INTRODUCTION TO POLITICAL SCIENCE

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Unit – I

State and its Elements – Relationship between Government and Society – Organs of Government – Legislatives, Executive and Judiciary

Objectives:

- Identify the three organs of government.
- Differentiate between the Legislatures.
- Discuss the role of the Judiciary

Introduction

The concept of state occupies a central place in Political Science. No discussion on political theory is complete without reference to the word 'state'. The state, indeed, touches every aspect of human life, and this is why it has, very rightly, captured the attention of all political philosophers since the days of Plato. To understand the state as an administrative machinery ordering public life is to know its one aspect. Important though this aspect is, it is not the only aspect which explains as to what it is. The state is where it operates on. Its real meaning together with its other related implications emerges more clearly when it is understood in relation to the domain of its area of operation, which is what society is.

State

James W. Garner in his ***Introduction to Political Science*** (1910) starts with the proposition that "Political Science begins and

ends with the state". The idea that the state alone can provide the basis for a truly political behavior can be traced back to the ancient Greeks. For Plato and Aristotle, the "Polis" or city-state was the ultimate expression of the intrinsic capacity of humans for social action. Only the city-state was large enough as well as small enough to provide suitable conditions for social communication and hence for a truly lawful and human form of social life. Other social units like family were too small and those like the vast Eastern empires were too large to fulfill this condition. That is why Political Science to the Greeks began and ended with the *Polis*.

Modern political thought is also clearly influenced by this tradition, even though the modern state is quite different from the Greek *Polis*. The modern state is characterised by greater territorial extent, thus restricting the scope for intimate social life rather than a close-knit community of citizens, it often appears as an external agency of control over a more or less random and heterogeneous collection of people and groups. However, like the ancient *Polis*, the modern state is a form distinguishable from others by its unique capacity for achieving integrative action. The idea that Political Science begins and ends with the state is a manifestation of the belief that only this type of action is essentially political.

Contemporary Political Science, however, no longer regards state and sovereignty as central to the discipline. The tendency is to regard politics not merely as a function restricted to any particular social organisation – the state – but as a type of particular functional aspect of social life in general. Accordingly, power relationships within professional associations and trade unions are no less "political" than those existing within a generous and no less deserving of attention.

The state has acquired its present form through a long historical process extending over centuries. It all started with the institution of family which represented humankind emergence from savagery and the creation of social, emotional and moral bonds amongst humans. The family in turn gave rise to larger social organisation, blood-relationship. Subsequently, there emerged some consistent patterns of behaviour and relationships of domination and subordination. Social life came to be regulated by custom and authority. This eventuality led to the evolution of the state. The historical evolution of the state is usually classified into six staged viz. the tribal state, the oriental empire, the Greek city-state, the Roman empire, the feudal state and the modern nation-state.

Meaning and Definitions of the State

The word State as a generic term for a body politic was, for the first time, fixed by the Italian philosopher Niccole Machiavelli in his book *The Prince* in early 16th century. At that time the term 'state' seems to have been in usage. Its origin can be traced to the Latinword 'status' – the particular form of 'stare' i.e. 'to stand'. Its earliest use in English in this context appears in Thomas Starkley's *England* (1538). The meaning became common in France and England during the 16th century. The employment of the term (state) has been carried beyond its state of origin to cover terms such as '*Polis'* or '*republica'* and forward to the modern state. The term 'state' has been variously interpreted and defined by various scholars. According to MacIver, the conflicting definitions of state are largely due to the fact that

"some writers define the state as essentially a class structure ... while others regard it as one organization that transcends class and stands for the whole community. Some interpret it as a power-system, others aswelfare-system, some view it entirely as a legal construction – as a community organised for action under legal rules. Some identify it with the nation, others regard nationality as incidentally or unnecessary or even as a falsifying element which perverts the nature and function of the state. Some regard it as no more than a mutual insurance society, others as the very texture of the life. To some extent

it is unnecessary, which to others it is the world the spirit has made for itself. For some the state as one in the order of 'corporations', and others think of it as indistinguishable from society itself.

One of the earliest definitions of state was given by Aristotle who described it as "a union of families and villages having for its end a perfect and self sufficiency life by which wemean a happy and honourable life." This definition emphasised on the end of the state and was advanced in the context of the Greek *Polis* and one must keep in mind the fact that for the Greeks there existed no distinction between the state and the society.

Machiavelli defines the state as "the power which has authority over men." This definition, unlike those puts forward before it, was mainly concerned with the nature of the state, rather than its end. Max Weber defined it as a human community that claims the "monopoly of the legitimate use of physical force." Similarly R M MacIver and C H Page have pointed out that "the state is distinguished from all other associations by its exclusive investment with the final power of coercion." Both these definitions rather than emphasizing the ends of the state, describe the State in terms of specific means peculiar to it.

One of the most comprehensive definitions of State, however, had been put forwarded by Garner. According to him, "the state is a community of persons more or less numerous, permanently occupying

a portion of territory, independent of internal control and possessing an organised government to which the great body of inhabitants render habitual obedience."

Elements of the State

In the light of the above mentioned definitions, we can identify the following elements of the state as:

- Population
- Territory
- Government
- Sovereignty

Population

The state is a human institution. Thus it is impossible to envisage a state without people. However, a population can constitute a state only when it is united by the condition of interdependence, consciousness of common interest and general regard for a set common rule of behaviour and institutions.

The ideal size of the population for a state, however, cannot be fixed exactly. Whereas Plato fixed the number for an ideal state at 5040, Rousseau fixed the population of an ideal state at 10,000. However, in modern times scholars have not attempted to fix any upperor lower limits of the population of a state. According to Garner, "population must be sufficient to provide a governing body and a

number of persons to be governed, and of course sufficient to support a state organisation." In other words, the population must be self sufficient to meet all the needs of life. Moreover, homogeneity is no longer considered to be an essential feature of a modern state population. The population of a state need not belong to a single race, religion, language or culture. A homogeneous population is no longer considered an essential feature of the modern state. The modern state claims to reconcile the interests of various groups of its citizens.

Territory

Territory is an essential attribute of the state which distinguishes it from other associations. Even though some writers like John Seely have argued that a fixed territory is not an essential element of the state, a state essentially comes into existence only when its population is settled in a fixed territory. The nomadic tribes characterized by some kind of political authority drawing legitimacy from custom and traditions constitute what political sociologists describe as a 'political system' but not a state. Within a state, citizens enjoy rights and duties irrespective of any tribal identity within a fixed territory. Moreover, international law regards the possessions of fixed territory as an essential attribute of the state. All this makes the demarcation of physical boundaries extremely essential in order to establish the identity of a state.

Territory symbolizes the sphere of sovereignty of the state – where its authority is accepted without dispute or challenge. The territory of a state provides for natural resources for the substance and economic development of a state. It provides for a sense of belonging what we commonly refer to as patriotism, a sense of security and opportunity for a fuller and better life for its residents.

The territory of a state includes not only land but also water within its physical boundary and the air space above it. The territorial matters of a state usually extend up to three miles into sea from its coast. Territories may be demarcated either by geographical features such as sea or mountain ranges or other natural barriers. However, it is generally demarcated on political considerations.

As in the case of population, there is no unanimity among scholars regarding the size of a territory which a state should possess. Many like Aristotle have favoured small size of territory. This perception, however, has undergone a sea change and larger territories are preferred today in the context of modern nation-states.

Some writers, like John Seeley (1834-95), hold that a fixed territory is not an essential aspect of a state. The nomadic tribes, who do not possess fixed territory, do constitute a state. This view is, however, no longer held valid. The nomadic tribes do have the institution of authority, or even government with custom based law,

but not a state. Political sociologists concede the existence of a 'political system' in such communities, but their organization still does not qualify to be a state. Moreover, the modern state is not a matter of internal organization; it needs international recognition as well, so as to enjoy its rights and perform its duties as a member of the comity of nations. International law regards possession of affixed territory as the essential attribute of the state. Demarcation of physical boundaries is, Therefore, essential for establishing the real identity of a state.

Government

Another essential element of the state is an agency or organization through which the state can express itself and regulate the affairs of the population that resides within the territory. According to J W Garner the "government is the agency or machinery through which common policies are determined and by which common interests promoted." He further argues that "without government the population would be an incoherent, unorganized anarchic mass with no means of collective union."

A state without government is inconceivable, for the state wills and acts through the government. The authority of the state is exercised and its functions are performed by the government. The state represents an abstract concept, the government is its concrete form.

There is, however, no formal rule regarding the form of government which a state should possess. The form of government depends upon the nature of the state which in turn depends largely upon the political thought and character of the people.

Government and state should not be treated as co-terminus. Governments may rise and fall without disturbing identity of the state, so long as they are formed and dissolvedaccording to the established custom, procedure or constitution of the state. But a state will lose its identity if it is suppressed by an alien power so much so that the established procedure of forming a government is also suspended. When the people of a state lose their right to have a government according to the established procedure, i.e. a legitimate government enjoying customary respect and obedience of the people, the state is reduced to a colony of the imperial power which suppressed it.

Sovereignty

Sovereignty is probably the next essential element of the state which distinguishes it from other organizations. By virtue of its sovereign authority the state claims supremacy in internal matters and freedom from external control. This authority may be exercised by the government of the day but it essentially belongs to the state from which it is derived by the government. By virtue of its sovereignty, the state, through the government declares its law, decisions and issues

commands which are binding on the citizens, the non-compliance of which leads to punishment. It is on account of this sovereign status that the state deals independently with other states.

The existence of sovereignty is so essential that only so long as it is armed with sovereignty does a state remain in existence. The moment a state looses its sovereign authority, either by internalrevolt or external aggression, the result is anarchy and complete annihilation of the state.

A state continues to exist so long as it is armed with sovereignty.

If a state loses its sovereignty because of internal revolt or external aggression, the result is anarchy and disappearance of the state as such. Some writers regard 'international recognition' as an essential element of the state. This denotes formal recognition of the sovereignty of the state over a given territory and population by other states. International recognition, however, is the outcome of the sovereignty of the state, not a condition of its existence. When a new state, like Bangladesh, comes into existence, it may be recognized by some states immediately while other states that withhold their recognition for quite a long time. Much depends on the foreign policy of a state whether to recognize the new state immediately or to delay it. USA had withheld recognition of the new states of USSR and People's Republic of China for decades after they came into existence,

but they did exist as states. Hence, international recognition is only incidental to the sovereignty of the state, not a fundamental element of the state itself.

Recognition

In addition to the four basic element of state, some scholars regard international recognition as another essential element of statehood. They argue that any inhabited portion of territory assumes the character of a state only when it is accorded recognition by other members of the international community. Recognition of one state by another, however, is a political act which depends upon considerations of national interest. For instance, the United States of America did not accord recognition to the USSR until the beginning of the fourth decade of the twentieth century. Similarly, the recognition of the Peoples Republic of China was withheld by the USA for almost two decades after it came into existence. Thus, the act of international recognition cannot be considered an indispensable factor for the existence ofa state, even though it is an important act in international politics. International recognition, which denotes formal recognition of the sovereignty of a state over a given territory and population by other states, is not a fundamental element of the state itself.

Organs of Government

Legislature occupies an important position in the machinery of government. Will of the state is formulated and expressed through the legislature. Legislature is treated with special respect and status as it is composed of people who represents the general population. Legislature in a democratic country enacts the general rules of society in the form of laws.

A variety of terms are used to denote legislatures in various countries: it is called congress in USA, Parliament in India, National Assembly in France, House of Representative in Japan and Congress of Deputies in Spain. The word parliament comes from the French "parler" which means to 'talk' or 'discuss'.

Functions of Legislature

Functions of the legislature are not identical in every country. It may vary from country to country, depending on the forms of government and the provisions of the constitution. Yet there are certain functions which are performed by legislatures in most democracies. They are as follows:

a. First and foremost function of Legislature is to make laws. Bills are introduced in the Legislature where it is thoroughly debated and discussed before it is passed by the legislature and sent to the Head of the State for his formal assent to become an act. In

cabinet system it is the duty of the concerned minister to introduce the bill and get it passed and duly enacted. But in the presidential system executive is not directly involved in legislation, rather he only exerts his influence in the law making through his messages. Legislature is the creator of laws of a country and is thus rightly called the rule making department of the state.

b. Legislature exercises control over the general administration of the country. In parliamentary system legislature exercises control over the political executive

c. .Ministers are individually as well as collectively responsible to the legislature for all their actions. Ministers can continue in office only till they enjoy the confidence of the legislature. Various measures like adjournment motions, censure motions and cut motions are available to control the executive. A vote of no-confidence can be passed by the legislature to remove the executive from office.

d. Legislature performs important financial functions. A major function it performs every year is the presentation, consideration and authorization of the budget. No money can be spent or no tax can be levied by the executive without the prior approval of the legislature. Ordinarily lower house enjoys more powers over the

money bill than the upper house in countries with bi-cameral legislature

e. Legislature also performs some important judicial functions. In England the House of Lords is the highest court of appeal. The impeachment trial of the president and vice- president in America takes place in the senate and in India either of the two house at the centre can conduct the impeachment trial of the president.

f. Legislature also performs elective functions. In India parliament takes part In the election of the President and vice President. British parliament can make a law to determine the mode of succession and abdication of the monarch. In Russia judges of the Supreme Court are elected by the parliament of that country.

g. In most democracies the power to change or amend the constitution rest with the legislature .In India the parliament has the power to change certain provisions of the constitution by following a special procedure. In England there is no distinction between ordinary laws and constitutional laws and the legislature has the power to amend the constitutional laws in the same manner as it changes ordinary law.

h. In India parliament has the power to remove the judges of Supreme Court and high courts on grounds of proved

misbehavior or incapacity. In Britain judges can be removed by a joint address of both house of parliament to the crown.

i. In the USA Senate shares with the President the power of making all federal appointments. All treaties negotiated and concluded by the president required to be ratified by the senate by a two-third majority. American President needs the approval of the senate for all the major Federal appointments he makes .And to declare war and for war expenses the President needs the approval of the senate.

j. Legislatures work as organs of inquest or enquiries. Legislature appoint commissions of enquiry to collect information, hear evidence and make recommendations on problems facing the country.

Executive

The Executive refers to that organ of government which executes, administers or put into effect the laws made by the legislature. The term Executive is used in a broad as well as in a narrow sense. Dr.Garner , while explaining the meaning of executive said, "Ina broad and collective sense the executive organ embraces the aggregate or totality of all the functionaries which are concerned with the execution of the will of the state as that will have been formulated and expressed in terms of law". This comprehensive definition implies

that in a broad sense executive includes the Head of the state, council of ministers and all other officials who implement the laws. The term executive when used in a narrow sense will include only the president and the council of ministers and the officials are excluded. Generally the term Executive is used in a narrow sense to mean the head of the state and the council of ministers.

Kinds of Executives

1. **Political and Permanent Executive**

   Political executive consists of popularly elected leaders who heads the office of various departments and whose tenure is a temporary one. In India political executive consists of the prime Minister and his council of ministers. They can only remain in office as long as they enjoy the confidence of the legislature. Permanent officials on the other hand, consists of all those permanent and salaried officials and subordinates who carry on the day- to- day work of the administration. These officials carry out the policy as laid down by the political executive. These officials having entered service through competitive exams continue in service until retirement. Efficient administration demands close co-operation of the amateur and the experts, that is; of the politicians and the specialist administrators.

2. Nominal and Real Executive

The executive may be real or nominal. This distinction is between Head of the state and the Head of the government. In parliamentary systems like India and Britain this distinction is very clear. In India, President is the nominal executive or titular executive and the cabinet headed by the Prime Minister is the real executive. In India, in theory the president enjoys wide powers, but in actual practice all these powers are exercised by the Prime Minister and his council of ministers. All the actions of the government are carried out in the name of the nominal executive. There is no nominal executive in the Presidential system as followed in USA. There the President is the head of the state as well as the real executive. He is both the Head of the state and Head of the government. In absolute monarchies and Dictatorships all the power will be concentrated in a single person or with a few elites and thus the distinction of real and nominal executive there is meaningless.

3. Single and Plural Executives

In the case if single executive the ultimate power is in the hands of a single person, and he does not share powers with others. American President is an example of single executive. Cabinet form of government combines the single and plural

executive. The Prime minister follows the principle of single executive and his colleague follow the principle of plural executive. However, it is to be noted that, in parliamentary system the real executive- the prime minister and his cabinet- act as a team or as a single unit and hence the whole cabinet can be viewed as a singular executive.

In the case of plural executive or collegiate executive, the executive power is in the hands of group of persons, having co-equal authority. Federal council of Switzerland is an example of plural executive. Federal Council consists of seven councilors, having co-equal powers and one of the members are elected annually to serve as chairman for a one year term with the title of president of the federation. The president does not enjoy any special powers apart from presiding over the council meetings. Federal council is elected by the federal assembly (legislature) for a four year term and the council functions essentially as a business body subordinate to the Assembly. The federal council implements the policies of the Federal Assembly .The Federal council also advises the Federal Assembly on legislative matters.

Judiciary

Judiciary is that organ of government which interpret and enforce the laws of the state. In ancient polity, the executive and the

judicial functions were combined in one person. But in such an arrangement, justice could not be secured when the same person made and interpret laws. So the need for an independent and impartial organ to interpret laws was felt in modern state and the result was the advent of judiciary as a separate organ of government.

Judiciary is regarded as the guardian of the rights and liberties of the people, and also of the constitution. Welfare of citizens depend on the efficiency and impartiality of the judiciary. James Brycy has aptly remarked that there is no better test of excellence of a government than the efficiency of its judicial system. No one doubt the importance of judiciary in modern state, but its degree of importance varies from country to country. For instance in UK, where the laws are not codified, judiciary not only interprets, but also make law. And in countries with written constitution, it acts as its guardian.

Judiciary is regarded as the rule adjudicating agency. It is the duty of the judiciary to interpret laws and punish the guilty. Rule adjudication refers to those authoritative decisions whereby conflict relating to rule application are resolved. Disputes that arise between citizens or between citizens and state are resolved by the judiciary. So in modern state an independent and impartial judiciary is a necessity for the administration of justice. Garner observed that "a society without legislature is conceivable and indeed, fully developed

legislative organ did not make their appearance in the life of the state until modern times, but a civilized state without judicial organ is hardly inconceivable."

Independence of Judiciary

A judge is often pictured as a blind fold person who holds the scales of justice, which he administers even handed. A Judge must be a person of high integrity, dignity and independence; then only he will be able give judgments freely and impartially. Need for an independent judiciary in a modern state has become outmost importance with the change in the nature of functions performed by the state. With the advent of welfare states the functions of the state have multiplied and role of the executive have become more important resulting in states becoming one of the biggest litigant before the courts. If the judiciary is not independent it will not be able to give decisions against the government when required and protect the rights and liberties of the people.

Modern states have devised various measures to uphold the impartiality and independence of the judiciary

Mode of appoint of judges is one most important aspect that can go a long way in ensuring the independence of the judiciary. Generally three methods are adopted by states – Elected by the people, Elected by the legislature and appointment by the executive.

In some states of America, and in some of the cantons of Switzerland judges are elected by the people. Though in theory this method appears impressive, it suffers from a number of defects. A scholarly and a quiet man may not be able to win a poll as it demands him to be talkative and popular. Popularly elected judges may not be expected to be impartial and independent, as he may have received support from political parties in his election .Moreover he is likely to give judgments which will make him popular and increase his chance of re-election. Worst of all a person who is popular but lacks legal knowledge may become a judge. According to Prof. Laski "of all the methods of appointment, that of the election by the people at large is without exception the worst".

In Switzerland judges are elected by the two federal chambers (Federal Assembly and Federal Council) sitting together, for a six year term. System has worked well in that country but it is not without defects. This method violates the spirit of separation of powers and make the judiciary subservient to the legislature. Judges elected by the legislature often are party candidates and the competence and impartiality of judges is a casualty.

Judges appointed by the executive is the most common method and is considered to be the best. Laski see this as the "the best available method of choice". It is widely followed in many countries

including India, Britain, Australia and Canada .It is claimed that executive is the most appropriate agency to judge the qualities necessary for a judicial officer. Opponents of this method content that favoritism and political considerations may cloud the appointments in this method. Though there is some merit in this argument, these defects can be easily rectified by making changes in the procedure of selecting judges by the executive. For instance, with the implementation of supremecourt guidelines regarding appointments of judges of higher judiciary, the judicial appointments has become fairly independent.

While appointing judges, care should be taken to make sure that persons who are highly qualified in the field of law are only appointed. Ideally, people with high legal knowledge, integrity, dignity and independence should only be appointed as judges.

Judges should have long tenure and should feel secure in their job. If judges are appointed for short periods they may be tempted to be corrupt, and also they may be always thinking of re- appointment .Ideally tenure of a judge should neither be too short nor it should be for life. In India, Supreme Court Judges hold office till they reach the age of 65 and high court judges till the age of 62.

Security of service is another Important aspect that ensures the independence of judiciary. If judges are under constant fear of being

removed from office, they are unlikely to give judgments that annoy the executive. .So in most countries legislature is the organ that have a say in the removal of judges .In India judges can be removed from office by the President only on account of proved misbehavior or incapacity, and that too on the basis of a resolution passed by not less than 2/3rd majority in both the houses of parliament.

Judges should be paid adequate fixed salaries that will allow him to maintain a good standard of living and thus not be tempted to adopt corrupt means to amass wealth. Office of a judge must carry high salary and other emoluments, so that his social position and mode of living, may attract capable and deserving people to the legal profession. According to Bryce, honesty and independence of a judge also depend upon inducements or prospects that his office carries. Executive should not be vested with the power to alter the Judges' salaries and allowances to his disadvantage.

For independence of judiciary, Montesquieu emphasized separation of judiciary from the executive. Judges should not be entrusted with executive and administrative duties. Liberty of people will a major casualty in such a situation. Directive Principles of state policy enshrined in the Indian constitution (Art.50) desires separation of judiciary from the executive.

Judges should not be given appointment after his retirement from service .This is necessary to prevent the judges from unduly favouring the government at the fag end of his career in the hope of executive returning the favour, in the form of appointments after retirement.

It is also required that judges avoid excessive public contacts and keep immune from public pressures in the interest of judicial independence. This will allow the judges to try cases that come before him purely on legal merit, and not on the basis of public opinion.

Judicial Review

Judicial review is the power of the court to review the laws passed by the legislature and orders issued by the executive, when challenged by the affected persons, and to declare them null and void, if they infringe the provisions of the constitution. Judicial review holds in check legislature and the executive within the limits laid down by law.

Judicial Review is a feature of countries with written constitution and federal systems. Judicial review protects personal rights against legislative and executive actions; states' rights against national action; national rights against state action; and respective rights of three branches of government against one another.

The doctrine of judicial review originated in USA in 1803 in a leading case of Marbury v/s Madison, where chief justice Marshall ruled that court had the power to declare the actions of the congress and the executive invalid.

Chief justice Marshall defined Judicial Review as "the examination by the courts in cases actually before them of the legislative statues and executive administrative acts to determine whether or not they are prohibited by a written constitution or are in excess of powers granted by it." Judicial review essentially means the 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 India ,by basis of Article 32 and 136 of the Indian constitution Supreme Court can exercise the power of judicial Review, similarly under Article 226 and 227 High Courts have the power of judicial review. Though the term judicial review is not mentioned in the constitution, Article 13 entrust the courts of the review power, it states:

a. (i)All laws in force in the territory of India immediately before the commencement of this constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void

b. (2) The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void

The scope of review power of judiciary in India is comparatively less to than that of USA.

Scope of Judicial Review in India is mainly on two grounds:

a. Whether the law under challenge falls within the competence of the authority that has framed it; and
b. Whether it is consistent with the part 3 of the constitution dealing with fundamental rights.

Though, Judicial Review has many positives, it has also come under fierce criticism. A major criticism is that judicial review has resulted in judicial tyranny and the whole concept is undemocratic. It is strange that one organ of government sit in judgment of the other two. A law passed by the legislature represents popular will and it is pointed out that it is Undemocratic for judiciary- which is not a representative body- to strike down the laws made by legislature. Moreover, it can lead to conflict between judiciary and the executive as it has happened many times in India. Finally, there is always the possibility of progressive legislations being struck down by conservative judges.

Judicial Activism

Judicial activism emanates from the power of judicial review enjoyed by the courts. It refers to the assertive role played by the judiciary to force the other organs of government to discharge their constitutional obligations towards the public. Basically the courts interfere only when the other organs fails to discharge their constitutional duties. Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens.

Activist means 'being active' or 'one who favours intensified activities' and an activist judge activates the legal mechanism and makes it play a vital role in socio-economic process. In the words of Justice V R Krishna Iyer "every judge is an activist either on the forward gear or on the reverse"

Judiciary has moved from being passive to an activist mode. Judiciary has shed its pro- status-quo approach and taken upon itself duty to enforce the basic rights of the poor and vulnerable sections of the society, by progressive intervention and positive action. Judiciary has started playing the role of a policy maker or even the legislature in the interest of the common man. By doing this it has furthered the cause of social change or stood for upholding liberty, equality and justice for the deserving masses. More importantly courts have become more accessible to the common man and he feels that justice is within

his reach. It is no wonder that judicial review enjoys much support and appreciation among the masses.

Judicial Activism in India

Judicial activism was not in vogue in India in the first 30 years of its independence. It was in the Keshavananda Bharathi case in 1973 that Supreme Court ruled that the executive had no right to tamper with the constitution and alter its 'basic structure'. During the late 1980s and early 1990s the Supreme Court began to deal frequently on issues ofpolitical, social and economic in nature. Judicial activism in India acquired importance due to the mechanism of Public Interest Litigation(PIL).PIL means a suit filed in a court of law by the aggrieved citizen or a public sprited person for the protection of public interest such as pollution, environment road safety etc. Former Chief Justice of supreme court, Justice P. N. Bhagwati and former judge of Supreme Court Justice V.R. Krishna Ayer played a key role in promoting PIL as a way of rendering justice to people who are denied of it. Areas where judicial activism gained prominence includes issues like child labour, health, political corruption, education and generally the denial of fundamental rights to the people. The first major case of judicial activism through social action litigation was Bihar under trial case in 1979 .And after that Supreme Court began to take cognizance of custody deaths, bride burning and rape in police stations. It has also

led to the prosecution of number of corrupt politicians, and other public servants due to the activism of the judiciary.

Judiciary is gradually extending its activities earlier considered to be the preserve of the executive. When the legislature and the executive shy away from taking hard and unpopular decisions, yet necessary, it is the judiciary that has filled the void. Kuldip Nayar eminent journalist, observed "judicial activism fills the vacuum that non-activism of other institutions create."

The effect of judicial activism has generally being positive-corruption exposed in high offices and penal action initiated against the politicians and public servants, strict enforcement of environment laws and closure or relocation of large number of polluting industries, authorities do their duties mandated by law and support and satisfaction of the people with the review power of the judiciary.

Critics of Judicial activism argue that in the short run it may be beneficial, but if it is resorted to quite often it will upset the 'balance' of the organs of government and will obstruct the smooth functioning of government machinery.

Self Assessment Questions

- What are the essential elements of a state?
- Name the three organs of government and their primary functions.
- What is the main role of the Legislature in a state?

Unit – II

Citizenship – Meaning – Right of the Citizen – Duties of Citizen – Fundamental Rights – How rights are safeguarded

Objectives:

- List the rights of a citizen**.**
- Describe the Fundamental Rights.
- Explain how citizens' rights are safeguarded.

Citizenship:

Meaning

Aristotle, the great Greek philosopher, had once commented, 'A citizen is one who permanently shares in the administration of justice and the holding of office.' The statement of definition suits aptly to a democratic citizen. However, one should always remember that elements of citizenship reside in all nations that include the most repressive, authoritarian and totalitarian states also. The explanation of citizenship is a complex phenomenon and its various usages tend to project its various meanings. These include:

- Citizenship is an indicator of morality, that is, one's good behaviour makes a person, a good citizen.
- Citizenship, as an empirical and descriptive term, refers to a specific set of obligations and rights vested in eligible persons in a specific nation or state.

- Citizenship, as an analytic term, refers to the protection that a state offers and the opportunities that a state creates for its core members for the sake of political participation.

On closer scrutiny, one may agree that it is the integrative perspective that needs to be adopted, especially because it is, without doubt, tied to the notion of welfare. Welfarism, as we may understand, is often regarded as a compensationfor inequalities and a means to equal treatment. This actually counters privatization and marketization, and virtually supports the integration of the larger community.

Not to forget that while citizenship pronounces an ideal condition for equality, it may remain fettered as political systems reside in the hierarchies of class, caste, sex, race and religion.

Most often, citizenship is seen as a legal entitlement, that is having a specific nationality, holding a passport, and deriving from this status the rights and duties asguaranteed by the Constitution. This formal relationship is also supplemented by awhole set of socio-economic and ideological practices associated with nationalism.

This leads to various mechanisms of exclusion and inclusion of particular groups and categories of individuals that include the women, the racial groups, the no propertied, the children and the differently-baled. Citizenship thereby justifies the dynamic concept of need as an

open political issue. It identifies a universal set of principles that guarantee common human needs. It further justifies that all persons as citizens are equal before law and, therefore, no person or a group is legally privileged, so that the disadvantaged and the marginalized are enabled to participatein the national activities as dignified citizens of the country.

Coming closer to the Indian perspective, citizenship is one of the many striking features of the Indian Constitution. The tremendousness of the task that needed to delineate on the issue of citizenship involved:

- To unite a population of over 300 million (of that time), a population that was not at all homogeneous.
- To handle the vast size of the population, but not the Greek way that determined the size and population of the city-states.
- To dissociate the princely state from entering into negotiations with any foreign power and thus become islands of independent territories within the country.
- To address the communal problems whose magnitude could be seen during the partition of the country.

The clause of citizenship is thereby incorporated in Part II of the Indian Constitution. It reads as:

At the commencement of this constitution every person who has his domicile in the territory of India and

- Who was born in the territory of India; or
- Either of whose parents was born in the territory of India; or
- Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Part II of the Indian Constitution defined various categories of Indian citizens at the commencement of the constitution. A citizen of a given state is a person who enjoys full membership of the political community or state. Citizens are different from aliens or mere residents who do not have all the rights which go to make full membership of a state. Thus, in India, aliens do not enjoy all the fundamental rights that are secured to the citizens. Again, citizens alone have the right to hold certain high offices such as those of President, Vice President, Governor of a State, Judge of the Supreme Court, High Court judge, Attorney General and the Advocate General. The right to vote to the Union or State Legislature is reserved for citizens alone, and also, only a citizen of India can become a member of the Union or State Legislature. Citizenship includes only natural persons and not juristic persons like corporations.

To be entitled to citizenship under the first category, namely, by domicile, Article 5 lays down two conditions.

- He must at the commencement of the Constitution, have his domicile in the territory of India.
- Such person must fulfill any one of the three conditions laid down, namely

1. He must have been born in the territory of India, or

2. Either of his parents must have been born in the territory of India

3. He must have been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the constitution.

Domicile in India

Domicile in India was considered to be an essential requirement for acquiring the status of Indian citizenship. The term 'domicile' is not defined in the constitution. Ordinarily, it means a permanent home or place where he resides with the intention of remaining there for an indefinite period. Domicile is not the same thing as residence. Residence implies a purely physical fact, the fact of just being and living in a particular place. But domicile is not only residence; it is residence coupled with intention to live indefinitely in the place. There are two kinds of domicile:

- Domicile of origin

- Domicile of choice

Every person is born with a domicile of origin. It is a domicile received by him at his birth. The domicile of origin of every person of legitimate birth is the country in which at the time of his birth his father was domiciled. Hence, the domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance or the country of the infant's nationality. In the case of a posthumous child, his domicile will be that of the country in which his father was domiciled at the time of his (father's) death. The domicile of origin is thus a concept of law and clings to a man till he abandons it. An independent person is allowed to give up his domicile of origin. But the domicile of origin prevails until a new domicile has been acquired.

Every independent person can acquire a domicile of choice by combination of:

- Actual residence in a particular place, and
- Intention to remain there permanently or for an indefinite period

While the domicile of origin is received by operation of law at birth, the domicile of choice is acquired by the actual removal to another country accompanied by his animus manned, that is, the state

of mind having formed a fixed intent to make his place of residence or settlement, a permanent home. The domicile of choice continues until the former domicile has been resumed or another has been acquired. A man or an unmarried woman of full age is an independent person. By marriage a woman acquires a domicile of her husband, if she had not the same domicile before. But the wife's domicile no longer follows her husband if they are separated by the sentence of a competent court or if the husband is undergoing a sentence of transportation.

A minor or a married woman is said to be a dependent person. Neither of these classes has the legal capacity to make a change of domicile, and both of these classes are liable to have it changed by the act of another person, who, in the case of an infant, is generally the father and in the case of a married woman is always the husband. A widow retains the domicile of her late husband until changed by her own act. Domicile is different from citizenship. The person may possess one nationality or citizenship and different domicile or he may have a domicile but no nationality. Domicile implies connection with territory, not membership of community which is at the root of the notion of citizenship or nationality. It must be noted that there is only one citizenship for the whole of India.

There is no separate state-level citizenship. Every citizen has the same rights, privileges and immunities offered by the citizenship,

no matter in which state he resides. In contrast, the US has a dual citizenship that is, one for USA and one for the state. Therefore in certain matters, the states do discriminate in favour of their own citizens. In India, there being only one citizenship, no such discrimination is possible by the states. Like citizenship, domicile is also one for the whole of India. It may be emphasized here that the definition of citizenship in Article 5 was at the commencement of the constitution. Thus, persons born after the commencement of constitution are not citizens under this Article.

Rights of the Citizen

Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this constitution if;

- He or either of his parents or any of his grand parents was born in India as defined in the Government of India Act, 1935 and

a. in the case where such person has so migrated before 19 July 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

b. in the case where such person has so migrated on or after 19 July 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the

Dominion of India on an application made by him therefore to such officer before the commencement of this constitution in the form and manner prescribed by that government.

Provided that no person shall be so registered unless he has been a resident in the territory of India for at least six months immediately preceding the date of his application.

Notwithstanding anything in Articles 5 and 6, a person who has after 1 March 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India. Provided that nothing in this Article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of Indiaunder a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purpose of clause

a. of Article 6 be deemed to have migrated to the territory of India after the 19 July 1948.

- Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grandparents were born in India as defined in the Government of India Act, 1935 and who is ordinarily residing in any country outside India as so defined shall be deemed to be citizen of India if he has been registered as a citizen of India by the diplomatic or consular

representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after commencement of this constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

- No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign state.
- Every person who is deemed to be a citizen of India under any of the foregoing provisions of any laws that may be made by Parliament, continue to be such citizen.
- Nothing in the forgoing provision of this part shall derogate from the power of Parliament to make any provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

In conclusion, Parliament has the power to make laws with respect to citizenship, naturalization and aliens. The object of this Article is to make it clear that notwithstanding the fact that certain rules relating to citizenship are contained in Part II, Parliament shall

have unfettered power to make any provision relating to acquisition, termination, etc. of citizenship. Parliament in exercise of its power has enacted in 1955, the Citizenship Act. This Act provides for the acquisition and termination of citizenship. The Act identified five types of citizens: by birth, descent, registration, naturalization and incorporation of territory. In the wake of the Assam agitation, a memorandum of agreement was signed by central government with the leaders of the agitation. As per this agreement, the Act was amended in 1986,adding Article 6A, which made way for a sixth type of citizenship, according to which people born in India and either of whose parents is a citizen of India at the time of their birth, unless excluded, were to be considered the citizens of India.

Right of the Citizen and Duties

Now-a-days, terms like 'right to education', 'right to information' and 'right to protest peacefully' are being used quite frequently. Many a time, you also feel that you have certain rights. Simultaneously, you may have been told by some one, may be your teacher, that you have certain duties towards other individuals, society, nation or the humanity. But do you think that every human being enjoys the rights or everyone performs the duties? Perhaps not. But everyone will agree that there are certain rights that must be enjoyed by individuals. Particularly, in a democratic country like ours, there

are rights that must be guaranteed to every citizen. Similarly there are certain duties that must be performed by democratic citizens. Which is why, the Constitution of India guarantees some rights to its citizens. They are known as Fundamental Rights. Besides, the Indian Constitution also enlists certain core duties that every citizen is expected to perform. These are known as Fundamental Duties. This lesson aims at discussing the details about the Fundamental Rights and Fundamental Duties.

Meaning

We often talk about rights, but do you know what does the term ‘rights’ mean? Rights are rules of interaction between people. They place constraints and obligations upon the actions of the state and individuals or groups. For example, if one has a right to life, this means that others do not have the liberty to kill him or her. Rights are defined as claims of an individual that are essential for the development of his or her own self and that are recognized by society or State. These are legal, social, or ethical principles of freedom or entitlement and are the fundamental normative rules about what is allowed to people or owed to people, according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture.

But the rights have real meaning only if individuals perform duties. A duty is something that someone is expected or required to do. Parents, for example, have a duty to take care of their child. You have duties towards your parents. A teacher has a duty to educate students. In fact, rights and duties are two wheels on which the chariot of life moves forward smoothly. Life can become smoother if rights and duties go hand in hand and become complementary to each other. Rights are what we want others to do for us whereas the duties are those acts which we should perform for others. Thus, a right comes with an obligation to show respect for the rights of others. The obligations that accompany rights are in the form of duties. If we have the right to enjoy public facilities like transport or health services, it becomes our duty to allow others to avail the same. If we have the right to freedom, it becomes our duty not to misuse this and harm others.

Fundamental Rights

Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate 'fundamental rights'. As Granville Austin observed:

> The fundamental rights, therefore, were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be privilege of the few.

The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state. The demand for a Charter of Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. It was most implicit in the formation of the Indian National Congress in 1885 that aimed at ensuring the same rights and privileges for the Indians that the British enjoyed in their own country. However, the first explicitly and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill was also known as Swaraj Bill of 1895. A series of Congress resolutions that were adopted between 1917 and 1919 repeated the demands and claims for civil rights and equity of status. Following this, drafting of seven fundamental rights under the Commonwealth of India Bill, 1925 took place.

The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future Constitution of India must be a

declaration of fundamental rights. This demand was further reiterated in the Nehru Report of 1928. In March 1931, the Congress once again adopted a resolution on fundamental rights and economic and social changes. However, the Simon Commission had considered the question but rejected it. The Government of India Act, 1935 did not contain any document pertaining to the declaration of rights. The next major document on rights was the Sapru Report of 1945. On the side of the British, the various British Constitutional experts like Wheare, Dicey, Jennings and even Laski did not favour the idea. It was only the Cabinet Mission Plan that conceded to the Indian demand for a Bill of Rights for the first time. The inclusion of rights in the Constitution vested on three major reasons:

a. To keep a check on the arbitrary action of the executive
b. To reach to the desired goal of socio-economic justice
c. To ensure security to minority groups in India

The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights and on the tribal andexcluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution.

The pertinent question that arises here is as to why the rights in Part III alone are considered fundamental? There are other rights as

well that are important and even justifiable, for example, the right to vote under Article 325. The justification goes that the rights in Part III are:

(a) More in consonance with the natural rights

(b) Gifts of the state

(c) Gifts of the Constituent Assembly

The Constitution of India contained seven fundamental rights originally. But the Right to Property was repealed in 1978 by the Forty-Fourth Constitutional Amendment bill during the rule of the Janata Government. These fundamental rights constitute the soul of the Constitution and thereby provide it a dimension of permanence. These rights enjoy an esteemed position as all legislations have to conform to the provisions of Part III of the Constitution. Not only this, its remarkable feature is these rights encompass all those rightswhich human ingenuity has found to be essential for the development and growth of human beings.

The salient features of the fundamental rights are:

- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.

- The chapter on fundamental rights in the Constitution is the most comprehensive and detailed one. It not only enumerates the fundamental rights guaranteed to the Indian citizens, but also provides comprehensive details of each right.
- Fundamental rights as embodied in our Constitution can be divided into two broad categories, namely, those which impose restrictions of negative character on the state without conferring special titles on the citizens. There are positive rights, which confer privileges on the people, e.g. Article 18 desires the State not to confer any special titles on the citizens. Similarly, Article 17 abolishes untouchability. These can be easily categorized in the former category. Right to liberty, equality or freedom to express or worship come under the second category.
- As being justifiable, if any of these rights are violated, the affected individual is entitled to move the court for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State Legislature in India or the orders issued by any executive authority as null and void, if these are found to be inconsistent with the rights.

- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community. In some cases, restrictions have been imposed by the Constitution itself. Article 19, for example, guarantees to all citizens, freedom of speech and expression.
- During the operation of an Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and the Supreme Court for the enforcement of the fundamental rights. When a National Emergency is declared under Article352 on account of war or external aggression, fundamental right to freedom guaranteed under Article 19 stands automatically suspended under Article 358. The President is also empowered under Article 359 to suspend, by order, the enforcement of other fundamental rights also, during the period of Emergency.
- Some of these fundamental rights are only guaranteed to the citizens of India, while the rights relating to protection of life, freedom or religion, right against exploitation are guaranteed to every person whether he/she is a citizen or an alien to the

country. This means that our Constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.

- The chapter on fundamental rights is not based on the theory of natural or unremunerated rights. The Indian Courts cannot enquire into any fundamental right that is not enumerated in the Constitution.
- The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the Constitution.
- They expressly seek to strike a balance between written guarantee of individual rights and the collective interests of the community.

The Constitution classifies fundamental rights into six categories:

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 25–28)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to Constitutional remedies (Article 32)

Right to Equality

Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India. As interpreted by the courts, it means that though the state shall not deny to any person equality before law or the equal protection of law, it shall have the right to classify citizens, provided that such a classification is rational and is related to the object sought to be achieved by the law.

Equality before law:

Equality before law does not mean an absolute equality of men which is physically impossible. It means the absence of special privileges on grounds of birth, creed or the like in favour of any individual. It also states that individuals are equally subjected to the ordinary laws of the land.

Equal protection of laws:

This clause has been taken verbatim from the XIV amendment to the American Constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal

application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be volatile of equal protection. The Constitution, however, does not stand for absolute equality. The state may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have same nature, attainments, qualifications or circumstances. It means that the state is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

Prohibition of Discrimination (Article 15)

Article 15(1) prohibits discrimination on certain grounds. It declares, 'The state shall not discriminate against any citizen on ground of religion, race, caste, sex, place of birth or any of them.' This discrimination is prohibited with regard to '(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public'. Article 15 has, however, to notable exceptions

in its application. The first of these permits the state to make special provision for the benefit of women and children. The second allows the state to make any special provision for the advancement of any socially and educationally backward class of citizens or for scheduled castes and scheduled tribes. The special treatment meted out to women and children is in the larger and long-term interest of the community itself. The second exception was not in the original Constitution, but was later on added to it as a result of the First Amendment of the Constitution in 1951. While freedom contained in Article 14 is available to all persons, that in Article15 is available only to the citizens and, therefore, it cannot be invoked by non-citizens.

Article 15(2) proclaims that no citizen shall, on grounds only of religion, race, caste, sex and place of birth be subject to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment
- The use of wells, tanks, bathing-ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of the general public.

The prohibition in this clause is leveled not only against the state but also against private persons.

Article 15(3) provides that the state shall be free to make any special provision for women and children. This sub-article is in the nature of an exception in favour of women and children. Thus, the provision of free education for children up to a certain age or the provision of special maternity leave for women workers is not discrimination. However, discrimination in favour of women in respect of political rights is not justified, as women are not regarded as a backward class in comparison to men for special political representation.

Article 15(4) allows the state to make special provision for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The state is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the state to make special provisions for these classes. Inserted under Ninety-Third Constitutional Amendment Act, this clause conferred on the state the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state,

other than the minority educational institutions.

Equality of Opportunity (Article 16)

Article 16(1) reads: 'There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.' It confers on every citizen, a right to equality of economic opportunity, and subsequently provides that no citizen shall be discriminated against in this respect on grounds only of religion, race, caste, descent, place of birth or any of them. However, an equality of opportunity is only between equals, i.e. between persons who are either seeking the same employment or have obtained the same employment. In other words, equality means equality between members of the same class or employees, and not between members of different classes.

Article 16 (2) reads: 'No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any one of them be ineligible for or discriminated against in respect of any employment or office under the state.'

Article 16 (3) says that the President is competent to allow states to make residency as a necessary qualification in certain services for ensuring efficiently of work.

Article 16 (4) allows the state to reserve appointments in favour of a backward class of citizens which in its opinion is not adequately represented in the services under the state. The Supreme

Court had held that such reservation should generally be less then 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats members of backward classes are free to compete with others and be appointed to non-reserved seats, if otherwise, they are eligible on merit.

Article 16 (5) allows the state to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess such additional qualifications or be members of that religious institution. This is an exception to the general rule that the state shall not discriminate on ground of religion in providing equal economic opportunities to the citizens.

Although Article 16 guarantees equality of opportunity in matters of public employment for all citizens and is expected to provide a bulwark against considerations of caste, community and religion, the result so far has been far from satisfactory.

Social Equality by Abolition of Untouchability (Article 17)

Complete abolition of untouchability was one of the items in Mahatma Gandhi's programme for social reform. The present Article adopts the Gandhian ideal without any qualification in abolishing untouchability and in forbidding its practice. It also declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament has enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of 500 or an imprisonment of 6 months or both, depending upon the seriousness of the crime.

Social Equality by Abolition of Titles (Article 18)

Article 18 is a radical application of the principle of equality it seeks to prevent the power of the state to confer titles from being abused or misused for corrupting the public life, by creating unnecessary class divisions in the society. The object of the Article is to prevent the growth of any nobility in India. Creation of privileged classes is contrary to the equality of status promised to all citizens by the Preamble to the Constitution.

Article 18(1) declares: 'No title, not being a military or academic distinction shall be conferred by the state'. It means that no authority in India is competent to confer any title on any person, excepting the academic title, or military titles of general, Major or Captain. Article 18(2) prohibits the citizens of India from receiving any title from any foreign state. This is an absolute bar. One the other hand, Article 18(3) prohibits the citizens from accepting any title from any foreign state without the consent of the President of India, if and

so long they are holding any office of profit or trust under the state. And, Article 18(4) prohibits both the citizens and aliens, who are holding any office of profit or trust under the state from accepting any present, emolument or office of any kind, from or under any foreign State.

Article 18, however, does not prohibit the institutions other than the state from conferring titles of honours by way of honouring their leaders or men of merit.

Right to Freedom (Articles 19, 20, 21 and 22)

Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their right. Included in Clause 1 of Article 19, these freedoms are:

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business.

Freedom of Speech and Expression

The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them,

and also to expose falsehood. Freedoms of speech and expression lie at the foundation of all democratic organizations, for without political discussion, no political education is possible.

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of press but also the expression of one's ideas in any other form.

Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to Constitutional and statutory provisions.

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose restrictions on any one or more of the following grounds:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court

- ❖ Defamation
- ❖ Incitement to an offence

Right of Peaceful Unarmed Assembly

Article 19 (1)(b) guarantees to every citizen the right to assemble peaceably and without arms. This right is subject to the following limitations:

- Assembly must be peaceful
- Assembly must be unarmed
- Must not be in violation of public order

Freedom of Association and Unions [Articles 19 (1) and (4)]

Article 19(1)(c) guarantees to all citizens the right to form associations and unions, the formation of which is vital to democracy. If free discussion is essential to democracy, no less essential is the freedom to form political parties to discuss questions of public importance. They are essential as much as they present to the government alternative solutions to political problems. Freedom of association is necessary not only for political purpose but also for the maintenance and enjoyment of the other rights conferred by the Constitution.

In short, the freedom of association includes the right to form an association for any lawful purpose. It also includes the right to form

trade union with the object of negotiating better conditions of service for the employees.

Clause 4 of the Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:

- Sovereignty and integrity of India
- Public order
- Morality

Freedom of Movement and Residence

Articles 19(1)(D) and (E) guarantee to all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These freedoms are aimed at the removal of all hindrances in the enjoyment of these rights.

The freedom of movement of a citizen has three aspects:

- Freedom to move from any part of his country to any other part
- Freedom to move out of his country
- Freedom to return to his country from abroad

The second of these provisions is not guaranteed by our Constitution as a fundamental right and has been left to be determined by Parliament by law. Freedom of movement and residence is subject to restrictions only on the following grounds:

- In the interest of any scheduled tribes

- In the interest of the general public, i.e. public order morality and health.

Freedom of Profession

Article 19(1)(f) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business. The freedom of profession, trade or business means that every citizen has the right to choose his own employment, or take up any trade, subject only to the limitations mentioned in Clause (6).

The right is subject to reasonable restrictions, which may be imposed by the state in the interest of general public. The state may prescribe professional or technical qualifications necessary for carrying on any business, trade or occupation. It also has the right itself, or through a corporation, to carry on any occupation, trade or business to the complete or partial exclusion or private citizens.

Protection in Criminal Convictions (Article 20)

Article 20 (1) declares that 'a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act., nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.' Clause 2 declares: 'No person shall be prosecuted and punished for the same offence more than once.' And,

Clause 3 says that 'no person accused of any offence shall be compelled to be a witness against himself.'

Right to Life and Personal Liberty (Article 21)

Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law. The object of this Article is to serve as a restraint upon the executive, so that it may not proceed against the life or personal liberty of the individual, except under the authority of some law and in conformity with the procedure laid down therein. This Article can be invoked onlyif a person is detained by or under the authority of the state. Violation of the right to personal liberty is not enforceable when it is violated by a private individual, and then the remedy lies in the Constitutional law.

Furthermore, the Supreme Court on various occasions ruled that the expression 'life' in Article 21 does not connote merely physical or animal existence, but includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. Concerned Bill, however, was introduced in the Parliament as Freedom on Information

Bill, 2002 which along with certain restrictions made it mandatory for the government to provide information pertaining to public sphere. This right of information was further illustrated by the Supreme Court, which held that 'a voter has a fundamental right to know the antecedents of a candidate'. Accordingly, Supreme Court struck down some parts of Representation of People (Amendment) Act, 2002 by making a clear distinction between the Constitutional right of a voter and his rights under general laws. The Court declared that voter's fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

Right to Education (Article 21(a))

Under Eighty-Sixth Amendment Act 2002, right to education was provided. For this purpose a new Article in Part III was inserted and two Articles in Part IV were amended. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the state may, by law, determine.'

Protection against Arrest and Detention (Article 22)

Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under the ordinary criminal law. Part II consists of Clauses3–7 and deals with the right of persons who are detained under the law of preventive detention.

Clauses 1 and 2 of this Article recognize the following rights of the persons arrested under ordinary criminal law:

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move to the High Court, for the grant of the writ of habeas corpus.
- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge,
- Nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

Preventive Detention

Clause 3 of Article 22 constitutes an exception to Clauses 1 and 2. The result is that enemy-aliens (i.e. foreigners belonging to the courtiers which are the enemies of the state) and other persons who are

detained under the law of preventive detention have neither the right to consult nor to be defended by a legal practitioner. Clause 4 requires that a person may be detained under the Preventive Detention Act for 3 months. If a person is to be detained for more than 3 months, it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention
- Where the person is detained under law made by the Parliament for this Clause 5 considers two things, namely:
- That the detainee should be supplied with the grounds of the order of detention
- That he should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

Clause 6 declares that the detainee cannot insist for the supply of all the facts, which means evidence and which the government may not consider in public interest. In this context, the Supreme Court has held that an order of detention is malafide, if it is made for a purpose other than what has been permitted by the legislature.

Clause 7 of this Article gives exclusive power to the Parliament to:

- Prescribe the circumstances under which and the cases in which a person may be detained for more than 3 months without obtaining the opinion of the an Advisory Board
- The period of such detention (which it has determined to be not more than twelve months); and
- The procedure to be followed by an Advisory Board.

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPOSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA, the Maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government

to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic. In the wake of intensified terrorist activities in many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

Right against Exploitation (Articles 23 and 24)

Clause 1 of Article 23 prohibits traffic of human beings, begars and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, 'traffic in human beings,' includes the institutions of slavery and prostitution. 'Begar' means involuntary or forced work without payment, e.g. tenants being required to render certain free services to their landlords.

Under Clause 2 of this Article, the state has been allowed to require compulsory service for public purposes, viz. national defiance, removal of illiteracy or the smooth running of public utility services

like water, electricity, postage, rail and air services. In matters like this, the interests of the community are directly and vitally concerned and if the government did not have this power, the entire life would come to a standstill. In making any service compulsory for public purposes, the state has, however, been debarred from making discrimination on grounds only of religion, race, caste, class or any of them.

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. Our Constitution goes in advance of the American Constitution in laying down a Constitutional prohibition against employment of children below the age of 14 in factories, mines or other difficult employments, e.g. railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

Right to Freedom of Religion (Articles 25–28)

In pursuance of the goal of liberty of belief, faith and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.

Article 25(1) grants to all persons the freedom of conscience, and the right to freely profess, practice and propagate religion. This Article secures to every person, a freedom not only to subscribe to the

religion of his choice, but also to execute his belief in such outward acts as he thinks proper. He is also free to propagate his ideas to others.

Clause 2 of this Article allows the state to make law for the purpose of regulating economic, financial or other activities of the religious institutions. At the same time, it allows the state to provide from, and carry on social welfare programmes, especially by throwing open the Hindu religious institutions of a public character to all classes and sections of Hindus, including the Sikhs, the Jains and the Buddhists.

The Parliament enacted the Untouchability Offences Act, 1955, which prescribes punishment for enforcing religious disabilities on any Hindu simply because he belongs to a low caste. The purpose of this reform is to overcome the evils of Hindu religion.

Explanation 1 to Article 25 declares that the warring or carrying of kirpan (sword) by the Sikhs shall be deemed to be included in the profession of Sikh religion. Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining license.

Article 26 guarantees to every religious denomination the following rights:

- To establish and maintain institutions for religious and charitable purpose
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property
- To administer such property in accordance with law

While rights guaranteed by Article 25 are available only to the individuals and not to their groups, those under Article 26 are conferred on religious institutionsand not on individuals. In this Article, religious denomination means a religious sect or body having a common faith and organization and designated by a distinctive name. This was the definition accepted by the Supreme Court. This Article grants to a religious denomination complete autonomy in deciding what rites and ceremonies were essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

Article 27 declares that 'No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination'.

This Article secures that the public funds raised by taxes shall not be utilized for the benefit of any particular religion or religious denomination. Thus, a local authority which raises taxes from persons

of all communities who reside within its jurisdiction would not be entitled to give aid to those educational institutions which provide instructions relating to any particular religion. In other words, an educational institution, which provides compulsory instructions relating to a particular religion is not entitled to any financial aid from the state.

Article 28 is confined to educational institutions, maintained, aided or recognized by the state. Clause 1 of this Article relates to educational institutions wholly maintained out of the state funds. It completely bans imparting of religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the state under some endowment or trust, like the Banaras Hindu University. In such institutions religious instructions may be given.

Cultural and Educational Rights (Articles 29–30)

The object of Article 29 is to give protection to the religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same. The right to conserve or protect a language includes the right to agitate for the protection of that language. It also means that every minority group shall have the right to impart instructions to the children of their own community in their own languages.

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religions, race, caste or language, in the matters of admission into any educational institution maintained or aided by the state. Thus, this clause gives to an aggrieved minority of citizens the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to Scheduled Castes or Tribes are in any case to be given special protection in matters of admission to educational institutions.

The Supreme Court observed that preference in admission given by institutions established and administered by minority community, to candidates belonging to their own community in their institutions on grounds of religion alone is violation of Article 29(2). Minorities are not entitled to establish and administer educational institutions for their exclusive benefit.

Clause 1 of Article 30 is a counterpart of Article 26, and guarantees the right to all linguistic or religious minorities to establish and administer educational institutions of their choice. It entitles the minority community to impart instructions to the children of their community in their own language. The right to establish educational institutions of their choice amounts to the establishment of the institutions which will serve the needs of the minority community,

whether linguistic or religious. When such institutions are established and seek aidfrom the state, it cannot be denied to them simply on the ground that they are under the management of a linguistic or religious minority.

Right to Constitutional Remedies (Articles 32, 33, 34 and 35)

A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226. An individual who complaints the violation of his fundamental rights can move the Supreme Court or the state High Court for the restoration of his fundamental rights.

Article 32(1) declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights included in Part III of the Constitution is guaranteed. Clause 1, thus, guarantees the right to move the Supreme Court for the enforcement of fundamental rights. In other words, the right to move the Supreme Court for the violation of fundamental rights is itself a fundamental right.

Article 32(2) empowers the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus,

mandamus, prohibition, quowarranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

Habeas corpus:

The writ of habeas corpus literally means 'has the body'. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention. Thus, habeas corpus is the citizen's guarantee against arbitrary arrest or detention. By virtue of this writ, the Supreme Court or the High Court can have any detained person produced before it for examining whether he has been lawfully detained or not, and for dealing with the case in accordance with the Constitution and the laws in force at that time.

Mandamus:

The writ of mandamus means 'we command'. It is an order directing person, or body, to do his legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:

- To compel the performance of obligatory duties imposed by law

- To restrain action which is taken without the authority of law, contrary to law, in excess of law.

Certiorari:

The writ of certiorari means 'to be more fully informed of'. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the state.

Prohibition:

The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the

inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.

Quo warrantor

The writ of quo warrantor is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

Article 32(3) provides that, without prejudice to the powers conferred on the Supreme Court by Articles 32(1) and (2), the Parliament may by law empower any court to issue these writs for the purpose of the enforcement of the fundamental rights.

Article 32(4) provides that fundamental rights guaranteed by Article 32(1) shall not be suspended except as otherwise provided by this Constitution.

Fundamental Duties (Article 51(a))

The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was

appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered as one of the fundamental duties. But these recommendations were not accepted by the Congress government.

However, under the Forty-Second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a). Under this Article, this shall be the duty of every citizen of India:

- To abide by the Constitution and respect the national flag and national anthem
- To cherish and follow the noble ideas, which inspired our national freedom struggle
- To protect the sovereignty, unity and integrity of India
- To defend the country

To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities and laws to renounce practices derogatory to women

- To preserve the rich heritage of our composite culture
- To protect and improve the natural environment

- To develop the scientific temper and spirit of enquiry
- To safeguard public policy
- To strive towards excellence in all spheres of individual and collective Activity
- As a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years (this clause was inserted through Eighty-Sixth Amendment Act 2002).

Insertion of these Fundamental Duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to D. D. Basu, the legal utility of these duties is similar to that of the directives as they stood in 1949, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

Also the duties enumerated are quite vague and can be interpreted in more than one ways. It is, therefore, very difficult to have their universally acceptable definitions. One of the duties of the citizens is to follow the noble ideals that inspired our freedom struggle, while each section, which participated in freedom struggle, had its own

ideals. The term ‘noble ideal’, therefore, becomes ineffable and vague. Another duty expects every citizen of India to value and preserve the rich heritage of composite culture. A question that can be asked as to which is India’s composite culture. Similarly, it is difficult to define scientific temper, humanism or spirit of enquiry.

Notwithstanding these criticisms, the fundamental duties have been the accepted part of the Constitution. These duties may act as a social check on reckless activities indulged in by irresponsible citizens and as a reminder to citizens that while exercising or claiming the right they have also to be conscious of these duties they owe to the nation and to their fellow citizens. In brief, the incorporation of fundamental duties in the Constitution was, no doubt, an attempt to balance the individual’s civic ‘freedoms’ with his civic ‘obligations’ and, thus, to fill a gap in the Constitution.

Nature of Fundamental Duties

These duties are in the nature of a code of conduct. Since they are unjustifiable, there is no legal sanction behind them. As you will find, a few of these duties are vague. For example, a common citizen may not understand what is meant by ‘composite culture’, ‘rich heritage’ ‘humanism’, or ‘excellence in all spheres of individual and collective activities’. They will realize the importance of these duties only when these terms are simplified

A demand has been made from time to time to revise the present list, simplify their language and make them more realistic and meaningful and add some urgently required more realistic duties. As far as possible, they should be made justifiable.

Self Assessment Questions

- What are the key duties of a citizen in a democratic state?
- How are fundamental rights safeguarded in a country?
- Why is the right to equality important for citizens?

Unit – III

Form of Government –Unitary and Federal – Type of Constitutions – Written and Unwritten Flexible and rigid

Objectives

- Define Unitary Government and provide
- Written and an unwritten constitution.
- Flexible constitution**.**

Form of Government

Unitary Government

A unitary government is that in which all the powers are concentrated in the hands of the central government. For administrative purpose, the country may be divided into units, provinces or districts, but, their existence as well for their powers they depend upon the will of the centre. Units are merely the creation of the central government and they exist as long as the central government allows them to exist. Which means, centre can abolish these units whenever it likes, and even create new ones at its discretion. Powers are not distributed between the centre and the states under the constitution, but are concentrated in the centre only.

According to C F strong "a unitary state is one organized under a single central government, that is to say, whatever power are possessed by the various districts within the area administered as a whole by the central government, are held at the discretion of that

government and the central power is supreme over the whole without any restrictions imposed by any law granting special power to its parts". And Dicey says, "Unitary government is the habitual exercise of supreme legislative authority by one central power".

Unitary governments exists in countries like England , France. Italy, Japan Sri-Lanka, etc.

Merits of Unitary Government

The following are the major merits of Unitary Government

Unitary type of government is considered as the most effective type of governmental organization. This is because, all important decisions are made at one common centre .This allows the centre to make prompt decisions. Powers given to the states are, only for the purpose of administrative efficiency and the centre can at any time take back those powers. This concentration of power, make the centre very strong.

Another merit is that, the organization being simple, the system posses the great merit of flexibility. It can easily adapt to the changing needs and circumstances .Constitution can be amended without much difficulty, and according to the demand of a particular situation. Governments can always keep harmony with the public opinion.

Unitary systems possess efficient administrations as there are no conflicts between the centre and the states and states are to strictly

abide by the orders of the centre. So, there is no delay in the administration and the centre can take decisions very quickly.

Uniformity of administration is another big advantage of unitary form of government as there is no dual government. There is only one administrative service for the whole country and provincial administrators are to act according to the orders of the centre. There is only one parliament for making laws and one cabinet to run the administration for the whole country.

Unitary system is less expensive compared to the federal form of government as there is no duplication of political institutions at the regional level - there is only one parliament and cabinet for the entire country.

There is no division of allegiance of the citizens like in the case of federation as there is only single citizenship. This means in a unitary state, a citizen is a citizen of the entire country and no separate citizenship for states. This system check separatist tendencies in the constituent units.

Demerits of Unitary System

One major defect of unitary system is that it tends to repress local initiative as excessive centralization reduce the regional units to the position of mere agents of the centre. This impairs the vitality of local governments which is of much importance for the success of

democracy. One problem with centralization is that, centre may not be fully aware of the needs of the region and thus the interest of the region may suffer in the unitary system.

Another defect with unitary system is that, there is the chance of the central government becoming despotic. Vesting full authority in the centre may tends to make the centre autocratic. As Laski observes, "the formidable centralization of the modern state is so great an enemy to an ideal system of rights. For only where power is distributed widely is there any effective restrain upon those who wield it."

Lack of local autonomy is a major demerit of the unitary system. Centre may not have sufficient time to tackle local problems. Local administrators are appointed by the central government and local people may not get enough representation in the decision making apparatus. This impairs the vitality of local administration. Interest of the region are best understood by the people of the region themselves

It is argued that unitary system is not suitable for big countries with many diversities, like India and U.S.A. Here separate legislatures and de-centralisation are needed for the units to satisfy the varied interest of the region.

Unitary system, it is argued, is more prone to collapse. Since Unitary system has only one central authority, it may easily collapse under stress from within and outside the country.

Federal Government

Federal government is one in which there is division of powers between the centre and the units. Power and authority of the state is divided and distributed between the centre and the states in a federation. Hence, in a federation, more than one government exists within a sovereign state.

According to Finer, "A federal state is one in which part of authority and power is vested in the local areas while the another part is vested in a central institution deliberately constituted by an association of local areas". According to Dicey "A federal state is nothing but a political contrivance intended to reconcile national unity with the maintenance of state rights".

Word Federation is derived from the Latin word 'Foedus', which means treaty or agreement. A federation is a union of states and it is generally the result of two kinds of forces –Centripetal and centrifugal.

A federation may be formed as a result of centripetal forces, when independent states join together to form a new state. Here, two or more hitherto independent states agree to form a new state, for reasons as varied as economic interest or security. The federal union is brought through a treaty or agreement, where mutually agreeing states surrender their sovereignty. Distribution of powers is between the

centre and the states is based on a constitution and alteration in this can only be brought about through the tedious process of amendment. Central government is generally entrusted with matters of common or general interest and states are allocated matters of local interest. United States of America and Australia, are prime examples of federation formed as a result of centripetal forces.

Sometimes a unitary government may be transformed into a federation as a result of centrifugal forces. Here, federation comes into existence through a process of 'disintegration'. Units demand a larger measure of autonomy and this result in the formation of a federation with the distribution of power and authority between the centre and the states. This arrangement is brought about through a constitution and can be altered only through amendments. The central governments retains only those subjects, which are of national importance and transfers the rest to the jurisdiction of the units, each autonomous within the sphere assigned to it. This was the case in India when greater autonomy was given to the provinces by the Government of India Act, 1935. K C Wheare characterizes India having a 'quasi-federal' feature; a unitary state with subsidiary federal features. Canada is an example of a federation formed as a result of centrifugal forces.

Essential Features of a Federation

Distribution of Powers between the Centre And the States

Distribution of powers between the centre and the states is indispensable for the existence of a federation. The scheme of distribution of powers will be provided in the constitution and it can only be changed through amendments. For administrative efficiency, central government grants autonomy to provincial governments. Generally ,the division of powers is done in such a way that matters of national importance and which are of common interest and that require uniform treatment are handled by the central government. And, regional governments are entrusted with matters of local interest. Defence, Foreign Relations, Communications etc., invariably, are handled by the central governments and matters like supervision of local government, Education, agriculture, co-operation etc., falls within the power of state or regional governments. Actually, there is no clear rule regarding the division of powers in a federation, but generally it happens according to the circumstances in which it adopted the federal form of government.

Two methods are adopted in the distribution of powers, between the centre and the states. In the first method, the central government is given enumerated powers and the state government the residuary powers. This is the case in United States and Australia. The

reason for adopting this system by the U.S.A. was largely historical. In America, states initially, refused to join the federation when it was trying to form one. And when they finally decided to join the federation, the states were not willing to give more powers to the centre. As a result, in the United States, by the tenth amendment "the powers not delegated to the United States by the constitution nor prohibited to it by the states, are reserved to the states respectively, or to the people.

In the second method, enumerated powers are given to the provinces, and the residuary powers are left to the dominion government. This is the case in Canada. In Canada too, historical events determined that, it adopt a system with strong Federal Government and weaker provincial governments. When the representatives of Canada met at Quebec in1865 for the purpose of forming a federation, all the powers were then in the hands of the Federal Government. The desire to keep a strong federal government was high among the people, as they felt they could not ignore the lessons from the civil war in the United States, which could have easily been tackled had America possessed a strong centre. India too, opted for a strong central government as the constitution was framed after the partition of the country and the framers of the constitution

decided have a strong centre which they thought will check secessionist tendencies in the future.

Supremacy of the Constitution

Second and essential feature of a federation is that constitution should be supreme. This essentially means that, the it should not be possible for the units as well as the federal governments to change the constitution, whenever it pleases. Centre and the states must have full faith in the constitution and it should be considered as the highest law of the country. Both the centre and the units should work within the allotted spheres and if they go beyond it, they are bound to be checked by the judiciary. A written and rigid constitution make sure that constitution can be changed only with the consent of the federal government and the units and that too, the both, working together. A special procedure is adopted to amend the constitution and the amending procedure is deliberately made difficult in a federation .This is done to ensure that there are very few amendments made and so the stability of the constitution is maintained. Dicey says "the law of the constitution must either be immutable, or else capable of being changed only by some authority above and beyond the ordinary legislative bodies, whether federal or state legislatures existing under the constitution"

Supremacy of the Judiciary

Stability of a Federation depends largely upon the existence of an independent and impartial judiciary. Federal Judiciary performs two important functions in a Federation

(1) It adjudicates on disputes arising between central and the regional governments or between one regional government against the other.

(2) It keeps different governments within their limits laid down by law, so that none may encroach upon the jurisdiction of the other.

In the absence of an independent judiciary, Centre and the states would have interpreted the constitution to their own liking. In a federation, supreme court is established to decide constitutional disputes and to interpret the constitution. In India and the United States, supreme court performs these functions and its judgment is binding on both the central and regional governments. A free judiciary is essential, so that the centre or the states may not have decisions in their favour by exerting pressure on the judiciary. Moreover, to win the confidence of the centre and the states a free and impartial judiciary is a necessity. J S Mill has emphasized this fact, that "not only that the constitutional limits of the authority of each (central and regional governments alike) should be precisely and clearly defined , but the power to decide between them in any case of dispute should

not reside in either of the governments, or in any functionary subject to it, but in an umpire independent of both. There must be a supreme court of justice, and a system of coordinate courts in every state of the union, before whom such questions shall be carried, and whose judgment on them in the last stage or appeal shall be final"

Conditions Necessary for the Success of Federation

Certain conditions are essential for the successful functioning of a federation. They are as follows-

Geographical contiguity is essential for the states desirous of forming a federation. It is very difficult to create a spirit of unity and mutual help, if states in a federation are widely separated by land or sea. Gilchrist has remarked, "Distance leads to carelessness or callousness on the part of both central and local governments. Natural unity is difficult to attain where the people are too far apart". Defense of the federation is a major problem when states are far apart. For instance West and East Pakistan were separated by thousands of kilometers and during the war of 1971 with India, Pakistan failed to defend its territory, and that eventually led to the creation of a separate nation- Bangladesh. There is geographical unity in the case of India, USA and Canada.

Another condition is that, there should be a genuine desire among the states to form a federation, in other words, states should

voluntarily join in a federation. The will to have a federation among the states is the basis of formation of a federation. The units joining the federation should be bound together by common ties of national affinity and sentiment. Otherwise, federal government will be unable to stand up to the stress and strains inherent in a federation. Federalism is an effective device to keep together a plural society, or to secure unity in diversity. India, Canada and USA are examples of states that have many diversities, but for one reason or the other, they have developed a sense of common identity, which they really cherish and do not wish to lose. At the same time, units should be able to maintain their separate identity. In the words of Dicey "they must desire union and not unity".

Absence of marked inequality among the units is cited as an important condition for the success of federation by some writers. Though, in practice, equality among all the units in a federation is inconceivable. It is said that, units of a federation should be comparatively equal as regards area and size of the population. If there is marked inequality, there is every chance of exploitation of weaker units by the stronger ones. Inequality among states can lead to conflict and thus, hurt the stability of the federation. According to K C Where, "There must be some sort of reasonable balance which will ensure that all the units can maintain their independence within the sphere

allocated to them and that, no one can dominate the others. It must be the task of those who frame and work a federal government to see that no unit shall be too large, and, equally important, none too small".

A federating unit must possess adequate economic resources. The dual government entails a lot of expenses. Units in a federation must have sufficient economic resources to carry out its functions and should not be too dependent on the centre for its financial needs. If that is the case, then, units would not be able to enjoy real independence. Moreover, wide economic inequality has the potential to create conflicts among units.

Similarity of social and political institutions is an important factor for the formation as well as for the better working of a federation. This helps the federation to work harmoniously. It is difficult to create unity if there exits wide dissimilarity in the political institutions of the state. The constitution of India, Canada and Australia provide for the parliamentary form of government at the centre and in the units. Likewise, constitution of America demands that it should be the 'republican' form of government at the centre and in the federating units.

Federal government requires people to be politically competent as well as enlightened .People should be politically educated, which would allow them to forget differences and work with a compromising

spirit for the welfare of the federation. The dual allegiance to the central and provincial governments requires a proper balance and can be better handled by the people who are politically educated and mature.

Merits of Federal Government

Countries that have vast territory and characterized by diversities of language, culture, race, religion etc., have found the federal form of government advantageous. The merits of federation are many and important among them are as follows-

It is well accepted that the federal form of government seek to reconcile national unity with regional autonomy. It harmonizes local autonomy with national unity and thereby provides an equilibrium between centripetal and centrifugal forces. In this type of government local self government, regional autonomy and national unity are all achievable. In this system, unit can retain their separate identities and autonomy, but it is not at the cost of national unity. Dicey has rightly observed, "Federal state is a political contrivance intended to reconcile national unity and power with maintenance of 'state rights'.

Division of powers between the centre and the states is a sure way to administrative efficiency. In fact, a federal system is based on the principle of decentralization and division of powers. A major reason for administrative inefficiency is said to be the concentration of

authority and the consequent overburdening of work. But, in a federation with the distribution of power and authority, this problem does not arise. In a federation, burden of work of the centre is lessened and centre does not have to be bothered about the problems, purely of local nature. Centre can concentrate on issues of national importance and the units can effectively tackle issues of regional nature. This arrangement inevitably leads to the efficiency of administration.

Distribution of powers is an effective check on the rise of despotism. If all the powers are vested with the centre, it may become despotic. In a federation distribution of powers is carried out according to the provisions of the constitution. Any attempt to usurp the powers of the units by the centre will be firmly resisted by the units. Moreover, federal judiciary ensures that centre does not exceeds the power which it is authorized to hold as per the constitution. According to Bryce, federalism thus prevents the rise of a despotic central government. It also facilitates the establishment of democratic institutions in a widely diffused area. It provides for limited and constitutional government.

In a federal set up it has been observed that people take more interest in the local and regional affairs. People gets ample opportunities to take part in the affairs of the region and they play a part in the formation of local governments. This naturally stimulates

the interest of the people in public affairs and makes them active participant in the democratic process.

Federation provides condition for faster economic growth as free flow of labour and capital is possible in a federation where it is in short supply. Moreover, vast territories with abundant and varied natural resources come in handy in its pursuit of economic growth.

Another great merit of federation is, it's strength. The federation consists of many states and their combined resources give them greater security and strength. For instance, the most powerful nation. U.S.A., consists of fifty states, and these states individually would not have commanded the respect and stature that it commands now, had they stayed independent. Same is the case with India, where the erstwhile princely states would not have got any importance in the international arena, had they not joined the Indian union. It can be added here that small states derive more advantage while joining the federation than staying alone.

Demerits of Federal Government

Federation is not without demerits. Some of them are listed below-

Federal government is generally considered to be weaker, compared to the unitary ones. Since the authority is divided between the centre and the states there cannot be any prompt action as the

centre will have to ascertain the views of the units before taking a decision. Distribution of powers leads to division of responsibility and this weakens the government. Dicey feels that "A federal government is, as compared with a unitary constitution, a weak form of government…… A true federal government is based on the division of powers. It means the constant effort of statesmanship to balance one side of the confederacy against another".

One of the biggest threats, a federation faces is the danger of secession of units from the federation. Units enjoy autonomy and sometimes they are allowed to have separate constitutions, legislature, executive and even judiciary in a federation. Units may develop a spirit of defiance and independence and this may prompt them to think of secession. This happened in the case of U.S.A. where the southern states seceded from the federation and were brought back with the help of force.

Another demerit is that, federal system entails huge expenses. Since there are two sets of government, it is more expensive and complex. Federation has to maintain separate legislatures, cabinet, bureaucracy etc., for the centre and the states. Dual system also adds to the complexity of government functioning.

Federal form of governments demand constitutions which are written and rigid. It is difficult to make changes in the rigid

constitution. Critics of federation point out that, because of the difficulty in making changes in the constitution, federal constitutions often are not able to keep pace with the changing needs and aspirations of the people. This impedes national progress.

Federalism also create divided allegiances and divided loyalties. Generally, federation provides double citizenship- an individual is a citizen of his own state as well as the citizen of the federation. Therefore, the citizen has to be loyal to their state as well as to the centre. Problem arises when loyalty of a citizen come into conflict with the loyalty towards centre.

There are some weakness with regard to pursuance of vigorous foreign policies by the federal government. State governments sometimes may not agree with the centre on foreign policies. For instance, when government of India transferred some area of Berubari in December 1960 to Bangladesh as per the ninth constitutional Amendment, the state of West Bengal lodged a strong protest with the centre. Likewise, various local considerations have an impact on the way finally how the foreign policy of a federation is framed, which may not always be in the best interest of the federation.

Federations are characterised by the vast diversity of legislation and administration. Each units have their own legislature and administration. The laws made by one unit may hugely differ from the

laws made by the other unit on the same subject. This leads to a lot of confusion, as a citizen may violate the law of one unit but not the other when he carry out the same action at different units. Such diversities of legislation leads to a lot of confusion and complexities.

Type of Constitutions

Introduction

A modern state has grown from simplicity to complexity and is still becoming more and more complex. The people living in it are not only members of the state but also of other associations. But, the state has a physical force behind it and as such it is essential that, it should administer force with caution. Force and authority of the state should only be used in accordance with the rules and those who feel that the administration of force on them is unjustified should be given an opportunity to prove their innocence. This is the reason that even the most despotic states develop a code of administration which is called the Constitution.

Meaning of the Constitution

The word Constitution is taken from Latin „Constitute" which implies „to establish". The constitution is that the fundamental document of a country. It is the basic law of a state that regulates the distribution of powers within different wings of government. In normal terms, the constitution of a state is also outlined as a body of rules and

regulations, written and unwritten, by virtue of what government is setup and it operations. It is an additional matter that in order to fulfill the necessities of a democratic order, a constitution incorporates some more principles specifying relationship between the people and their state within the variety of a particular charter of their fundamental rights and obligations.

Hence, a constitution "may be aforementioned to be a set of principles in step with which the powers of the government, the rights of the governed, and the connection between the two are adjusted." In alternative words, it is going to be delineated as a frame of political society setup through and by law, in which law has established permanent institutions with recognised functions and definite rights."
By all means, it is a legal document known by different names like,

- Regulation of the state,
- Tool of government
- Basic law of the territory
- Basic statute of the polity
- Foundation of the nation-state

The constitution of a state, in brief, gives all basic principles on which the state is to be governed leaving the details for the governments to work out. In other words, the constitution of a State provides the skeleton of the body politic whereas flesh and blood are

provided by the subsequent laws. The English word Constitution' means the physical structure of a person. In political science, the term constitution means the structure and the organization of the State or government. The constitution contains the fundamental principles of the government.

Definitions of the Constitution

Cooley: "The Constitution is the fundamental law of the State, containing the principles on which the government is founded."

Bryce: "A constitution is a set of established rules embodying and directing the practice of government."

Finer: "The Constitution is a system of fundamental political institutions."

Dicey: "All rules which directly or indirectly affect the distribution or the exercise of sovereign power in the State make up the constitution of the state."

Woolsey: "It is the collection of principles according to which the powers of the government, the rights of the governed and relations between the two are adjusted."

Borgeaud: "A constitution may be a written instrument, a precise text or series of texts enacted at a given time by a sovereign power"

Aristotle: "A constitution is the way in which citizens who are component parts of a state are arranged in relation to one another."

Gettell: "The fundamental principles that determine the form of a state are called its constitution. These include the method by which the state is organized, the distribution of its sovereign powers among the various organs of government, the scope and manner of exercise of governmental functions and the relation of government to the people over whom authority is exercised."

Lewis: "The term Constitution signifies the arrangement and distribution of the sovereign power in the community or form of Government."

Leacock: "Constitution is the form of Government." Austin: "The Constitution fixed the structure of Supreme Government".

Jellinek: "Constitution is a body of rules or laws, which determine the supreme organs of the states, prescribe their mode of creation, their mutual relation, their sphere of action and finally the fundamental place of each of them in relation to State",

The basis of any system of government, democratic or otherwise, is its constitution. In a democracy, however, the constitution has a special significance. Still, writers differ as to the precise meaning of the term constitution. Its general nature may be

understood by examining some of the authoritative statements of eminent writers.

For instance, Lord Bryce defined a constitution as "a frame of political society, organized through and by law, that is to say, one in which law has established permanent institutions with recognized functions and definite rights."

According to Dicey, “it includes (among other things) all the rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other, or which determine the mode in which the sovereign power, or the members thereof exercise their authority." It follows, that a constitution signifies the total complex of effective rules relating to the fundamental concerns of government.

Modern writers view the constitution as a scheme for the arrangement of power-relationship inside a community. The basis of a constitution lies in a belief in the limited government. Its purpose is to design the institutional fabric of a state by means of which power relationships may be so organized, that it would lead to an effectively restrained governmental action. Sometimes constitutions are classified as written and unwritten, rigid and flexible.

A written constitution is supposed to mean a document or a collection of documents, in which the rules regulating the main

institutions of government are written down. In this sense there are written constitutions in India, the United States, and France etc. An unwritten constitution, on the other hand, stands for the whole body of customs, conventions and usages which have not been systematically documented and yet which are as important as regulating rules as those in a so-called written constitution. In this sense Great Britain is said to have an unwritten constitution.

Necessary of a Constitution

During the period before the American Revolution, the idea of a constitution as a necessary and fundamental document was very much to the forefront. As the nineteenth century wore on, the idea became firmly rooted that, every state must have a constitution and that it must rest on the approval of the people. Today constitutionalism has become the bedrock of democracy. A constitution is desired for a variety of reasons:

- To curb the powers of government by a fundamental law.
- To restrain the government on behalf of the individual.
- To limit the vagaries of present and future generations.

John Adams, James Madison, and a long succession of the Supreme Court Justices of the U.S.A emphasized this view point In contrast to it; Jefferson preferred to set a limit to the duration of any particular constitution. Today most scholars will agree with Schulze

when he says "every community entitled to the name, of state must have a constitution i.e., collection of norms by which the legal-relations between the government and its subjects are determined and in accordance with which the power of the state is exercised; a state without a constitution is unthinkable."

Kinds of Constitutions

It is helpful to bear in mind the range of possible classifications which can be applied to any constitution. Professor KC Wheare identifies the following classification as

- Written and unwritten
- Rigid and flexible
- Supreme and subordinate
- Federal and unitary
- Separated powers and fused powers; and republican and monarchical.

Enacted Constitution

Enacted constitution is that, Constitution which is framed by a constituent assembly. Such a constitution is enforced on some fixed date, For example, the Indian constitution is an enacted constitution. It was framed by a Constituent Assembly and it was enforced on 26th January 1950.

Evolved Constitution

Evolved constitution is that constitution, which is neither created by any assembly nor enforced on some fixed date. It is the result of evolution and growth. It takes hundreds of years to grow. For example, the British constitution is an evolved constitution.

The Written Constitution

The American constitution heralds the era of constitutionalism. The American example has been followed by several other nations. Constitutionalism provides for a philosophy of change which is rationalized legally as well as morally and socially. A written constitution is one in which most of the provisions are embodied in a single formal written instrument or instruments. "It is a work of conscious art and the result of a deliberate effort to lay down a body of fundamental principles under which the government shall be organized and conducted".

A written constitution may be composed within a single document bearing a single date such as the constitutions of the U.S.A.. India, and Burma or may be written in a series of documents such as those of France and Austria. In states having written constitutions there are generally two bodies of law, one constitutional and paramount, and the other statutory and subordinate. This distinction, however, is not always found in states with the written constitutions.

The Unwritten Constitution

An unwritten constitution is that in which most of the prescriptions have never been reduced to writing and formally embodied in a document or collection of documents. It consists mainly of customs. Usages and judicial decisions together with a smaller body of legislative enactments of a fundamental nature created on different dates. The constitutions coming under this category cannot be struck off at once by a constituent assembly or any other body. The British constitution is the best example of such a constitution. Nobody has the legal authority to declare an Act of Parliament or of the executive unconstitutional.

Even Britain has certain written documents such as the Magna Carat, the Petition of Rights, the Bill of Rights, the Act of Settlement, the Franchise Acts, and the Parliament Act of 1911. But, the most important part of the British constitution is contained in "conventions" or "understandings". As Finer puts it, "they are taken for granted but not formulated".

Flexible Constitutions

All those constitutions which possess no higher legal authority than ordinary laws and which can be changed or amended by the same procedure as ordinary laws, whether they are enshrined in a single document or in a large number of conventions; are classified as

flexible or elastic constitutions. Such constitutions, though written, possess flexibility and can be altered at will as easily as an ordinary law. The constitutions of Great Britain, to some extent, has influenced and brought it that of India, come under this category.

Rigid Constitutions

Those constitutions which are enacted by a different body which have a higher status than ordinary laws and which can be altered only by special procedure, are classified as rigid, stationary or inelastic constitutions. This fact is made clear, if the method of amending the American, Australian or Swiss constitutions is carefully studied.

Essentials of a Good Constitution

Regardless of whether a constitution is appropriate or inappropriate for a specific nation depends up on the circumstance, which prevail there. It is conceivable that a specific sort of constitution might demonstrate valuable for a specific nation, yet for another country it may not demonstrate helpful. For instance, a federal constitution is fit for India, but it is not apt. for Nepal, Myanmar and Pakistan. It relies upon the social and financial set up of the country. Each state has a privilege to choose and outline its own constitution. A good constitution should have the accompanying characteristics.

Clarity or Definiteness

By readability and definiteness, we suggest that each clause of the constitution need to be written this type of easy language, as need to specific its that means clearly.

Brevity

The constitution ought to now no longer be lengthy. It ought to incorporate handiest vital matters and unimportant matters ought to be left out.

Comprehensiveness

It implies that the constitution ought to be material to the entire nation or other than the central government, tthere ought to be notice of the construction and powers of state or provincial governments. Mention must additionally be made approximately the crucial topics regarding the rights and obligations of the authorities and the citizens.

Flexibility

One of the foremost vital characteristics of an honest constitution is its ability to adjust to the ever-changing society. A honest constitution should be versatile to some extent. It should always adapt to the social, political, economic, technological and alternative changes that are inevitable within the lifetime of a rustic for its growth and process. It ought to be flexible and furthermore be generously deciphered to meet the always evolving social, financial and political

necessities of the country. Where the constitution isn't adaptable, it will be hard for it to address the issues of the residents in the midst of crisis.

This doesn't likewise imply that the constitution ought to be excessively adaptable, as that will likewise take into account simple meddling with the arrangements of the law. The constitution should make uncommon circumstances where it tends to be corrected to meet certain improvements in the general public. The constitution ought not be too unbending to even consider obstructing the course of revision when required.

Declaration of Rights

A good constitution should contain the fundamental rights of the citizens. In the constitutions of nations like Soviet Union, China, France, India, US, Japan and Italy such kinds of presentations have been made.

Independence of Judiciary

Freedom of Judiciary is one more nature of a good constitution. The judiciary ought not be heavily influenced by the executive and it should operate independently and act as the defender of the Fundamental Rights of the citizens without favor or dread.

Directive Principles of State Policy

In a good constitution notice should be made of the Directive Principles of State Policy, since it helps in the foundation of a welfare state. These principles additionally fill in as a reference point for the public authority. However these principles have been referenced in a couple of constitutions of the world, yet it is valuable and not unsafe to specify them. These principles have been remembered for the Constitution of India and Ireland.

Written Constitution

On the basis of the above mentioned definitions it can be laid down that the constitution of a state determines the organization of its government. It specifies the various organs of the government their respective powers and inter-relations. It also states the general principles on which their powers are to be exercised. Constitution came into existence may be classified as written or unwritten. A constitution is called written if its fundamental provisions are embodied in one or several documents. It would be better to call it an enacted constitution. It is always the result of a conscious and deliberate effort to lay down the fundamental principles under which the government of people is sought to be organized.

A written constitution is the work of a either a constituent assembly or a legislature body. It is usually promulgated on a specific

date. The constitution of United States of America was drafted by a special convention of delegates at Philadelphia. Like that, constitution of India is proclaimed on a particular date i.e. 26th January 1950. It provides certain fundamental rights to the people. It also provides a method of amendment. As the written constitution is the work of either a constitutional assembly or a legislative body. It is superior to an unwritten constitution which is based on customs and conventions. The written constitution provides a special process for amending the constitution and thus it make the constitution rigid. The process of amendment being difficult it is more stable than a flexible constitution or an unwritten constitution.

Demerits

The written constitution has some demerits:

1. The written constitution provides a special process for amending the constitution thus it makes the constitution rigid. The process of amendment being difficult it is more stable than a flexible constitution on unwritten constitution.
2. Clarity an unambiguity are the two essential pre-requisites of a written constitution. But most of the written constitution lacks there two principles. The Indian constitution has been called the lawyer‘s paradise as it provides a fertile ground for litigation.

3. But every written constitution has unwritten elements for example there are unwritten convention in the constitution of U.S.A. and India.

Unwritten Constitution

An unwritten constitution is one which has not been enacted by constituent assembly or by any sovereign body deliberately authorized by the people for the purpose. It is a product of history and result of evolution.

It is based on customs and conventions which have ground for a long time. According to C.F. Strong that a constitution is generally called unwritten if it has grown up on the basis of customs rather than of written law. According to Gettel, ―An unwritten constitution of governmental organization has not been reduced to definite written form to embodied in basic document. It consists of rather mass of certain usages, judicial decision and statues enacted at different times‖.

The British constitution is the sole example of such constitution in the modern world. An unwritten constitution is one which the fundamental principles of government organization are not comprised in one document or a few documents. It has developed on the basis of customs, usages, and judicial decisions. It is a product of evolution.

Merits of an Unwritten Constitution

The unwritten constitution is flexible. Flexibility and adaptability are two important advantages. A flexible constitution is one which can be easily changed through the process of ordinary legislation. It avoids a lot of complications and formalities as it requires no special process to amend the constitution. The unwritten constitution is that its roots are embodied deep in the past. It paved the way for its continuity in growth.

Demerits

The important demerit of an unwritten constitution is that it lacks stability. The flexibility of the constitution and the supremacy of the parliament should be used carefully there is the possibility. The people should be politically aware and the leaders should be welfare minded. Hence written constitutions are not suitable for a country with people of different ideas and leaders of the different attitude of the executive strengthening its power. It may change the constitution to suit their own will and wish. Every written constitution has certain unwritten elements. For example there are unwritten convention in the constitution of U.S.A. and India. The unwritten constitution of England has mass written element and other agreement made between the people and the king were written.

The Difference Between Written and Unwritten Constitution of Degree not of Kind

But this distinction between the written and unwritten constitutions has rather been exaggerated and in reality it is not genuine. In short there is no constitution in the world which is wholly written or entirely unwritten. A constitution has to keep pace with the changing circumstances and as such must provide scope for growth and expansion. The customs and conventions and supplement the written constitution and provide life and movement to it. Similarly in unwritten constitutions, in course of time, certain customs and conventions tend to assume a written shape and are reduced to writing. To understand these points we must go into the working of the American and British constitutions and analyze how these fare contain written and unwritten elements.

In the U.S.A numerous extra-constitutional developments have supplemented the original constitution. The most notable of these extra constitutional developments is the rise of political parties. The farmers of the constitution wanted to provide for a mechanism of government free from party-factions. But in the President election in 1796 there emerged two political parties supporting the rival candidates. By 1800 the partysystem, had firmly caught roots in U.S.A and the necessary amendment (12^{th} was made in the constitution. Since then the political

parties from the hub of national to assist the President. President Washington started the practice of having a small group of advisers to assist him. The succeeding Presidents followed this example. As a result today it is impossible dispense with this body known as Cabinet. The other important extra-constitutional developments in U.S.A. include Senatorial Courtesy, presidential nominating conventions, and residence requirements for election as member of House of Representatives etc. Similarly the Committee System in U.S.A is based on customs and usages. The Supreme Court of U.S.A has also played an important part supplementing the written constitution by liberal interpretation of the constitution and by assigning it new meanings according to the requirements of time.

The English Constitution, which is the only example of an unwritten constitution, also includes a considerable portion in statutory or written form. The succession to the throwing problems regarding suffrage, elections, judiciary, duration of parliament etc. have been subject to parliamentary regulation for centuries. Some of the former customs now enjoy statutory status. For example before the passage of famous Parliament Act of 1911, it was customary for the House of Lords to concede supremacy to the House of Commons in the financial sphere. The conflict over the budget of 1909 led to the passage of Parliament Act of 1911, which gave exclusive powers to the House of

Commons to pass money bills and enact ordinary bills without the consent of the Lords. The supremacy of the House of Commons was further confirmed and extended by the Amending Act of 1949. Likewise, the Ministers of the Crown Act gave legal status to the Cabinet, to the office of the Prime Minister, the political parties and even to his Majesty‘s opposition. Thus even in England the statutory (written) element seems to be gaining in relative strength.

Thus Strong has opined that ―the distinction sometimes drawn between written and unwritten, or, as we have called them, documentary and non-documentary constitutions, is a false one. For constitution is nonetheless a constitution even thought it is not set out in documentary form. To deny this is to fall into the error of de Tocqueville, the great French expositor of American democracy, who, because Britain lacked a constitutional documents, asserted that the ―British constitution did not exist‖. He further argues that the distinction between the unwritten and written constitutions is triply misleading. First, it misleads us by suggesting that while the force of custom and precedent is the sole ground of development in an unwritten usage ….. no constitutions are either written or unwritten in this absolute sense. Second, the distinction between unwritten and written constitutions is misleading because it implies that there can be no laws of the constitution except those which are all brought together

in one document called the constitution. If no such document exists, this argument seems to say, then there is no law of the constitution. Thirdly, this distinction is misleading because thereby we are persuaded to believe that law must necessarily be in a written form. This is certainly not true. Even if we could point to a constitution which had developed solely upon custom, we might still assert that it had law, for custom can have the force of law.

Prof. Garner has observed: ―A co-called written constitution is one in which most, but not all of the provisions have never been reduced to writing and formally embodied in a document or collection of documents. A written constitution, on the contrary, is one in which most of the provisions are embodied in a single format written instrument or instruments‖.

The above discussion leads us to the conclusion that the distinction between written and unwritten constitution is really one of degree rather than of kind. All written constitutions, with the passage of time, are overlaid with unwritten elements just as the unwritten constitutions, in course of time, come to have substantial written element.

Rigid - Flexible Constitution

Rigid Constitution

A constitution can be classified as rigid and flexible, according to the difficulty of the case with which amendments may be made. A rigid constitution is one which needs a special procedure for amendments which is quite different from the procedure for amending the ordinary laws of the hand. The different in procedure is due to the fact that constitutional law is considered to be superior to the ordinary law. Each written constitution provides a method to change itself.

According to C.F. Strong there are mainly four methods for constitutional amendments in vogue in different countries.

1) By the ordinary legislature but under certain restrictions. 2) By a
2) majority of all the units of a federal state.
3) By a special convention.

Since a rigid constitution is usually the result of the deliberation of a special body of persons and to provisions are prepared with great care and intelligence it is expected to be clear and definite. Being always written its provisions can be easily ascertained by reference to the legal document. The process of amendment being difficult it is more stable than a flexible constitution less liable to affected by temporary popular passions. Thus the greatest merit of a rigid constitution is that it posses stability and permanence.

A rigid constitution which normally contains chapters for fundamental rights. Thus it safeguards the fundamental rights of the people. If it also safeguards their rights of the people. It acts as a check for the legislatures encroachment

Merits of Rigid Constitution

1. A rigid constitution possesses the qualities of stability and performance. A rigid constitution is essentially a written constitution which is the creation of experienced and learned people. Thus it is the symbol of national efficiency. People regard it as a sacred document and they are ready to work according to its provisions.
2. A rigid constitution safeguards legislative violation, Constitution should not be a plaything in the hands of legislatures.
3. A rigid constitution safeguards fundamental rights effectively. Fundamental rights are part of constitution. No legislature can tamper them, because they are superior to ordinary law.
4. A rigid constitution protects the rights of minority. Minorities cannot be expected to agree to their rights being endangered by a majority action. If the majority ventures it, the judges perform their function of guardianship.

5. A rigid constitution is free from dangers of temporary popular passion. Because of complex amendment procedure the constitution may not be swept away by the emotions of the people which in most of the cases are not based on wisdom and reasoning.
6. A federal set up of government essentially needs a rigid constitution for the safety of the rights of the units as well as for the strength and integration of the federation.
7. Under rigid constitution units of a federation feel secure and at the same time there is a check on their activities also in order to stop them from violating each other‘s jurisdictions.

Demerits

The important demerit of a rigid constitution is that cavity adaptable and may even break under changing constitute.

Another important demerit of a rigid constitution the judiciary is given too much power to decide the constitution of law. Its constitutes are wholly rigid, it is harmful and if it is fully flexible, it is equally harmful hence certain advocate a blend of rigidity and flexibility as a feature of a good constitution.

Flexible Constitution

The division of constitution into rigid and flexible was properly by Lord Bryce. Its basis lies in the relations of the constitutional law to

the ordinary law of the land and to the authority which maps them. If the constitution of a state can be made, amend a repealed by the same authority which is empowered to make, amend or repeal the ordinary laws according to which the relation of the citizens to one another are governed it is said to be flexible. In such a constitution there is no distribution between constitution authority and the ordinary law making authorities. No special procedure need by adopting for embody the constitution. The British constitution is the classical example of this type.

The main features of the flexible constitution are its places the constitutional and statutory law on a basis of equality. There is no difference made between the constitutional majority authority and the law making authority constitutional law is ended in the same way as an ordinary law is. Judiciary has no power of judicial law.

Merits of Flexible Constitution

Elasticate and adaptability are the two important merits of a flexible constitution. The flexible constitution can also change with the time. According to Bryce flexible constitution can be started on bend so as to meet emergencies out dragging them from work and when the emergency has passed, they slip back into their old form like a tree whose outer branches have been pulled on one side to let a vehicle pass.

Demerits of a flexible constitution

Due to its flexible nature the constitution keeps on changing. The constitution may be changed just to satisfy the people who are in majority ignoring the welfare of minority. It fails to provide a stable system in administration, which results in the poor performance of the government.

When the procedure of amendment is simple and easy, it is liable to be seriously affected by ever changing popular passion. And popular passions are guided by emotions, not by reasons. These decisions, which are based on emotions, may disturb the harmony and balance of a nation. It may divide the society and there may be a possible threat to the integration of the nation itself. Flexible constitution is not suitable for a federal system, because the rights of constituent units are not guaranteed due to flexible nature of the constitution.

The flexible constitution lacks stability and permanence as it can be easily changed. The leader may change it according to their personal will and wish. A flexible constitution may not safeguard the rights of the people.

The following are the differences between the flexible constitution and the rigid constitution.

Flexible Constitution	Rigid Constitution
Written constitution is found in legal documents duly enacted in the form of laws.	An unwritten constitution consists of principles of the government that have never been enacted in the form of laws
It is precise, definite and systematic. It is the result of the conscious and deliberate efforts of the people.	It is unsystematic, indefinite and unprecise. Such a constitution is not the result of conscious and deliberate efforts of the people
It is framed by a representative body duly elected by the people at a particular period in history.	It is not made by a representative constituent assembly. So, it is sometimes called an evolved or cumulative constitution
It is always promulgated on a specific date in history.	It does not have a specific date, as it is evolved in course of time.
The Constitution of India is the best example of written constitution (promulgated on 26th January 1950) . A written constitution is generally rigid and its amendments need constitutional laws. In other words a distinction between constitutional law and ordinary law is maintained. The first is regarded as superior to the second.	The constitution of England is the best example of an unwritten constitution. A written constitution is generally rigid and its amendments need constitutional laws. In other words a distinction between constitutional law and ordinary law is maintained. The first is regarded as superior to the second. Unwritten constitution is not rigid and its amendments DO NOT need any laws. In other words a distinction between constitutional law and ordinary law is NOT maintained.
A written constitution may also be termed as an enacted constitution.	Unwritten constitution may also be termed as an un-enacted constitution.

The evolution of Indian constitution started during the British rule in India. Indian constitution was framed by constituent assembly with a group of members who pursued to improve the existing conditions prevailing in India and other countries	The foundation of the English Constitution was laid in the 13th century by King John, who issued the first charter of British freedom known as the Magna Charta. Since then it has been in the process of making through conventions and usages.

Self Assessment Questions

- Name a key characteristic of a federal government.
- How does a written constitution differ from an unwritten one?
- What is meant by a flexible constitution?

Unit – IV

Executives – Parliamentary and Presidential – Legislature – Unicameral – Bicameral – Judiciary – Judicial Review – Rule of Law and Administrative Law

Objectives

- Parliamentary and presidential executives.
- Concept of judicial review.
- role of administrative law in governance

Introduction

Legislature, executive and judiciary are the three organs of government. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people. The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. In a parliamentary system, executive and the legislature are interdependent: the legislature controls the executive, and, in turn, is controlled by the executive. In this chapter we shall discuss the composition, structure and function of the executive organ of the government. This chapter will also tell you about the changes that have occurred in recent times due to political practice. After reading this chapter, you will be able to

- Make a distinction between the parliamentary and the presidential executive;

- Understand the constitutional position of the President of India;
- Know the composition and functioning of the Council of Ministers and the importance of the Prime Minister; and
- Understand the importance and functioning of the administrative machinery.

Executive

The Executive refers to that organ of government which executes, administers or put into effect the laws made by the legislature. The term Executive is used in a broad as well as in a narrow sense. Dr. Garner , while explaining the meaning of executive said, "Ina broad and collective sense the executive organ embraces the aggregate or totality of all the functionaries which are concerned with the execution of the will of the state as that will have been formulated and expressed in terms of law". This comprehensive definition implies that in a broad sense executive includes the Head of the state, council of ministers and all other officials who implement the laws. The term executive when used in a narrow sense will include only the president and the council of ministers and the officials are excluded. Generally the term Executive is used in a narrow sense to mean the head of the state and the council of ministers.

Kinds of Executives

1. Political and Permanent Executive

Political executive consists of popularly elected leaders who heads the office of various departments and whose tenure is a temporary one. In India political executive consists of the prime Minister and his council of ministers. They can only remain in office as long as they enjoy the confidence of the legislature. A permanent official on the other hand, consists of all those permanent and salaried officials and subordinates who carry on the day- to- day work of the administration. These officials carry out the policy as laid down by the political executive. These officials having entered service through competitive exams continue in service until retirement. Efficient administration demands close co-operation of the amateur and the experts, that is; of the politicians and the specialist administrators.

2. Nominal and Real Executive

The executive may be real or nominal. This distinction is between Head of the state and the Head of the government. In parliamentary systems like India and Britain this distinction is very clear. In India, President is the nominal executive or titular executive and the cabinet headed by the Prime Minister is the real executive. In India, in theory the president enjoys wide powers, but in actual practice all these powers are exercised by the Prime Minister and his

council of ministers. All the actions of the government are carried out in the name of the nominal executive. There is no nominal executive in the Presidential system as followed in USA. There the President is the head of the state as well as the real executive. He is both the Head of the state and Head of the government. In absolute monarchies and Dictatorships all the power will be concentrated in a single person or with a few elites and thus the distinction of real and nominal executive there is meaningless.

3. Single and Plural Executives

In the case if single executive the ultimate power is in the hands of a single person, and he does not share powers with others. American President is an example of single executive. Cabinet form of government combines the single and plural executive. The Prime minister follows the principle of single executive and his colleague follow the principle of plural executive. However, it is to be noted that, in parliamentary system the real executive- the prime minister and his cabinet- act as a team or as a single unit and hence the whole cabinet can be viewed as a singular executive.

In the case of plural executive or collegiate executive, the executive power is in the hands of group of persons, having co-equal authority. Federal council of Switzerland is an example of plural executive. Federal Council consists of seven councilors, having

co-equal powers and one of the members are elected annually to serve as chairman for a one year term with the title of president of the federation. The president does not enjoy any special powers apart from presiding over the council meetings. Federal council is elected by the federal assembly (legislature) for a four year term and the council functions essentially as a business body subordinate to the Assembly. The federal council implements the policies of the Federal Assembly .The Federal council also advises the Federal Assembly on legislative matters.

Parliamentary and Presidential Type of Executives

Parliamentary Executive

In the parliamentary system, political executive is responsible to the legislature, and remain in office till he enjoys the confidence of the legislature. There exist a distinction between real and nominal executive in the Parliamentary system, where Prime minister and his cabinet is the real executive, and the head of the state is the nominal executive. Head of the state may be hereditary King or Queen as in the case of England, or an elected president as in the case of India, or an Emperor as in the case of Japan. Theoretically, all the powers are vested in the hands of thehead of the state, but in practice, he does not exercise these powers. Real power is exercised by the cabinet, headed by the Prime Minister. Since the cabinet holds the real power, and is

responsible to the popularly elected legislature it is also called responsible type of executive. This system is followed in many countries including Britain, India, Australia and Japan.

Presidential Executive

In the Presidential type of executive the executive is separate from the legislature. There is no nominal executive, and there is only one executive-the President- and he is the real executive, in both law and practice. This type of executive developed in USA and now is practiced in many countries.

In the Presidential executive the president is directly elected by the people and enjoys a fixed tenure and can only be removed by a cumbersome special procedure called impeachment. President appoints the ministers and they are responsible to him for all their actions. Ministers hold office during the pleasure of the President. There is no collective responsibility and the president is responsible for all the actions of his ministers.

Though Presidential system is based on the principle of separation of powers, powers of the organs of government do overlap. A system of ‘ checks and balances ‘ are also devised in the system, which makes the powers of the respective organs limited, as well as responsible. Though the President enjoys enormous power, he also

face some limitations as regards to legislation and while making federal appointments.

Functions of the Executive

The executive performs the essential activities of government which is relate to rule application. Functions of the executive can be discussed under the following heads: Administrative, Military, Legislative, Financial and judicial.

Administrative Functions

Administrative functions include all those matters which have to deal with the strict administration of the government such as the appointment, direction and removal of officers, issue of instructions and all acts relating to the execution of laws. Internal administration is an important concern of the executive. Maintenance of peace and rule of law is the most important function of the executive, without which state cannot effectively function. Home department, which is under the control of the political executive and he along with the permanent executives is responsible for the maintenance of internal peace and security.

External administration also falls under the prerogative of the executive. It is the duty of the executive to see that a state is safe from external aggression. Executive head frame foreign policy of the state, which is pursued by the trained and professional diplomats. Executive

appoints ambassadors and other diplomats, who conducts international relations under the overall guidance of the political executive. Ministry of external affairs is in charge of the conduct of relations with other countries.

Military Functions

Duty of defense of the country rest with the executive. It is an essential function of the executive to secure territorial integrity and to protect the country from external aggression, and if necessary, to wage war. The Executive has to maintain an efficient and strong army, navy, air force to defend its territory against the attack of outsiders .In USA the President can declare war or peace with the consent of the Congress and in India head of the state can declare war or conclude peace but in reality this power is exercised by the Prime Minister and his cabinet. The department which is concerned with the defense of the country and controls its military operations in India is called the Ministry of defense.

Legislative Functions

Though lawmaking is the prerogative of the legislature executive also performs some legislative functions. In Parliamentary form of government executive summon, adjourn and prorogue the session of parliament, and he can also dissolve the popular house. Executive exercise the power to issue ordinance when the legislature is

not in session. Ordinance is the law made by the executive. In parliamentary systems political executives introduce the bills in the legislature and takes up the responsibility of passing the bill in the house. Assent of the chief executive or nominal executive is necessary for a bill to become act. The growth of Delegated legislation is an extension of the sphere of executive in the legislative field. As the laws are growing more complex these days, the system of passing what is known as skeleton bills is being resorted to. This has enabled the executive to supplement the law by issuing rules and regulations which makes up the case of departmental or delegated legislation.

Financial functions

The executive controls the purse of the nation. The Budget is prepared and introduced by the politic executive in the legislature.

Judicial Functions

In most countries appointment of the judges are made by the executive. Executive also exercise the power to grant pardon or reprieve to the offenders. Head of the state enjoys the power of granting mercy, whereby he may commute the sentence given by the highest court of the land. Executive may also grant amnesty to the offenders or reduce their sentence by his discretionary power.

Executive also performs miscellaneous function like regulation and control of productive forces in the country, national planning,

emergency power during war and internal disturbances, conferring of awards and honours , etc.

Parliamentary Government

Governments have been classified on the basis of the basis of the relationship of the political executive with the legislature. If the political executive is immediately responsible to the parliament, it is called parliamentary form of government. It is also called cabinet or responsible form of government, because the cabinet enjoys the real powers of government and is responsible to the parliament. According to Dr. Garner, "cabinet government is that system in which the real executive-the cabinet or ministry-is immediately and legally responsible to the legislature or branch of it(usually the more popular chamber) for its political policies and act, and immediately or ultimately responsible to the electorate; while the titular or nominal executive-the chief of the state-occupies a position of irresponsibility". Some of the countries that have parliamentary form of governments are Britain, India, Australia and Canada.

There exist dual executive in the Parliamentary system- one executive is real and the other, nominal. In India real executive is the Prime Minister and his Cabinet and the nominal executive the President of India. In England King is the nominal executive and the Prime Minister and his cabinet is the real executive.

Parliamentary form of government is characterized by the close relationship of the political executive and the legislature. Ministers are chosen from the members of the legislature and are responsible to the legislature for all their acts of commission and omission. Political executive can continue in office only till they enjoy the confidence of the legislature.

In the cabinet form of government Prime Minister is the leader and he selects his cabinet and presides over the meetings of the cabinet.

Features of Parliamentary Form of Government

Following are the main features of parliamentary form of government.

Head of the State Exercises Nominal Powers-

In Parliamentary system there exists a titular Executive or Head of the State. He may be the President, the Governor General, the King or the Queen. Presidents are the Head of the states in countries like India, Australia and Italy, and the King or Queen in countries like Britain, Japan and Denmark. Constitutionally the Head of the State enjoys many powers, but in practice he does not utilize these powers. . Hence, head of the State is called the nominal executive. Real power, rest with the Prime Minister and his cabinet, where Prime Minister is the Head of the Government. The executive power of the government

is actually exercised by the cabinet in the name of the head of the state. Legally speaking cabinet is appointed by the head of the state and can be dismissed by him, but, politically it is unthinkable, unless the government has lost majority in the parliament.

Collective Responsibility

Cabinet system is based on the principle of collective responsibility; which means the cabinet is collectively responsible to the parliament. It is said that 'they swim or sink together'. It means once a decision has been taken by the cabinet, it is then the responsibility of the ministers to support it, inside and outside the parliament, even if he had not agreed to it in the cabinet. Ministers are collectively responsible to the Parliament. If a no-confidence motion is passed by the parliament against one minister, it is considered to have been passed against the entire cabinet. Prime Minister and the cabinet has to then tender their resignation. The principle of 'all for one and one for all' applies in the working of the cabinet form of government.

Individual Responsibility

Apart from collectively responsible to the Parliament, ministers are also individually responsible to the parliament for the conduct of his ministry. A Minister is answerable to the members of Parliament on matters regarding the department the minister heads. In India by Art 75(3) of the constitution, ministers are responsible to the lower house

of the Parliament. In case of any lapse in its administration, ministers are personally answerable to the parliament. In the case of severe adverse criticism against a minister, he may resign, so as to not put the whole cabinet in an awkward situation. There have been instances in India where ministers have resigned owning moral responsibility of the lapses of their ministry, like Lal Bahadur Shastri did in1956, after a major railway accident when he was then the railway minister.

Clear and Stable Majority

In Parliamentary system, administration is run by the party that gets a majority in the legislature. Head of the state invites the leader of the majority party in the legislature to become the Prime Minister and to form government.

Prime Minister selects his minister and they are appointed by the head of the state as ministers. The ministers can continue in office as long as they enjoy the support of the lower house of parliament. In the case of coalition governments, the head of the state invites the leader of the coalition that got the majority in the legislature to form government.

Political Homogeneity

Members of cabinet are generally drawn from a single political party having majority in the legislature. They must constitute a homogeneous team. Harmonious working of the cabinet will be a

casualty, if ministers are from different political parties having different political ideologies. But in countries with multiparty system like France and in India, it is not always possible for a single party get majority in parliament and form government. The result is the formation of coalition governments in these countries, where different political parties come together on the basis of some common understanding or ideology and agree to form governments.

Leadership of the Prime Minister

The main characteristic of Parliamentary system is the leadership of the Prime Minister over the cabinet. Prime Minister is generally the leader of the majority party in the lower house and thus he is also called the leader of the house. Ministers are selected by the prime minister and appointed by the head of the state on his advise. Prime Minister is the leader of the cabinet and the leader of the council of ministers. Prime Minister allocates the portfolios to the ministers and supervise and co- ordinates their functions. He can promote or recommend to the President the dismissal of any minister at his own will. If a minister does not cooperate with the Prime minister or has any serious difference with any policy, the minister will have to resign. If he fails to do so, the Prime Minister can get him removed from the cabinet. Prime Minister can also recommend to the president for the dismissal of a ministry as a whole. He can also recommend to the

President for the dissolution of the parliament. Prime Minister presides over the cabinet and council meetings. Though he acts on the advice of the cabinet, he is the one who makes the final decisions of the government. All major decisions and policies are formulated by the cabinet and here prime minister by virtue of his position as head of the cabinet exerts tremendous influence over each any every decision made by the cabinet. Prime Minister is an important link between the ministry and the head of the state, where he keeps the head of the state informed of all decisions of the cabinet. As per the Art. of the constitution Prime minister of India is duty bound to inform the president of all decisions of the council of ministers relating to the administration of the affairs of the union. Prime Minister is the chief spokesman of the government it is the Prime Minister who clarifies if there is any confusion or misunderstanding in a government policy or decision. His word is taken as the last and final word of the government. Finally, death or resignation of the Prime Minister leads to the dissolution of the whole cabinet.

Secrecy of Procedure

It is a pre-requisite of Parliamentary form of government. In India ministers are required to take oath of allegiance to the constitution and secrecy of office before taking charge as a minister.

Merits of Parliamentary System

The great virtue of Parliamentary system is the harmony and co-operation between legislature and the executive departments. Legislature is the creator of political executive in the parliamentary system. Prime minister and the ministers come from parliament and are responsible to it. Prime Minister has control over the house and the cabinet and he is the leader of the both. Close co-operation between legislature and political executive is necessary for the passage of bills in parliament. Close cooperation that exists between the political executive and legislature in parliamentary system helps in the smooth functioning of the government.

Another merit of cabinet form of government is that, it as a responsible form of government. In this system executive is responsible to the parliament for administration and policy. Parliament has a day-to-day control over the government (executive) for its administration and policies. There are various methods at its disposal to effectively control the government. Parliament can bring in censure motion, adjournment motion, no- confidence motion etc, against the government and can put questions and supplementary questions to the ministers. In this way government is always made responsible to the legislature, and in an indirect way, to the people.

It is said that the pulse of the nation is accurately felt in the cabinet form of government. The cabinet ministers are always in close contact with the members of the majority party supporting them. Ministers sit in the legislatures and listen to the views of the members both from their party and the opposition. Opposition constantly raise questions and often criticizes the ministers. This enables the ministers to ascertain the minds of the house and also that of the people whom the various members represent. Bryce points out "Being in constant contact with the members of the opposition as well as in closer contact with those of their own, they have opportunities of feeling the pulse of the assembly and through it the pulse of public opinion."

A great merit of Parliamentary system is that, the chances of government becoming autocratic are very less in Parliamentary system. As have already been explained, in Parliamentary system government is always responsible to the Parliament. Legislature has many devises at its disposal to check the government, if it behaves in an arbitrary manner, like censure motion and the vote of no-confidence. In this system those vested with power are under constant threat of being ousted from office, if they abuse their power and authority. Power is not concentrated in one person, rather it is vested in a group of cabinet ministers. This dispersal of authority puts effective curb on the possible despotic tendencies of the government

Parliamentary governments are considered as more responsive to public opinion. Parliamentary governments seek to satisfy the desires of the people. It is the duty of the ministers to fulfill the promises that they have given to the people at the time of elections. If they fail to fulfill those promises their party would face difficulty winning the next elections. Moreover, governments should be able to know the changing needs and aspirations of the people and act accordingly, otherwise there is the danger of the government not only becoming unpopular but also of losing support of the members of Parliament.

De Merits of Parliamentary Form of Government

Parliamentary system violates the principle of separation of powers. As discussed earlier, legislature is the creator of the political executive and the both the organs functions in co-operation and harmony. But, in this system the executive is dependent on the legislature for its existence. This makes the executive subservient to the legislature which is not good as it can lead to inefficiency. So, critics point out, harmony between the legislature and the executive is at the cost of efficiency. And again, critics point out, concentration of legislative and executive power in one person lead to the passage of tyrannical laws.

Another major demerit of Parliamentary governments is its instability. Parliamentary governments are dependent on the vagaries of the legislature. A government can remain in office, only till they enjoy the confidence of the legislature. So there will be a lot of uncertainty regarding a government's continuance in office, especially if they are surviving on a wafer thin majority in the legislature. Unstable natures of Parliamentary governments are even more pronounced in countries with coalition governments. Here governments are formed by various political parties coming together based on some understanding. By its vary nature coalitions governments are unstable as the parties supporting the government may withdraw support, if it suits them.

There is the apprehension of Parliamentary governments becoming the dictatorship of the cabinet. If the government has sufficient majority in the Parliament the cabinet may act in an arbitrary manner.

Cabinet government is criticized as being an inefficient form of government. It is termed as a government by amateurs. The various departments in the ministry are handled by individual ministers who are often not trained in the art of administration and its technicalities. While in office lot of their time is spent nurturing their constituencies

so as to win the next election. The result is that, the administration suffer for lack of proper supervision and leadership.

In the cabinet form of government the executive may become subservient to the legislature. Dicey stressed this aspect when he said that the dependence of the executive on the legislature for its very existence may turn the former into a mere slave or appendage of the latter Thus the executive may become uncritical, ineffective and paralysed.

It is well acknowledged that parliamentary systems are unsuitable in emergencies. The emergency situation demand quick and strong response. But the delay in decision making process in the cabinet system makes it unsuitable for dealing with emergency situations.

Frequent change of governments hamper the continuity or consistency in policies. The instability of governments wrecks the continuity and consistency of policy which is essential for efficient administration.

Presidential Government

Presidential system is based on the principle of separation of powers. Independence of the legislative and executive powers is the specific quality of Presidential government. Here executive is independent of legislature and is not responsible to it for his acts. The

executive is neither the creator of the legislature, nor is it responsible to that body for its public acts or depend on it for remaining in office. President is directly elected by the people and he enjoys a fixed tenure. President can be removed from office only through a special procedure called impeachment, which is not easy. According to Garner Presidential form of government "is a government in which the executive is independent of the legislature as regards its tenure and to a large extent as regards its policy and ends". This system is followed in the U.S.A., Brazil and many countries of South America.

There is no nominal executive in the Presidential system. There is only one executive-the President- and he is the real executive. The President and his ministers does not sit in the legislature and take part in the proceedings, as they are not members of the legislature. Here, President can choose men of known administrative qualities as ministers from the public. Ministers are responsible to the President for all their actions and they can continue in office as long as the president wants them to. Which means, President can select as well as dismiss a minister at his own discretion. Ministers in the Presidential system are not colleagues of the President, rather they are subordinate officers of the President. Advice of the ministers are not thus, binding on the president. The 'cabinet' under the Presidential system is different from that of the Parliamentary system in that president can

override the opinion of the cabinet or if he so desires, he may not even seek the opinion of the 'cabinet'.

In Presidential system there is no collective responsibility as in the case of parliamentary system.

United States of America is the best example of Presidential system. Presidency of USA is widely regarded as one of the greatest political offices in the world. He enjoys great many powers and is regarded as the most powerful head of the government. He enjoys the power of 'veto' where the President can turn down the laws passed by the congress. A bill 'vetoed' by the President can become a law, only if it is passed by both the houses with two- third majority.

Balances' have been devised to make the power limited, controlled and diffused. It means that the independence of the three organs of government are not absolute. Though these branches are separate, a kind of interdependence and interrelationship exist among these organs of government. By this mechanism the excessive independence of one organ of government is reduced through the check of the other organs.

Though president of USA enjoys wide powers, there are also certain limitations to his power. President does not have the authority to summon or dissolve the congress. President cannot initiate any bill directly in the congress. President can only sent messages from time to

time, to the congress, recommending the enactment of particular laws. All major federal appointments made by the President needs the approval of the senate. International treaties signed by the president also needs the ratification of the senate. Expenditure incurred for war has to be granted and approved by the senate.

Merits of Presidential Government

Lot of merits are attached to the Presidential form of government and many countries have adopted this type of government. Some of the merits of Presidential government are:

Chief merit of Presidential System is its stability. President is elected by the people for a fixed tenure and cannot be removed from office by a no-confidence motion like in the case of Parliamentary system. President can only be removed from office through the process of impeachment, which is a complicated process. Moreover, in most countries, including the U.S.A. President can be impeached only for the violation of the constitution. Till date, no president has been removed from office in the U S A, through impeachment, though constitution of that country was established as early as 1789. Only once was impeachment proceedings initiated in the USA , and it was against President A. Johnson, buy it failed to carry through for want of required numbers in the senate. Principle virtue of this system is that it creates a stable executive within the framework of a democratic order.

Presidential government ensures consistent and continuous policies. Since the president enjoys fixed tenure and cannot be easily removed, he can follow consistent and continuous home and foreign policies. In this system real power is held by only one person- president- and he can choose his own advisors as per his discretion. This allows him to put in practice the vision he has for his country.

Another merit of Presidential system is that, President enjoys a lot of independence and flexibility while choosing his ministers. This a great advantage, as the President can rope in services of experts and people of exceptional administrative qualities from the public. President can appoint ministers irrespective of party affiliations and even non- party men can be appointed .In the united states there have been instances where retired army generals given appointed as defense ministers.

There is the greater chance of efficiency of administration in the presidential system as it is based on the principle of 'division of labour'. President can carry on with job of administration without any interruption from any quarter and likewise, the congress can carry on its job of legislation without much interference from outside. There is no excessive work, either for the legislature or for the executive. President and his ministers does not have to 'nurture' any particular constituency as they are not elected from a particular constituency.

This allows the President and his team to devote all their time to the administration of the country. President can take quick and prompt decisions and act firmly without any loss of time, when needed. The unified control in the administration that is possible in the Presidential government help in enhancing the efficiency of administration.

Presidential system is suitable for dealing with emergency situations. Unity of control, Quickness in decision, and concerted policy, which emergency situations demand can best be obtained in the presidential system. President does not have to act according to the direction of the legislature or members of his cabinet. Since all powers are concentrated in the hands of the president he can take quick decisions in the least possible time which an emergency situation may demand, This was amply proved by the way president Roosevelt dealt with during the second world war as United States' President.

Demerits of Presidential Form of Government

Presidential system has many short comings. Major de-merits of Presidential systems are:

The possibilities of the chief executive becoming autocratic are high in the Presidential system. President does not have to fear the opposition, as he knows that he cannot be easily removed from office. Seeming asserts that Presidential system is 'autocratic, dangerous and irresponsible'. President may act according to his whims and fancies,

if he may so desires. There is also the chance of President behaving in an irresponsible manner as he is not responsible and answerable to the legislature for his actions .No immediate action can be taken against the President if he behaves in an arbitrary manner. Only course available will be to wait for the expiry his term, if impeachment is out of reach for the opposition.

The Presidential system is also not self corrective. President and the ministers do not sit in the legislature or take part in the proceedings of the parliament. President does not get to hear criticisms and different points of view emanating from the opposition benches regarding the administration of his government. Consequently, the chance of the president becoming blind to his misgivings and shortcomings are high in the presidential system.

The separation of legislature from the executive is not always desirable as it may lead to conflicts between the legislature and the executive. It can lead to a situation of deadlocks and delays in the working of the government. Here three possibilities arise- one, executive may ask the legislature to enact a particular legislation which he thinks is necessary, but the legislature may refuses to comply. Two, legislature pass a bill, but it is turned down by the Presidential veto. Three, legislature may pass certain laws and the executive may not enforce them in the spirit in which they were passed

and thereby making the legislation ineffective. All these situations lead to certain deadlocks and delays in the administration which ultimately affect the efficiency of the system.

As regards following vigorous foreign policies Presidential system suffers from certain weakness. In the United States all major federal appointments and international treaties signed by the president has to be ratified by the Senate. An expense for the conduct of war needs the approval of the legislature. President will face a tough time, if the congress is dominated by the members from the opposition party. Such situations place limitation on the president in the conduct of international relations.

The inability of the executive to initiate legislation is a serious disadvantage of the Presidential system. The President can only request or persuade the legislature to enact a particular legislation. There is no certainty that the legislature will accede to his request.

Legislature

Legislature occupies an important position in the machinery of government. Will of the state is formulated and expressed through the legislature. Legislature is treated with special respect and status as it is composed of a person who represents the general population. Legislature in a democratic country enacts the general rules of society in the form of laws.

A variety of terms are used to denote legislatures in various countries: it is called congress in USA, Parliament in India, National Assembly in France, House of Representative in Japan and Congress of Deputies in Spain. The word parliament comes from the French "parler" which means to 'talk' or 'discuss'.

Functions of Legislature

Functions of the legislature are not identical in every country. It may vary from country to country, depending on the forms of government and the provisions of the constitution. Yet there are certain functions which are performed by legislatures in most democracies. They are as follows:

1. First and foremost function of Legislature is to make laws. Bills are introduced in the Legislature where it is thoroughly debated and discussed before it is passed by the legislature and sent to the Head of the State for his formal assent to become an act. In cabinet system it is the duty of the concerned minister to introduce the bill and get it passed and duly enacted. But in the presidential system executive is not directly involved in legislation, rather he only exerts his influence in the law making through his messages. Legislature is the creator of laws of a country and is thus rightly called the rule making department of the state.

2. Legislature exercises control over the general administration of the country. In parliamentary system legislature exercises control over the political executive .Ministers are individually as well as collectively responsible to the legislature for all their actions. Ministers can continue in office only till they enjoy the confidence of the legislature. Various measures like adjournment motions, censure motions and cut motions are available to control the executive. A vote of no-confidence can be passed by the legislature to remove the executive from office.
3. Legislature performs important financial functions. A major function it performs every year is the presentation, consideration and authorization of the budget. No money can be spent or no tax can be levied by the executive without the prior approval of the legislature. Ordinarily lower house enjoys more powers over the money bill than the upper house in countries with bi-cameral legislature.
4. Legislature also performs some important judicial functions. In England the House of Lords is the highest court of appeal. The impeachment trial of the president and vice- president in America takes place in the senate and in India either of the two

house at the centre can conduct the impeachment trial of the president.

5. Legislature also performs elective functions. In India parliament takes part In the election of the President and vice President. British parliament can make a law to determine the mode of succession and abdication of the monarch. In Russia judges of the Supreme Court are elected by the parliament of that country.
6. In most democracies the power to change or amend the constitution rest with the legislature .In India the parliament has the power to change certain provisions of the constitution by following a special procedure. In England there is no distinction between ordinary laws and constitutional laws and the legislature has the power to amend the constitutional laws in the same manner as it changes ordinary law.
7. In India parliament has the power to remove the judges of supreme court and high courts on grounds of proved misbehavior or incapacity. In Britain judges can be removed by a joint address of both house of parliament to the crown.
8. In the USA Senate shares with the President the power of making all federal appointments. All treaties negotiated and concluded by the president required to be ratified by the senate

by a two-third majority. American President needs the approval of the senate for all the major Federal appointments he makes .And to declare war and for war expenses the President needs the approval of the senate.

9. Legislatures work as organs of inquest or enquiries. Legislature appoint commissions of enquiry to collect information, hear evidence and make recommendations on problems facing the country.

Organisation of Legislature

Legislatures are classified into two, on the basis of the number of chambers it posses. When the legislature of a country is organized into two houses it is called Bi-Cameralism and when the legislature has only one house it is called Uni-Camaralism.

Bi Cameralism

Legislatures of most countries have two houses ,while a few countries have only one house. And when the legislature is organized into two chambers, it is called Bi-Cameralism. In India the two houses are Lok sabha and Rajya Sabha at the centre and Legislative Council and Legislative Assembly at the states .In England the two houses are the House of Lords and the House of commons. In the USA their names are the House of Representatives and the Senate.

In Bi-cameralism one house is generally called the ‘lower House’ and the other the ‘Upper House’. In India Lower house is the Lok Sabha and the upper house is the Rajya sabha. Lower House is generally the larger house and its members are directly elected and they have a shorter term, while the upper house is generally the smaller house and its members are differently elected ie., through election(often indirect) and nomination and generally enjoys longer term.

Generally the lower house enjoys more powers than the upper house mainly because of the fact that they are the house of the people. In India Lok Sabha is stronger than the Rajya Sabha and in England the House of Commons is stronger than the house of Lords. A major exception here is that in the case of USA where the upper house-senate- has been made deliberately stronger than the lower house-The House of Representatives. In most cases money can be introduced only in the lower house and they have a complete say in matters of money bill. In India Money Bill can only be introduced in the Lok Sabha.

Ui Cameralism

When the legislature has only one house, it is termed as Ui-Cameralism. Some countries follow Uni-cameral system and

prominent among them are China, Israel ,New Zealand and Bangladesh.

Arguments in favour of Bi Cameralism

Following arguments are put forward in defense of Bi-Cameralism.

a. It act as a check on hasty, rash and ill considered legislation. Popularly elected members of the lower house in their zeal to perform miracles may bring out legislations that may be rash and ill conceived and even impractical. They may opt for sweeping changes which may not always be it the best interest of the people. Upper house which consists of generally senior members and who enjoy longer terms (often fixed terms) may act a check on the radicalism of the lower house.

b. A related argument to the first one is that, Bi-Cameralism helps to check legislative despotism. If there is only one house a party having absolute majority in that house can come out with any legislations which it thinks fit. It can lead to tyranny and in such a situation liberty of the people will be in danger. According to lord Acton "for the protection of freedom, second chamber is necessary".

c. It affords a convenient means of giving representation to special interest and classes in the state ,who are otherwise not

adequately represented in the lower house. Some eminent persons may not like to undergo the tribulations of fighting elections, but a country cannot afford to ignore the experiences of such people. In India for instance, president can nominate 12 members to the Rajya Sabha in the field of literature, social service, Science and arts.

d. It is also pointed out that the two houses represents public opinion in a better way than one house. This is the position in India too.

e. Second chamber act as a relief to the first chamber. Of late activities of the government has increased tremendously and as a result the need for new legislations has also increased many fold. This has led to congestion of work in the legislatures .second chamber helps to relieve this congestion as non-controversial bills can be introduced in the upper house and those of greater importance can be initiated in the lower house.

f. Second chamber enable the legislature to attain perfection. The defects that have crept into a legislation in one house, can be rectified in the other house and thus enable a legislation to attain perfection.

g. Finally, Bi-Cameralism is necessary in a federal state where the people have their representation in the first chamber and the units have their representation in the second chamber.

Arguments against BiCameralism(or Arguments in favour of UniCameralism)

a. It is argued that Bi-Cameralism paralysis the will of the people. Sovereignty resides with the will of the people, and two chambers imply the existence of two sovereignties. Critics of Bi-cameralism opine that this amount to dividing the will of the people, and if will is divided, it is paralyzed.

b. It is often argued that Bi-Cameralism duplicates work and it is highly wasteful. It leads to loss of time, energy and it is a drain on the national resources.

c. Special interest can be accommodated even in the lower chamber itself by reserving seats for this category, and there is no need for a second chamber for this purpose. Moreover, minorities get better protection from constitutional safeguards than from representation in a second chamber.

Judiciary

Judiciary is that organ of government which interprets and enforces the laws of the state. In ancient polity, the executive and the judicial functions were combined in one person. But in such an

arrangement, justice could not be secured when the same person made and interpret laws. So the need for an independent and impartial organ to interpret laws was felt in modern state and the result was the advent of judiciary as a separate organ of government.

In Switzerland judges are elected by the two federal chambers (Federal Assembly and Federal Council) sitting together, for a six year term. System has worked well in that country but it is not without defects. This method violates the spirit of separation of powers and makes the judiciary subservient to the legislature. Judges elected by the legislature often are party candidates and the competence and impartiality of judges is a casualty.

Judges appointed by the executive is the most common method and is considered to be the best. Laski see this as the "the best available method of choice". It is widely followed in many countries including India, Britain, Australia and Canada .It is claimed that executive is the most appropriate agency to judge the qualities necessary for a judicial officer. Opponents of this method content that favouratism and political considerations may cloud the appointments in this method. Though there is some merit in this argument, these defects can be easily rectified by making changes in the procedure of selecting judges by the executive. For instance, with the implementation of Supreme Court guidelines regarding appointments

of judges of higher judiciary, the judicial appointments have become fairly independent.

While appointing judges, care should be taken to make sure that persons who are highly qualified in the field of law are only appointed. Ideally, people with high legal knowledge, integrity, dignity and independence should only be appointed as judges.

Judges should have long tenure and should feel secure in their job. If judges are appointed for short periods they may be tempted to be corrupt, and also they may be always thinking of re- appointment .Ideally tenure of a judge should neither be too short nor it should be for life. In India, Supreme Court Judges hold office till they reach the age of 65 and high court judges till the age of 62.

Security of service is another Important aspect that ensures the independence of judiciary. If judges are under constant fear of being removed from office, they are unlikely to give judgments that annoy the executive. .So in most countries legislature is the organ that have a say in the removal of judges .In India judges can be removed from office by the President only on account of proved misbehavior or incapacity, and that too on the basis of a resolution passed by not less than 2/3rd majority in both the houses of parliament.

Judges should be paid adequate fixed salaries that will allow him to maintain a good standard of living and thus not be tempted to

adopt corrupt means to amass wealth. Office of a judge must carry high salary and other emoluments, so that his social position and mode of living, may attract capable and deserving people to the legal profession. According to Bryce, honesty and independence of a judge also depend upon inducements or prospects that his office carries. Executive should not be vested with the power to alter the Judges' salaries and allowances to his disadvantage.

For independence of judiciary, Montesquieu emphasized separation of judiciary from the executive. Judges should not be entrusted with executive and administrative duties. Liberty of people will a major casualty in such a situation. Directive Principles of state policy enshrined in the Indian constitution (Art. 50) desires separation of judiciary from the executive.

Judges should not be given appointment after his retirement from service .This is necessary to prevent the judges from unduly favouring the government at the fag end of his career in the hope of executive returning the favour, in the form of appointments after retirement.

It is also required that judges avoid excessive public contacts and keep immune from public pressures in the interest of judicial independence. This will allow the judges to try cases that come before him purely on legal merit, and not on the basis of public opinion.

Judicial Review

Judicial review is the power of the court to review the laws passed by the legislature and orders issued by the executive, when challenged by the affected persons, and to declare them null and void, if they infringe the provisions of the constitution. Judicial review holds in check legislature and the executive within the limits laid down by law.

Judicial Review is a feature of countries with written constitution and federal systems. Judicial review protects personal rights against legislative and executive actions; states' rights against national action; national rights against state action; and respective rights of three branches of government against one another.

The doctrine of judicial review originated in USA in 1803 in a leading case of Marbury v/s Madison, where chief justice Marshall ruled that court had the power to declare the actions of the congress and the executive invalid.

Chief justice Marshall defined Judicial Review as "the examination by the courts in cases actually before them of the legislative statues and executive administrative acts to determine whether or not they are prohibited by a written constitution or are in excess of powers granted by it." Judicial review essentially means the 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 India, by basis of Article 32 and 136 of the Indian constitution Supreme Court can exercise the power of judicial Review, similarly under Article 226 and 227 High Courts have the power of judicial review. Though the term judicial review is not mentioned in the constitution, Article 13 entrust the courts of the review power, it states:

a. All laws in force in the territory of India immediately before the commencement of this constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.
b. The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void

The scope of review power of judiciary in India is comparatively less to than that of USA.

Scope of Judicial Review in India is mainly on two grounds:

1. Whether the law under challenge falls within the competence of the authority that has framed it; and

2. Whether it is consistent with the part 3 of the constitution dealing with fundamental rights.

Though, Judicial Review has many positives, it has also come under fierce criticism. A major criticism is that judicial review has resulted in judicial tyranny and the whole concept is undemocratic. It is strange that one organ of government sit in judgment of the other two. Laws passed by the legislature represent popular will and it is pointed out that it is Undemocratic for judiciary- which is not a representative body- to strike down the laws made by legislature. Moreover, it can lead to conflict between judiciary and the executive as it has happened many times in India. Finally, there is always the possibility of progressive legislations being struck down by conservative judges.

Judicial Activism

Judicial activism emanates from the power of judicial review enjoyed by the courts. It refers to the assertive role played by the judiciary to force the other organs of government to discharge their constitutional obligations towards the public. Basically the courts interfere only when the other organs fails to discharge their constitutional duties. Judicial activism is a way through which relief is provided to the disadvantaged and aggrieved citizens.

Activist means ‘being active’ or ‘one who favours intensified activities’ and an activist judge activates the legal mechanism and makes it play a vital role in socio-economic process. In the words of Justice V R Krishna Iyer “every judge is an activist either on the forward gear or on the reverse”

Judiciary has moved from being passive to an activist mode. Judiciary has shed its pro- status-quo approach and taken upon itself duty to enforce the basic rights of the poor and vulnerable sections of the society, by progressive intervention and positive action. Judiciary has started playing the role of a policy maker or even the legislature in the interest of the common man. By doing this it has furthered the cause of social change or stood for upholding liberty, equality and justice for the deserving masses. More importantly courts have become more accessible to the common man and he feels that justice is within his reach. It is no wonder that judicial review enjoys much support and appreciation among the masses.

Judicial Activism in India

Judicial activism was not in vogue in India in the first 30 years of its independence. It was in the Keshavananda Bharathi case in 1973 that Supreme Court ruled that the executive had no right to tamper with the constitution and alter its ‘basic structure’. During the late 1980s and early 1990s the Supreme Court began to deal frequently on

issues of political, social and economic in nature. Judicial activism in India acquired importance due to the mechanism of Public Interest Litigation(PIL).PIL means a suit filed in a court of law by the aggrieved citizen or a public sprited person for the protection of public interest such as pollution, environment road safety etc. Former Chief Justice of supreme court, Justice P. N. Bhagwati and former judge of Supreme Court Justice V.R. Krishna Ayer played a key role in promoting PIL as a way of rendering justice to people who are denied of it. Areas where judicial activism gained prominence includes issues like child labour, health, political corruption, education and generally the denial of fundamental rights to the people. The first major case of judicial activism through social action litigation was Bihar under trial case in 1979 .And after that Supreme Court began to take cognizance of custody deaths, bride burning and rape in police stations. It has also led to the prosecution of number of corrupt politicians, and other public servants due to the activism of the judiciary.

Judiciary is gradually extending its activities earlier considered to be the preserve of the executive. When the legislature and the executive shy away from taking hard and unpopular decisions, yet necessary, it is the judiciary that has filled the void. Kuldip Nayar eminent journalist, observed "judicial activism fills the vacuum that non-activism of other institutions create."

The effect of judicial activism has generally being positive-corruption exposed in high offices and penal action initiated against the politicians and public servants, strict enforcement of environment laws and closure or relocation of large number of polluting industries, authorities do their duties mandated by law and support and satisfaction of the people with the review power of the judiciary.

Critics of Judicial activism argue that in the short run it may be beneficial, but if it is resorted to quite often it will upset the 'balance' of the organs of government and will obstruct the smooth functioning of government machinery.

Rule of Law and Administrative Law

In common-law legal orders, public power is supposed to be exercised in accordance with the rule of law. Administrative law, the law that governs the exercise of power by public officials, is the body of rules and principles developed by judges to ensure that when public officials act, they act in accordance with the rule of law. Severe tensions can arise within the common-law understanding of administrative law when a legislature enacts a law that meets the legal order's formal criteria for validity, yet purports to exempt officials from the requirements of the rule of law. If those officials' decisions are challenged before a court, should the court declare them invalid simply on the basis that they fail to accord with the rule of law? Judges

who adopt positivistic theories of law will generally answer "no" to this question, while judges of a more natural law bent will tend to answer "yes." The former will determine a law's validity based only on the criteria explicitly set out in the positive law of their order, while the latter will think that there is more to the question than positive law—namely, the transcendent moral values of the rule of law. Although judges of a natural-law bent will likely appreciate the tensions better than positivistically inclined judges, a more sophisticated response to the problem is available than one that simply reduces it to a question of whether a law offensive to the rule of law is or is not a law.

That response presupposes a natural-law understanding of the rule of law, one which holds that the value content of the rule of law transcends what any formal source of law declares the law to be. However, such a response does not require that a law is always invalid when it fails to comply with the values of the rule of law. Rather, all it requires is that the tensions created by such a law are understood as tensions internal to legal order, tensions which must be resolved in order for that legal order to sustain its claim to be such—an order constituted by law. Thus, judges are not necessarily always able or even often best suited to resolve such tensions.

The Common-Law Courts and the Rule of Law

Common-law judges presume that individuals whose interests are affected by the decisions of administrative public officials have certain rights. The package of rights involved depends on many factors, including the way in which doctrine has developed in the particular legal order, the nature of the interest affected, the impact of the decision on the interest, and, assuming the official is acting on the basis of authority delegated by statute, on what the statute actually prescribes. In the abstract, the package at its fullest may include the right to a hearing before a decision is made, the right to have the decision made in an unbiased and impartial fashion, the right to know the basis of the decision so that it can be contested. the right to reasons for the official's decision, and the right to a decision that is reasonably justified by all relevant legal and factual considerations. Except for the last, all these rights are usually grouped into the category of "procedural rights," which pertain to the way in which a decision is made. By contrast, the last-mentioned gives the individual the right to a substantively sound decision. To make these rights effective, one more right must be added to the package—the right to have the validity of the decision tested in a court of law.

When common-law judges uphold official decisions, they are also certifying that the officials acted in accordance with the rule of law. Official compliance with the package of rights thus marks the

difference between a rule-of-law society and one in which individuals are subject to the arbitrary rule of men.

In the common law of judicial review, something roughly like the package of rights just described is thought to supply the content of the rule-of-law regime with which judges presume all officials must comply. The qualification "something roughly like" is necessary to indicate that the content of the package is controversial and that the rule of law is an essentially contested concept.3 However, the terms of that contest can be unpacked in order to illuminate the subject of the rule of (administrative) law in international law. The claim here is that the package fulfills the central aspiration of the rule of law—the subjection of public power to controls that ensure it is exercised in the interests of those affected by it.

Further, in order to have that package, one has to adopt a non-positivist understanding of law and legal order or legality, which, for now, can be described as embracing just three points: First, while the prescriptions of the statute under whose authority an official is acting are most relevant to determining the content of the package, the content is not contingent on the statute's prescriptions. As a well-known judgment put it, "the justice of the common law will supply the omission of the legislature."4 Put differently, the basis of the rule of law is not in the positive law provided by the legislature, but in what

can be thought of as the unwritten or common-law constitution. Second, the common law constitution applies even when the official's claimed authority is not derived from statute but from the prerogative powers of government—the residuary power of the sovereign, which, as Dicey claimed, is the "residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown. These two points suggest—against the grain of positivist tradition—that the operation of the values of the rule of law does not depend on their prior expression in positive enactments of the legislature. In addition, a third point undermines a more sophisticated kind of legal positivism, one that seeks to recognize judgments as a source of positive law: that judges have developed a common law of judicial review over time is considered the positive law basis for their understanding of the rule of law. The idea is that proponents of the common-law constitution consider judgments to be evidence of the requirements of the rule of law and not the source of those requirements.

The most controversial part of the package is its substantive component, the right to a decision that is reasonably justified by all relevant legal and factual considerations. When judges review on the basis of procedural components, they can claim that because procedure pertains to how a decision is made, not which decision was made, they

are not second-guessing the legislature's decision to delegate authority over substance to the officials charged with implementing the statute. This distinction between process and substance is hard to sustain, not only because procedural rights might protect the same values as substantive rights, but also because the connection between procedural and substantive components is very tight. Procedural and substantive rights have what one can think of as a symbiotic relationship. For the moment, however, the focus will be not on the fragility of this distinction, but on the reasons for making it—a judicial concern about the legitimacy of the common law of judicial review.

This concern stems from a formal doctrine about the separation of powers, which holds that Parliament has a monopoly on making law—on the production of legal norms. The rest of the powers necessary to sustain the rule of law are divided between the executive, with its monopoly on implementing the law, and the judiciary, with its monopoly on interpreting the law. When the executive acts, it must act within the limits of its legal authority, that is, within the authority provided by the particular enabling statute. Judges fulfill their role by policing those limits. This doctrine of judicial review, the doctrine of ultra vires, thus holds that the limits on executive discretion in implementing a statutory mandate are only the limits prescribed by statute or by some other supra authoritative source, for example, a

statute prescribing general rules for all administrative bodies or a written constitution.

In democratic theory, Parliament's alleged monopoly on legislative power is rooted in the claim that only the people's representatives have the authority to make law. But justification for the formal doctrine of the separation of powers need not be rooted in democratic theory. It can, for example, reside in a Hobbesian argument about the need to concentrate legislative power in one body. However, for present purposes, it will be assumed that the judicial concern about the legitimacy of intruding upon executive decision-making is a democratic one.

Now, the history of the common law of judicial review is a history of judges imposing controls on public officials that are not prescribed by any statute. Not all judges have been comfortable with this history, and so there has been, and continues to be, significant judicial resistance to imposing controls beyond those explicitly contemplated by statute or written constitution. To the extent there has been comfort among such judges, it has rested on the distinction between process and substance: if judges stick to the process side of the distinction, they are not intruding into substance. It is also often claimed that there is a kind of tacit legislative consent to judicial imposition of procedural controls discernable from the legislature's

ability, if it chose, either to preemptively exclude such controls or to override them in the wake of a judgment. However, the doctrine of tacit consent cannot be invoked with respect to judicial intrusion into substance, since the very legislative delegation of authority to the executive is taken as an altogether explicit signal to the judiciary of legislative intent.

The formal doctrine of the separation of powers, the doctrine that leads to this judicial discomfort with review, is unhelpful. On its best understanding, the separation of powers is not so much about formal divisions between the competences of the legislative, the judicial, and the executive. Rather, it concerns their roles in ensuring that public power is exercised in accordance with the substantive and procedural values of the rule of law.

The Rule of Law: Challenges and Opportunities

1. Domestic Administrative Decisions

The idea of unfettered discretion, that officials are a "law unto themselves" within the limits clearly stated in the statute, has important affinities with the idea of the prerogative as a legally uncontrolled space. There seems to be a family of such ideas in the theory and practice of law in common-law legal or ders—ideas that are connected to the Hobbesian idea that the international domain is a lawless state of nature. Foreign affairs or participation by states in that

domain is considered to be a matter of uncontrolled prerogative, since states within that domain are seen as analogous to individuals within the state of nature. Similarly, the thought of national security as a matter for the prerogative is connected to the idea that those who threaten the very existence of the state have put themselves into a state of nature with regard to that sovereign. Control over immigration or aliens is thus control over those who wish to enter a civil society from either a state of nature or from another civil society whose relationship with the first is itself in a state of nature. While both immigration and national security are now generally controlled by statute, their history as prerogative powers often looms large in a judge's approach to statutory interpretation, especially when officials are given broad discretionary powers to make security or immigration determinations.

Given this concern about judicial intrusion into substance, it is hardly surprising that many common-law judges have adopted the stance known as "dualism" with respect to the norms of international law other than those of customary international law, which are supposed to have domestic force whether or not the legislature has explicitly incorporated them. Dualists hold that the only legitimate source of legal norms within their legal orders is the legislature. They thus argue that with the exception of customary international law, international legal norms may have force domestically only when the

legislature has explicitly incorporated them by statute. It follows that executive ratification of a treaty is a signal to the outside world, but not to the subjects of the domestic legal order. To enforce such norms would be to permit the executive to usurp legislative power, though the instrument of usurpation would not be the executive itself, but judges, who would in substance, have incorporated the norms through the back door.

The tale that follows illustrates how common-law judges responsible for bringing international norms into the embrace of the common law of their four jurisdictions—New Zealand, Australia, Canada, and the United Kingdom— understood what they were doing, not as incorporating through the back door, but as updating the values of the rule of law, or "working the law pure." The tale is remarkable in its display of what one could call an international dialogue between judges about the role of international norms in domestic law, particularly in informing their understanding of the controls exercised on public officials by the rule of law.

In the first three countries, the norm that sparked the process was Article 3 of the United Nations Convention on the Rights of the Child (CRC),8 which all three had ratified but not incorporated. Article 3 provides that, "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of

law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." In all three cases, the issue was whether an immigration official's decision to deport a parent with children in the host country had to take into account the interests of the children as a "primary consideration." The legal vehicles for Article 3 were the statutory regimes of the three countries, which required, in various ways, that decisions about whether to deport an individual had to be taken in the light of "humanitarian" or "compassionate" considerations.

The first decision by New Zealand's Court of Appeal, Tavita v. Minister of Immigration, did not formally decide anything because the case was adjourned so that the Minister could reconsider. However, in rejecting the argument put forth by the Crown, which conceded that the Minister had not considered the CRC but contended that the CRC was of no effect in the domestic legal system, the Court stated an important principle, describing this argument as "unattractive, apparently implying that New Zealand's adherence to the international instruments has been at least partly window-dressing." In the Court's view, when an official is making this kind of decision, "the basic rights of the family and the child are the starting point.

This idea of a presumption against hypocrisy was then relied on by the majority of the High Court of Australia in Minister of State

for Immigration and Ethnic Affairs v. Teoh, which reasoned that the CRC created a legitimate expectation in Teoh and his children that any decision relating to residency or deportation would be made in accordance with the principle in Article 3(1), namely, that the best interests of the children would be a primary consideration. This expectation could be validly defeated only by informing the Teohs that the Convention principle would not be applied and by giving them the opportunity to persuade the decision maker to change her mind.

Finally, in Baker v. Canada (Minister of Citizenship and Immigration), Canada's Supreme Court held that although a decision about whether to stay a deportation order on "humanitarian and compassionate grounds" was one the legislature had delegated to the expert discretion of immigration officials, the decision still had to be reasonable, that is, justified by relevant legal considerations. In other words, discretion was no longer viewed as a legal void or state of nature, but as replete with legal values. The Court held that among the legal factors informing its understanding of the content of reasonableness was Article 3 of the CRC. Since the officials had not given sufficient weight to the interests of Baker's children, their decision was thus invalid because it was unreasonable. En route to this holding, the Court also articulated a general duty at common law to give reasons for decisions that affect important interests—the first time

the highest court in any one of these four jurisdictions discussed in this section had claimed that such a duty exists.

The duty to give reasons, articulated in the procedural part of the judgment, not only seems premised on the idea of the inherent dignity of the individual, but was considered necessary, in large part, to make possible the kind of reasonableness review described in the substantive part of the judgment. Moreover, while the content given to reasonableness—the idea that the children's interests had to be given special weight—was drawn from sources besides Article 3, namely, the immigration statute and the Immigration Department's own regulations and guidelines, it seems clear that Article 3 was the main—and perhaps the only—source of inspiration for the idea.

This is only fitting. Expressed in various ways in the immigration regimes of these countries, the idea that deportable non-citizens are not subject to the completely unfettered discretion of the immigration department, but must be treated in a way that is attentive to humanitarian considerations, is itself a postwar innovation inspired by the international law discourse on human rights.

This discourse has advanced the idea that officials should be attentive to policy and political considerations, but must also take into account the humanity of the individuals subject to the decision and the impact of the decision on them. In other words, the idea of the

individual as a bearer of human rights reinforces the notion that any individual subject to official power must be treated in a way respectful of his or her status as a member of humanity. Thus, it should be no great surprise if the developing international human rights discourse is then used to fill out the content of humanitarianism.

Together, these cases evoke two important themes of the jurisprudence on international human rights norms. First, a public commitment to membership in the international human rights community must, on pain of conviction of hypocrisy, be given domestic legal force. Second, when international human rights are in issue, they must be given special weight when it comes to balancing their demands against the demands of other considerations such as public policy. Human rights cannot be thought about only to be dismissed. There is a kind of logic to taking human rights seriously, which requires them to be given special weight in the deliberations of public officials.

In contrast, the stance of judges who dissent in these sorts of cases is often driven by the old idea that control of immigration is a matter of executive prerogative and thus immune to the rule of law. The prerogative is preserved in that, even when the immigration statute prescribes that officials must take humanitarian considerations

into account, the judge deems the manner in which that is achieved to be within the discretion of the official.

However, even when no statute is involved and the exercise of executive authority is based entirely on the prerogative, common-law courts are evidently willing, on occasion, to extend the reach of the rule of law, as is illustrated by Abbasi v. Secretary of State for the Home Department. In Abassi, the English Court of Appeal had to deal with the detention of the plaintiff in what it described as a "legal black hole." Abbasi was one of a number of British citizens captured by American forces in Afghanistan and transferred to Guantanamo Bay, an area controlled by the United States and thus beyond the jurisdiction of English courts. Challenges in the U.S. courts had at that stage led nowhere; these courts had held that the "legality" of the detention of foreign nationals rests "solely on the dictate of the United States Government, and, unlike that of United States' citizens, is said to be immune from review in any court or independent forum.

Abbasi's lawyers sought a finding from the English Court of Appeal that the Foreign Secretary owed him a duty to respond positively to his request for diplomatic assistance. Two obstacles seemed to stand in Abbasi's way. First, the principle of comity requires that an English court will not examine the legitimacy of action taken by a foreign sovereign state. Second, an English court will not

adjudicate upon actions taken by the executive in the exercise of its prerogative to conduct foreign relations.

In response to the first obstacle, the Court of Appeal relied on previous authority in accepting Abbasi's contention that "where fundamental human rights are in play, the courts of this country will not abstain from reviewing the legitimacy of the actions of a foreign sovereign state." The Court then went on to accept the argument that Abbasi's detention contravened "fundamental principles recognised by both jurisdictions and by international law." It referred to common law, to U.S. constitutional law,31 and to the International Covenant of Civil and Political Rights (ICCPR).

In responding to the argument about the non-justifiability of the foreign affairs prerogative, the Court rejected arguments that either the European Convention on Human Rights or the Human Rights Act (1998) provided that the Foreign Secretary owed Abbasi a duty to exercise diplomacy on his behalf. The Court did not conclude, however, that decisions by the executive are nonjusticiable when they pertain to its dealings with foreign states regarding the protection of British nationals abroad. Rather, the Court drew on Council of Civil Service Unions v. Minister for the Civil Service for two propositions. First, the doctrine of legitimate expectation "provides a well-established and flexible means for giving legal effect to a settled

policy or practice for the exercise of an administrative discretion." The expectation, which may arise from an express promise or the existence of a regular practice, is not necessarily that the promise will be fulfilled or that the practice will continue, but that the subject is entitled to have the promise or practice properly considered before any change is made. Second, the mere fact that a power derives from the royal prerogative does not "necessarily exclude it from the scope of judicial review." Rather, the issue of justiciability "depends, not on general principle, but on subject matter and suitability in the particular case." Here the Court, following Teoh, referred to a prior decision that accepted that ratification by the United Kingdom of an international convention could, in principle, create a legitimate expectation.

The Court then noted that the Foreign and Commonwealth Office had a policy of assisting British citizens abroad when there is evidence of a miscarriage or denial of justice.40 Since Abassi's case involved the denial of a fundamental right, it followed he had a legitimate expectation that the government would "consider" making representations. However, the Court stressed the limited nature of the expectation, in that the individual's request will be properly considered, that is, weighed against all the other non-justiciable and highly sensitive political factors. The "extreme case," one in which judges should make a mandatory order that the Foreign Office give

due consideration to the Applicant's case, would lie if the Office were, "contrary to its stated practice, to refuse even to consider whether to make diplomatic representations on behalf of a subject whose fundamental rights were being violated." Finally, the Court expressed its confidence that U.S. Appellate Courts would prove to have the "same respect for human rights as our own," and noted that the Inter-American Commission on Human Rights had "taken up the case of the detainees," though it was "yet unclear what the result of the Commission's intervention will be.

The Court thus informed the executive it would be concerned if the executive departed from its practice and also sent a disapproving message to the U.S. government and its courts. This message has been strongly reinforced by a member of the House of Lords, Lord Steyn, who in two speeches has suggested to both the U.S. Supreme Court and his own that they put their rule-of-law house in order. There is, however, more to the judgment than that.

The Court left open the possibility of more intrusive review in other circumstances. For example, if there were no outstanding court actions in regard to Abbasi, it might be thought appropriate for Abbasi to have a legitimate expectation that went beyond a mere "consideration" of his case. However, the significance of the decision lies in its "clear signal that where fundamental human rights are at

stake, the courts will be reluctant to allow the government to hide too far behind the prerogative power" or to allow foreign governments to hide behind the doctrine of comity. It is this issue that explains the Court's reference to the role of international human rights conventions in legitimately influencing a court's understanding of the legitimate expectations of individuals. This reference is the only loose end in an otherwise very tight set of reasons, unless one takes it as a general placeholder for the Court's acceptance of Abbasi's argument that the "increased regard paid to human rights in both international and domestic law" meant international law could no longer be regarded as a matter of relations between states, but as giving "rise to individual rights." Although these rights might not manifest themselves as enforceable duties in the domestic legal order, they still can play a role in controlling public authorities. Moreover, the role they play is not incorporating international legal norms through back door or front door, but rather, as the judges see it, through enriching the judges' sense of the content of the common-law constitution.

A fruitful way of capturing the difference between these cases and those that formally account for the separation of powers is to see the former as a judicial updating of the common law's stock of values to include human rights— rights whose articulation and importance is not exclusively or even mainly in domestic legal instruments. In this

newer, broader view, judges no longer consider their role to be as guardians of values that sustain the relationship between citizen and state, but to be also, even primarily, guardians of the values that sustain the relationship between individual and state, in which the individual is understood as the bearer of human rights. The change is the product of the human rights era, itself the product of the wave of treaties and conventions that responded to the abuses of the Second World War, as well as to the decolonization process that followed that war.

While this change should not be underestimated -it is a consequential re conceptualization of the judicial role - nor in one important sense should it be overestimated. The common law of judicial review always depended for its legitimacy on the notion of an unwritten constitution of legality. Judgments are but the evidence of this constitution, as are other legal texts, and its content evolves as we come better to understand what legality requires. Thus, the change is not in the methodology of the common law's self-understanding, but only in the content of that understanding. Moreover, the change in content brings to the fore an aspect of common-law constitutionalism, an aspect that highlights the productive tension between the claim that the values of the common law have existed from time immemorial and the claim that our understanding of those values evolves.

If one takes the dualism of the partial dissent in Baker seriously, one must also take seriously the political objection that supports dualism—that Parliament has a monopoly on creating legal value within the domestic legal order. However, this objection applies with equal force to the majority's recognition that the reviewing court has a common-law duty to give reasons. It applies as well to extending reasonableness review to discretionary decisions, which in the past would have been considered reviewable at most on a much less strict standard, such as patent or manifest unreasonableness. The objection applies with equal force unless one adopts the rather strained device of attempting to legitimate what judges do by reference to the tacit or implied consent of the legislature - the ultra vires doctrine. This device, however, cannot be stretched to in clude unincorporated, though ratified, human rights conventions because legislative failure to incorporate cannot be interpreted as tacit consent.

That the device cannot be stretched this far might be thought, as did the dissenters in Teoh and Baker, to indicate simply that judges have reached the limits of their review authority. The better understanding is, however, that one contribution of the judicial domestication of international human rights law is that it underlines the poverty of the ultra vires doctrine as a justification for judicial review. This judicial domestication shows that the true justification

was never a view of legislative consent derived from the separation of powers. Rather, it was the constitution of legality, a constitution to whose values the legislature is just as accountable as the executive. Put differently, overcoming dualism about international norms may help us to finally move away from the kind of internal dualism sustained by legal positivist accounts of the judicial role in upholding the rule of law.

International Administrative Decisions

This section develops an international law case study of the listing mechanism developed by the Security Council of the United Nations in the wake of September 11.52 It concerns one specific act of legislation or lawmaking by the Security Council that has potentially profound consequences for the human rights of individuals. Under Article 39 of Chapter VII of the United Nations Charter, the Security Council may make a determination that there exists a "threat to the peace, breach of the peace, or act of aggression," and it may then either make "recommendations, or decide what measures shall be taken to maintain or restore international peace and security." Here, it relies on the authority provided by Articles 40, 41, and 42. Article 41 of the United Nations Charter authorizes the Security Council to decide "what measures not involving the use of armed force are to be

employed to give effect to its decisions" and to "call upon the Members of the United Nations to apply such measures."

Prior to 2001, the practice of the Security Council had generally been to exercise these powers regarding specific conflicts and situations, for example, by imposing sanctions on a state in order to bring it into compliance with international law. The Council would enjoin all states to comply with its decision, but the particular and temporary nature of the decisions did not appear legislative and thus did not offend the thought that intergovernmental organizations cannot legislate international law. To the extent that the Council departed from this particularize and addressed conflicts in general, it would refrain from addressing states in compulsory terms and "call upon" them or "urge" them to take measures.

After September 11, prompted by the United States, the Council adopted Resolution 1373, which posited "all States shall" take certain actions against the financing of terrorist activities, among other actions. The resolution also established a plenary committee of the Council, the "Counter-Terrorism Committee," to monitor implementation of the resolution. Since this Resolution is limited neither by time nor to a particular conflict, but focuses rather on an undefined threat of "global terrorism," in significant measure it can be "said to establish new binding rules of international law—rather than

mere commands relating to a particular situation—and, moreover, even [to] create[] a mechanism for monitoring compliance with them.

In addition, the Afghanistan Committee had its mandate expanded to include monitoring economic sanctions imposed by Resolution 1390 of 2002, which clarifies state obligations regarding listed entities. The committee subsequently became known as the 1267 Committee and was responsible for compiling a list of individuals and entities pursuant to Paragraph 2 of Resolution 1390. In practice, the 1267 Committee's list is based more or less on information supplied by countries, most notably the United States.

The listing mechanism can have far-reaching domestic consequences. Canada, by tradition a dualist country, requires the legislature to transform international treaty rules by legislation before the norms will be given domestic effect. Section 2 of Canada's United Nations Act of 1945 authorizes the Governor in Council (or Cabinet), once the Security Council has called on Canada under Article 41 of the United Nations Charter, to apply one of its measures to "make such orders and Regulations as appear to him to be necessary or expedient for enabling the measure to be effectively applied." These executive measures have to be laid before Parliament, which may resolve them within forty working days; otherwise the order or regulation ceases to have effect.

Four days after the Security Council adopted Resolution 1373, the Governor in Council issued the United Nations Suppression of Terrorism Regulations. These Regulations aim to cut off funding of terrorists by prohibiting financial dealings with a list of entities and by making it an offense to provide or collect funds for a listed person. Further, they impose a duty on Canadian financial institutions, residents of Canada, and all other Canadians to disclose any property they have reason to believe is owned by or controlled by or on behalf of a listed person, as well as information related to transactions involving such property.

On November 7, 2001, the U.S. sought the extradition of Liban M. Hussein, a Canadian citizen and resident of Ottawa, for allegedly engaging in an illegal money transmittal business, an offense under U.S. law. Although Canadian law requires that extradition be on the basis of an offense that has a parallel in Canadian law, no such offense existed. In any case, U.S. authorities clearly wanted Hussein for questioning in connection with the "war" on terror, as they had been alerted by a private company with which they had contracted to engage in counter-terrorism that Hussein was transmitting money to Arab countries. However, even though the U.S. Customs Service had engaged in an extensive investigation of Hussein's activities, no terrorism or money-laundering charges had been brought against him.

Indeed, later in the proceedings, the Royal Canadian Mounted Police said they had not received any information from the U.S. that linked Hussein with terrorism.

The extradition warrant cited an executive order issued by President Bush on the same day designating Hussein and two of his companies, Barakaat North America Inc. and Al Baraka Exchange LLC, among others, as "foreign persons" to whom it would be illegal to provide financial or other services. Such an executive order does not require a statement of reasonable grounds for believing that listed persons are engaged in terrorist activity. Later that day, after Canada received the extradition warrant, Hussein and his companies, together with the other names listed on the presidential executive order, were listed in Canada through the schedule mechanism of the Canadian Terrorism Regulations. On November 9, Hussein was listed by the 1267 Committee of the Security Council, which meant that he was listed three times under Canadian law: under earlier Afghanistan Regulations, also made under authority of the United Nations Act; under the first track of "listed persons" in the Terrorism Regulations; and under the second track in the Terrorism Regulations because of the Schedule listing of November 7.

Canadian government officials stated that the parallel offenses for which Hussein should be extradited were those of acting contrary

to the Terrorism Regulations, specifically, knowingly providing or collecting funds for use by a listed person and providing financial services to a listed person. Hussein's offense was having financial dealings with himself, as a listed person, and with his businesses. Extensive media coverage in both the U.S. and Canada linked Hussein with terrorism, with immediate negative consequences for his business activity in Canada.

Hussein's lawyers contested the extradition as contrary to Canada's Charter of Rights and Freedoms, relying on section 7, which deems a violation to take place when someone is deprived of his right to "life, liberty and security of the person" in a way that violates the "principles of fundamental justice." Since the Terrorism Regulations provide for imprisonment, they clearly pass the threshold for deprivation of "life, liberty and security of the person." Regarding the second part of the test, the lawyers argued the Terrorism Regulations create criminal offenses—moreover, criminal offenses that are "inherently wrong" rather than mere "regulatory offen[s]es." This, they argued, is precluded by section 7, for a principle "so ingrained" in the Canadian legal system—part of the "principle of legality" or the rule of law—is that all true crimes (offenses that prohibit intrinsically wrong conduct) are to be created only by legislation. Their argument here was a democratic one: because of the stigmatization and serious

consequences of true crimes, deeming conduct to be criminal had to be done in the "open air of Parliament rather than through administration." Although Canada's Anti-Terrorism Act creates similar offenses, they noted, it had been enacted as a statute only after full legislative debate.

Hussein's lawyers next argued that the Terrorism Regulations contravene the presumption of innocence, protected by section 11(d) of the Charter, since they deem listed persons to be those for whom there are reasonable grounds to believe have carried out, attempted, facilitated, or otherwise been complicit in terrorist activity. This amounts to legislatively presuming facts that would otherwise have to be proved, removing the onus on the Crown to prove beyond a reasonable doubt that listed persons are in fact engaged in these activities.

Finally, the lawyers argued that the combination of Canada's legislative, after-the-fact determination of Hussein's criminality and the U.S.'s attempt to extradite him for a licensing offense, when in fact what it wanted was to question him about terrorism, amounted to an abuse of the Canadian judicial process that could not be countenanced at common law—an offense that had been subsumed into the section 7 prohibition of deprivations that violated "principles of fundamental justice.

The Canadian government decided to avoid the challenge in court and instead amended the Terrorism Regulations to exempt Hussein. Canadian officials had been in contact with U.S. officials and had concluded that Hussein should not be on the list because he was not connected to any terrorist activities. This exemption meant that Canada was no longer in compliance with its obligations to the Security Council, and it also left Hussein subject to sanctions by other nations. However, Canada succeeded in getting him taken off the Security Council list, thereby coming once more into compliance.

The listing by the 1267 Committee did not play a direct role in creating the basis for an extradition order against Hussein, for his initial listing happened under the second track of the Terrorism Regulations, and on November 7 the Canadian government simply took over Bush's executive order. However, it is far from insignificant that the full title of these regulations includes "United Nations," that the regulations were made relying on the United Nations Act, and that the 1267 Committee in fact adopted the same list two days later, leaving Canada in non-compliance with its obligations to the Security Council once Hussein's name was removed from the Canadian list. What drove the whole process was the legitimacy and legal status that the Security Council and the United Nations as a whole enjoys in Canada. Indeed, in the fairly heated debate about whether it was

appropriate for Canada to react to September 11th with a terrorism statute—one that would become part of the ordinary law of the land—the argument that Canada was merely fulfilling its obligations to the international community loomed large on the side of those who thought such legislation necessary.

There is, then, a deep question about the legitimacy of the process the Security Council put in place for listing terrorist individuals and entities—a question also about the legality of that process.72 The factum, or brief, put together by Hussein's lawyers is fundamentally an argument about legality or the rule of law, although it is an argument made easier for them by the existence of an entrenched bill of rights.

However, Resolution 1267 has been described as legislative in nature. Two questions arise from this description. One might ask on what authority the Security Council legislated and, in particular, used legislation to delegate authority to the 1267 Committee to make its lists. Second, one has to ask about the legal nature of the 1267 Committee. As a body that has been delegated authority by the Security Council, its authority looks administrative. But the Committee is also charged with determining who should figure on a list that, as long as states take their obligations to the Security Council seriously, will result in severe consequences to the individuals so

named. Its function thus looks in part judicial, since it is making determinations equivalent to a finding of guilt, or a function that, at the least, will play a significant role in such determinations when states comply with their obligations. In substance, however, its process is not in any way judicial; rather, it seems one whereby names are merely transferred to the list from a list compiled by one country's security service.

In one view, the answer to the first question has to be found in the Charter of the U.N., in which authority to delegate, if any, will be either stated expressly or implied. However, if the delegated authority was flawed from the perspective of the rule of law, then, whether the Security Council has a general authority to legislate or not, the legislation itself would be flawed in the same way.

Legality and legitimacy are deeply implicated in the common law of judicial review since public exercises of power are lawful on condition that they do not violate these values and principles. Moreover, what is meant by public exercise of power is not confined to executive action under the authority of statute. Even in a legal order that lacks a written constitution of any sort, the legislature is answerable to the same set of values and principles. If a domestic court has good rule-of-law reasons to resist an extradition order based on the listing mechanism of the 1267 Committee, then its refusal to accord

authority to that mechanism indicates a failure of legality the Security Council must remedy before its legislation will merit respect. In addition, assuming that listing a person in this manner is an illegal act, in principle, one who has been listed and who has suffered as a result would be able to claim damages from the institutions that had participated in this process. Of course, if the U.N. were to be sued, it would rely on the doctrine of immunity. However, the doctrine of immunity, whether of states or international organizations, is overdue for revision when the legal wrong for which redress is sought is a violation of human rights.

As was argued on behalf of Abbasi, an international standard of a human right of access to a court is emerging, a right recognized in the constitutional law of many legal orders. Indeed, the U.S. Supreme Court has now gone some way towards recognizing such a right, both in asserting in Rasul v. Bush the jurisdiction of federal courts over the detainees at Guantanamo Bay, and in holding in Hamdi v. Rumsfeld that those designated as "enemy combatants" by the Bush administration have a constitutional entitlement to some minimum of due process in order to permit them to contest that designation. Both decisions can be seen as continuing a tradition of common-law judicial protection of liberty, informed to some extent by an awareness of norms of international law. Even if the Canadian government were to

react to a judicial decision that accepted Hussein's legal arguments by legislating the listing mechanism into the criminal law, its doing so would not affect the merits of the rule of law arguments. Indeed, Canada's Anti-Terrorism statute took over in large part the Terrorism Regulations made under the United Nations Act. The statute provides that the Cabinet may list a group as a terrorist group if it is "satisfied" there are "reasonable grounds to believe" the person has been involved in terrorist activity. Judicial review is available after a group has been listed, but the group seeking review is not entitled to all the information before the judge. Further, the Solicitor General can withdraw the information, with the effect that the judge must pretend it does not exist when determining the reasonableness of the decision to list. This procedure seems to amount to an usurpation of judicial independence, invoking again the idea of a bill of attainder.

Nevertheless, a common-law court does not always have the authority to invalidate legislation because it amounts to a bill of attainder. Even if protection against such bills is constitutionally entrenched, as in Article I, Section 9, of the American Constitution, which states, "No Bill of Attainder or ex post facto law shall be passed," it will often be controversial whether a particular statute amounts to such a bill.

It is important to note that the listing mechanisms initiated by the 1267 Committee replicate the U.S. Foreign Narcotics Kingpin Designation Act of 1999 (the Kingpin Act),89 which aimed to generalize the practice of sanctioning Colombian Drug traffickers by Presidential Executive Order. This Act provides for the imposition of economic sanctions on a world-wide basis against major international narcotics traffickers, their organizations, and the foreign individuals and entities that provide support for them. It established a two-tiered system: the first, permitting the President to designate foreign persons deemed to be drug "kingpins" for sanctions; and the second, permitting the Secretary of the Treasury to designate "foreign persons" deemed to be facilitating the activities of the kingpins. The Act requires that property subject to U.S. jurisdiction of designated individuals be blocked, prohibits U.S. individuals from dealing with designated individuals, and subjects violations of the Act to a range of civil and criminal penalties. The Act explicitly precludes judicial review of the designations, though it does permit review of the civil penalties. On January 23, 2001, the Judicial Review Commission on Foreign Asset Control, which was established by the Act, submitted a final report on the Act to Congress.

Although the Commission recommended that judicial review, along with an internal system of administrative review, be introduced

into the system, the majority of the Commission rejected the claim that the Kingpin Act amounted to a bill of attainder. On its understanding of U.S. constitutional jurisprudence, the Commission concluded that a bill of attainder has to be a law that is both specific and imposes punishment. It argued that because the executive, not the legislature, names individuals, the constitutional protection against such bills does not apply, since they constrain legislative, not executive, action.92 In addition, the Commission concluded the Act was not punitive in the required sense, since blocked assets could be released; the Act was related to goals other than punishment; there was no basis for inferring Congress's subjective intent to punish; and any criminal penalties would be imposed by federal courts based on "rules of general applicability" laid down by the legislature.

Self Assessment Questions

- What is the purpose of judicial review in a democratic system?
- How does the rule of law ensure justice?
- What is the significance of administrative law in governance?

Unit – V

Separation of Powers – Pressure Groups – Political Parties – Single Party, Bi-Party and Multi-Party Systems.

Objectives

- Separation of powers in a government system.
- Single-party, bi-party, and multi-party systems.
- Political Parties function in a democratic system.

Separation of Powers

The doctrine of separation of powers implies that there should be three separate organs of government-Legislature, Executive and Judiciary-with separate set of functions and powers.

The idea is not new as it was discussed by Aristotle in his work 'Politics' where he made a distinction between the deliberative, magisterial (Executive) and Judicial functions. But in ancient Greece this distinction was not followed, as all these powers were often exercised by the same person.

The idea was discussed in the writings of Polybius and Cicero of the Roman empire, where they emphasized the importance of a 'balanced equilibrium of power 'where each part of government acted as a check on the other part. In the Middle Ages too, the idea got resonance in the writings of Marsiglio of Padua who made a distinction between legislative and executive functions of government. Jean Bodin in the sixteenth century opined that judicial functions be

given to independent magistrates and it should not be in the hands of monarchs as it "would mean the indiscriminate mixture of justice and mercy, of strict adherence to law and arbitrary departure from it".

John Lockes' 'Civil Government' talks about three powers that existed in every commonwealth. He mentioned it as legislative, executive and federative where the federative power relates to the conduct of foreign affairs. He opined that for the interest of liberty powers of government be separated from each other.

The best exposition of the doctrine of separation of powers was given by the French scholar Montesquieu in his work, 'Sprit of Laws' published in 1748. Montesquieu is widely regarded as the father of the doctrine of separation of powers.

Montesquieu lived in the times of Louis Fourteen who gave the famous dictum 'I am the state'. The monarch held absolute power, as his words was law and his authority unquestionable. The monarch combined in his person all the three powers of govt. Montesquieu observed that all the powers concentrated in one person or body of persons is dangerous, and it will result only in the denial of liberty to people. Montesquieu happened to visit Britain, and was greatly impressed by the liberty enjoyed by the people of that country. He misjudged it as a result of separation of powers that he thought existed in that country. So he came to the conclusion that separation of powers

was the main reason for the liberty of British people. This view of Montesquieu was however incorrect, as the cabinet system was not fully developed in Britain (which itself is not based on the principle of separation of powers) when he visited that country, and there was no separation of powers in Britain.

Montesquieu believed that there must be separation of powers If liberty is to be safeguarded.

The doctrine of separation of powers, as stated earlier, implies that there should be three separate organs of government with their separate set of functions and powers. Function of government be differentiated and performed by different organs, consisting of different persons, so that each organ is limited to its own sphere of activity and not be able to encroach upon the independence and jurisdiction of the other. Allied to the theory of separation powers is the doctrine of checks and balances. Each organ of government has to act within the law and not beyond it. If an organ of government acts in excess of that permitted by law, it should be checked by the other organs to restrain its encroachments. Thus power halts power(‘*lepouvoir artere le pouvoir’*) and the separation of powers within the structure of government make sure that one power operates as a balance against the other power.

Statement of the theory of Montesquieu which is often quoted runs thus:

"When the legislative and executive powers are united in the same person, or in the body of magistrates there can be no liberty; because apprehensions may arise lest the same monarch or senate should enact tyrannical laws ,and execute them in tyrannical manner. Again, there is no liberty if the judicial power be not separate from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would then be legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be the end of everything, were the same man or the sane bod to exercise those three powers that of enacting laws, that of executing the public relations, and of trying the case of individuals".

Montesquieu's theory of separation of powers had a great impact on the political thinking of the time and found its best expression in the constitution of United States of America. Founding fathers of the American constitution wanted to limit the powers of each organs of government, in order to protect the liberty of people. Montesquieu's writings influenced the French Revolution and the famous Declaration of Rights issued after the revolution, laid out that

"every society in which the separation of powers is not determined has no constitution"

Criticism

Though the theory received wide recognition and had great practical implications, it also received a fair amount of criticism from various quarters. Major criticisms leveled against the theory are:

1. Absolute separation of powers is not possible: Organs of government are like the organs of a human body; though distinct they must work in unison in order to be useful and effective for the purpose for which they are created. Absolute separation of power leads to division of organs of government into water- tight compartments. This can lead to inefficiency and deadlocks in the functioning of government and so is highly undesirable. Moreover, in modern times institutions exercise overlapping functions and provision is made for some degree of co-operation between different organs of government.
2. All organs of government are not equal in powers: Theory of separation of powers assume that the powers of organs of government are equal. But with the emergence of democracy this assumption seems to be wrong with pre-eminence of legislature among the other organs being widely recognized.

Executive has been reduced to a subordinate position. In the parliamentary system executive is responsible to the legislature and is dependent upon the legislature for its existence.

3. Organs of government are mutually dependent: Rather than clear separation, organs of government today, depend and cooperate among one another to a great extent . For example, legislature performs some executive functions apart from its main function of law making, like wise executive performs some legislative functions apart from its main function of rule application. In USA bills are often prepared under the orders or will of the president and are introduced in the congress by the members of his own party. Ordinance are issued by the executive, which have the same effect of law, is a practice followed in many countries, including India.
4. Montesquieu's view was that liberty is not possible without separation of powers. But this view is not right as many countries like Britain, India, Italy etc., which does not follow separation of powers, guarantee liberty to its people.
5. Modern democratic view does not accept the traditional doctrine of separation of powers. Montesquieu's theory emerged at a time when state powers were viewed with suspicion and danger. But with the advent of the concept

welfare states, people expect more action and services from the state. This has led to the ascendancy of executive over legislative branch .Planning and active services demand fusion and not rigid separation of powers.

Pressure Groups

Apart from political parties there are various associations and groups exiting in almost all countries of the world. A group has an interest of its own and it also represent a pattern of process rather than a static form. A group can emerge, only when the interactions among its members are relatively frequent and sufficiently patterned to produce directional activity. What bind members of the group is the interest – a shared attitude concerning a claim or claims to be made by one group upon certain other groups in a social system.

Interest is the main reason for the organization of groups. People holding similar views and interest may form groups for the realisation of their interest. The shared interest may be political, religious, occupational, cultural etc. Groups or association formed by like minded people for the protection and promotion of specific interest or goals are called Interest Groups. It is a formal organization of people who share one or more common aim or interest. Interest groups may be formed at the national, state or even at the local level. A person can be a member of different interest groups at the same

time. Interest groups may or may not indulge in politics, but their main aim is to protect the interest of the group.

Hitchner and Harbold describe pressure groups as "any collection of persons with common objectives who seek their realization through political action to influence public policy". Pressure groups are part of political process and they attempt to reinforce or change the direction of government policy. It can be said that, pressure groups are those interest groups that exert pressure on the government with the aim of accomplishing what is advantageous to them. An interest group when they start influencing the formation and administration of public policy by the government, they become pressure groups.

Pressure groups do not seek to influence the electorate on the basis of certain programmes. They are only concerned about the interest that they espouse. They normally do no actively get involved in politics, but at the same time they are not averse to indulge in politics if that helps their cause.

Generally, no distinction is made between interest groups and pressure groups and both terms are used interchangeably by most writers on the subject.

Main Features of Pressure Groups(Interest Groups)

We can identify certain characteristics which are common to all pressure groups. They are:

(a) **Self Interest**- Self interest is guiding force for the formation of a pressure group. Individuals having common interest come together to form groups to fight for their interest.

(b) **No Open Alignment with Politics**- Pressure groups are not organizations without politics, but at the same time they do not prefer to have open alignment with politics. They are somewhere in the middle. In the view of Eckstein, "Pressure group politics represent something less than the full politicization of groups and something more than de-politicization: it constitutes an intermediate level of activity between the political and the apolitical." Generally a group keeps its political complexion mainly for the sake of expediency.

(c) **Pressure Groups Differ from Political Parties**- political parties are generally bigger associations and represent the interest of various sections of a society. Pressure groups on the other hand are comparatively smaller groups and have specific interest to pursue. One can be a member of different interest groups simultaneously, but that is not possible in the case of political parties.

(d) **Universality**- pressure groups enjoy universality. They are formed in all parts of the world. They include organizations catering to the interest of various sections of the society. These include business,

labour, farm cooperative, church and other organizations. Interest groups based on religion and caste are predominantly a feature of developing countries like India.

Types of Interest and Pressure Groups

Two most common classification of interest groups are:

(a) sectional and promotional groups ;

(b) insider and outsider groups

Sectional Groups (sometimes refered as protective or functional groups) strive to advance or protect the interest of their members. Trade unions, business corporations, trade associations and professional bodies are the prime examples of this group. Their 'sectional' character is derived from the fact that they represent various sections of society; workers, employers, consumers and ethnic or religious groups , etc,. In the USA ,sectional groups are often classified as 'private interest groups' , as these groups are concerned with the betterment and well being of their members, and not of the society in general.

In India we can find various sectional interest groups working for protection and promotion of specific interest. For instance in the business sector we have groups like federation of Indian Chamber of Commerce and Industry, All India manufacturers Association, Confederation of Indian Industry etc. Likewise, in the labour sector in

Kerala, employers and employees have organized pressure groups like Private Bus Owners Association, the Merchants Association CITU, INTUC,BMS, AITUC ,etc. Among the professionals like doctors, lawyers, teachers etc., we have pressure groups like Indian medical Association, The Bar Association, All Kerala Private College Teachers Association etc. In India we also find pressure groups based on religion, caste and community. The Nair service society, Hindu Maha Sabha, the Scheduled Caste Federation etc., are examples.

Promotional Groups are groups that are set up to advance shared values, Ideas or principles. These are groups that aim to help groups other than their own members. In the USA they are called 'public interest groups' to emphasis that they promote collective, rather than selective benefits. They espouse many causes like campaigns favouring civil liberties, protest against pollution, defence of traditional or religious values etc. When involved in international politics these groups are called nongovernmental organizations or NGOs. Some organizations have both sectional and promotional features. For instance, the National Association for the Advancement of coloured people addresses the Sectional interest of American black people , but is also concerned with causes such as social justice and racial harmony.

The alternative system of classification is based on the status that group have in relation to government and the strategies they adopt in order to exert pressure. One such classification is 'insider groups' and 'Outsider groups'. **Insider groups** have regular privileged and institutionalized access to government through routine consultation or representation in government bodies. Insider and sectional groups classification do often overlap. This is because of the ability of powerful sectional groups like those in the business and trade to impose sanctions, if their views are ignored by the government. Government may also consult groups that possess specialist knowledge and information that may be of help in the formulation of various policies.

Outsider Groups are either not consulted by the government or are consulted only irregularly. Outsider groups, since they lack formal access to government are often forced to 'go public', so as to indirectly influence the policies of the government. This strategy of outsider groups often do not produce the desired results. Radical protest groups (espousing the cause of animal rights, environment protection etc.) have little choice than being outsiders as their causes are often not the goal or priorities of the government.

G. .A Almond classify pressure groups into four categories . They are:

a. **Institutional Groups**- This is Almonds own invention. Here he includes departments of the state like legislature, executive**,** bureaucracy and judiciary in the category of pressure groups. Almond's reasoning is that even the organs of government put pressure on the government. For instance, bureaucrats may influence the ministers and then a decision may taken, so as to protect and promote the interest of the administrators.

b. **Associational Groups**- This category includes all the leading pressure groups of a country like the organizations of businessmen, workers, farmers professionals etc., These are formally organized and largely registered bodies having their constitutions, rules of organizations finances ,record of activities and the like.

c. **Non Associational Groups**- In this category Almond includes groups having informal organisation . These are based on factors of kingship, religion, tribal loyalties and the like. These bodies appear and disappear from time to time. These bodies appear when some important matters are to be taken up by the community.

d. **Anomic Groups**- This category includes all those organizations whose behavior is unpredictable. Such organizations often act spontaneously and indulge in activities

of violence and extremism. Students unions and youth organizations are best examples of this category.

Tactics of Pressure Groups

Various strategies are adopted by pressure groups for the realization of specific interest. Some of the common tactics used by pressure groups are given below:

Lobbying-This is the common and an effective strategy adopted by the pressure groups. Here pressure groups resort to relentless persuasion on the public authorities to make them act according to their wishes. Public authorities include not only political executives but also bureaucrats and all other public servants who are involved in policy making and implementation.

Public Opinion-Creating favourable public opinion for ones cause is a sure way of influencing the policy of the government in modern democracies. Pressure groups use the tactics of publicity to call attention to their appeals. To influence the opinion of the people, pressure groups use various methods like, bringing out pamphlets and books, conducting of press conferences and delivering of speeches, holding of panel discussions etc. Through propaganda and special pleading with the electorates, they build up considerable influence in the matters of public policy.

Political Allegiance- Some pressure groups actively associate with political parties. They exert influence on the political party they associate with to achieve their objectives. They even try to get one of their members nominated in the elections or even in the ministry. Traditionally, British trade unions have had much influence in the policies of the Labour Party.

Electioneering- Some pressure groups , though they do not openly align with any political parties, yet they support candidates who can be relied upon in the time of elections. This they do in the hope that once elected the supported candidate will help them back to realize their interest.

Strike- Strike is the temporary stoppage of work. Generally pressure group resort to strike only when they have failed to achieve their objectives through the above mentioned(Lobbing, public opinion, political allegiance etc.) tactics.

Political Parties

Political parties are indispensable for the working of modern representative democracy. They have made their way into vast majority of countries of the world and in most political systems. Nature of these parties may differ widely-they may be democratic or authoritarian; they may seek power through elections or through revolutions ;and may be ideologically as varied as left, right or centre.

But one thing is certain, there will be some kind of political parties in almost all countries of the world, regardless of the fact that where that country is situated.

Historically, the origin of party system is intimately connected with the development of British party system and politics. Hence, party system in England is regarded as the progenitor of modern parties. Generally, party system is viewed as an extra-legal growth in most democracies, as it is not mentioned in the constitutions and it exist outside the legal framework of the states .Constitution of United States of America does not presume the existence of political parties. So is the case with Britain. In fact, makers of American constitution were against political parties, as they felt parties were highly detrimental to national solidarity, as they encouraged strife, division, chicanery and personal manipulation. President George Washington even advised the people against formation of political parties. Yet, within a few years (by the beginning of the 19th century) party system became well established in America.

Parties of the modern kind first emerged in the USA, where the federalist party(later the wigs, and, from 1960, the Republican Party)appeared as a mass based party during the election of 1800. Many conservative and liberal parties started their life as factions. But later on, they widened their base and transformed into mass based

parties. Socialist and parties representing religious and ethnic groups on the other hand, were born as a result of social movements or interest groups operating outside government. They developed into full fledged political parties in the hope of winning formal representation and shaping public policy. By the middle of the 20th century about 80 per cent of the world's states were ruled by political parties. But in the 1960s and early 1970s, a lot of developing countries, especially the newly independent countries of Asia and Africa reverted to military rule. This was largely because of the feeling that democracy was divisive and failed to solve the problems of the people. Added to this was the inconvenience the democracy caused to the economic and military elites in these countries. But the upsurge in the democratization felt in the 1980s and 1990s world over have again brought back the importance of political parties.

Definitions of Political Party

Some of the important definitions of political parties are stated below:

According to R N Glichrist "A political party is an organized group of citizens who profess to share the same political views and who by acting as a political unit try to control the government"

According to R.G. Gettle,"A political party consists of group of citizens, more or less organised, who acts as a political unit and who

by the use of their voting power, aim to control the government and carry out their general policies"

According to R.M. MacIver "A political party is an association organized in support of some principles or policy which by constitutional means in endeavors to make the determinant of government".

Basic Features of Political Parties

A close reading of the above definitions of political parties given by various scholars lead us to some idea about the basic features of political parties. We can summarise the characteristics or ingredients of political parties as thus:

Organisation- Political parties are more or less organized. Without organization people make just a disorganized crowd and it will be difficult to conform to the common principles on which they agree. Moreover, organization provides strength to the party and helps it to influence people better. Political party needs a good organization to communicate their policies and programs to the people.

Members agree on principles- Members of a political part must agree on fundamental principles of public policy adopted by the party. Members may differ on details, but there should be no difference of opinion on the fundamental principles they stand for. If there is disagreement among members on fundamentals, then cooperation

among the members become difficult and their political ends even more difficult.

Formulate clear programmmes- Political party should formulate clear and specific programme which they should place before the electorate to win their support. Political party can succeed in this, only if the party members support their programme wholeheartedly and work for its realization

A political should adopt only constitutional and peaceful means to capture power and form government- It is the ballot box which should decide the fate of a political party and its claim to form government. Violence as a means of capturing power cannot be the character of political party in a democracy.

A political party must promote national interest – A political party must endeavor to promote national interest and not sectarian or communal interest . Burke defines a political party as "a body of men united, for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed". When a political party tries to promote sectional interest and selfish ends, it degenerates into a faction.

A political party should aim to capture power - party that does not aim to capture power and form government cannot be termed a

political party in the technical sense. And as stated earlier a political party should use only constitutional means to capture power.

Basis of Political Parties

There are five distinct basis for the formation of political parties. They are as follows:

i. One important explanation of party divisions is that, it is based on human nature. Origin of political parties can be traced in the domain of human psychology. People have different temperaments. If some are moderates, others are extremist; if some are radical, others are reactionary. Thus, people form parties to give expression to their instincts. The conservatives may get together and form a party, catering to conservative and orthodox views, while the radically inclined people may constitute a liberal or socialist party. According to their temperamental differences and leanings, people are attracted to one party or the other. This is the reason why people who want to retain and maintain their old institutions are attracted towards the conservative parties and people who desire change in the organization and working of institutions are attracted towards radical parties.

ii. Economic interest is one major reason for the formation of political parties. If some people desire economic freedom,

others prefer more and more state control on the economic liberties of the people. Thus, some advocate *laissez faire while* others desire socialism that stands for state intervention in the economic life of the people. Thus ,we see people forming liberal parties which are in favour of less and less state control over the economic life of the people and some forming socialist parties which advocates more of state intervention in peoples economic life. Halcombe has observed "National parties cannot be maintained by transitory impulses or upon temporary needs. They must be founded upon permanent sectional interest, above all upon those of an economic character".

iii. Political parties may be formed on the basis of ideology. The clash of economic interest that we have already mentioned above can be further studied in the factor of ideology. Parties of the 'right' like Fascist and Nazis are interested in protecting and promoting the interest of the capitalist and other affluent sections of the society. Whereas, parties of the 'left', like socialist and the communist desire a change in the present system, so as to give benefits to the underprivileged sections of the society. But, today ideological differences between political parties are not that pronounced. For instance, policies and programmes of the Republican and Democratic parties in the

USA are such that, it is difficult to distinguish one from the other on the basis of ideology. Marxist parties on the other hand, are keen on them being different from others on the basis of ideology and term all non- communist parties as organizations of 'right reaction'.

iv. Religion, caste and communal sentiments also play a part in the formation of political parties, especially in the developing countries of the world. Here people have very strong sentiments for their religious or communal order. It becomes relatively least for the political parties to appeal to their primordial identities like caste or community and thus convert their support into political support. Christian democrats in Switzerland, Hindu Maha Sabha and Akali Dal in India etc., are examples of parties based on religion and ethnicity. Dravida Munnetra kazhgam in Tamil Nadu and Mizo National Front in Mizoram falls in the category of parties mentioned above.

v. Environment also induces an individual to seek the membership of one party or other. Generally people inherit politics as they inherit religion. Children get their basic political orientation from the family and it has a tremendous influence over the child .Often, thus, political views of the

family also become the political views of the child. In the USA for example, people of Irish descent traditionally show their inclination towards the democratic party, while the people of German descent prefer the republican party.

Types of Political Parties

There are any number of classification for the political parties. The most important of these are as follows:

Cadre and mass parties Representative and Integrative parties Constitutional and Revolutionary Parties Left-wing and Right-wing Parties.

The most common distinction is that of '**cadre' parties** and '**mass' parties.** The *cadre* party originally meant a 'party of notables', dominated by an informal group of leaders who saw little point in building up a mass organization. Such parties developed out of parliamentary cliques or factions at a time when franchise was limited. However, the term cadre now denotes trained and professional party members who exhibit high level of political commitment and doctrinal discipline. The distinguishing feature of cadre parties is their reliance on a politically active elite, that is capable of offering ideological leadership to the masses. Chinese communist party, Nazi party in Germany, Fascist Party in Italy are examples of cadre parties.

Mass parties emphasis on broadening membership and constructing a wide electoral base. For this to happen, they give much importance to recruitment and organization, than on ideology and political conviction. Earliest examples of mass parties were European socialist parties, like German Social Democratic Party and UK Labour Party, which constructed organizations designed to mobilize working class support. Most modern, fall in the category of 'catch- all parties' as mentioned by Otto Kirchheimer. These are parties have played down their ideology in order to appeal to the largest possible number of voters. Best example of catch all parties are found in USA in the form of Republican and democratic party. Modern de-ideologised socialist parties such as German Social democrats and the Labour party in the UK also fit this description.

A party distinction advanced by Sigmund Neumann is that of between **Integrative parties** and **Representative parties**.

Representative parties attempts to reflect, rather than shape public opinion. Primary function of these parties is to secure as many votes as possible in elections. In this respect they place pragmatism before principle. The prevalence of such parties in modern politics have given force to arguments which portray politicians as power-seeking creatures who are willing to adopt whatever policies that will bring them electoral success.

Integrative parties, on the other hand, adopt proactive, rather than reactive political strategies. These parties emphasis on mobilizing people and they try to educate the masses, rather than merely responding to their concerns. Although Neumann saw the typical mobilizing party as an ideologically disciplined cadre party, mass parties also exhibit mobilizing tendencies. For example, until they faced electoral failure and got consequently discouraged , socialist parties were bent on winning over the electorate to a belief in the benefits of public ownership, full employment ,redistribution, social welfare and so on.

Third classification of parties is of, **Constitutional parties** and **Revolutionary parties.** Constitutional parties acknowledge the rights and entitlements of other parties, and thus operate within a framework of rules and constraints. These parties understand that there is division between the party and state, between party in power and state institutions, that enjoy formal independence and political neutrality. Constitutional parties, above all, acknowledge and respect the rules of electoral competition. They understand that winning or losing an election is part of the electoral process. Mainstream political parties in liberal democracies all have such a constitutional character.

Revolutionary parties, on the other hand are anti-system or anti-constitutional parties, either of the left or the right. Revolutionary

parties aim to seize power, by overthrowing the existing constitutional structure through insurrection and popular revolution or through quasi-legalism as was practiced by Nazis and Fascists. Revolutionary parties when they win power, they invariably become 'ruling' or regime parties, suppressing rival parties and establishing a permanent relationship with the state machinery. In single party systems ,whether established under the banner of communism, nationalism fascism etc., the distinction between party and the state is weakened and ruling party substitute for government, creating a fused 'party- state apparatus' This was the case in the former USSR where the general Secretary of the communist party used to act as the head of the government.

The final classification of political parties is on the basis of ideology especially between parties those labeled **Left Wing** and those labeled **Right Wing**. Left parties (progressive, socialist and communist parties) stands committed to change, in the form of either social reform or whole scale economic transformation. These parties have traditionally drawn their support from the ranks of the poor and disadvantaged sections of the society. Right-wing parties (conservative and fascist parties in particular) generally uphold the existing social order and stands for continuity. Their supporters usually include business interest and the materially contented middle class. These

classifications of right and left are often misleading in the present times, as a single party may show the characteristics of both the right and the left.

Functions of Political Parties

Political parties are considered as the backbone of democracy without which modern democratic governments would not have functioned to our satisfaction. They perform a variety of functions which helps in the smooth working of democracy. Some of the functions performed by political parties are:

Political parties unite, simplify and stabilize the political process. They bring together sectional interest overcome geographical distances, and provides coherence to divisive governmental structures. Political parties, especially, national parties are a unifying force in a society, characterized by diversities of language, religion, caste, culture etc. With the huge population of modern states without the medium of political parties, political process would have been in utter chaos.

a. Representation is often seen as the primary function of political parties. Political parties are meant to represent the views of the people whom they represent.
b. Political parties help to aggregate and articulate various interest found in society. Parties act as vehicles though which various

interest of society- business, religious, labour, ethnic- are advanced or defended. For instance, the UK Labour party was created by the trade union movement with the aim of achieving working class political representation. Political parties recruit various interest and groups in order to broaden their electoral base. National parties articulate demands of a multitude of groups, aggregate their demands as well as balance their competing interest against one another.

c. Political parties act as a link between the government and the people. It is mainly through the political parties that governments are kept informed about the wishes and aspirations of the people.

d. Political recruitment is an important function performed by political parties. Parties are responsible for providing the state with their political leaders. Politicians hold office by virtue of their party post. In parliamentary systems leader of the largest party in the lower house normally becomes the Prime Minister and his cabinet colleagues are normally, senior party members. In presidential systems, President generally represent a political party. Parties generally act as training grounds for politicians equipping them with skills, knowledge and experience needed for playing larger political roles.

e. Political parties are important agents of political education and socialisation. Political parties constantly educate people through debates and discussions and campaigning, especially during elections .Their advocacy of personalities and policies is carried through press, meetings and personal contacts. Issues that political parties highlight set the political agenda, and the issues and attitudes they articulate become part of the larger political culture.

f. Political parties also perform social welfare functions. They work for eradication of social evils like illiteracy, untouchability, ignorance etc. During the time of emergencies, they work for the alleviation of the sufferings of the people. This is often demonstrated in the time of natural calamities like earth quakes, floods cyclones, famines etc.

Political Party Systems

An easy and common way of classifying party systems are on the basis of number of parties competing for power. On this basis Maurice Duverger distinguish between 'one- party' 'two- party' and 'multi- party systems.

One Party Systems

One-Party or Single Party System is one in which a single party enjoys the monopoly of power, through the exclusion of all the

other parties. Here one party dominates the politic of a country. There may be other parties but they are insignificant players, as they do not get enough votes to form a government or an effective opposition. One- party systems are generally associated with totalitarian regimes. In single party systems, authority of the party is total and the party members are well disciplined and are committed to the ideology of the party. Opposition parties are either banned by law or are removed using brute force. All the authority of the state will be concentrated in a single party and the party even absorbs the state, instead of merely acting on its behalf. Single party's authority embraces all aspects of human life. One-Party system first came into being with the emergence of communist state in Russia in 1917 under the leadership of Lenin. Germany under Hitler and Italy under Mussolini are all examples of single party systems.

Two different types of single party systems can be identified. The first type is found in state socialist regimes where communist parties have directed and controlled virtually all the institutions and aspects of society. Such parties practice strict ideological discipline and have highly structured internal organizations, in line with principles of democratic centralism. They function as cadre parties and the membership is restricted on political and ideological grounds. Just

above 5 percent of the Chinese population are said to be the members of Chinese communist party.

The second type of one party system is associated with anti-colonial nationalism and state consolidation in the developing world. Here 'ruling' party developed out of an independence movement that proclaimed the need for nation-building and economic development. One-party systems in Africa and Asia have usually been built around the dominant role of a charismatic leader and ideology proclaimed by that leader. Julius Nyerere in Tanzania Robert Mugabe in Zimbabwe are prime examples of this.

Merits of Single Party Systems

Great merit of single party systems is that it provides stability to the governments. Since the party has monopoly of government and politics and there is no opposition to dislodge it from power the governments are stable.

Another merit is that single party is that it enhances national unity. It is argued that democratic pluralism sacrifices national unity by encouraging sectional interest. Single party, preserves national unity and looks at all problems from the national point of view.

There is no chance of conflict between party and government since members of one are also the members of the other. This is

reflected in the efficiency of administration as chief executive faces no difficulty in implementing the policies of the party.

Single party systems are also less expensive as there is no possibility of frequent elections as the governments are stable. Even the elections process is less expensive as there is only one party to contest.

Demerits of Single Party System

The main defect of single party system is that, overtime, it tends to become tyrannical and irresponsible. Since a single party has complete control over the politics and government and there is no genuine opposition to check the arbitrariness of the government and thus, it becomes authoritarian. It ruthlessly suppresses or even eliminates any form of genuine opposition or dissent.

Another major defect of one party systems is that there is no chance for alternative governments or politics. All sections of the society may not be adequately represented in the party. People who are not satisfied with the system does not have any option, other than to continue with the system.

Single party rule often leads to rule of the elite, where power is concentrated in the hands of a select few. Party is more prone to commit mistakes, since there is no opposition to point out the mistakes of the government.

Two Party Systems

Two-party system or Bi-party system is one in which two 'major' parties dominates the politics of a country and have equal prospect of forming governments. Two party systems can be identified by three distinct criteria:

a. Though a number of minor parties exist, only two parties enjoy sufficient electoral and legislative strength for winning government power.
b. One party is able to rule alone and the other party becomes the opposition.
c. Power alternates between these two 'major' parties; both parties are electable and the opposition serving as 'government in the wings'.

Bi- party system is prevalent in countries such as USA, UK, Canada, Australia and New Zealand. In USA the two major parties are the Republican Party and the Democratic Party. In UK it is the Labour Party and the Conservative Party.

Merits of Two –Party Systems

Two- party systems are characterized by stability ,choice and accountability.

Bi-party systems are characterised by stability of governments. The party that comes to power generally gets a comfortable majority in

the legislature in the parliamentary system. The governments thus formed can effectively implement the policies and programmes proclaimed by the party. It ensures efficiency of administration and continuity of policies. Vigorous and consistent home and foreign policies are possible only if the government is stable.

Two party system secures the democratic government in the real sense. Two parties offer the electorate, the choice between rival programmes and policies. People can make a choice knowing that, if their party wins the election, the party will be able to carry out the promises made in the election manifesto without having to make compromises with other parties.

Each party plays a positive and constructive role so as to win as many supporters as possible for their party. It behaves in a responsible manner, so that the other party does not make political capital out of its objectionable acts of commission and omission.

Opposition party plays a constructive role in two party systems. Opposition points out the flaws in the acts of the government, and unmasks its real infirmities. Criticism is not always aimed at pulling down the government. Constructive and active role played by the opposition is amply demonstrated by Her Majesty's opposition in the UK and by the opposition parties in the USA.

In two party system responsibilities are easily identified- one party rules and the other becomes the opposition. The leaders of both the parties as well as the people know the responsibilities of each other. Chances of corruption are also less in this system as the ruling party does not have to tolerate the corruption of other parties as In the case of coalition governments where governments are dependent on the support of other parties.

Advantages of bi-party has been very well summed up by Laski "it is the only method by which the people can at the electoral period directly choose its government. It enables that government to drive its policy to the statute book. It makes known and intelligible the results of its failure. It brings an alternative government into immediate being".

Demerits of Bi Party System

In two-party systems there is the chance of executive becoming very strong and with the support of the legislature the cabinet may act like a dictator. Rulers know that government cannot be easily defeated in the legislature and they can continue with their policies even when they are opposed by the opposition.

Electorate have choice, but it is effectively restricted to only two parties .Even if one is not satisfied with both the parties ,still he has no effective choice other than voting for either of the two parties.

This situation may leads to polarisation of vested interest and party prejudices.

Minority interest may not be adequately represented, or worse, ignored in the bi- party systems. The division of the country into two parties amounts to ignoring a good number of other interest not falling in the domain of these two parties.

Ruling party may ignore the opposition or even the public opinion in a bi-party system. Governments when they have comfortable majority, they know that they can be brought down only in the next general election and they don't have to pay much attention to the opposition or public at present.

Multi Party System

Multi party systems is characterized by the existence of three or more parties which regularly, secure substantial number of votes and are able to share power. Parties are well organized and they are able to exert considerable influence on the politics of a country. In multi-party systems, usually single parties are not able to secure absolute majority and form governments, and the result is the formation of coalitions governments .Smaller parties may form coalitions and form governments by excluding the major parties. This is what happened in India during the Janata party rule in 1977, and the various non-congress governments that were formed in the late 1980s

and early 1990s. Multiparty system exists in a number of countries including India, France, Germany, Italy, and Switzerland.

Merits of Multi Party System

Multi-party systems are considered more democratic than all other systems. True democracy demands interest of all voters to be adequately represented. Here all shades of opinion, every conceivable interest of people, find their place in multi-party system. All sections of the population feel that there Interest are being taken care off in the multi-party system.

Dictatorship of the executive or cabinet is virtually impossible in multiparty systems, as the governments that come to power are, generally dependent on other parties for its survival. Displeasing the parties that support the government, may lead to the supporting parties withdrawing its support. Governments being aware of this danger, usually does not act in a despotic manner.

Wide choice are available with the electorate and all parties have a realistic chance of gaining governmental power. Thus voters are not constrained to vote for a particular party as in the case of single and bi-party systems.

Governments are more sensitive and responsive to public opinion. Governments cannot afford to ignore the interest of any

section of society, as it can pave the way for the downfall of the government.

Demerit of Multi Party System

The main drawback of multi-party system is the instability of the governments. Coalition governments formed in multiparty system are inherently unstable. Parties in a coalition may, at any time withdraw support to the government in the slightest of provocations or discomfort, if its suits the supporting party.

Efficiency of administration may be affected due to the uncertain nature of coalition governments as the governments may shy away from taking hard, yet necessary decisions. Government will be often compelled to make compromises and concessions due to the pressure of coalition partners.

Frequent change of governments affect the continuity of policies and it can severely impact negatively on the foreign policy front.

The sheer multiplicity of choice to the electorate in times of elections may confuse the voters, especially in countries with large section of illiterate and uneducated voters.

Maurice Duverger's Analysis of a Political Party.

French scholar Maurice Duverger's study of the organization and working of a political party has given us some useful insights

about a political party. For him "Political party is not a community, but a collection of communities, a union of small groups dispersed throughout the community (branches, caucuses, local association etc.) and linked by coordinate institutions." He makes comprehensive view of the horizontal and vertical elements of a political party. An empirical examination of the organization and working of a political party shows the role of several 'inner circles' as:

a. **Caucus:** It is like a small unit like clique, core committee, coterie etc., where the size is deliberately kept small. Its strength depends not on the size but on the quality of its members. It is actually, a group of 'notables', chosen because of their influence. Caucus plays a very important part in the decision-making process, though its activity reaches its peak on the eve of elections.

b. **Branch:** It is largely an invention of socialist parties which desires to maintain intimate touch with the people. It is less centralized than the caucus and appreciates its growing proximity with the masses. Leaders of the socialist party often visit branch members and free exchange of ideas takes place between the leaders and the branch members.

c. **Cell**: It is an invention of fascist and communist parties. The units of a party are scattered in every nook and corner of the

country and every cell has a much greater hold on its members than the caucus or a branch. The members of the cell carry much importance than other members of the party. The entire network of the cell is controlled by the highest unit of the party composed of the real decision-makers at the top.

d. **Militia:** Fascist and communist parties have a military wing under their command like the Shock Troops of Mussolini, or the Red Guards of Mao. The members of these organizations remain civilians, though they are given military training. The members wear prescribed uniforms, hold party flags and act at the behest of the party leaders working under the supreme commander of the chief of the organization.

Self Assessment Questions

- What does the separation of powers mean in a government?
- How do political parties contribute to the democratic process?
- What are the advantages of a bi-party system over a multi-party system?

Reference Books

1. Johann Kaspar Bluntschli, *The Theory of the State,* Oxford University Press, 1885.
2. Woodrow Wilson, *The State: Elements of Historical and Practical Politics,* D.C. Heath & Co., 1889.
3. W.W. Willoughby, *The Nature of the State: An Inquiry into the Conditions of Its Existence,* Macmillan & Co., 1896.
4. Francis Lieber, *Manual of Political Ethics,* Charles C. Little and James Brown, 1838
5. Henry Sidgwick, *The Elements of Politics,* Macmillan & Co., 1891
6. Thomas Hobbes, *Leviathan,* Printed for Andrew Crooke, 1651.
7. John Locke, *Two Treatises of Government,* Awnsham Churchill, 1689.
8. Jean-Jacques Rousseau, *The Social Contract, or Principles of Political Right,* Marc-Michel Rey, 1762.
9. James Bryce, *The American Commonwealth,* Macmillan & Co., 1888.
10. J.S. Mill, *Considerations on Representative Government,* Parker, Son, and Bourn, 1861.
11. Radhakumud Mookerji, *Local Government in Ancient India,* Oxford University Press, 1919
12. Beni Prasad, *Theory of Government in Ancient India,* Central Book Depot, 1928.
13. Appadorai, *The Substance of Politics,* Oxford University Press, 1917.