For the purpose of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Article 133: Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1) An appeal shall lie to the Supreme Court room any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Article 134: Appellate jurisdiction of Supreme Court in regard to criminal matters

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certified under article 134A that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Article 134A: Certificate for appeal to the Supreme Court

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134, –

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) or article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

Article 135: Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Article 136: Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Article 137: Review of judgments or orders by the Supreme Court

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Article 138: Enlargement of the jurisdiction of the Supreme Court

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Article 139: Conferment on the Supreme Court of powers to issue certain writs

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Article 139A: Transfer of certain cases

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court of the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Article 140: Ancillary powers of Supreme Court

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Article 141: Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Article 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order

for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 143: Power of President to consult Supreme Court

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after hearing as it things fit, report to the President its opinion thereon.

Article 144: Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Article 144A: Special provisions as to disposal of questions relating to constitutional validity of laws

{…} — Repealed

Article 145: Rules of Court, etc.

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including –

(a) rules as to the persons practicing before the Court;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III; (cc) rules as to the proceedings in the Court under article 139A;

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgement pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court or such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexations or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal of the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgement shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgement and so such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgement or opinion.

Article 146: Officers and servants and the expenses of the Supreme Court

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule,

no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Article 147: Interpretation

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made there under, or of the Indian Independence Act, 1947, or of any order made there under.

GUARDIAN OF THE CONSTITUTION

The Constitution of India is the supreme law of the land and the Supreme Court is its interpreter and guardian. It does not allow the executive or the Parliament to violate any provision of the Constitution. It can also review any action of the Government, which allegedly violates any provision of the Fundamental Rights. This power of the Supreme Court is called Judicial Review about which we shall study later. If it finds violation of any provision of the Constitution, it may declare the concerned law as ultra-vires, or null and void. It is on the basis of this power of Judicial Review of the Supreme Court that it is called guardian of the Constitution. It is also called ‘a champion of liberties’ and ‘a watchdog of democracy’.

In this context the role and the functions of the Supreme Court are wide and comprehensive.

Protector of Fundamental Rights Structure of Government

The Supreme Court has concurrent right with the High Courts to issue directions, orders and writs for enforcement of fundamental rights. These are in the nature of the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. These writs make the Supreme Court a protector and guarantor of fundamental rights. The idea is that in case of violation of a law or right, the Court may issue directions for compliance with the Constitution. Thus, the citizens of India are secure as far as fundamental rights are concerned.

The Supreme Court has the right to declare a law passed by the legislature null and void if it encroaches upon our fundamental rights. It has rejected many legislations, which violated fundamental rights. This shows how the Supreme Court has always served as the guardian of fundamental rights.

JUDICIAL REVIEW

It is a process through which judiciary examines whether a law enacted by a legislature or an action of the executive is in accordance with the Constitution or not. The power of the judicial review was first acquired by the Supreme Court of the United States. Now it is freely exercised by the Supreme Court of India and in many other countries. Our High Courts also exercise this power.

Judicial Review does not mean that every law passed by the legislature is taken up by the Supreme Court for review. It only means that the Court will review the law as and when it gets an opportunity. This is possible in two ways. First, the Court can review the law if its validity is challenged. The Supreme Court or High Court may get an opportunity to review a law in another situation also. If a person or institution feels that his/her rights are violated, or a certain benefit due to him under a law is being denied, the Court while examining such a petition may come to the conclusion that the law, under which relief is sought, is itself unconstitutional. Therefore, relief may not be granted.

In a democratic country like India the power of Judicial Review is an important guarantee of the rights of the people. Besides, the Supreme Court has been interpreting various provisions of the Constitution. Its rulings are treated as law of the land.

Let us now see how the Supreme Court has played its role as a custodian of the civil liberties and in particular of the fundamental rights.

The Right to Equality is an important right, which ensures equality before law. The Right to Equality also means absence of special privileges and inequality of treatment. So, the Supreme Court in the name of Protective Discrimination has justified the benefits or concessions in the form of reservations or relaxation of eligibility conditions.

The Right to Freedom has given various kinds of freedoms to all of us. But the freedom of press was not mentioned in the Constitution. It was decided by the Supreme Court that freedom of press as a right is implied in right to freedom of expression. Thus, the Court expanded the right to freedom.

The Supreme Court has regarded the Right to Know as an important right to be able to take part in the participatory process of development and democracy. The Court had ruled that the Right to life in, Artile 21 implies and includes the right to education and clean environment also.

Regarding the delay in deciding the cases, the Supreme Court has held that delay in trial constitutes denial of justice. It has also laid down that speedy trial, release on bail of under trials, free legal aid to the poor and accused are also the fundamental rights.

The Supreme Court has used its power of judicial review and given various historic decisions to safeguard the rights of the individuals. It has stood guard of linguistic rights of minorities, religious rights of the people, welfare of the workers and daily wage earners.

If has also taken action to protect bonded labour, prevent exploitation of women, children and deprived sections of society.

No doubt, the Supreme Court through its power of judicial review has guarded our rights in various walks of life. The Supreme Court has given momentous decisions. Through, what is called “judicial activism”, the Court has given such rulings as compulsory use of CNG fuel for the use of public transport vehicles in Delhi so that pollution could be brought under control. Similarly, for the protection of lives of people, it has made the use of helmets compulsory for two-wheeler users, and even the pillion riders.

The power of judicial review is an important guarantee of the rights of the people. It does not allow any violation of the Constitution. It has given several new interpretations to the Constitutional provisions. Thus, it has protected as well as expanded the Constitution.

PUBLIC INTREREST LITIGATION

Earlier, the judiciary, including Supreme Court, entertained litigation only from those parties that were affected directly or indirectly by it. It heard and decided cases only under its original and appllate jurisdiction. But subsequently, the Court permitted cases on the ground Structure of Government of public interest litigation. It means that even people, who are not directly involved in the case, may bring to the notice of the Court matters of public interest. It is the privilege of the Court to entertain the application for public interest litigation (PIL). The concept of PIL was introduced by Justice P.N. Bhagwati.

PIL is important because justice is now easily available to the poor and the weaker sections of society. The Supreme Court on the basis of letters received from journalists, lawyers and social workers and even on the basis of newspaper reports has taken up a number of matters of public interest. Let us take some examples to know how PIL has helped the people to get justice.

Under PIL, the rights of under trials held under illegal detention have been restored. The Supreme Court ordered the release of many detenues without trial on the ground of their personal liberty, which could not be curbed due to judicial or bureaucratic inefficiency.

The Supreme Court has also taken up steps to free bonded labourers, tribals, slum dwellers, women in rescue homes, children in juvenile homes, child labour etc.

In case of environmental pollution, the Supreme Court has ordered closure of a few factories near Kanpur, Delhi and other places.

With more and more decisions coming from the Supreme Court, the scope of PIL has widened. Now a person can approach the Court through a letter and if the Supreme Court believes that the matter is of public interest, it can consider the letter to be a petition and direct the hearing of the matter so that public interest may be protected. The process of PIL has led to increased judicial activism.

GOVERNER

INTRODUCTION

Generally, in India, the President and Governor are regarded as a rubber stamp; they are considered to be the titular head of the state. Appointment of a Governor has been specified in article 153 of the Indian Constitution. Therefore, the governor has been made just a nominal official; the real official comprises the committee of ministers headed by the chief minister.

At the end of the day, the governor needs to exercise his powers and functions with the help and advice of Council of ministers headed by the chief minister, aside from in issues in which he is required to act in his watchfulness (i.e., without the exhortation of ministers). In assessing the established position of the governor, specific reference must be made to the arrangements of **Articles 154, 163 and 164.** The official intensity of the state will be vested in the governor and will be practised by him either legitimately or through officers subordinate to him as per this Constitution (Article 154). Therefore Governor of the state has been conferred with the various powers by the constitution of India. The article deals with the Powers and the Position of the Governor as per the constitutional provisions.

APPOINTMENT AND QUALIFICATION OF THE GOVERNOR

The Governor is generally appointed by the **President** of the Nation under **Article 155 of Indian Constitution**. The governor shall be appointed by the President under his seal and warrant. The candidate shall fulfil the listed criteria given below to be appointed as Governor of the state enshrined in Article 157 of Indian Constitution which is as follows:

1. He ought not to be the individual from either house of parliament or a place of the state governing body.
2. He ought not to hold any office of profit.
3. He can utilise his official home for other purposes, however, ought not to charge rent for that.
4. If an individual is named as the overseer Governor of other states, he is qualified to get the compensation of both state's Governor (chosen by the President of India).
5. His payments and remittances can't be diminished amid his term.

Since, the Article is silent about the direct and indirect election of the governor, the mode of his appointment is by way of nomination by the Central Government which is approved by the

President of India, but after such appointment Governor is free to act on his own wisdom and perform his duties for the betterment of the society. However, due to the powers of governor, he is sometimes used as a tool for disruption by the central government in a situation when there is no coordination between the state and central government. Thus, sometimes in cases of UT where Lt. Governor has more powers, he/she becomes a tool to disrupt by the Central government.

Oaths and Resignation

The Governor takes his **oath** from the **Chief Justice** of the respective state, and he/she addresses his **resignation** to **President of India**.

POWERS OF GOVERNOR

The Powers of the Governor can be classified under four heads viz. Legislative, Executive, Judicial and financial powers which are as follows.

Legislative Powers

Even though the Governor isn't the member from either House of the State Legislature, yet he is vested with some significant powers and obligations in the authoritative space.

- He is to bring the House or each House of the State Legislature, if it is a bicameral governing body, to meet at such time and spot as he deems fit. There must not be a difference of more than 6 months between the first and the last session of the house. He ensures that the balance is maintained.
- He may prorogue the Houses or either House and break up the Legislative Assembly. For example, on March 12, 1967, the Punjab Governor, Dr D.C. Pavate, prorogued the State Vidhan Sabha (Legislative Assembly) which was deferred by the Speaker for two months on March 7, 1967, preceding the House could think about the Budget. This was an initial move towards an answer of established emergency that held the State. The disintegration of the Assembly has been finished by the Governors numerous periods.
- He can address either or both of the Houses, amassed together at the beginning of the first session after each General Election and furthermore, at the initiation of the main session every year.

- The Bills passed by the State council require his consent. He can retain his consent and return the Bill (other than a Money Bill) to the State governing body for re-examination. In any case, if the House ends, with or without alteration, he should accord his consent to it.
- He is engaged in saving specific Bills for the consent of the President. For example, the Bills accommodating obligatory procurement of the property or diminishing the forces of the High Court must be so saved for President's assent.
- He designates people, having extraordinary learning or pragmatic involvement concerning such issues, like Literature, Art, Science, Co-usable Movement and Social Service.
- He designates a few individuals from the Anglo-Indian Community if he finds the last insufficiently spoke to.
- On the guidance of the Election commission, he is approved to choose questions emerging about the exclusion of any individual from either House.
- He can issue statutes amid the opening of the governing body if some projection emerges. These mandates stop to work at the lapse of about a month and a half from the reassembly of the Legislature, or prior if a goal objecting such a law is passed by the Legislative Assembly and consented to by the Legislative Council. Governor's mandates are liable to specific confinements. On the off chance that they identify with any issue in regard of which a Bill would have required the President's prior approval or his consent after reservation, the Governor cannot issue them aside from on the President's guidance.
- He may likewise send messages and ask for updates to the House or Houses on a Bill pending in the council or something else.
- He can get the State Assembly suspended while prescribing to the President the taking over of the State Administration. Such a stage is taken with the plan to reinstall mainstream service at an early date. This was finished by the Governor of Uttar Pradesh on June 13, 1973, and Governor of Punjab on October 4, 1983.

Executive Powers

The executive powers vested to the Governor of the state under the Indian Constitution are as follows:

- His powers to stretch out to the issues counted in the State list. On account of issues gave in the Concurrent List, Governor practices to control over them at the same time, subject to the official advice of the President
- He makes rules for the exchange of the matters and portfolios of the legislature of the State for its allotment among Ministers.
- He has the privilege to look for data from the Chief Minister, and the Chief Minister of the State must notify and answer him regarding all choices of his service.
- He can likewise require the Chief Minister to present any individual Minister's choice for the thought of the Council of Ministers,
- He is enabled to make arrangements of the Council of Ministers and on the recommendation of different Ministers.
- He is consulted by the President in the appointment of the Judges of the state High Court.
- The Governor appoints Judges of the District Courts.
- In case he/she feels that the Anglo-Indian community has not been adequately represented in the Vidhan Sabha, he or she can nominate one member of the community to the Legislative Assembly of the state.
- In all the states where a bicameral legislature is present, the Governor has a right to nominate the members, who are "persons having special knowledge or practical experience in matters such as literature, science, art, co-operative movement and social service", to the Legislative Council.

In like manner, he can expel the Chief Minister or his Council of Ministers just when the Legislative Assembly passes a demonstration of majority disapproval or reproaches the CoM or annihilations an important measure. As it were, Governor is not authorised to act and exercise his duty at his pleasure since it is the Legislative Assembly which upholds the aggregate obligation of the CoM to itself [Article 164(2)]. The Supreme Court in **S.R. Bommai v. Union of India** saw that at whatever point an uncertainty emerges whether a service has lost the certainty of the House, the primary method for testing is on the floor of the House.

Clearly, the evaluation of the quality of the Ministry had not been left to the Governor. This reality was affirmed when Uttar Pradesh Governor rejected **Kalyan Singh's Government** on Feb. 21, 1998 as 25 M.L.As of Lok Tantrik Congress and Janata Dal (Raja Ram) Group pulled back help, and it was left in the minority. Kalyan Singh would not leave. Subsequently, he was rejected. Governor did not allow him to look for certainty vote on the floor of the House. Allahabad High Court in a milestone between time requests reinstalled Kalyan Singh and left it to the Governor to request a preliminary of solidarity on the floor of the House.

Financial Powers

Financial powers of the Governor enlisted in the constitution are as follows:

- No money Bill can be presented in the Assembly aside from on Governors' proposal.
- The Contingency Fund is available to him. He can make signs of progress out of it to meet unexpected use, pending its approval by the State Legislature.
- No interest for a grant can be made except on the suggestion of the Governor.
- Under Article 205, the Governor can request advantageous, expansion or abundance gifts from the State Legislature.
- Governor is required to see that the yearly financial report or spending plan of the State is presented before the House or Houses of the Legislature have gone through it.
- Amendments making arrangements for budgetary issues can't be moved without the assent of or on the recommendations of the Governor if any changes have to be done.

Judicial Powers

Judicial Powers of the Governor are as follows:

- According to Article 161, The Governor can allow pardons, respites, rests or abatement of disciplines. He can likewise suspend, dispatch or drive the sentence of an individual indicted for an offence illegal.
- The Governor is consulted by the President in the appointment of the Chief Justice to the High Court of that specific state.

Emergency Powers

Governor isn't vested with emergency powers to meet any consequence emerging from outside animosity or equipped resistance [Article 352(1)] not at all like that of President of India. Anyway, he is enabled to answer to the President at whatever point he is fulfilled that a circumstance has emerged in which legislature of the state can't be carried on as per the arrangements of the Constitution (Article 356). In the last case, the President expects to be the apex authority of the State Government. However in the ordinary course of practise it may be noticed that, Governor accepts the reins of State Government since the state is under the President's Rule and in case there is no clear majority of a political party, the Governor has the discretion to appoint chief Minister of the state.

Miscellaneous provisions

Governor acts as the first person to supervise the Auditor General's report on expenditure and income of the state. He is also an agent of the President to oversee the emergency situation and President rule in a particular state.

CONCLUSION

The Governor of a state isn't just a figurehead. He can practice a few powers in his prudence, and free of the suggestions made by the state Chief Minister. Governor is anything but a pointless height. The Governor goes about as the connection between the Union and the state. He goes about as the operator of the President in the country both when he goes nearly as the nominal and constitutional head of the state in typical occasions just as when he goes about as the whole head of the state amid the time of President's rule operates in the state. The Governor relies on his prudence in informing the President for the declaration concerning an emergency in the state. He can make a decision concerning whether there has been a breakdown of constitutional machinery in the state or not. Thus, the Governor plays an important in the governance of a state in the country.

STATE LEGISLATURE

India is a Union of States. It means that there is one Union Government and several State Governments, It also means that Union (Centre) is more powerful than States. At present there are 28 States in the Indian Union and each one of them has a Legislature. You have already read in lesson no.11 about the Parliament of India, which is the law making body at the Union level. The State Legislature is a law making body at state level. In this Lesson you will read about the composition of State Legislature, qualifications and election of their members, powers and functions of the Legislature, and comparison of the powers of two Houses of the Legislature.

COMPOSITION OF THE STATE LEGISLATURE

In most of the States, the Legislature consists of the Governor and the Legislative Assembly (Vidhan Sabha). This means that these State have unicameral Legislature. In a few States, there are two Houses of the Legislature namely, Legislative Assembly (Vidhan Sabha) and Legislative council (Vidhan Parishad) besides the Governor.Where there are two Houses, the Legislature, is known as bicameral.

Five States have the bicameral, legislature. The Legislative Assembly is known as lower House or popular House. The Legislative Council is known as upper House. Just as Lok Sabha has been made powerful at the Union level, the Legislative Assembly has been made a powerful body in the States.

Legislative Assembly (Vidhan Sabha)

There is a Legislative Assembly (Vidhan Sabha) in every State. It represents the people of State. The members of Vidhan Sabha are directly elected by people on the basis of universal adult franchise. They are directly elected by all adult citizens registered as voters in the State. All men and women who are 18 years of age and above are eligible to be included in the voters' List. They vote to elect members of State Assembly. Members are elected from territorial constituencies. Every State is divided into as many (single member) constituencies as the number of members to be elected. As in case of Lok Sabha, certain number of seats are reserved for Scheduled Castes, and in some States for Scheduled Tribes also. This depends on population of these weaker sections in the State.

In order to become a Member of Vidhan Sabha a person must:

be a citizen of India;

have attained the age of 25 years;

his/her name must be in voters' list;

must not hold any office of profit i.e.; should not be a government servant.

The number of Vidhan Sabha members cannot be more than 500 and not less than 60. However, very small States have been allowed to have lesser number of members. Thus Goa has only 40 members in its Assembly. Uttar Pradesh (is a big state even after creation of Uttaranchal from this state in 2002) has 403 seats in the Assembly.

The Governor of the State has the power to nominate one member of Anglo-Indian community if this community is not adequately represented in the House. As in case of the Lok Sabha, some seats are reserved for the members of Scheduled Castes and Schedule Tribes. The tenure of Vidhan Sabha is five years, but the Governor can dissolve it before the completion of its term on the advice of Chief Minister. It may be dissolved by the President in case of constitutional emergency proclaimed under Article 356 of the Constitution.

In case of proclamation of national emergency (under Article 352) the Parliament can extend the term of the Legislative Assemblies for a period not exceeding one year at a time.

Presiding Officer (The Speaker)

The members of Vidhan Sabha elect their presiding officer. The Presiding officer is known as the Speaker. The Speaker presides over the meetings of the House and conducts its proceedings. He maintains order in the House, allows the members to ask questions and speak. He puts bills and other measures to vote and announces the result of voting. The Speaker does not ordinarily vote at the time of voting. However, he may exercise casting vote in case of a tie. The Deputy Speaker presides over the meeting during the absence of the Speaker. He is also elected by the Assembly from amongst its members.

Legislative Council (Vidhan Parishad)

Vidhan Parishad is the upper House of the State Legislature. It is not in existence in very State. Very few States have bicameral Legislature that means having two Houses. At present five states viz. Utter Pradesh, Bihar, Karnataka, Maharashtra and Jammu & Kashmir have Vidhan Parishad while, remaining 23 States have one House, i.e. Vidhan Sabha. Legislative Councils are legacy of the British period. The Parliament can create Vidhan Parishad in a State where it does not exist, if the Legislative Assembly of the State passes a resolution to this effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the

members of the Assembly present and voting, and sends the resolution to the Parliament. Similarly, if a State has a Council and the Assembly wants it to be abolished, it may adopt a resolution by similar majority and send it to Parliament. In this situation Parliament resolves to abolish the concerned Legislative Council. Accordingly, Councils of Punjab, Andhra Pradesh, Tamil Nadu and West Bengal were abolished.

According to the Constitution, the total number of members in the Vidhan Parishad of a State should not exceed one-third of the total number of members of Vidhan Sabha but this number should not be less than 40. The Jammu & Kashmir is an exception where Vidhan Parishad has 36 members.

In order to be a member of the Legislative Council the person concerned should

– be a citizen of India:

– have attained the age of 30 years;

– be a registered voter in the State;

– not hold any office of profit.

The Vidhan Parishad is partly elected and partly nominated. Most of the members are indirectly elected in accordance with the principle of proportional representation by means of single transferable vote system. Different categories of members represent different interests. The composition of the Legislative Council is as follows:

i. One-third members of the Council are elected by the members of the Vidhan Sabha.

ii. One-third of the members of the Vidhan Parishad are elected by the electorates consisting of members of Municipalities, District Boards and other local bodies in the State;

iii. One-twelfth members are elected by the electorate consisting of graduates in the State with a standing of three years;

iv. One-twelfth members are elected by the electorate consisting of teachers of educatioal institutions within the State not lower in standard than a secondary school who have teaching experience of at least three years;

v. The remaining, i.e. about one-sixth members are nominated by the Governor from amongst the persons having special knowledge in the sphere of literature, science, arts, co-operative movement and social service.

The Vidhan Parishad, like Rajya Sabha is a permanent House. It is never dissolved. The tenure of its members is six years. One-third of its members retire after every two years. The retiring

members are eligible for re-election. In case of vacancy arising out of resignation or death by-election is held for the remaining period of such members' tenure.

Chairman of the Legislative Council (Presiding Officer)

The presiding officer of the Vidhan Parishad (Legislative Council) is known as the Chairman, who is elected by its members. The business of Vidhan Parishad is conducted by the Chairman. He presides over the meetings and maintains discipline and order in the House. In addition to his vote as a member, he can exercise his casting vote in case of a tie. In his absence, Deputy Chairman presides over the House. He is also elected by the members of the Parishad from amongst themselves.

Sessions of The State Legislature

The State Legislature meets at least twice a year and the interval between two sessions cannot be more than six months.

The Governor summons and prorogues the sessions of State Legislature. He addresses the Vidhan Sabha or both Houses (if there is bi-cameral Legislature) at the commencement of the first session after each general election and at the commencement of the first session of the year. This address reflects the policy statement of the government which is to be discussed in the Legislature, and the privileges and immunities of the members of the State Legislature are similar to that of members of Parliament.

POWERS AND FUNCTIONS OF THE STATE LEGISLATURE

Law Making Function

The primary function of the State Legislature, like the Union Parliament, is law-making. The State Legislature is empowered to make laws on State List and Concurrent List. The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail.

Bills are of two types-Ordinary bills and Money bills. Ordinary bills can be introduced in either of the Houses (if the State Legislature is bicameral), but Money bill is first introduced in the Vidhan Sabha. After the bill is passed by both Houses, it is sent to the Governor for his assent. The Governor can send back the bill for reconsideration. When this bill is passed again by the

Legislature, the Governor has to give his assent. You have read when the Parliament is not in session and if there is a necessity of certain law, the President issues Ordinance. Similarly, the Governor can issue an Ordinance on the State subjects when legislature is not in session. The Ordinances have the force of law. The Ordinances issued are laid before the State Legislature when it reassembles. It ceases to be in operation after the expiry of six weeks, unless rejected by the Legislature earlier.

The Legislature passes a regular bill, to become a law, to replace the ordinance. This is usually done within six weeks after reassembly of Legislature.

Financial Powers

The State Legislature keeps control over the finances of the State. A money bill is introduced first only in the Vidhan Sabha. The money bill includes authorization of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the Governor. The money bill cannot be introduced by a private member. The Speaker of the Vidhan Sabha certifies that a particular bill is a money bill.

After a money bill is passed by the Vidhan Sabha, it is sent to the Vidhan Parishad. It has to return this bill within 14 days with, or without, its recommendations. The Vidhan Sabha may either accept or reject its recommendations. The bill is deemed to have been passed by both Houses. After this stage, the bill is sent to the Governor for his assent. The Governor cannot withhold his assent, as money bills are introduced with his prior approval.

Control over the Executive

Like the Union Legislature, the State Legislature keeps control over the executive. The Council of Ministers is responsible to Vidhan Sabha collectively and remains in the office so long as it enjoys the confidence of the Vidhan Sabha. The Council is removed if the Vidhan Sabha adopts a vote of no-confidence, or when it rejects a government bill.

In addition to the no-confidence motion, the Legislature keeps checks on the government by asking questions and supplementary questions, moving adjournment motions and calling attention notices.

Electoral Functions

The elected members of the Vidhan Sabha are members of the Electoral College for the election of the President of India. Thus they have say in the election of the President of the Republic (see

Lesson No. 10) The members of the Vidhan Sabha also elect members of the Rajya Sabha from their respective States. One-third members of the Vidhan Parishad (if it is in existence in the State) are also elected by the members of the Vidhan Sabha.

In all these elections, members of the Vidhan Sabha (Assembly) cost their votes in accordance with single transferable vote system.

Constitutional Functions

You have learnt about the procedure of amendment of the Constitution. An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects. The resolution for the ratification is passed by State Legislatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legislature.

LIMITATION OF THE POWERS OF STATE LEGISLATURE

The powers of law-making by the Legislature are limited in the following manner:

As explained above, State Legislature can make a law on the subjects listed in the State List and also the Concurrent List. But in case, the State law on a subject in the Concurrent list is in conflict with the Union law, the law made by the Parliament shall prevail.

The Governor of the State may reserve his assent to a bill passed by the State Legislature and send it for the consideration of the President. It is compulsory in case the powers of Structure of Government the High Court are being curtailed. In some other cases, prior approval of the President for introducing the bill in the Legislature is essential such as, for imposition of restriction on the freedom of trade and commerce within the State or with other States.

The Parliament has the complete control on the entire State List at the time when the national emergency has been declared (under Art. 352), although the State Legislature remains in existence and continues to perform its functions. In case of breakdown of constitutional machinery (under Art. 356) after fall of popular Government in the State, the President's rule is imposed. The Parliament then acquires the power to make laws for that State, for the period of constitutional emergency.

The Parliament can also make laws on a subject of the State list in order to carry on its international responsibility. If the Rajya Sabha adopts a resolution by two-thirds majority to this

effect, on its own or at the request of two or more States, the Parliament can enact laws on a specified subject of the State list.

Fundamental rights also impose limitations on the powers of the State Legislature. It cannot make laws which violate the rights of the people. Any law passed by the State Legislature can be declared void by the High Court or Supreme Court if it is found unconstitutional as violate of the fundamental rights.

COMPARISION OF THE TWO HOUSES OF STATE LEGISLATURE

Legislative Assembly (Vidhan Sabha) like the Lok Sabha, occupies a dominant position. Legislative Council (Vidhan Parishad) enjoys much less powers as compared to the powers of Vidhan Sabha even in relation to ordinary bills. The Rajya Sabha at the Centre enjoys equal powers in consideration of bills other than money bills; but Vidhan Parishad enjoys much lesser powers as compared to the Rajya Sabha.

The relative position of the Vidhan Sabha and Vidhan Parishad is as under:

In Relation to Ordinary Bills

In case of the Parliament, if there is disagreement between the two Houses over an ordinary bill, the President summons a joint sitting of both the Houses and if the bill is passed there by the majority of votes, the bill is taken as passed by both Houses of the Parliament. But this provision of the joint sitting does not exist in the States.

Although an ordinary bill can originate in either House of the State Legislature, yet both Houses have unequal powers. If a bill is passed in the Vidhan Sabha, it is transmitted to the Vidhan Parishad for consideration. When it is passed by Vidhan Parishad without any amendment, the bill is sent to the Governor for his assent. In case, the bill is

(a) rejected by the Parishad or

(b) more than three months elapsed without the bill being passed by the Parishad, or

(c) bill is passed with amendment to which the Vidhan Sabha does not agree, the Vidhan Sabha may pass the bill again in the same or in the subsequent session. After that the bill is again sent to the Vidhan Parishad. If the Vidhan Parishad does not return the bill within a period of one month, the bill is deemed to have been passed by both Houses of the State Legislature and is sent to Governor for his assent. Thus the Vidhan Parishad can delay the bill for a maximum period of

four months. On the other hand, if the bill is first passed by the Vidhan Parishad and rejected by the Vidhan Sabha, the bill is rejected and cannot become a law.

In Relation to Money Bills

Like in the Lok Sabha, money bill is introduced first in Vidhan Sabha. It cannot be initiated in the Vidhan Parishad. The Speaker of the Vidhan Sabha certifies whether a particular bill is a money bill. After the bill is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad. The Vidhan Parishad gets 14 days time to consider the bill. If the Parishad passes the bill, it is sent to the Governor for his assent. If the bill is not returned by the Vidhan Parishad within 14 days, it is deemed to have been passed by the Vidhan Parishad. If it suggests certain changes in the bill and sends to Vidhan Sabha, the Vidhan Sabha may accept or reject the changes suggested by the Parishad. The bill is then sent to the Governor for his assent who is bound to give his assent.

Control Over the Executive

The Council of Ministers of the State is responsible to the Vidhan Sabha only and remains in the office so long as it enjoys the confidenc of the Assembly (Vidhan Sabha). Although members in the Vidhan Parishad can ask questions, introduce adjournment motions, calling attention notives, etc. yet the Vidhan Parishad cannot remove the government.

Electoral Functions

Only the elected members of the Vidhan Sabha are entitled to participate in the election of the President of India. The members of the Vidhan Sabha do so in their capacity as the members of the Electoral College. But the members of the Vidhan Parishad are not entitled to vote in the election of the President. Members of the Rajya Sabha from each State are elected only by the members of Assembly and not of the Council.

The above discussion makes it clear that the Vidhan Parishad is powerless and noninfluential House. It has become a secondary House. Thus many States prefer to have unicameral Legislature. But the Vidhan Parishad is not superflous. It serves as a check on hasty Legislation made by Vidhan Sabha by highlighting the short bills comings or defects of the bill. It lessens the burden of the Vidhan Sabha, as some bill are initiated in the Vidhan Parishad.

CHIEF MINISTER

The Governor is a state's de jure head, but de facto executive authority rests with the Chief Minister. So, Chief Minister is the real executive of the Government. Article 164 of the Constitution says that the Chief Minister shall be appointed by the governor.

After the abolition of the article 370 from the Indian Constitution now the number of sates in India remained 28 while the number of Union territories (UTs) has increased to 9. There are 3 UTs (Delhi, Puducherry and Jammu & Kashmir) that have bicameral legislative assemblies.

Appointment of Chief Minister

Our constitution does not specifically mention about the qualification to be appointed as Chief Minister (CM). Article 164 of the Constitution envisages that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint anyone as the Chief Minister of the state or UT.

Powers and functions of the Chief Minister

The powers and functions of CM can be classified under following heads:

With respect to council of ministers –

The following are the powers of CM with respect to state council of ministers –

1) He advises the Governor to appoint any person as a minister. It is only according to the advice of CM the Governor appoints ministers.

2) Allocation and reshuffling of portfolios among ministers.

3) In case of difference of opinion; he can ask minister to resign.

4) Directs, guides and controls activities of all the ministers.

5) If the Chief Minister resign then full cabinet has to resign.

With Respect to Governor -

Under Article 167 of our constitution: The Chief Minister acts as a link between Governor and state council of ministers. The functions with respect to the Governor are as follows:

1) CM has to communicate to the Governor all the decisions of the council of ministers relating to the administration of the states.

2) Whenever the Governor calls for any information relating to the decisions taken or regarding the administration, the CM has to provide him the same

3) The Governor can ask for consideration of council of ministers when a decision has been taken without the consideration of the cabinet.

4) CM advises Governor regarding the appointment of important officials like Attorney General, State Public Service Commission (Chairman and Members), State Election Commission etc.

With Respect to State Legislature –

1) All the policies are announced by him on the floor of the house.

2) He recommends dissolution of legislative assembly to the Governor.

3) He advises the Governor regarding summoning, proroguing the sessions of State Legislative Assembly from time to time.

Other Functions

1) At the ground level he is the authority to be in contact with the people regularly and know about their problems so as to bring about policies on the floor of the assembly.

2) He acts as the chairman of State Planning Commission.

3) He is the vice chairman of concerned zonal council in rotation for a period of one year.

4) During emergencies he acts as the crisis manager in the state.

S from the above explanation it can be conclude that the Chief Minister of a state has wide range of functions. He is the leader of the MLAs elected by the general public of the state.

THE HIGH COURT

The constitution provides for a High Court at the apex of the State judiciary. Chapter V of Part VI of the Constitution of India contains provisions regarding the organisation and functions of the High Court. By the provision of Article 125 which says "there shall be a High Court for each state", every state in India has a High Court and these courts have a constitutional status.

The parliament has the power to establish a common High Court for two or more states. For instance, Punjab and Haryana have a common High Court. Similarly, there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

In case of Union Territories, the Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory. Thus, Delhi, a Union Territory, has a separate High Court of its own while, the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over

Lakshadweep, the Mumbai High Court over Dadra and Nagar Haveli, the Kolkota High Court over Andaman and Nicobar Islands, the Punjab Haryana High Court over Chandhigarh.

Though the constitution of India provides for single Judicial system, yet provisions are made of separate courts for each state. High court is the highest court in the state and Art-214 to 231 of the constitution describe the organisation and powers of high courts. Art-214 of the constitution provides that, ―There shall be a High Court for each state" Art-231 further provides that , "Parliament may by law establish a common High court for two or more states and a union territory." At present for example there is a common High court for the states of punjab, Haryana and Union Territory of Chandigarh. Similarly. There is Common High court for Assam, Nagaland, Manipur, Meghalaya, Tripura and Mijoram.

NUMBER OF JUDGES: The number of the judges of the high court has not been fixed by the constitution, but it has been left to the discretion of the President.

APPOINTMENT OF THE JUDGES: Appointed by President in consultation with the Chief Justice of India and Governor of the concerned state and the other judges of high court in consultation with Chief Justice of India, the Chief Justice of High court concerned and Governor of the State concerned.

APPOINTMENT OF ADDITIONAL JUDGES: The President may take the appointments of the additional judges in the event of vacancies arising on account of the long absence of the Judges, death, due to illness or long leave.

PROVISION TO CALL BACK RETIRED JUDGES: With the prior consent of the president.

QUALIFICATION OF THE JUDGES:

(1) He must be citizen of India.

(2) Must have held a judicial office for 10 years in the territory of India.

(3) Must have been an advocate for at least 10 years in one or more High court.

TENURE OF THE JUDUGES:

62 years.

SALARY AND ALLOWANCES:

Chief Justice-Rs. 1,10,000 and other judges-Rs. 90,000 with other facilities also.

TRANSFER OF THE JUDUGES OF THE HIGH COURT:

Art-222 of the constitution empowers to transfer the judges of High Court anywhere within the territory of India. *REMOVAL FROM OFFICE: May be removed from the office by the

President, after an address is presented to him by the parliament passed in each House by a majority of its total membership and 2/3 majority of its members present and voting.

OATH OF OFFICE:

According to Art-219, The Governor of the state concerned or any other official appointment by him, administers the oath of the to the Chief Justice of High Court.

COMPOSITION OF THE HIGH COURT

Unlike the Supreme Court, there is no minimum number of judges for the High Court. The President, from time to time will fix the number of judges in each High Court. The Chief Justice of the High Court is appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State, which in actual terms mean the real executive of the State. In appointing the judges, the President is required to consult the Chief Justice of the High Court. The Constitution also provides for the appointment of additional judges to cope with the work. However, these appointments are temporary not exceeding two years period.

A judge of a High Court normally holds office until he attains the age of 62 years. He can vacate the seat by resigning, by being appointed a judge of the Supreme Court or by being transferred to any other High Court by the President. A judge can be removed by the President on grounds of misbehaviour or incapacity in the same manner in which a judge of the Supreme Court is removed.

JURISDICTION

The original jurisdiction of a High Court includes enforcement of Fundamental Rights, settlement of disputes relating to the election to Union and State legislatures and jurisdiction over revenue matters. Its appellant jurisdiction extends to both civil and criminal matters. In civil matters, the High Court is either a first appeal or a second appeal court. In criminal matters, appeal from decisions of a session's judge or an additional sessions judge where sentence of imprisonment exceeds seven years and other specified cases other than petty crimes constitute the appellant jurisdiction of a High Court. In addition to these normal original and appellant jurisdictions, the Constituent vests the High Court's with four additional powers. These are:

• The power to issue writs or orders for the enforcement of the Fundamental Rights. Interestingly, the writ jurisdiction of a High Court is larger than that of the Supreme Court. It can

not only issue writs not only in cases of infringement of Fundamental Rights but also in cases of an ordinary legal right.

• The power of superintendence over all other courts and tribunals except those dealing with the armed forces. It can frame rules and also issue instructions for guidance from time to time with directions for speedier and effective judicial remedy.

• The power to transfer cases to itself from subordinate courts concerning the interpretation of the constitution.

• The power to appoint officers and servants of the High Court. In certain cases, the jurisdiction of High Courts is restricted. For instance, it has no jurisdiction over a tribunal and no power to invalidate a Central Act or even any rule, notification or orders made by any administrative authority of the Union, whether it is violative of Fundamental Rights are not.

SUBORDINATE COURTS

Under the High Court, there is a hierarchy of courts which are referred to in the Indian constitution as subordinate courts. Since these courts have come into existence because of enactments by the state government, their nomenclature and designation differs from state to state. However, broadly in terms of organisational structure there is uniformity.

The state is divided into districts and each district has a district court which has an appellant jurisdiction in the district. Under the district courts, there are the lower courts such as the Additional District Court, Sub-Court, Munsiff Magistrate Court, Court of Special Judicial Magistrate of the II Class, Court of Special Judicial Magistrate of I Class, Court of Special Munsiff Magistrate for Factories Act and Labour Laws, etc. At the bottom of the hierarchy of Subordinate Courts are the Panchayat Courts (Nyaya Panchayat, Gram Panchayat, Panchayat Adalat etc). These are, however, not considered as courts under the purview of the criminal courts jurisdiction.

The principle function of the District Court is to hear appeals from the subordinate courts. However, the courts can also take cognisance of original matters under special status for instance, the Indian Succession Act, the Guardian Act and Wards Act and Land Acquisition Act.

The Constitution ensures independence of subordinate judiciary. Appointments to the District Courts are made by the Governor in consultation with the High Court. A person to be eligible for appointment should be either an advocate or a pleader of seven years standing, or an officer in the service of the Union or the State. Appointment of persons other than the District Judges to

the judicial service of a State is made by the Governor in accordance with the rules made by him in that behalf after consultation with the High Court and the State Public Service Commission.

The High Court exercises control over the District Courts and the courts subordinate to them, in matters as posting, promotions and granting of leave to all persons belonging to the State judicial service.

JUDICIAL REVIEW

Literally the notion of judicial review means the revision of the decree or sentence of an inferior court by a superior court. Judicial review has a more technical significance in pubic law, particularly in countries having a written constitution, founded on the concept of limited government. Judicial review in this case means that Courts of law have the power of testing the validity of legislative as well as other governmental action with reference to the provisions of the constitution.

In England, there is no written constitution. Here the Parliament exercises supreme authority. The courts do not have the power to review laws passed by the sovereign parliament. However, English Courts review the legality of executive actions. In the United States, the judiciary assumed the power to scrutinise executive actions and examine the constitutional validity of legislation by the doctrine of 'due process'. By contrast, in India, the power of the court to declare legislative enactments invalid is expressly enacted in the constitution. Fundamental rights enumerated in the Constitution are made justiciable and the right to constitutional remedy has itself been made a Fundamental right.

The Supreme Court's power of judicial review extends to constitutional amendments as well as to other actions of the legislatures, the executive and the other governmental agencies. However, judicial review has been particularly significant and contentious in regard to constitutional amendments. Under Article 368, constitutional amendments could be made by the Parliament. But Article 13 provides that the state shall not make any law which takes away or abridges fundamental rights and that any law made in contravention with this rule shall be void. The issue is, would the amendment of the constitution be a law made by the state? Can such a law infringing fundamental rights be declared unconstitutional? This was a riddle before the judiciary for about two decades after India became a republic.

In the early years, the courts held that a constitutional amendment is not law within the meaning of Article 13 and hence, would not be held void if it violated any fundamental right. But in 1967,

in the famous Golak Nath Case, the Supreme Court adopted a contrary position. In was held that a constitutional amendment is law and if that amendment violated any of the fundamental rights, it can be declared unconstitutional. All former amendments that violated the fundamental rights to property were found to be unconstitutional. When a law remains in force for a long time, it establishes itself and is observed by the society. If all past amendments are declared invalid, the number of transactions that took place in pursuance of those amendments become unsettled. This will lead to chaos in the economic and political system. In order to avoid this situation and for the purpose of maintaining the transactions in fact, the past amendments were held valid. The Supreme Court clarified that no future transactions or amendments contrary to fundamental rights shall be valid. This technique of treating old transactions valid and future ones invalid is called prospective over-ruling. The Court also held that Article 368 with amendments does not contain the power to amend the constitution, but only prescribes the procedure to amend. This interpretation created difficulty. Even when there is a need to amend a particular provision of the constitution, it might be impossible to do so if the amendment had an impact on fundamental rights.

In 1970, when the Supreme Court struck down some of Mrs Indira Gandhi's populist measures, such as the abolition of the privy purses of the former princes and nationalisation of banks, the Prime Minister set about to assert the supremacy of the Parliament. She was able to give effect to her wishes after gaining two-thirds majority in the 1971 General Elections. In 1972, the Parliament passed the 25th Constitutional Amendment act which allowed the legislature to encroach on fundamental rights if it was said to be done pursuant to giving effect to the Directive Principles of State Policy. No court was permitted to question such a declaration. The 28th Amendment act ended the recognition granted to former rulers of Indian states and their privy purses were abolished.

These amendments were challenged in the Supreme Court in the famous Kesavananda Barathi Case (otherwise known as the Fundamental Rights Case) of 1973. The Supreme Court ruled that the while the parliament could amend even the fundamental rights guaranteed by the Constitution, it was not competent to alter the 'basic structure' or 'framework' of the constitution. Under the newly evolved doctrine of 'basic structure', a constitutional amendment is valid only when it does not affect the basic structure of the constitution. The second part of Article 31C (no law containing a declaration to implement the Directive Principles contained in

Article 39 (b) and (c) shall be questioned) was held not valid because the amendment took away the opportunity for judicial review, which is one of the basic features of the constitution. The doctrine of basic features gave wide amplitude to the power of judicial review.

Later history shows the significant role played by this doctrine in the review of constitutional amendments. For challenging the election to Parliament of a person who holds the office of Prime Minister, the 39th Constitutional Amendment provided a different procedure. The election can be challenged only before an authority under special law made by Parliament and the validity of such as law shall not be called in question. The Supreme Court held that this amendment was invalid as it was against the basic structure of the Constitution. It argued that free and fair elections are essential in democracy and to exclude judicial examination of the fairness of the election of a particular candidate is not proper and goes against the democratic ideal that is the basis of our constitution.

In a later case, the Minerva Mill Case, the Supreme Court went a step ahead. The 42nd Constitutional Amendment of 1976, among other things, had added a clause to Article 368 placing a constitutional amendment beyond judicial review. The Court held that this was against the doctrine of judicial review, the basic feature of the constitution.

One of the limits on judicial review has been the principle of locus standi. This means that only a person aggrieved by an administrative action or by an unjust provision of law shall have the right to move the court for redressal. In 1982, however, the Supreme Court in a judgement on the democratic rights of construction workers of the Asian Games granted the Peoples Union of Democratic Rights, the right of Public Interest Litigation (PIL). Taking recourse to epistolary jurisdiction under which the US Supreme Court treated a post card from a prisoner as petition, the Supreme Court of India stated that any 'public spirited' individual or organisation could move the court even by writing a letter. In 1988, the Supreme Court delineated the matters to be entertained as PIL. The categories are: matter concerning bonded labour, neglected children, petition from prisoners, petition against police, petition against atrocities on women, children, Scheduled Castes and Scheduled Tribes, environmental matters, adulteration of drugs and foods, maintenance of heritage and culture and other such matters of public interest.

Since the granting of the right to PIL, what some claim to be the only major democratic right of the people of India, and granted not by the Parliament but by the judiciary, the courts have been flooded by PILs. While the flood of such litigation indicates the widespread nature of the

deprivation of democratic rights, they also pose the danger of adding to the pressure on the courts that are already overloaded.

JUDICIAL REFORMS

The most striking criticism against administration of justice is the large number of pending cases and the delay in the dispensation of justice. In the early 1990s, there were more than two crore cases pending in different courts. Reasons for the piling of a large number of cases can be attributed to structural and procedural flaws in the judiciary. The availability of multiple remedies at different rungs of the judicial ladder also enables dishonest and recalcitrant suitors to abuse the judicial system. This leads to the piling up of cases as well as delay in the dispensation of justice.

Another weakness of the judicial system is cumbersome procedures and forbidding cost of justice. Suggestions for judicial reforms have come up, to help achieve a new order and bring economic, political and social justice.

In fact, the Tenth Law Commission had invited suggestions for judicial reforms. One suggestion was to reduce the workload of the Supreme Court of India which accepts nearly one lakh cases every year (whereas the US Supreme Court accepts only 100 to 150 cases of the five thousand filed). Among the suggestions to reduce the load of the Supreme Court, one was to establish a Constitutional Court to deal exclusively with constitutional matters and another was to establish Zonal Courts of Appeal in the country.

CONCLUSION

As we saw, the existing judicature in India can be traced to the British period. The Royal Charter of the Charles II (1661), the Regulating Act of 1773, the Indian High Courts Act of 1861 and the Act of 1935 are the important milestones in the evolution of modern judicial system in India. The Constitution of India has designed the Supreme Court as the highest court of law. The law declared by the Supreme Court has been made binding on all small courts, that is, the High Courts and the Subordinate courts.

Given the importance of judiciary as a federal court and as a guardian of fundamental rights of the citizen, the framers of the Indian Constitution gave great deal of thought to such issues as the independence of the courts and judicial review.

Judicial review is a technique by which the courts examine the actions of the legislature, the executive and the other governmental agencies and decide whether or not these actions are valid and within the limits set by the constitution. The foundation of judicial review is

(a) that the constitution is a legal instrument, and

(b) that this law is superior in status to the laws made by the legislature that is itself set up by the constitution. It is now well established in India that judicial review constitutes the basic structure or feature of the Constitution of India.

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PARTY SYSTEM IN INDIA

1. Introduction
2. Concept of Political Parties
3. Functions of Political Parties

a. Electoral Functions

b. Non Electoral Functions

4. Types of Political Parties

a. National

b. State

5. Role and Importance of Opposition Political Parties
6. Conclusion

INTRODUCTION

India is a multi-party democracy. Political parties constitute an integral part of the Indian political system which is marked by the functioning of a variety of political parties. In this unit we shall read about the different aspects of political parties in India including the concept of political parties, functions of political parties, types of political parties and the role and importance of opposition political parties in India.

CONCEPT OF POLITICAL PARTIES

Political parties are such organizations which intermediate between citizens of a nation and the state. They are organized groups, whose members share common policy preferences and programmes. And it is through their common policy preferences and programmes that political parties aim at acquiring and holding on to government power. In a democratic form of government like that of India, political parties achieve their aim by contesting and winning elections.

The following are some of the characteristics of political parties which will help you understand the concept of political parties better-

- Political parties are organizations which have formal membership.
- The members of a political party share same political ideology.

- Political parties aim to achieve power, form government and exercise political power through constitutional means.

FUNCTIONS OF POLITICAL PARTIES

In this section you will learn about important functions of political parties. Being an integral part of democracy political parties perform a variety of functions. The list of functions performed by political parties is an exhaustive one; however, the functions of political parties can be broadly classified as:

(i) Electoral functions

(ii) Non-electoral functions

(i) Electoral functions

- One of the primary functions of political parties is to form government by winning political office through elections.
- In our country which is a representative democracy, it is political parties which represent millions of voters. Therefore, one of the important electoral functions of political parties is to nominate candidates. The voters elect their representatives from the list of nominated candidates from various political parties.
- Political parties also prepare a list of their policy programmes and promise to implement the listed programmes if they can come to power. This is known as the party manifesto.
- Campaigning and canvassing for election candidates is another electoral function of political parties.

(ii) Non-electoral functions

- One of the non-electoral functions of political parties is interest articulation and aggregation. This means political parties perform the function of educating, instructing and making the citizens politically conscious as well as active. Aggregation means to bring together interests of different sections and groups from across the nation and to provide a platform where the interests of the various groups can be combined or aggregated to form broad political programmes and policies.

- When voted to power political parties/party form the government, and perform all the functions which are necessary to run a nation
- Political parties provide the much needed connection between the people and the government. They in fact bridge the gap between citizens and the government
- Apart from capturing power which is one of the important functions of political parties, another important function of political parties is to play the important function of the opposition if they fail to acquire power. These parties keep an eye on the activities of the party in power so that it does not become all powerful.

ROLE AND IMPORTANCE OF OPPOSITION PARTIES

The political parties which do not come to power are described as the opposition parties. Opposition parties are an indispensable part of a democracy. They provide the checks and balances to the ruling parties by criticizing it on its lapses and mistakes. Opposition party or parties are expected not only to criticize the policies of the government, but to provide constructive criticism which can help the government to rule the nation efficiently. Keeping in mind the importance of opposition, many parliamentary democracies give official reorganization to opposition parties. For instance in Britain opposition party is officially recognized. Similarly, in India the leader of the opposition enjoys same salary and privileges as that of a Cabinet Minister.

The role performed by the opposition can be outlined in the following way-

- By criticizing governmental policies and policy makers, it makes government responsible and accountable for every action it takes. Along with criticizing the governmental programme through questions and debates in the Parliament, the opposition provides alternative solutions and strategies to the government.
- It controls the ruling government through parliamentary debates, privileges and rules of procedure.
- It keeps the public abreast of every step taken by the government. It helps in the formation of vibrant public opinion.

  Thus, we see that not only the party or parties which form the government are important but the opposition too plays an important role in the functioning and success of parliamentary democracy. However, at the same time it must be mentioned that the

opposition parties sometimes oppose the government just for the sake of criticizing it and stall the proceedings of the cabinet resulting in noisy scenes in the Parliament. Accordingly, the opposition must always act responsibly and engage in constructive criticism of the government.

CONCLUSION

After going through this unit we have learnt about political parties their functions and types. We have also read about the differences between the national and state political parties and, in the process, seen how political parties are categorized as national and state political parties. Moreover, we have also read about some important national and state level political parties in India. Finally, we have also discussed the role and Importance of opposition political parties.

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