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Modern Constitutions

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Modern Constitutions

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Unit V:

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UNIT I

Constitution of England.

Britain is a conglomerate of Scotland, Wales and Northern Ireland. It is a democracy comprising a population of sixty million where most people vote, have access to a free press and have an independent judicial branch. It also provides numerous civil liberties to its citizens. However, when you look back and revisit the historical events that have nurtured it, you will find that it has evolved into its present state through a series of important historical changes. The Magna Carta or the Great Charter laid the foundations of Britain as a state that respects the rights of its citizens. You will be surprised to know that this document came five and a half centuries before the American Declaration of Independence in 1797. The power struggle between the church and the state, the break with the Roman Catholic Church, the increasing power of the Parliament, the establishment of the Protectorate, the restoration of the monarchy, and the creation of factions such as Whigs and Tories (which later went on to become the Liberal Democrats and Conservatives), the emergence of democracy in the state, increasing power of the working classes, etc. are important events and factors that distinguish the history of Britain.

The British Constitution, like all other constitutions in the world, is primarily a set of rules that direct politicians on how to run the country. But Britain has an unwritten constitution, which means that it has not been written, but has come about in an organic way by the means of its past traditions, customs and legalities. But the various laws in the country serve the role as well as a written constitution. But who makes the statute law in Britain? The answer is—the Parliament. It passes the bills after discussions and amendments. However, the bill becomes a law only with the signature of the monarch. Britain's laws have mostly been defined and shaped by conventions. For example, though the monarch is free to use the royal prerogative at any time, it has been seen that the monarchy has never taken advantage of this power. Though the Parliament has immense power concentrated in its hands, there are numerous checks and balances in this power. There are limits to the powers of the Parliament. Though rooted in history, customs and traditions, the UK government is one of the most efficient governments in the world, and the citizens of the UK enjoy more freedom and civil liberties than most of their counterparts. In this unit, you will learn about the sources and features of the Constitution, Conventions and the Rule of Law of the United Kingdom, the position and the power of the Crown, and the composition and functions of the Parliament

of the United Kingdom. Towards the end of this unit, you will study the differences between the United Kingdom cabinet and the United States of America cabinet.

The area of the United Kingdom is only twice that of New York State. The country comprises Great Britain (England, Wales and Scotland) and Northern Ireland. The Cheviot Hills demarcate England, which is the southeast part of the British Isles and Scotland in the northern region. From the hills, the Pennine Chain of the uplands reaches out south via the centre of England, approaching its highest point in the Lake District in the northwest. Along the border of Wales in the west, in a land of steep hills and valleys are the exquisite Cambrian Mountains, while the Cotswolds, a range of hills in Gloucestershire, extend into the surrounding shires. The North Sea located beside the United Kingdom is the mouth of many important rivers, namely, Thames, Humber, Tees and Tyne. The Severn and Wye rivers in the west drain themselves into the Bristol Channel and are navigable, as are rivers Mersey and Ribble.

Parliamentary Democracy The United Kingdom is a constitutional monarchy and parliamentary democracy, with a queen as the Head of State, and a bicameral parliament in place consisting of the House of Lords and the House of Commons. While the former comprises 574 life peers, 92 hereditary peers and 26 bishops; the latter consists of 651 popularly elected members. The Parliament is the highest repository of all legislative powers in Britain. Unless dissolved otherwise, it remains operative for five years. The effectiveness of the House of Lords reduced considerably in 1911, and at present, it mainly revises legislation. The Crown wields the executive power only in name since it is the Prime Minister’s cabinet that exercises the real power. England was established as a cognate nation state in the tenth century. The unification between England and Wales started in the year 1284 in the device of the Statute of Rhuddlan. The actual formalization of this merger took place in 1536 with an Act of Union. Later, in 1707, England and Scotland joined together to form the Great Britain with another Act of Union. In 1801, Great Britain became the United Kingdom of Great Britain and Ireland with the legislative union affected between Great Britain and Ireland. After the Partition of Ireland (formalized in the AngloIrish Treaty of 1921), only its northern part—formally known as Northern Ireland— stayed as a part of the United Kingdom. Its present name, the United Kingdom of Great Britain and Northern Ireland, was formally adopted in the year 1927.

Magna Carta and House of Commons The Magna Carta awarded the people of Britain, especially the nobles, certain basic rights. King John was compelled to sign the Magna Carta in 1215. This happened after his royal power had been centralized at the expense of the nobles. Edward I (1272–1307) was successful in overpowering Wales, and he also had eyes on Ireland and Scotland. But Edward I could not capture Scotland and was defeated in the Battle of Bannockburn. A separate House of Commons was constituted and it was given the responsibility to raise and collect taxes in the late thirteen and early fourteen centuries. Edward III expressed his concern that a hundred years were wasted in fights and wars, and unlimited loss had threatened most of the English territory in France. Following the Hundred Years of War (1338–1453), a plague called Black Death spread as an epidemic, which decreased the population in England by one-third. The Wars of the Roses (1455–1485) was fought between the House of York and the House of Lancaster for the throne of England. This war ended in the triumph of Henry Tudor (Henry VII) at Bosworth Field (1485). The British Constitution Laws lay down a constitution that governs a country. Unlike the Constitution of the United States of America or that of the European nations, the Constitution of Britain is not laid down in one single document and is, thus, referred to as an unclassified constitution. It contains a number of documents. The sole reason for the differentiated documents which define the constitution is that it makes the rectification of any amendment easier and simpler. Constitutional amendments are made in Britain by gaining a simple majority support in both the Houses of the Parliament which have to be later approved by Royal Assent. The various differentiated sources of the Constitution of Britain are as follows:

- Statutes like the Magna Carta of 1215
- The Act of Settlement of 1701
- Parliamentary laws and traditions
- Political conventions case law
- Constitutional affairs settled in a court of law
- Scholars who have written on the subject of the Constitution Features of the British Constitution

The following are the prominent features of the British Constitution:

- A unitary constitution

Parliamentary sovereignty

• Partly written and partly unwritten

• A flexible constitution • Evolutionary

• Difference between theory and practice

• A blend of monarchy, aristocracy and democracy

• Rule of law

• A parliamentary form of government

• Separation of powers combined with the concentration of responsibility

• A bicameral legislature

• Conventions of the constitution of British Monarchy.

The monarchical system of governance prevails in Great Britain. The current monarch of Britain is Queen Elizabeth II, who ascended the throne on 6 February 1952. She, along with her family members, performs several officials, ceremonial and representational duties. Being a constitutional monarch, the Queen carries out merely non-partisan functions like conferring titles and honours, causing the dissolution of Parliament and ordaining the Prime Minister. Even though the monarch is the executive head of the government, in practice, she has to function in accordance with the customs and conventions of England. Even royal prerogative is used in accordance with the laws of the land. It was with the kings of the Angles and Scots that the British monarchy actually originated. By the year 1000, the kingdoms of England and Scotland had originated from the small kingdoms of early medieval Britain. As mentioned earlier, the monarchy was then conquered by Normans, who defeated Harold II in a battle during the invasion of 1066. Wales became a part of England in the thirteenth century, and the Magna Carta became an instrument that could diminish the political powers held by the monarch.

The Scottish as well as the English kingdoms have been ruled by a single ruler since 1609. When England became a Commonwealth, the monarchy received a major blow. The Act of Settlement, of 1701 prohibited the accession of Roman Catholics, or those who married them, to the throne of England. After the unification of Great Britain with Ireland, the British monarch became the nominal head of the vast British Empire.

In the 1920s, most of Ireland (except its northern territories) became independent from the Union. The Balfour Declaration gave recognition to the autonomous entities of the empire that together formed the Commonwealth of Nations. With the Second World War, most of the British colonies and territories gained independence, thus curtailing the empire's existence. When George VI and his successor, Elizabeth II ascended the throne, they adopted the title of the Head of the Commonwealth which symbolized that the members of the Commonwealth were self-governing member states. Republics and monarchies together formed the Commonwealth. Fifteen nations along with the United Kingdom share the same monarchy.

Constitutional Role of the Monarch

According to the Constitution of the United Kingdom, the monarch is the supreme head of the state or one might say the one having the sovereignty. 'God save the Queen' or 'God save the King' is the national anthem of Britain, and you can see the monarch's portrait on the coins, postage stamps and banknotes.

The monarch has limited participation in the government. She/He has the authority to delegate duties, powers and responsibilities to the ministers or officers of the Crown, or other public bodies, which are exclusive of the monarch. The following points will make the monarch's role clearer:

• Firstly, even though the Crown exercises the legislative powers in the Parliament, the advice and influence on the performance perpetuate from the consent of the Parliament, the House of Lords and the House of Commons only.

• The monarch's government is exercised by the executive power, constituting the Ministers, primarily the Prime Minister and the Cabinet, which is a committee of the Privy Council. This executive power council has the direction of the Armed Forces of the Crown, the civil services and other Crown Servants such as diplomatic and the Secret Services.

• The third and most effective power is judicial power, which is vested in the judiciary. The judiciary has been given the powers by the constitution and the statute.

• The monarch is the head of the Church of England. The church itself has hierarchies of power, i.e., it has legislative, judicial and executive powers and structures within itself.

• Statutes or statutory instruments influence the legal grant of powers to public bodies.

• Other than the members of Parliament and local authorities, no public officers are elected. Thus, the monarch can use his or her clout to give office.

The role of the monarch in the British political structure has generated a lot of commentaries. Walter Bagehot in 1867 had referred to the monarchy as the 'dignified part' rather than the 'efficient part' of government. The English Bill of Rights of 1689 affected the curtailment of the monarch's governmental power.

The Appointment of the Prime Minister

A Prime Minister is appointed only by the monarch. The Constitution says that the monarch must choose a candidate for Prime Ministership who has gained the support of the House of Commons, generally the leader of the party or coalition having a majority in that House. The Prime Minister has a private audience with the monarch, in which he formally kisses the monarch's hands to symbolize the taking of office. There is no other formality or instrument.

A 'hung parliament' is a kind of Parliament where no single party or coalition holds a majority. In such a parliament, the monarch has the authority to choose and elect an individual, but usually, the designation is supposed to be bestowed upon the leader of the largest party. There have only been two hung parliaments since 1945. The first hung parliament followed the February 1974 general election, and the second followed the May 2010 general election.

Dissolution of Parliament

The power of the dissolution of Parliament has an interesting story. In 1950, the King's Private Secretary wrote anonymously to the Times asserting a constitutional convention: 'According to the Lascelles, if a minority government asked to dissolve Parliament to call an early election to strengthen its position, the monarch could refuse, and would do so under three conditions.' In 1974, Prime Minister Harold Wilson appealed to dissolve the Parliament. It was a request to which the Queen acceded because Edward Heath had been unable to form a coalition. Wilson was able to gain a small majority in the ensuing elections. Theoretically speaking, the monarch has complete power to dismiss a monarch. However, in practice, a Prime Minister can lose office only in case of electoral defeat, death or resignation. The last monarch to dismiss a Prime Minister was William IV, who removed Lord Melbourne from Prime Ministership in 1834.

Royal Prerogative

The royal prerogative is defined as an extension of the government's executive authority that resides with the monarch in theory. The royal prerogative is wielded by the sovereign, who works in complete accordance with convention and precedent, and is exercised only through the Prime Minister or the Privy Council. Practically, the exercising of prerogative powers takes place after consultation with the Prime Minister, who wields the actual control. The sovereign holds a weekly audience with the Prime Minister to discuss opinions regarding the ministry and administration, but the decisions of the Prime Minister and cabinet are more binding according to the convention. 'The Sovereign has, under a constitutional monarchy...three rights—the right to be consulted, the right to encourage, the right to warn,' says Walter Bagehot, economist and writer on the constitutional monarchy. Parliamentary approval is not formally required for exercising the royal prerogative. Although it is quite extensive, it is still very limited. Authorization of the Act of Parliament is required for action by the monarch, such as imposing new taxes or collecting taxes. 'The Crown cannot invent new prerogative powers,' says a parliamentary report. The Parliament has the power which can supersede any prerogative power by ordaining legislation.

The royal prerogative includes the following

- Appointment and dismissal of ministers
- Regulation of civil services
- Issuance of passports
- Declaration of war and peacetime
- Control of the military
- Ratification of treaties
- Formation of alliances and affecting international arbitration

The legislative laws of the United Kingdom are immune to any changes that may be accorded in a treaty ratified by the monarch because it is the Parliament's duty to enact or amend legislation. The sovereign also serves as the Commander-in-chief of the Armed forces (the Royal Navy, the British Army and the Royal Air Force). He or she bears the responsibility of accrediting British High Commissioners and ambassadors, and of receiving foreign delegates.

The summoning, prorogation and dissolution of the Parliament are the prerogatives of the monarch. All the parliamentary sessions begin with the monarch's summons. The monarch addresses the members of the Parliament from the throne in the Chamber of the House of Lords, providing a blueprint of the government's programmes, in a new parliamentary session. Usually, prorogation takes place about a year after a session starts, and it officially brings down the curtain on the session. The term of the Parliament comes to an end with dissolution, which is succeeded by a general election for all seats in the House of Commons. A variety of factors influence the timing of dissolution. The limit for any parliamentary term is five years. After the parliamentary term ends, dissolution is the established mode of conduct under the Parliament Act, 1911, except in a rare contingency and even then only if the Parliament has approved such action. An instance of this is the Second World War when a massive coalition was established from all the parties in the Parliament that congregated for more than its usual five-year term; however, three Prime Ministers were changed during this period.

The Prime Minister usually selects the most politically advantageous time for his or her party. As per the Lascelles Principle, the monarch can theoretically deny the dissolution of parliament, but it is not stated specifically as to what circumstances fall under this principle. A bill can become law even before being passed and approved by the legislative houses if royal assent has been achieved. Theoretically, the approval may either be granted or refused, but any refusal has not taken place since 1707.

The power of appointing the First Minister of Scotland upon the recommendation of the Scottish Parliament and the First Minister of Wales upon the recommendation of the National Assembly for Wales and Northern Ireland has been bestowed upon the monarch. The monarch is required to act in consultation with the Scottish Government as far as Scottish affairs are concerned. Similarly, for Wales, the monarch consults the Prime Minister and Cabinet of the United Kingdom. It is in the hands of the monarch to veto any law passed by the Northern Ireland Assembly if it is deemed unconstitutional by the Secretary of State for Northern Ireland.

The British sovereign is touted to be the 'fount of justice'. Even though the monarch does not give a ruling or exercise any real judicial power, his or her name is pledged in judicial ceremonial events. The common law states that the 'monarch can do no wrong,' and she or he cannot be prosecuted for any criminal offence, as she or he is deemed to do no

wrong. The Crown Proceedings Act, 1947 admits the filing of civil lawsuits against the Crown in its public capacity (that is, lawsuits against the government), but not lawsuits against the sovereign's person. The monarch has been embedded with the power to pardon convicted offenders and/or also to reduce their sentences.

The monarch is also the source of all honours and dignities, and is also called the 'fount of honour'. It is the responsibility and authority of the monarch to create all peerages, choose members of the orders of chivalry, grant knighthoods and confer awards and other honours. Most of the honours and awards are conferred upon the deserving persons after consulting with the Prime Minister, but some of these are within the ambit of the monarch's responsibility. Grants are given only on the advice of the monarch. It is solely the responsibility of the monarch to appoint members of the Order of the Garter, the Order of the Thistle, the Royal Victorian Order and the Order of Merit.

Status of the Monarch in the Contemporary Times

Sixteen out of fifty-three Commonwealth states, including the United Kingdom, share the same monarch. The present monarch of the United Kingdom, Queen Elizabeth II succeeded her father in 1952 and works as a constitutional monarch. She has had some negatively charged followers also during her reign, and allegedly, this happened because of the negative publicity associated with the royal family. But even now, the Queen seems to be still going strong.

Judiciary

The judiciary occupies a place of pride in a democratic country. The first thing to be noted in British Judiciary is a high reputation for fairness, impartiality and incorruptibility. One of the outstanding features of the British Constitution is the concept of the Rule of Law. Dicey's exposition of the Rule of Law is subject to various criticism. He was subjective in his approach and viewed the Constitution in the background of the liberal philosophy of the Whigs. The United Kingdom is a constitutional monarchy and parliamentary democracy, with a queen as the Head of State, and a bicameral parliament in place consisting of the House of Lords and the House of Commons. The royal prerogative is defined as an extension of the government's executive authority that resides with the Monarch in theory. The Monarch can only exercise veto if the cabinet advises him to do so

The judiciary occupies a place of pride in a democratic country. If a democratic government is to be effective, it is essential that laws passed by the legislator should be applied and upheld without fear or favour. Professor Laski has said that the Acts of Parliament are not self-operative and, hence there is a need for a judicial organ to see its operation. Hamilton opined that ‘laws are a dead letter without courts to expound and explain their true meaning and operation. Thus, there are courts of law in all democratic countries and England is no exception to it.

The present-day organization of the British judiciary is relatively modern. Though the courts themselves are much older, they are entirely reconstituted by the Judicature Acts of 1873-1876, as amended by the Act of 1925. Prior to 1873, the judicial organization of England was in a state of chaos, with numerous courts possessing special functions, following procedure and overlapping jurisdictions. The Acts of 1873 reorganized the courts and simplified the judicial procedure

The Rule of Law is the basis of the British constitutional system. There are three kinds of law in England namely, common law, statute law and equity. The courts in Britain administer these three types of law without any fear or favour. Except for statutes, common law and equity are based on traditions, customs and morality as decided by the judiciary. It is an accepted principle of the British judicial system that a decision given by a judge shall be applicable in all similar cases, unless it is set aside by a judge of a higher court or until an Act of Parliament settles the issue.

Salient features

Salient Features of the British Judicial System

The salient features of the British judicial system are as follows:

i) Impartiality and independence of the courts

The first thing to be noted in the British judiciary is a high reputation for fairness, impartiality and incorruptibility. The judges are free to pronounce judgment without fear and favour. The Act of Settlement of 1701 provides that the judges in Great Britain hold office on account of good behaviour and not due to the pleasure of the executive. Thus, there is a great tradition of administration of justice without fear or favour.

(ii) Absence of judicial review

In England, there is no judicial review and as such the judiciary cannot declare any act of Parliament as ultra vires. The case is just the opposite in America. Due to parliamentary supremacy in England, the parliament can pass any law and no court can question its authority.

(iii) Absence of separate administrative court

There are no separate administrative courts in England, as found in France and other continental countries. In France, there are two types of law, ordinary and administrative, and two types of court, administrative and ordinary respectively. The administrative persons are tried by administrative law in administrative courts. There is no such distinction between officials and ordinary citizens in England and all are subject to the same court of law.

(iv) Absence of uniform judicial organization

There is no uniform judicial system throughout the country. There is one set of courts in England and Wales, another for Scotland and still another for Northern Ireland. Sometimes each court has its own peculiar procedure and practices. The Judicature Acts of 1873-76 tried to bringuniformity but failed to achieve a uniform judicial organization throughout the country.

(v) Jury system

The prevalence of the jury system is a salient feature of the British judicial system and in the trial of grave crimes; a jury trial may be demanded in all courts of England except the lowest and highest court. England is the classic home of the jury system. The charge in a case is framed by the judicial officers and the trial is held by the judge with the assistance of a jury. The juries have revealed impartiality, fearlessness, knowledge and common sense and have given decisions against the government.

(vi) Integration of courts in England and Wales

The courts of England and Wales were different organizations having different conflicting procedures and jurisdiction. Now the entire judiciary has been reconstructed and brought under the control of the Lord Chancellor. Thus the, there ispre-eminence of the Senate – the process of Law-making – Committee systemintegration of the judicial systems

of England and Wales. The judicial system has been made simple and inexpensive as far as practicable.

(vii) Guardian of individual liberty

The courts in England are the custodians of the liberty of the people. The Liberties of the people are guaranteed not by parliamentary acts but by the common law of the land. The concept of rule of law pervades in all spheres of judicial organization.

(viii) High quality of justice

English people are proud of the high quality of justice dispensed by their courts. Cases are heard and decided in open court. The judges show a high order of independence, ability and integrity. There is a quick disposal of cases. The rules and procedures are also simple and logical. Independent attitude of a judge is deeply rooted in the British judicial system. The judges are not influenced by any consideration except that of justice and impartiality. Courts in England 'do not tolerate the pettifogging dilatory, hair splitting tactics which lawyers are so freely permitted to use in American halls of justice. The judge rules his court room, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so.

Organization of the British judiciary

The Anglo-Saxon judicial system is the oldest in the world. It has been influenced very much by other judicial systems of the world. Just as there is no written constitution in England, there is no rigid written code of law. The British judicial system has evolved and as such there is no single form of the judicial organization throughout the country. In recent times, attempts have been made to reorganize the judicial system to a certain extent. The Judicature Acts, of 1873-76 were the first attempt to organize the judicial system in modern times. These Acts set up a Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal. The Act of 1925 and the Court Act, of 1971, made few changes in its organization.

The courts in Great Britain are broadly divided into two categories—civil and criminal. This division is almost common in all judicial systems of the world

1. **Criminal Court**

   The various aspects of the criminal court are mentioned below:

(i) Justices of Peace:

The lowest criminal court is the Justices of the Peace. When a person is charged with a crime he is brought before one or more Justice of the Peace (J. P.) or in large towns, before a Stipendiary Magistrate for trial. The Justices of Peace are honorary persons and are appointed by the Lord Chancellor. They do not have legal training. They are laymen appointed from all classes of people in society. The Stipendiary Magistrates are not honorary persons. They are appointed by the Secretary of States for Home Affairs and they receive regular salaries or stipends from their respective boroughs or urban districts. They are required to be barristers of seven years standing and they are appointed in the name of the Crown

The Justices of the Peace and Magistrates have jurisdiction over minor crimes which are punishable by a fine of not more than twenty shillings or by imprisonment for not more than fourteen days. Serious cases are tried by a Bench of two or more Justices who work in a Bench. It is called a Court of Petty Session which can impose a fine, of not more than 100 pounds or in some specified cases 500 pounds or a period of imprisonment up to six months and in some cases one year. If the punishment is more than three months imprisonment, the accused may demand a trial by jury.

(ii) Court of quarter session:

The Court of Quarter Session is the next higher court in civil matters. Appeals from the lower court may be taken to this court. It consists of two or more justices from the whole country. In a large town, it is presided over by a single magistrate. As this Court meets four times a year, it is known as the 'Quarter Session'. It exercises original jurisdiction over serious criminal cases and, in fact, is the court in which most of the serious cases are tried.

(iii) Court of Assizes:

The Courts of Assizes are held in county towns and some big cities thrice a year. These courts are branches of High Court Justice. Each such court is presided over by a judge or often two judges of the High Court of Justice who go around on circuits. The entire country has been divided into eight circuits. The Court of Assize functioning in London is called 'Central Criminal Court' and in the popular language, it is known as 'Old Bailey. The jurisdiction of the Assizes includes all grave offences like armed robbery, kidnapping, murder, etc. The Assize Court is assisted by a Jury of twelve countrymen and the Jury gives

its verdict. Whether the accused is guilty or not if the jury finds the accused is not guilty, he is forthwith discharged. If he is, on the other hand, found guilty, the Judge decides the punishment. The accused may appeal to the Court of Criminal Appeal against the judgment of Quarter Sessions or the Assizes. This Court was set up in 1907, and before that, there was no provision for appeal in criminal cases. This court consists of a Lord Chief Justice and not less than three judges of the Queen's Bench. The Court meets without a jury in London. If the Court finds that there has been a serious lapse of justice, it can modify the sentence or even quash the conviction altogether. The Judgment of the Court of the Criminal Appeal is final except in rare instances when an appeal can be made to the House of Lords upon a point of law and when the Attorney General gives a certificate that the case is set for the appeal.

Civil Court

i) County court:

The county court is the lowest court on the civil side. It decides cases in which the amount involved is not more than 500 pounds. It is presided over by a judge who may take the assistance of a jury, if necessary. Its procedure is very simple. At a place where a county court sits, there is an official known as the registrar who disposes of the great majority of cases by influencing withdrawals or effecting compromises, without ever referring them to the Judge at all. It may be noted that the county courts are not part of county organizations and the area of their jurisdictions is a district which is small than a county and bears no relation to it. The Judges and Registrars of the country courts are paid their salaries out of the national treasury and hold office during good behaviour.

(**ii) Supreme Court of Judicature**: The next tier above the county courts is the Supreme Court of Judicature which is divided into two branches:

High court of justice (b) Court of appeal High court of justice: The high court of justice has three divisions:

• The Queen's Bench Division

• The Chancery Division

• The Probate, Divorce and Admiralty Division or the Family Division as renamed in 1971

In each of these divisions, judgment is made by a bench, consisting of one or more than one judge. The Queen's Bench is presided over by the, Lord Chief Justice of England having twenty other judges. It hears majority of cases including the common law cases which are referred to the high court. The Chancery Division is presided over by the Lord High Chancellor having five other judges. It hears the cases which formerly belonged to the Courts of Equity or it deals with such cases in which the remedy or law is inadequate. The probate, divorce and admiralty division is presided over by a president with seven other judges. They hear particular type of cases involving above three subjects. This division is known as the family division since 1971. Any of the judges mentioned above may sit in any, division and all may apply common law or equity with restriction to their sphere of duty.

iii) The Court of Appeal:

The court of appeal is an appellate authority against the judgments of the county courts and three divisions of the high court. Appeals are made only on substantial questions of law and not on mere facts. The court of appeal meets in two or three divisions or occasionally all Lord Justices sit together in very important cases. In the Court of Appeal no witness is given and there is no jury also. For appealed cases, the Court sits in trial. The Lord Chancellor is its president. The House of Lords may hear appeal against the judgment of the Court of Appeals. Thus, in the civil side there are county court, high court, court of appeal and House of Lords which are the highest court of appeal.

iii) The House of Lords as the Highest Appellate Court:

The House of Lords is not only a legislative body but also a powerful judicial organ. It is the highest court of appeal both in civil and criminal cases in England. When the House of Lords exercises its judicial function, the whole House never sits as a court. It is a convention that the appeals are heard by the Lord Chancellor and nine Law Lords. The Lord Chancellor is the presiding officer. He is also member of the Cabinet. The Law Lords are men of high judicial calibre who are made Life Peers by virtue of judicial eminence. These ten Lords exercise the highest appellate judicial' power in the name of the House of Lords. They sit and give judgment at any time, regardless of whether Parliament is in session or not.

Judicial Committee of the Privy Council

The discussion on the British judicial system would be incomplete without reference to the judicial committee of the Privy Council, which is the final court of appeal in cases

which come from the courts of the colonies and from certain of the dominions, as well as from the ecclesiastical courts in England. The judicial committee of the Privy Council is not a court in the usual sense of the term but only an administrative body to advise the Crown on the use of its prerogative regarding appeals from the courts of the colonies and Commonwealth. It consists of the Lord Chancellor, former Lord Chancellors, nine Law Lords, the Lord President of the Privy Council, the Privy Councillors who hold or have held high judicial offices and other judicial persons connected with overseas higher courts. As it is a committee consisting of eminent persons, it is best competent to hear the appeal on legal matters and advises the Crown on such matter. It consists of about twenty jurists but most of its work is done by the Law Lords of the House of Lords. The appeal goes straight forward to the judicial committee which advises the Crown to accept or reject it. There is no appeal against its decision. The committee has a special function. In times of war, it acts as the highest court in naval prize cases.

The British Judicial System has earned a high reputation, both at home and abroad for its excellence, impartiality, independence and promptness. The Legal profession in England is held in high esteem and attracts the best talents in the country. The concept of the Rule of Law pervades their legal system and the people have not forgotten the dictum that 'where law ends, tyranny begins.

Rule of Law:

A Citadel of Liberty One of the outstanding features of the British Constitution is the concept of the rule of law. Human dignity demands that individuals should have certain rights and freedom. In most democratic countries, rights and freedoms are guaranteed and protected by the constitution. In the US and India, the constitutions work like watchdogs and protect individual freedom and rights. In England, there is neither a written constitution nor a bill of rights to act as a safeguard of individual liberty. However, England claims to be the classic home of democracy and British people enjoy their rights and freedom without any fear or a favour like all free citizens of democratic countries.

The citadel of liberty of the people in Great Britain is the rule of law. John Locke, a liberal British political philosopher of the 17th century, wrote, 'where law ends, tyranny begins.'

British history is replete with tyranny and absolutism and, hence people and Parliament are always eager to preserve the liberty of the people through the rule of law.

Though there are no written constitutions or bills of rights, the concept of the rule of law is carefully maintained and scrupulously adhered to by the people in Great Britain. Prima facie, the rule of law means that it is the law of England that rules and not the arbitrary will of the ruler. Lord Hewart defines the Rule of Law as 'the supremacy of predominance of law as distinguished from mere arbitrariness.' Towards the end of the 19th century, Prof. A. V. Dicey gave the famous exposition of the idea of the rule of law. He considered it to be the fundamental principle of British constitutional system and gave a lucid and vivid description of the concept rule of law.

According to Dicey, rule of law involves the following three distinct propositions:

(i) 'No man is punishable or can be lawfully made to suffer in body or goods, except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of the land.' It implies that nobody in England can be punished arbitrarily simply because the authority wants him to be punished. A person can be punished only on the distinct breach of law. It also implies that nobody will be deprived of his life, liberty and property except by the verdict of the courts of law. The courts of law are the custodians of life, liberty and property of the people. England Courts are open in England and judgments are delivered in open courts.

(ii) 'Not only is no man above the law, but every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. 'Here according to Dicey, the Rule of Law means equality before the law or equal protection of law. Nobody is above the law. All citizens irrespective of any distinction are equal in the eyes of law and are subject to the same courts of law. Dicey observes, 'With us every official from the Prime Minister down to a constable is under the same responsibility as any other citizen. This minimizes and checks the tyranny of the government. This perfect equality before law is in contrast to the system of administrative law that prevails in France and other countries of the continent. There are no separate administrative courts to try the administrative officials in England.

(iii) 'The general principles of the constitution are the result of judicial decisions determining the rights 'of private persons in particular cases brought before the courts.' The third meaning of the Rule of Law as Dicey explains is that the legal rights of the British people are not guaranteed by any constitutional law, but assured by the Rule of Law. Dicey observes, 'The constitution is the result of the ordinary, law of the land.' He further writes, 'with us, the law of the constitution, the rules which in foreign countries naturally forms part of a constitutional code, are not the source, but the, consequence of the rights of individuals as defined and enforced by the Courts. The rights of the citizens in Great Britain are protected not by the constitution, but by the judicial decisions, free access to the courts of law is a guarantee against wrongdoers.'

Thus, the judiciary has a great contribution to the protection of the liberties of the people. It is true that the parliament can at any time put those rights and liberties in statutes. To cite an example, the Habeas Corpus Act of 1679 guaranteed citizens the right against unlawful arrest and detention. It is equally true that the parliament can, at any time, limit or repeal any right of the people, based on the statute or common law. In times of national emergency, such as war, the parliament limits and restricts the freedom of the people by passing an ordinary law like the Defence of the Realm Act of 1914 or the Emergency Powers Act of 1939.

In the ultimate analysis, the rights and liberties of the people in Great Britain are protected not by law, but by the Rule of Law. The Rule of Law is based on a long tradition and is strongly supported by public opinion. It has been observed that although at first glance, civil liberties seem to enjoy no such sheltered position in Britain as in the United States and some other countries, they are both in law and practice, as secure as anywhere else in the world

Hence, the rule of law is the product of centuries of the struggle of the British people for the recognition of their rights and freedom. In Great Britain, the law is supreme and the constitution is the result of the ordinary law of the land and its general principles have evolved from the rights of persons as upheld by the courts in various cases. This is a great contrast with many a written constitution in which the rights of the citizens are declared. The rights declared and guaranteed by written

constitutions in other democratic countries, are well-secured and protected in Great Britain.

Criticisms of Dicey's exposition

Dicey's exposition of the Rule of Law is subject to various criticism. He was subjective in his approach and viewed the constitution on the background of the liberal philosophy of the Whigs. His book, The Law of the Constitution, was published in 1885. No doubt it is a scholarly work, but it contains the remnants of the Laissez-Faire philosophy. Dicey himself was a liberal and was unaware of the planned economy and the welfare state. The emergence of the welfare state has necessitated the grant of discretion and power to government officials. There is a tremendousproliferation the state activities. The Parliament neither has the time nor competence to deal with the immense problems of the modern state. Hence, there is increasing use of delegated legislation, consequently leading to granting more discretionary powers to government officials. Lord Hewart has condemned it as new despotism but it seems inevitable in recent times. Dicey is not aware of the emergence of the modern powerful state. Thus, the concept of the rule of law, as interpreted by him, cannot be strictly applicable in modern Great Britain.

Sir Ivor Jennings is also a strong critic of Dicey's concept of the rule of law. He criticized Dicey's concept of equality of law as too ambiguous as well as an ambitious phrase. Perfect equality is neither possible nor desirable. What Dicey suggests by equality, according to Jennings, is that an official is subject to the same rule as an ordinary citizen. But even this is not true in England. There are certain privileges and immunities granted to public officials and these are not granted to ordinary people. For instance, the police have a right to enter an individual's house with the intention to search the premises, if the particular individual is a suspect in a case. However, despite being a citizen, every person does not have the right to do so.

Thus, the powers of private citizens are not the same as the powers of public officials. Dicey was not aware of volumes of statutory laws, by-laws and orders which are found today. The members of various groups and associations are often punished by statutory bodies. To cite another example, the General Medical Council, which is the statutory body, can punish any member of the medical profession for unprofessional action and ultimately may remove his name from the medical register. Thus, persons are the first subject to group and professional laws and finally subject to the laws of the land.

According to Jennings, the phrase, ‘equality before the law’, implies that among equals the law should be equally administered. Their right to sue and to be sued, to prosecute and to be prosecuted for the same kind of action should be the same for all persons irrespective of any distinctions. Further, there can be no complete equality before the law, while the rich will engage a better lawyer than the poor. Of course, the Legal Aid Scheme of the British government has done something to help the poor.

Dicey’s assumption that the constitution is the result of ordinary law of the land is erroneous. Once the theory of parliamentary sovereignty is admitted, there is no doubt that the parliament can reverse the decisions of the courts. Even the parliament can do it with retrospective effect and there, seems to be no remedy against it to save public opinion. Dicey’s exposition of the Rule of Law is only a mere eulogy of the British system, with a view to condemning the French system of administrative law. What Dicey thought was that the Rule of Law should be accepted as a principle of policy. Jennings does not accept even this contention. In his analysis, Jennings does not deny the concept of Rule of Law but he denigrates it. He writes, the truth is that the Rule of Law is apt to be rather an unruly horse. If it is a synonym for law and order, it is a characteristic of all civilized states.

If it is merely a phrase for distinguishing democratic or constitutional government from dictatorship, it is wise to say so. Further, if the Rule of Law means that power must be derived from the law, most of the modern states have it. Thus, there is no precise definition of the Rule of Law. Dicey viewed the concept of the Rule of Law in the 19th - century liberal background. Dicey was a liberal lawyer. His interpretation of the Rule of Law is more subjective. The Rule of Law does not guarantee democracy; rather it is a feature of democracy. It is a sine qua non a free and democratic society.

Great Britain is considered to be a classic home of the Rule of Law. In spite of the above limitations, the Rule of Law is considered to be a democratic embellishment. It is true that its content has undergone some transformation in recent times, yet it acts like a bulwark of British liberty. Freedom is truly a part of the British way of life and nobody likes to part with it. What the Rule of Law implies today is that the freedom of the individual should be restrained only under the authority of law. Justice should be available to all irrespective of any distinction. The Rule of Law is not dead today. It still remains a principle of the British constitutional system and inspires not only the people of England but also the people of the world. According to a modern critic, it involves the absence of arbitrary power, effective

control and proper publicity for delegated legislation, particularly when it imposes penalties, that when discretionary power is granted, the manner in which it is to be exercised should be as far as practicable be defined, that everyman should be responsible to the ordinary law whether he be a private citizen or a public officer, that private rights should be determined by impartial and independent tribunals, and that fundamental private rights are safeguarded by the ordinary law of the land. No doubt, the Rule of Law is a prized concept in the British Constitution, and the British people are very proud of it as it acts like the citadel of their liberty. Of course, in the ultimate analysis, public opinion acts as the protector of liberty.

The rule of law would be valueless if people do not resist arbitrary and discretionary laws. As Judge Learned Hand in a classic observation said 'Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, and no court to save it. What is said about liberty is that this classic statement holds equally true in all democratic countries of the world.

Rule of the Law

The judiciary is said to be the foundation stone of the British constitution. It should play a very important role in legal perpetuation. The government should carry out its functions according to the law. This law should be framed and enforced by a judiciary that is not controlled by the government. The procedure of appointing judges should endorse the practicality of independence.

The Constitutional Reform Act, of 2005 defended the liberty of the judiciary and it introduced drastic changes in the process of appointing judges. According to the new system, all appointments are controlled and managed by an independent judicial appointments commission. On the other hand, though the appointed judges may have been suggested by the commission, still the Lord Chancellor conducts all formalities of the appointments. This process suggests ways in which the government may rationalize the current level of executive involvement if that is the opposite. The possibility of the involvement of the parliament in the appointment process is also being considered.

Principles of Judicial Appointments

The basic features which the government should regard as the foundation of any judicial appointment procedure are as follows:

(i) Judicial independence is very important to the rule of law, specifically to instil public confidence in judges to uphold the law. This is socially and economically beneficial as it provides a sense of security to the citizens, when their rights are threatened, or when there is a need to enforce their duties. The citizens also get a sense of assurance that criminal cases will be dealt with in a just manner. This also projects Britain as an established country internationally and thus improves its business relations with other nations.

(ii) (ii) Therefore, the requirement to safe judicial independence is one of the basic principles and a keystone for any system of judicial appointments. It is important to be aware about the meaning of judicial independence, i.e., judges need to be aware about their rights and independence:

(a) In a country which is working under the rule of law, judges need to be independent of the executive. The executives should not be able to improperly manipulate judges to deal with cases in the interest of the executives. At the same time it is vital for the public to believe that the judges will be impartial in deciding cases and will stand up for the rights of individuals, regardless of other interests.

(b) It is also imperative for the judiciary to be independent of the parliament. Parliament is a group that represents all political parties which are elected by the people and are empowered to make and change the laws of a country. In a parliament, the welfare and opinions of the common man are considered. The judges can only decide cases according to the legal provisions endorsed by the Parliament. The freedom of the judiciary within these limits is important for fair decisions. This is more important where cases are politically inclined.

(c) It is essential that judges are not intimidated by parties in a case that involves the government, directly as a party in civil cases and indirectly through the crown, as the prosecutor in criminal cases. Moreover, the basic requirement of a judiciary is that judges should not be under the influence of any kind of prejudice, nor should they be biased in any way.

(d) Out of the many significant ways of securing judicial independence, one main approach is to make sure that the appointments procedure does not result in politically biased judges, who are, or feel, obliged to the person or body who has appointed him/her, or to any individual or organization. This in turn helps to make certain that the judges who are chosen are capable to act independently and thus are free from political or other inappropriate pressures in office.

(e) There are also a variety of other reasons, further the appointments procedure itself. These are essential to secure independence while a judge is in post. The first amongst these is the safekeeping of terms ensuring that judges cannot be discharged of their duties for the reason that they make fault-finding decisions against, or are not liked by the government. Judges need to be sheltered against the pressure of salary deduction; against political pressure pertaining to their judgments.

(iii) Associated with independence is the rule that the appointment of judges should be based on their suitability for the relevant post. This is an effort to ensure that the appointment process results in the selection of first-rate individuals. This is another essential characteristic that should add power to an appointment procedure that is intended to bring into being a judiciary which is exceedingly capable, politically unbiased, has high standards of honesty and which avoids any form of unjust prejudice. Selection of individuals, based on their worth has fundamentally two aims: no one should be appointed for a post if they are not suitable for it and if two or more people have the same criteria for appointment, the better of the two should be selected. This will probably place appointments above the doubt of patronage and ensure that enrolment procedures underpin the political independence of the judiciary.

(iii) Equality is another fundamental principle that should strengthen any judicial system of appointment. Britain's judiciary is appreciated all over the world for its value of integrity, justice and judgement. It is an extremely evident institution with a public focal point. It represents and sustains numerous values that the society considers important: our liberties, mutual admiration and admiration for the rule of the law. It is important for all members of society to be dependent on the judiciary for sustaining their values. The communities of Britain are changing continuously and their institutions have to become accustomed to ensure that they continue to replicate those changes. It also means ensuring that the judges have an efficient insight of the communities that they are serving. They would be able to attain it in a number of ways, for instance, by ensuring that judges are drawn from the different communities that make up modern Britain; or by ensuring that judges distinguish and comprehend those communities while performing their duties.

In the background of judicial appointments, equality requires both, inward and outward focal points. The inward focus must look in the direction of the working atmosphere for judges and the degree to which that atmosphere supports an assorted membership. Thus, it would assist to sustain and support a more varied membership. This will motivate a more diverse range of individuals to apply for judicial appointment and to reflect on the judiciary, as an institution which is one that can carry out its duties independently.

Types of Judges

A list of the types of judges who sit in the courts of England is as follows:

(i) Lord Chief Justice and Lord Chancellor:

Lord Chief justice has been the overall head of the judiciary since 3 April 2006. He was second to Lord Chancellor before the office lost its judicial functions under the Constitutional Reform Act 2005. Lord Chief Justice also holds the position of the head of the criminal division of the Court of Appeal.

(ii) **Lord Chancellor**:

Though not a judge, still holds the disciplinary authority over the judges, jointly with the Lord Chief Justice.

(iii) Heads of division:

The four heads of divisions, namely the masters of the rolls, the president of the Queen’s Bench Division, the president of the family division and the chancellor of High Court. The master of the rolls holds the position of the head of the civil division of the Court of Appeal.

(iv) Justices of the Supreme Court:

The Supreme Court is the highest court in England and all its judges are called Justices of the Supreme Court. (v) Court of Appeal: Lord Justices, who also are the Privy Councillors, are the judges of the Court of Appeal.

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Lord Justices, who also are the Privy Councillors, are the judges of the Court of Appeal.

(vi) High court:

High court judges are referred to as the (right) honourable Mr./Mrs. Justice Smith, as they are not normally holding the position of the Privy Councillors.

(vii) Circuit judges:

Circuit judges hold a respectable position and unlike other senior judges, are referred to as his/her honour judge.

(viii) Recorders:

Recorders are usually practising barristers or solicitors. They are basically part-time circuit judges.

(ix) Masters and registrars:

Masters are chiefly responsible for pre-trial case management and they hold a position which is a level lower than that of the high court judge. A registrar is the senior master of the Queen's Bench division.

x) District judges:

Two diverse categories of judges come under the district judge. One group of judges sits at the county court and the other group sits at the magistrates' courts.

(xi) Deputy district judges:

Barristers or solicitors who serve as part-time district judges, either after being retired from their post as a district judge or in route to becoming full-time district judges are called deputy district judges.

(xii) Magistrates:

Magistrates are appointed to sit and pass judgements at the magistrates' and youth courts. They basically are chosen from the community in groups of three.

POSITION AND POWER OF THE CROWN

Although British society has had continuous debates about the status of the King and the Crown and whether distinctions between the two are wholly relevant in the twenty - first century, the political economy of Britain continues to distinguish between the two. Simply put, the Crown is the institution while the King (or the Queen) is an individual who is

considered the physical manifestation of that institution. The maxim 'The King is dead, long live the King,' aptly sums up the distinction. It expresses the fact that even though the person holding the position of the king is dead, the office continues to exist. The Crown, according to Mr. Sidney Low, is 'a convenient working hypothesis . According to Sir Maurice Amos, 'The Crown is a bundle of sovereign powers, prerogatives and rights—a legal idea.' Thus, the rights and powers of the Crown are historically the rights and powers of the King or the Queen. This is still the case in theory, but in reality, the King is merely a nominal head, i.e., ministers exercise these powers on his behalf and in the king's name. These ministers are authorized by the Parliament, and are responsible to it. According to Dr.Finer, 'When we talk of the actions of the Crown in politics we mean that the People, Parliament and the Cabinet have supplied the motive power through the formal arrangements established by centuries of constitutional development. The Crown is an ornamental cap over all these effective centres of political energy.' The author of England in the Reign of Charles II David Ogg states that the Crown is a 'subtle combination of sovereign ministers (especially Cabinet members), and to a degree Parliament.

Thus, it can be stated that the king is the physical embodiment of the crown, whereas the Cabinet is its visible embodiment.

Powers of the British Monarchy

The powers of the British Monarch come from the following sources:

(i) Prerogative (ii) Statute In earlier times, the powers of the British monarch were considered to be 'prerogatives' and were not conferred to him or her by an act of Parliament. However, with time, the parliament began cutting away at the powers of the monarch.

Today, whatever powers remain with the monarch constitute the prerogatives of the Crown. According to the constitutional theorist A.V. Dicey, prerogatives are the remnants of autocratic and discretionary powers legally remaining with the Crown. They mean powers that are not granted but are possessed or conferred powers that have been acquired because they were prescribed, confirmed by usage and accepted. The second source of the power of the Crown comes from the Acts of Parliament. The British Parliament may have reduced the powers of the monarch over the years, but it has also added to them. To give an example, whenever the Parliament authorizes a new tax or introduces fresh duties of administration

upon the Crown, it begins to expand the powers of the Crown in an imperceptible manner. However, whether a given power is derived from prerogative or statute is not important. What is really important is that the powers of the Crown keep changing off and on. Sometimes they are curtailed and sometimes they are allowed to reach new heights.

The powers of the Crown can be classified under the following heads:

• Executive Powers

• Legislate Powers The executive powers of the Crown are as follows:

• The power to appoint all judges, military men, administrative and executive officers

• The power to supervise administrative functions and work

• The power to enforce national laws

• The authority to control the armed forces

• The right to represent the nation in foreign countries

• The right to wield the power of pardon and reprieve

Along with this, the Crown also has the power to go to war or make peace or sign treaties with foreign countries without consulting the Parliament.

However, this executive power in reality is exercised by the ministers of the British government or the cabinet. The cabinet and ministers also have the responsibility of administration of the country. They also appoint members to the office and direct the British foreign policy as well as decide on expenses made by the Parliament. Thus, in Britain, real power is wielded not by the King, but by ministers and the Cabinet.

The powers that are conferred on the Crown by Parliament, are actually delegated to the Cabinet. As the monarch is only a nominal head, as an individual the King is not granted any authority by the Parliament. The prerogative of mercy is primarily exercised by the Home Secretary. There is only a formal contribution by the royalty. Even when the King bestows honours on the public or his subjects, he is doing so with prior permission from his ministers. It is the Prime Minister, and not the King, who is responsible to the Parliament for including or excluding items/ names from the list of honours.

Legislative Powers

Along with executive powers, the Crown also has legislative powers. In theory, laws of the British Parliament are passed with the King acting in consultation/tandem with the House of Lords and the House of Commons. However, just like the executive powers, the legislative powers of the monarch are nominal and in actuality rest with the Crown. In theory, the King does the following:

• Summons and prorogues the sessions of the Parliament

• Dissolves the House of Commons

• Gives his assent to the bills passed by the Parliament

• Issues Orders-in-Council

Although a Bill cannot become an Act until and unless the monarch gives his or her assent, however, no monarch can exercise veto on his own when a bill is passed by Parliament. The monarch can only exercise veto if the Cabinet advises him to do so. Therefore, it would not be wrong to say the Cabinet is the institution exercising all these powers.

Reasons for the Survival of Monarchy in Britain

The following issues are debated regarding the existence of monarchy in Britain: • According to the Treason Felony Act, of 1848, it is treason if 'any person whatsoever, within the United Kingdom or without, the compass, imagine, invent, devise, or intend to deprive or depose our most gracious Lady the Queen from the style, honour or Royal Name of the Imperial Crown of the United Kingdom.' Several monarchists are of the opinion that it is seditious and illegal to advocate republican democracy.

• The current framework of governance has been existing in Britain since the 10th century. The system has changed now, even though the monarch still remains the Head of the State, and does not possess any political powers now. The current framework leaves the Prime Minister out of useless events and has given him time to execute his duty of controlling the country well. Another reason for monarchy in Britain is that no one has been able to devise an alternative till now. However, it is equally important to bring a change in British society and make it seem like an influential and modern state.

The following are some suggested points against the monarchy in Britain:

• A hereditary monarch in a developed nation cannot be justified because it represents the feudalism of medieval English society. It seems like a superannuated system that has served its time and purpose. It encourages social division and snobbery by separating the monarchy from ordinary citizens. Monarchy stands in contrast to the system of meritocracy, where people are rewarded according to their abilities, and not on the basis of their birth. As long as the monarchy survives, the class system will also survive in Britain.

• The fact that monarchy is a mere ceremonial office supported by the money of the taxpayers is not justified. These funds can easily be used for the further development of the nation. They can be invested towards important sectors such as education, healthcare, infrastructure, transport and communications. It should be noted that public money (about £50,000) was once used for renovating Buckingham Palace. Since the palace is a tourist attraction, abolishing the monarchy would increase revenue from the same. Moreover, the palaces can be used as tourist spots rather than as a home for royalty.

• Monarchy encourages the persistence of anachronous traditions and values. It not only paints the image of Britain as a country still stuck in the medievalism of the past but is also the relic of an era gone by. Monarchy flourishes while the working class perishes.

• Monarchy is not regarded with the same degree of respect as in the past. It is often claimed to lack the sensibility to act as the head of state. Very few people are of the opinion that it should continue in its present form. British citizens often face despondency when it comes to the question of the continuation of monarchy in Britain. It is believed that monarchy is a style of governance where, by itself, it has no special role but many have to suffer because of its presence. To avoid this suffering of the innocent, it should be eradicated or at least reduced to some extent. Monarchy is a redundant framework, leading to no optimal positive results and simultaneously leading to racism, which is its biggest drawback. Why does the system still prevail even after such criticism?

• The most common reason is that monarchy has not been practised in its true sense anymore. People do not perceive any direct adverse effect of monarchy in the state.

• Britain's sense of security has been embedded in the Crown only, and without it, things would not make much sense.

• Since the true sense has been lost, the behaviour of the Crown is considered irrelevant.

• Monarchy is constitutional. It renders Britain a unique and singular identity.

• The monarch is in a position in the state where he/she is able to work for the welfare of the civilians.

• Monarchy has no significance of its own.

• Any attempt to do away with the monarchy is a fundamental assault on the national way of life in Britain.

National Identity:

The monarch is a National Icon

The monarch is a physical representation of the history of the era that she or he rules. Monarchs depict the ups and downs of the nation during their reign. The Queen of Britain is a national icon as she is inextricably related to the history of the nation during her rule, and she cannot be replaced or substituted by any other politician or personality. This is a living continuity between the past, present and future. A monarch truly depicts the nation, its traditions, ceremonies and many more things. The British monarchy is a cultural embellishment for the nation, divested of which it willappear impoverished. Monarchs are representatives of the unique customs and traditions of a nation-state. In a world where people believe that the government should be for the people, by the people and for the people, monarchy still has a place.

Abolition of the British Monarchy

The following arguments have been forwarded for the abolition of monarchy in Britain:

• The values of a monarchy are significantly different from that of a democracy.

• The royals spend a lot of state money on personal expenses, especially on pompous ceremonies.

• The political power and clout of the royal family cannot be neglected.

• The royals have invited criticism from various quarters by causing marital mishaps and demonstrating financial indiscretions.

• Monarchy is often seen as a symbol of everything that is wrong with British society and its political system today.

• Most modern-day nations practise democracy. It strengthens people and provides them with the power to elect their leaders. The people of developed countries participate in the nation-making process. They elect the people who constitute their government. However, Britain has lagged in this respect by retaining the monarchy

PRIME MINISTER: UK

The Prime Minister is by far the most important man in the country. He is also described as the master of the government. It is the peculiarity of the British Constitution that the man who holds such a high office has, strictly speaking, no legal sanction. English law is very much silent with regard to the office of the Prime Minister.

Selection of the Prime Minister

The selection of the Prime Minister depends essentially on the monarch. During the 18th century, the royal choice played an effective role in such an election. It was a well-established rule that the Prime Minister must be either a Lord or a member of the House of Commons. All Prime Ministers since Sir Robert Walpole have been appointed from one of the Houses.

A convention has been developed since 1923 that the Prime Minister should belong to the House of Commons. The resignation of Bonar Law in 1923 left the King to select either Lord Curzon or Stanley Baldwin as the Prime Minister. The former was a member of the House of Lords, and the latter belonged to the House of Commons. Lord Curzon had greater cabinet experience than Stanley Baldwin. But the King finally selected Baldwin as the Prime Minister after due consultation with the prominent members of the party. As the cabinet is responsible to the House of Commons and the House of Commons is more powerful than the House of Lords, it is natural to expect the leader of the majority party of the House of Commons to be appointed as the Prime Minister.

Functions of the Prime Minister

The functions of the Prime Minister are many and varied. He has immense powers and a considerable amount of prestige, which can be seen from the following description of his functions.

(i) Formation of the ministry

The Prime Minister forms the ministry. With the appointment of the Prime Minister, the essential function of the monarch is over, for it is left to the Prime Minister to select his ministers, and present the list to the monarch. The Prime Minister has also to select his cabinet colleagues. The Prime Minister can change the members of the ministry at any time.

(ii) Distribution of portfolios

The distribution of portfolios is another important task of the Prime Minister. However, while distributing portfolios, he has to see that important members of the party do get important portfolios. He also has to satisfy the aspirants for the important portfolios.

iii) The chairman of the Cabinet Committee

The Prime Minister is the Chairman of the Cabinet Committee. He convenes the meetings of the cabinet and presides over them. He is to fix the agenda of the meetings and it is for him to accept or reject proposals put by its members for discussion in such meetings. He may advise, warn or encourage the ministers in the discharge of their functions

iv) Leader of the House of Commons

It is now an established convention that the Prime Minister should belong to the House of Commons. He represents the cabinet as a whole and acts as the leader of the House. He announces the important policies of the government and speaks on the most important bills in the House of Commons. He is responsible for the arrangement of thebusiness of the House through the usual channels. The members of the House look to him as the fountain of every policy.

v) Chief coordinator of policies

The Prime Minister is the chief coordinator of the policies of several ministries and departments. He has to see that the government works as an organic whole and activities of various departments do not overlap or conflict with one another. In case of a conflict between two or more departments, the Prime Minister acts as the mediator. He irons out conflicts among the various ministries and departments. Thus, he plays a major role in coordinating the policies of the government.

vi) Sole adviser to the monarch

The Prime Minister is the sole adviser to the monarch. You must already know that he is the only channel of communication between the monarch and the cabinet. The Prime Minister advises the sovereign in matters of appointment and any other matter of national importance. He recommends the names of persons on whom honours can be conferred. He is also responsible for a wide variety of appointments and exercises considerable patronage. He also

has the power to advise the King to create peers. Thus, he has a legal right of access to the sovereign, which other members of the cabinet ordinarily do not possess. For this reason, he frequently visits Buckingham Palace to meet the monarch.

vii) Leader of the nation

The Prime Minister is not only the leader of the majority party but also the leader of the nation. A general election in England is in reality an election of the Prime Minister. He should feel the pulse of the people, and try to ascertain genuine public opinion on matters which confront the nation. His appeal to the people in critical periods saves the nation.

viii) Power of dissolution

The Prime Minister possesses the supreme power of dissolution, and it is his sole right to advise the monarch to dissolve the House of Commons. In other words, the members of the House of Commons hold their seats at the mercy of the Prime Minister. It is difficult to imagine a situation inwhich the monarch can refuse the dissolution of a Prime Minister. Nevertheless, the Prime Minister should consult the cabinet before advising for dissolution.

ix) Other powers

The Prime Minister possesses wide powers of patronage, including the appointment and dismissal of ministers. A large number of important political, diplomatic, administrative, and ecclesiastical and university appointments are made by the monarch on his recommendations. He may occasionally attend international conferences. He meets the Commonwealth Prime Minister in regular conferences. He may meet the Heads of other Governments at the summit talks and discuss international problems. The Prime Minister often discharges these functions without consulting the cabinet. However, the solidarity of the cabinet and the prestige of the Prime Minister should be always reconciled.

The Doctrine of the Prime Ministerial Government

In view of the vast powers exercised by the Prime Minister, some critics observed that there is a Prime Ministerial form of government in England. R. H. S. Crossman writes, 'The post-war epoch has seen the final transformation of cabinet government into Prime Ministerial Government.' Under this system, the cabinet which is a 'hyphen which joins, the buckle which fastens, the legislative part of the State to the executive part' becomes one

single man. Even in Bagehot's time, it was probably a misnomer to describe the Premier as Chairman, and primus inter pares (first among equals).

His right to select and remove his own cabinet, his power to decide its agenda, his right to announce its decisions and to advise the monarch for dissolution, his power to control the party members for the sake of discipline–all this has given him near presidential powers. Every cabinet minister has become, in fact, the Prime Minister's agent or assistant. No minister can take an important move without consulting the Prime Minister. It may be said that the cabinet has become a Board of Directors and the Prime Minister is like a general manager or a managing director. Important policy decisions are often taken by the Prime Minister alone, or after consulting one or two cabinet ministers. The repeal of the Corn Laws in 1846 was done by the personal initiative of Robert Peel. The invasion of the Suez Canal in 1956 was decided by Anthony Eden in consultation with his colleagues, and the cabinet was informed at the last moment before Israel attacked Egypt. Harold Wilson reached the final decision to dissolve the House of Commons in 1966 without consulting the cabinet. Once the Prime Minister announces his policy or takes a step, his followers have little chance to oppose him, for it may endanger party solidarity and the stability of the government.

Herbert Morrison and some other critics refute the thesis of the establishment of thePrime Ministerial government in England. They hold the view that 'the Cabinet is supreme' and the Prime Minister is not the master of the cabinet. He cannot ride roughshod over the desire of the cabinet. As the captain, he must carry the whole team with him. A team is weak without a captain, and there can be no captain without a team. Both should work in mutual cooperation and perfect harmony. Hence, the Prime Minister is like an executive chairman.

The preceding two views seem to be extreme ones, and the real truth lies in between these two views. The Prime Ministerial powers change with political circumstances and with the concerned personalities. The Prime Minister is, no doubt, more powerful than any cabinet minister. But it cannot be said that he is more powerful than the whole cabinet. After all, he has to carry the whole cabinet with him.

UNIT II

PARLIAMENT: COMPOSITION AND FUNCTIONS

The British Parliament is the oldest legislative institution in the world. It is one of the best representative assemblies in the world. It still upholds the theory of the supremacy of the ballot. This Parliament meets in the Palace of Westminster. Incidentally, the parliamentary form of government of England is the oldest in the world.

Origin and Growth of Parliament

Etymologically, the word 'parliament' has been derived from the Latin word parle, which means consultation. In the beginning, the British monarch, who was the embodiment of the legislative, executive and judicial powers, found it convenient to consult with the Lords, Barons and the Commons for raising money. Its root can be traced to the Magnum Concilium (Great Council) of the Norman period. Simon de Montfort first used the word 'parliament' in 1265, and Edward I summoned the famous 'Model Parliament' in 1295.

Bicameralism is an accident in British constitutional history, for in the 'Model Parliament' of 1295, the Barons and clergy refused to sit with the common people. Hence, two houses were created: the House of Lords and the House of Commons. Initially, the House of Lords was more powerful, but with the extension of the franchise which started with the passage of the first Reform Act of 1832, the House of Commons became a popular and powerful chamber. During the period of 1832–1971, there were several Reforms Acts which gradually granted every person of eighteen years of age the right to vote, thus completing the process of democratization of Parliament.

Powers and Functions of Parliament

The Parliament is a sovereign body. It has the right to make or unmake any law, and the judiciary has no right to override or set aside its act. The Parliament in general enjoys the following powers:

i) Law-making powers

Great Britain has a unitary form of government, and hence, both Houses of Parliament have the power to make laws for the whole country. It is the principal function of the Parliament. In actual practice, it has neither time nor competence and hence the initiative is left in the hands of the cabinet. The cabinet dominates both in the legislative as well as in

executive fields. Further, in the legislative sphere, the House of Commons has more powers than the House of Lords.

(ii) Financial power

The Parliament is the guardian of national finance. It may be pointed out here that it was largely on the question of money that the battle was fought between the King and Parliament. Finally, it was settled that Parliament has the supreme authority in the financial field. Here, the House of Commons is more powerful, and as per the provision of the Parliament Act 1911, the House of Lords can delay money bills for a maximum period of one month. Money bills can be first introduced only in the House of Commons.

ii) Control over the Executive

The responsibility of the executive to the legislature is the very basis of the parliamentary form of government. The cabinet in England is responsible to the Parliament. Here again, it is the House of Commons and not the House of Lords that exercises effective control. The House of Commons may remove a cabinet from power by a vote of no confidence. It may reject a bill or a budget proposal of the cabinet. Its members have a right to ask questions to the ministers. They move the vote of no confidence or vote of censure against the government.

(iv) Ventilation of grievances

The Parliament is a forum for deliberation on questions of public importance and the ventilation of public grievances. It is the mirror of the nation. Whatever happens in the various parts of the country can be discussed in it. That is why it is often described as a nation in miniature'

(v) Educative functions

Besides the function of exercising control over the executive, the Parliament also performs educative functions. Its debates provide valuable political education to the people and create a process of awareness among them. Newspapers, radio and televisions give maximum publicity to its debates. It helps to educate and formulate a public opinion in Great Britain. It provides an opportunity for the opposition to criticize the government.

(vi) Miscellaneous functions

The Parliament protects the rights and privileges of its members. It provides a training ground for future parliamentary leaders and ministers. Its members, particularly the members of the House of Commons, have to demonstrate talent, ability, wisdom and practical statesmanship.

Bicameralism and the Parliament

The Parliament of Great Britain is bicameral in structure. It consists of the following two houses·

- House of Commons
- House of Lords

The House of Commons

The House of Commons is the popular chamber whose members are elected directly by the people. It has been aptly described as the 'most characteristic institution of British democracy. It consists of elected representatives of the people who represent the nation as a whole. The House of Commons is now purely an elective body, and it has attained its present status through a long process of democratization. The free election is now an essential basis of British democracy. The House of Commons at present consists of 635 members. These members are elected for a period of five years from single-member constituencies, arranged on a geographical basis. If the House is dissolved earlier, there may be a fresh election before the completion of the terms. The tenure of the House normally does not extend beyond five years, but it can be extended in great national crises such as wars and emergencies. The House of Commons elected in 1910 continued to work till 1918 due to First World War, and one elected in 1935 continued till 1945 during Second World War.

The House of Lords is the oldest upper House in the world. As a second chamber, it has been in continuous existence for more than one thousand years. This House consists of more than one thousand Peers of Lords. The term 'peer' means an equal, and originally, it referred to the feudal tenants-in-chief of the monarch. These tenants-in-chief more or less enjoyed equal privileges, and they were summoned by the King to be present when a new Parliament met. It became customary that when a new Parliament met, the King used to summon the same old peers who had sat in an earlier one, or if in the meantime, they had died, for their

eldest sons. Thus, peers became hereditary under the law of primogeniture, where the eldest son had the right to inherit the father's legacy and become a member of the House of Lords

The House of Lords

At present, the House of Lords consists of the following categories of peers:

(i) Princes of the Royal Blood

(ii) Hereditary Peers

(iii) Representative Peer of Scotland

(iv) Representative Peers of Ireland

(v) Lords of Appeal

(vi) Lords of Spiritual

(vii) Life Peers

The members of the House of Lords have certain privileges and disabilities. They enjoy the freedom of speech and individually meet the monarch to discuss public affairs. They are exempted from arrest when the House of Lords is in session. Eminent persons are conferred on peerage so that the country gets the chance of getting their services.

Features of the Cabinet system

The cabinet system, as it is found in Great Britain, is based on certain recognized principles. The principles have been developed in course of time and these are based more on conventions than on law. The British cabinet is rightly described as 'one of the parts of the governmental machinery least governed by law'. However, the Cabinet occupies the most important place in the British constitutional system. The essential features of the Cabinet system are discussed below.

1. Exclusion of the monarch from the Cabinet

The first essential feature of the British Cabinet system is the exclusion of the monarch from the Cabinet. The Monarch stands outside the Cabinet and he does not attend its meeting. He is neutral and above party-politics. Hence, he should not be involved in political matters. Although all executive actions are taken in the name of the monarch, the monarch practically does nothing. The decisions are taken by the Cabinet and the monarch acts on the advice of the Cabinet. This is a fundamental principle of the working of the Cabinet system in Great Britain and any deviation from it, would render the system unworkable. The practice of the exclusion of the monarch from the Cabinet had developed since the reign of George.

2. Combination of the executive and legislative functions

The second essential feature of the cabinet system is the close cooperation between the executive and the legislature. All ministers are members of Parliament. The Prime Minister and the members of the Cabinet belong to the majority party. As Heads of the Departments, the members of the Cabinet control the executive and as leaders of the majority party, they also control the parliament. There is an absence of strict separation of powers in a cabinet form of government. The situation is different in the American system which is based upon the principles of 'separation of powers and where the executive is made independent of the legislature. In a parliamentary system, the ministers are not only the members of the legislature but also control the legislature. The cabinet, therefore, occupies a very important place and without close cooperation between the Cabinet and parliament, the governmental system cannot work. 'The whole life of British politics rightly observed Bagehot, 'is the action and the reaction between the ministry and the parliament.

3. Collective responsibility

In third place, the Cabinet system is based on the principle of 'collective responsibility, which is said to be 'the cornerstone of the working of the British Constitution. All ministers swim or sink together. For the wrong policy of the government, the entire cabinet is held responsible. The cabinet is responsible to the House of Commons and it continues in office as long as it enjoys the confidence of the latter. The cabinet works like a team and meets the parliament as a team. Its members stand or fall together. The collective responsibility of the Cabinet is enforced in the parliament through various methods like the vote of no-confidence, the vote of censure and the refusal to pass government bills. Whenever the Cabinet ceases to enjoy the confidence of the House of Commons, it may resign or advise for the dissolution of the House of Commons. In case of dissolution of the House of Commons, a fresh election takes place. Thus, collective responsibility has strengthened the solidarity of the Cabinet in the British constitutional system.

4. Ministerial responsibility

In fourth place, the British cabinet system is also based on the principle of 'ministerial responsibility. L. A. S. Amery writes, 'The collective responsibility of ministers in no way derogates from their individual responsibility. A minister is responsible to the House of Commons for his acts of omission and commission. Every act of the Crown is countersigned by at least one minister, who can be held responsible in a court of law if the act done is illegal. The cabinet as a whole may not resign on the mistake of an individual minister. There are many instances when individual ministers have resigned for their personal errors. In the

Attlee Government in 1947, Hugh Dalton, the then Chancellor of Exchequer, resigned because of his indiscreet revelation of some facts about the budget to a journalist.

5. Political homogeneity

In fifth place, political homogeneity is another essential feature of the Cabinet system. The members of the Cabinet are preferably drawn from the same political party. The party which gets the majority in the House of Commons is given the opportunity to form the Cabinet. The ministers belonging to the same political party hold similar views. The cabinet consisting of like-minded persons with similar objectives can work efficiently with more vigour and greater determination. Coalition ministry is also a rare phenomenon in the British constitutional system. Due to the bi-party system, coalition ministry is not much favoured in England. Though there have been occasional coalitions just like the National Government of 1931, these are few in number and are formed in extraordinary circumstances. Further, the coalitional government does not last long. Thus, political homogeneity adds strength to the principles of collective responsibility which rests the entire structure of the British cabinet system.

5. The leadership of the Prime Minister

The sixth essential feature of the Cabinet system is the leadership of the Prime Minister. 'The Prime Minister' according to John Morley, 'is the key-stone of the Cabinet-arch.' Although the members of the Cabinet stand on an equal footing, the Prime Minister is the captain of the team. Other members are appointed on his recommendation and he can reshuffle his team whenever he pleases. He is the recognized leader of the party. He acts like an umpire in case of differences of opinion among his colleagues. He coordinates and supervises the work of various departments in the government. His resignation means the resignation of the entire cabinet as well as the ministry.

6. Secrecy of cabinet meetings

The last feature of the British cabinet system is the secrecy of the meetings of the Cabinet. The entire cabinet proceedings are conducted on the basis of secrecy. The members of the Cabinet are expected to maintain complete secrecy with regard to the proceedings and policies of the Cabinet. They take the oath of secrecy as per the Official Secrets Act. Legally, the decisions taken by the Cabinet are in the nature of advice to the monarch and cannot be published without his permission. Although meetings of the Cabinet may be held anywhere and at any time, they usually take place each Wednesday in the Cabinet room at 10, Downing Street. In extraordinary circumstances, there may be frequent meetings of the Cabinet. Emergency meetings may be summoned at any time.

The establishment of a permanent cabinet Secretariat by Lloyd George III in 1917 has helped to write down the minutes of the proceedings and maintain secrecy. The secrecy of the proceedings of the Cabinet meeting helps to maintain collective responsibility and cabinet solidarity. Further, in order to strengthen the solidarity of the Cabinet its decisions are not arrived at by voting for or against a proposal. The Prime Minister tries to know the views of the members and uses his influence to reach a common decision. The members of the Cabinet are free to express their views, but once a decision is taken, they solidly stand behind it. Thus, secrecy and party solidarity may be considered to be the last but not the least essential feature of the British cabinet system.

Cabinet

Cabinet in political systems, a body of advisers to a head of state who also serve as the heads of government departments. The cabinet has become an important element of government wherever legislative powers have been vested in a parliament, but its form differs markedly in various countries, the two most striking examples being the United Kingdom and the United States.

The cabinet system of government originated in Great Britain. The cabinet developed from the Privy Council in the 17th and early 18th centuries when that body grew too large to debate affairs of state effectively. The English monarchs Charles II (reigned 1660–85) and Anne (1702–14) began regularly consulting leading members of the Privy Council in order to reach decisions before meeting with the more unwieldy full council. By the reign of Anne, the weekly, and sometimes daily, meetings of this select committee of leading ministers had become the accepted machinery of executive government, and the Privy Council's power was in inexorable decline. After George I (1714–27), who spoke little English, ceased to attend meetings with the committee in 1717, the decision-making process within that body, or cabinet, as it was now known, gradually became centred on a chief, or prime, minister. This office began to emerge during the long chief ministry (1721–42) of Sir Robert Walpole and was definitively established by Sir William Pitt later in the century.

The passage of the Reform Bill in 1832 clarified two basic principles of cabinet government: that a cabinet should be composed of members drawn from the party or political faction that holds a majority in the House of Commons and that a cabinet's members are collectively responsible to the Commons for their conduct of the government. Henceforth no cabinet could maintain itself in power unless it had the support of a majority in the

Commons. Unity in a political party proved the best way to organize support for a cabinet within the House of Commons, and the party system thus developed along with cabinet government in England.

The modern British cabinet

In Great Britain today the cabinet consists of about 15 to 25 members, or ministers, appointed by the prime minister, who in turn has been appointed by the monarch on the basis of ability to command a majority of votes in the Commons. Though formerly empowered to select the cabinet, the sovereign is now restricted to the mere formal act of inviting the head of Parliament's majority party to form a government. The prime minister must put together a cabinet that represents and balances the various factions within his or her own party (or within a coalition of parties). Cabinet members must all be members of Parliament, as must the prime minister. The members of a cabinet head the principal government departments, or ministries, such as Home Affairs, Foreign Affairs, and the Exchequer (treasury). Other ministers may serve without portfolio or hold sinecure offices and are included in the cabinet on account of the value of their counsel or debating skills. The cabinet does much of its work through committees headed by individual ministers, and its overall functioning is coordinated by the Secretariat, which consists of career civil servants. The cabinet usually meets in the prime minister's official residence at 10 Downing Street in London.

Cabinet ministers are responsible for their departments, but the cabinet as a whole is accountable to Parliament for its actions, and its individual members must be willing and able to publicly defend the cabinet's policies. Cabinet members can freely disagree with each other within the secrecy of cabinet meetings, but once a decision has been reached, all are obligated to support the cabinet's policies, both in the Commons and before the general public. The loss of a vote of confidence or the defeat of a major legislative bill in the Commons can mean a cabinet's fall from power and the collective resignation of its members.

Only rarely are individual ministers disavowed by their colleagues and forced to accept sole responsibility for their policy initiatives; such was the case with Sir Samuel Hoare's resignation in 1935 over his proposed appeasement of Fascist Italy. Despite the need for consensus and collective action within a cabinet, ultimate decision-making power rests in the prime minister as the party leader. Various other member countries of

the Commonwealth, notably India, Canada, Australia, and New Zealand, maintain cabinet systems of government that are closely related to that developed in Great Britain.

Continental Europe

In continental Europe the cabinet, or council of ministers, similarly became an intrinsic part of parliamentary systems of government, though with some differences from the British system. Modern cabinets first appeared in Europe during the 19th century with the gradual spread of constitutional government. Monarchs had previously used members of their court circles to carry out various administrative functions, but the establishment of constitutional rule endowed a monarch's ministers with a new status. This was largely due to the creation of elected parliaments whose approval was needed for budgetary matters and legislative acts. Ministers now came to share with the monarch responsibility for the processes of government, and it became their task to defend policy proposals in parliament. The power to choose these ministers gradually shifted from the monarch to elected prime ministers in the late 19th and early 20th centuries.

Traditionally in many European countries, notably Italy and France, several parties competed for power and no one party proved able to command stable majorities in the parliament. Under these conditions, only coalition cabinets commanding the support of several minority parties could muster legislative majorities and hence form a government. The multiparty systems in France and Italy gave rise to unstable and disunited coalitions that rarely stayed in power for long, however. To remedy this, when France established the Fifth Republic under Charles de Gaulle (1958), it retained the parliamentary system but reinforced the power of the president, who is directly elected and appoints the premier (prime minister) and cabinet. This reformed system is an example of the search for a form of executive power that can overcome the weaknesses often displayed by cabinets that are dependent on parliamentary approval. After World War II, West Germany found a different solution to the problem of frequent cabinet crises provoked by adverse parliamentary votes. A provision in the German Basic Law, or constitution, mandates that the Bundestag, or lower house of parliament, can force a federal chancellor (prime minister) from office by a vote of no confidence only if at the same time it elects a successor by an absolute majority

Functions of the Cabinet

The cabinet occupies a unique position in the British constitutional system. Writers of the British Constitution have used colourful phrases to describe the position of the Cabinet in the political system of that country. 'It is described as the key-stone of the political-arch, the steering wheel of the ship of the State, the central directing instrument of government and the pivot around which the whole political machinery revolves. Bagehot is the first constitutional authority to emphasize the importance of the Cabinet in Great Britain. It occupies the central place in the political field and plays a dominant role in the governmental system. It has many functions and we may subdivide them for our convenience under the following headings

(i) It decides the national policy:

The cabinet decides the major national policies to be followed in both home and abroad. All kinds of national and international problems are discussed in the Cabinet and decisions with regard to various policies are arrived at. It is the real executive of the State. As the real executive, the Cabinet defines the lines of the National Policy and decides how every current problem which may arise at home or abroad is to be treated. The individual ministers remain in charge of administrative departments. The cabinet decides policies and the respective departments execute them.

(ii) It is the principal custodian of executive powers:

The cabinet not only formulates and defines policies, it also executes them. It exercises the national executive power subject to the approval of the parliament. The fundamental requirement of a good administration is that a policy should be clearly formulated and efficiently executed. The cabinet formulates policy as well as sees its execution. All the ministers, whether they are members of the Cabinet or not, have to execute the policies formulated by the Cabinet and implement laws enacted by the parliament. It is the duty of a minister to see that his department works well. He supervises the work of senior civil servants working under him and guides them in the implementation of government policies. The cabinet is also responsible for the appointment of high officers of the State. The King is a mere nominal executive head, whereas the ministers are the real executive heads. Thus, the Cabinet is held responsible for every detail of the administrative work.

(iii) It controls and guides the legislative work:

The absence of a strict separation of powers is a fundamental principle of the British Constitution. The members of the Cabinet are responsible to the House of Commons. The Prime Minister is the leader of the Cabinet as well as the leader of the House of Commons.

The cabinet guides and largely controls the functions of the parliament. The ministers prepare, introduce and pilot legislative measures in the parliament. They also explain and urge the members to pass the bills introduced by them. Practically, most of the time of the parliament is spent in consideration of the legislative proposals made by the Cabinet. All bills introduced by the Cabinet are generally passed due to the support of the majority party in the parliament. If a government bill is rejected, the entire cabinet resigns or seeks dissolution of the House of Commons. A bill opposed by the Cabinet, has no chance of becoming an Act. In fact, the Cabinet has become a miniature legislature and it is said that, today it is the Cabinet that legislates with the advice and consent of the parliament.

(iv) It controls the national finance:

The cabinet controls national finance. It is responsible for the entire expenditure of the nation. It decides what taxes will be levied and how these taxes will be collected. It finalizes the budget before it is introduced in the House of Commons. The Chancellor of the Exchequer is an important member of the Cabinet. He prepares the annual budget and generally the budget is discussed in the Cabinet before its presentation in the parliament. Of course, he is not bound to reveal new taxation proposals to all the members of the Cabinet. However, the entire cabinet works as a team and the Cabinet maintains secrecy in this matter. The cabinet has a right to examine the pros and cons of various financial measures.

(v) It coordinates the policies of various departments:

The government is divided into several departments and it cannot be a success unless all the departments work in harmony and cooperation. That is why careful coordination is required in administration. The cabinet, in fact, performs this task. Proposals of various departments may be sometimes conflicting and contradictory. Hence, it is the responsibility of the Cabinet to coordinate the policies of various departments. While some measures of coordination can be achieved at lower levels by the departments concerned, the broad aspects have to be achieved at the Cabinet level. The cabinet, therefore, prevents friction, overlapping and wastage in departmental policies and programmes. It coordinates as well as guides the functions of the government.

Cabinet in the USA

The president's cabinet is not known to the law of the country. It has grown by conventions during the last 200 years. The founding fathers did not regard it as an essential institution.

Many of the ‘constitution makers assumed that the senate—a small body of 26 members at the time of its creation would act as the president’s advisory council. The first president, George Washington actually tried to treat the senate as such. But the experiment was so discouraging that it was never repeated. Naturally, therefore, the American president developed the practice of turning for advice to the heads of the executive departments. In this connection, the constitution provides that the president may require the opinion in writing of the principal officers in each of the executive departments.’ The meetings of the heads of executive departments soon came to be called cabinet meetings. Thus, the cabinet has arisen as a matter of convenience and usage. According to William Howard Taft: ‘The cabinet is a mere creation of the President’s will. It is an extra-statutory and extra-constitutional body. It exists only by custom. If the President desired to dispense with it, he could do so. Though unknown to the law yet it has become an integral part of the institutional framework of the United States.

Composition:

The size of the cabinet has undergone a steady growth. George Washington’s cabinet included only four heads of the existing departments. The cabinet’s strength has increased to twelve with the creation of more departments. Besides, President may include others also. Some presidents invite the vice-president to the meetings of the cabinet. Frequently, the heads of certain administrative commissions, bureaus and agencies are also included in the cabinet meetings. The actual size of the cabinet, therefore, depends upon the number of people the president decides.

Manner of selection:

The members of the cabinet are heads of executive departments and are appointed by the President with the approval of the Senate. Constitutionally, the consent of the senate is necessary but in practice, the Senate confirms the names recommended by the President as a matter of course. Though the President is free in the choice of his ministers, he has to give representation keeping in mind the geographical considerations, powerful economic interest and religious groups in the country. He has to pay ‘election debts’ by including a few of these persons who helped in securing nomination and election to the like. He also has to appease the various sections of his party by including their representations in the cabinet. Tradition dictates that every President selects a ‘well balanced’ cabinet, a group of men whose talents backgrounds and affiliations reflect the diversity of American Society.

States of the cabinet:

The US Cabinet is purely an advisory body. It is a body of President's advisors and 'not council of colleagues' with whom he has to work and upon whose approval he depends. The members of the cabinet are his nominees and they hold office during his pleasure. President Roosevelt consulted his personal friends more than his cabinet members. President Jackson and his confidential advisors are known as 'Kitchen Cabinet' or 'Place guards'.

In the words of Brogan, the President is 'ruler of the heads of departments'. The President may or may not act on the advice of his cabinet. Indeed, he 'may or may not seek their advice. The President controls not only the agenda but also the decision reached. If there is voting at all, the President is not bound to abide by the majority view.

The only vote that matters is that of the President. In fact when the President consults the cabinet, he does so more with a view to collecting the opinions of its members to clarify his own mind than to reaching a collective decision. In short, the members of his cabinet are his subordinates or mere advisors while the President is their boss.

The Cabinet is what the president wants it to be. It is by no means unusual for a cabinet ministry to get his first information of an important policy decision, taken by the president through the newspapers. Thus, the cabinet has no independent existence, power or prestige

Comparison between the American and the British Cabinet

Both America and Britain have cabinets in their respective countries, but they fundamentally differ from each other. The American cabinet can be said to resemble the British cabinet in one thing only. Both have arisen from custom or usage. While in all other respects the American Cabinet stands in sharp contrast to its American counterpart. The chief differences between the two are as follows: **(i) Difference regarding constitutional status:**

The contrast is because of the different constitutional systems in which the two cabinets function. The British Parliamentary government is based on the close relationship between the executive and the legislative branches of government. So, all the members of the British Cabinet are members of the Parliament. They are prominent leaders of the party. They present legislative measures to the Parliament, participate in debates and are entitled to vote. On the other hand, the American constitutional system is presidential, which is based upon the principle of separation of powers. So, the members of the cabinet cannot be the members of the Congress like the president himself. They may 'appear before Congressional

committees, but they cannot move legislative measures or speak on the floor of either House of Congress.'

(ii) Membership of legislature:

In the presidential system like USA, in case a member of either House of Congress joins the presidential cabinet, he must resign his seat in the House. Whereas in Britain, if a member of the cabinet is chosen from outside the parliament, he must seek membership of the parliament within a period of six months; otherwise, it will not be possible for him to continue as minister.

(iii)Political homogeneity:

The British cabinet is characterized by political homogeneity, all its members being normally drawn from the same party. The American cabinet may be composed of politically heterogeneous elements. Presidents frequently ignore party considerations informing their cabinet.

(iv) Ministerial responsibility:

The British cabinet holds office so long as it enjoys the confidence of the House of Commons, which is the Lower House of the British Parliament. But in USA, the ministers act according to the wishes of the president and they are responsible to him alone.

(v) Collective responsibility:

The British cabinet always functions on the principle of collective responsibility. Its members are individually as well collectively responsible to the parliament. But this is not the case with USA. As Laski says, 'The American cabinet is not a body with the collective responsibility of the British cabinet. It is a collection of departmental beads that carry out the orders of the president. They are responsible to him'. They can remain in office during the pleasure of the president.

vi) Official status:

Membership of the British cabinet is a high office which one gets as reward for successful parliamentary career. It may be the stepping stone to Prime Ministership. Whereas, in America, many of the persons appointed to the cabinet have little or no Congressional experience. It is not even, necessarily towards the presidency. According to Laski, it is 'an interlude in a career, it is not itself a career'.

vii)Position of their heads:

Members of the American cabinet stand on a completely different footing in their relations with the president from that of the members of the British cabinet in their relations

with the Prime Minister. The Prime Minister is the leader of his cabinet team. His position with his colleagues is that of a primus-inter-pares or first among equals. He is by no means their boss or master. He hazards his head when he dispenses with a powerful colleague. In other words, he cannot disregard a powerful colleague without endangering his own position.

On the other hand, the members of the American cabinet are not the colleagues of the president. They are his subordinates. The president is the complete master of his cabinet, which, in fact, is his own shadow. Members of the cabinet are his subordinates, at best advisors and at worst his office boys. According to Laski 'the real fact is that an American Cabinet officer is more akin to the permanent secretary of government departments in England, than he is to be a British cabinet minister.

Keeping in view the composition, position and the relationship of American cabinet with that of president, Laski describes that 'the cabinet of USA is one of the least successful of American federal institutions'. Being completely over-shadowed by the President and being excluded from Congress, the cabinet officer has no independent forum and no independent sphere of influence. An influential member of the Senate is in a better position to influence public policy because he has a sphere of influence in which he is his own master. Prof. Laski, rightly contends that 'the American Cabinet hardly corresponds to the classic idea of a cabinet to which representative government in Europe have accustomed us.'

UNIT III

USA

The United States of America is a federal state in the sense that power is shared between the state and the national government. However, the US Constitution never mentions that it is a federal nation. Federalism has an interesting history in the United States. After the US became free from England, the thirteen colonies restructured themselves to become thirteen states. They were bound by a document called the Articles of Confederation, and formed a league to function together as one nation. These states were, each of them, autonomous in their own right, and the state governments had all the power. But this translated into a weak national government. The Founding Fathers of America then came to an understanding that a new form of government was, indeed, required. They wrote the Constitution that sought to aggrandize the national government. Power was now divided between the state and national government. This is how federalism came to be adopted in the United States. The country is led by the President, who is not only the head of the executive branch of the government but also the head of the military. This means that the President can mobilize troops as he sees fit. This power was allegedly misused by George Bush Jr., the 43rd President of the United States. Congress creates laws, but it is the President who approves them. The President enjoys the power of the veto and it is under his power not to sanction a bill. He represents his country in the world and ratifies treaties. The President is the main head of the government and is elected by the American citizens. In the way that we turn to our friends when we need advice, the President turns to his cabinet which comprises experts in various subjects.

In this unit, you will study about the salient features of the Constitution of the United States of America, the powers and the position of the American President, and the composition and functions of Congress. You will also study the differences between the power held by the American President and the British Prime Minister and compare the duties of the American Speaker with that of the British Speaker.

SALIENT FEATURES OF THE CONSTITUTION

The dilemma of recognizing major determinants of political behaviour is complex in the case of the United States because of the vast diversity of American life. Constitutional organization along with the prototypes of political action, frequently act and react upon each other. Prior to learning about the features of American politics, it is essential to return to the hypotheses that have been estimated to clarify the motivational forces, which are behind political systems, as well as the insinuations of these contradictory details for getting an

understanding of the American system. These 'representations' of political life assist in understanding the intricacy of American politics at every stage of activity, in the electorate in general and in the formation of party and pressure groups, along with the functioning of congressional and presidential politics.

Model of Politics

The sense of affection to a region or community, has at all times, been one of the most dominant sources of political loyalty and action. The US grew out of various colonial communities, expanding progressively across the continent, in a way, which has the propensity to lay emphasis on local loyalties. The constitutional make up of federalism that was developed in 1787 provided prospects for the sustained appearance of regional loyalties through the governments of the states. Therefore, the history of the American political system has been powerfully exemplified by sectional outlines of activities by the people of particular geo-states. The Civil War (Figure 2.1) certainly was one of the most vivid confrontations of this nature, wherein the North and South became diverse warring nations.

However, sectionalism continues to be a moving force in American politics all the way through its history. The unanimity of a segment was dependent on some universal awareness and shared interests, which set it apart from the rest of the country and which were of ample significance for the unification of its people, despite class or any other internal division. Often this common interest was economic, on which the entire occupation of the region depended, for example, the significance of cotton and tobacco in the South or grain for the states of the Mid-West. Therefore, all the way through the 19th century, agricultural sectionalism had an immense effect on the American political behaviour. The extreme example of sectional loyalty was provided by the presidential election of 1860, in which not a single vote was cast in all the ten southern states for the candidate of the Republican Party, Abraham Lincoln.

In the last quarter of the 20th century, such extremes of sectionalism no longer existed, and indeed, the US developed a sense of national identity and unity that was more unified than that of older nations in Europe. Yet, sectional and regional factors continue to play a very important role in the working of American politics, a role that can be pragmatic in the stubborn decentralization of the party system. It is in the interrelationship between this unique brand of nationalism and the reality of the decentralization of political power, that the special quality of the American system is to be found.

The second model of political motivation is that which looks to the class structure of society as the major determinant of political behaviour. Although a number of political

thinkers, such as Locke and Montesquieu, have emphasized this aspect of political behaviour, it was Karl Marx who saw class as the ultimate explanation of people's actions. Taken to extremes, this is of course quite incompatible with sectionalism as a force in politics. If political loyalty is really a matter of social class, then regional loyalties will have no part to play in the political system and to the degree that these regional loyalties continue to exist; class solidarity across the nation will be diminished. In fact, recent American political history is largely the story of the complex interaction of these two political motivations, with sectionalism declining as class-consciousness increases. Each of these styles of political behaviour has very different implications for the type of party system one would expect to find. Indeed, if either sectional or class politics is taken to the extreme, then party politics as we understand it would be ruled out. There would simply be a civil war either between geographical regions or between classes. The working of the democratic system depends on the fact that these extremes are never realized and that political parties must appeal to both, different sections of the country and different classes of the population.

We may describe our third approach to the political system as the pluralistic approach. This views the political system as a large number of groups, each with a different interest so politics is a continually altering model of group activities and interactions. Economic, class and geographic factors are important parts of the pattern, but many other kinds of groups are also important: religious groups, ethnic groups and other social groupings. Moreover, although economic groups play an important part in the political system, they do not come together into two or three big classes for purposes of political action. They are divided among themselves, union opposing union, one type of producer battling with his competitors, agriculture ranged against industry, small businessman against big businessman, the retailer against the manufacturer, and so on. Class and regional loyalties are disjointed, each group looking for support to win its battles wherever that support is to be found. Thus, we have a picture of the political system as a collection of a large number of groups, of anecdotal size and importance, battling for their interest in a society where no single group dominates.

Since the membership of these groups overlaps significantly, there are Catholic and Protestant businessmen, Irish-American and Italian-American labour leaders—there is a continual set of cross-pressure on the leaders of these groups. This helps the processes of compromise between them and moderates their demands. At the extreme, the role of government in such a society is simply to hold the ring, to act as referee between the groups to enable the necessary bargaining and compromise to take place. The political machinery simply becomes the mechanism through which equilibrium is achieved between contending

interests. As the government's main autonomous interest becomes that of maintaining law and order, there is little hope for active leadership to give directions to the national policy, and political parties have little coherence or discipline. They become merely organizational devices that are devoid of policy content.

Individualism is the final model of political behaviour that must be utilized to scrutinize American politics. In other accounts of the political system, a class, a section or a group dissolves the individual. Political behaviour is determined by class ideology, regional loyalty or group interests and the individual has little or no implication in affecting the outcome of political situations. Such interpretations of political life seem to bear little relation to the mainstream of traditional democratic thought. For theorists, such as John Stuart Miller, the individual citizen was the central concern of writers on politics, and personality and individual choice were crucial elements in political decisions. It is ironic that it is in America, the land of individualism par excellence, that the students of political behaviour have demolished the classical description of the democratic political system. They have suggested that, in the 20th century, the influence of family, class, local community or other relevant social grouping is far more important in determining voting behaviour, rather than the knowledge of issues that face the electorate. In reality, however, individualism plays a role of greater importance in America, than in the political system of any other modern democratic state.

Conservative Political Tradition of the US

Concurrent with the formation of the American state system, the conservative tradition appeared on the US political scene. The Constitution of 1787, which had become the most complete expression of the philosophy and politics of bourgeois liberalism in constitutional rights, contained conservative features itself. While sanctifying the existence of slavery for many decades, it upheld the indivisible supremacy of the bourgeoisie in the north and the plantation owners in the south. These were united in one bloc by common economic and political interests. Till that time, the remarkably constructive conditions, both extrinsic and intrinsic, for the development of capitalism in the United States ensured the harmonious coexistence of two ruling classes: western farmers and southern plantation owners. The opposing nature of their policies was the main topic of the internal political debates within the country. This led to the discussion of the following:

- **(i)** Broad and narrow interpretations of the Constitution
- **(ii)** The relationship between the powers of the central federal government versus the rights of the state

(iii) The priority of industry over agriculture and vice versa

In the first quarter of the 19th century, these deliberations did not leave any doubt about the value of compromise by different classes, which was achieved on the issue of slavery. The entry of American capitalism into the initial stage of the Industrial Revolution during the 1830s and 1840s led to a severe escalation of class conflicts that rose from the coexistence of two social systems: free labour and slavery. It was exactly during this period that the conservative tradition finally took shape within the orb of politics, and became an integral feature of the party tandem.

During the course of two decades that led to the Civil War, a compromise was the banner of conservatism in the struggle with the politically organized movements. These movements had liberal to abolitionists on the one hand, and extremist plantation owners from the south on the other. However, conservative politics proved inadequate for the practical demands of time.

The inevitability of an instantaneous solution to the problem of slavery, which had become the main obstruction in the path of the development of US capitalism, disturbed the balance of conservative powers in politics. The revolutionary tendencies in American society ran so deep that it was not possible to overcome them, even with the most refined policies of compromise. The two-party system of that period, which had become an obstruction to socio-political development, by the middle of the 1850s had been wrecked and disorganized. The Whig Party had finally disappeared from the political arena. The disintegration of the two-party combination unleashed the forces of supporters and opponents of slavery, which were earlier suppressed within its devices. The struggle between them became the primary ingredient of American politics, till the beginning of the Civil War. However, the adherents to the conservative tradition did not surrender. Throughout this time, the defenders of the idea of compromise did not lose hope for the possibility of returning politics to the conservative helm. The secession of the southern states and the Civil War that followed created completely new and alien conditions in which the conservative tradition was forced to operate The campaigns for the presidential election of 1860 completed the process of separation of the country's political forces, over the issues of slavery and the attitude toward the supremacy of southerners in the federal union. It also contributed to the crystallization of ideological positions by various divisions within the parties. The spectrum of politics, which preached conservative ideology on the eve of the Civil War, was broad enough to cover all the existing parties to some extent or another.

One of the bastions of conservatism was in the Republican Party, which had entered the national political arena in 1856. The conservative Republicans were quite a strong and influential group in political circles. Their leaders included Abraham Lincoln's ally Orville Browning (Illinois), Edward Bates (the well-known Missouri politician), Supreme Court Justice John McLean (Ohio), Senator William Dayton (New Jersey), Congressmen Thomas Corwin (Ohio), Edgar Cowan (Pennsylvania) and Albert White (Indiana). The conservative faction consisted of former representatives of parties that had fallen apart: the 'Know Nothings' and 'Jacksonian' democrats, who were the opponents of slavery. However, the largest conservative contingent carried the experience of political struggles under their belts, under the banner of the Whig Party.

The proof of the resilience of the conservative positions in the party was their dominating influence in the Republican organizations of Indiana, Pennsylvania and New Jersey and the visible effect on the course of party organization from New York, Massachusetts and Illinois. The conservative Republicans' programme on the issue of slavery, which was completely inherited from the ideological baggage of the Whigs, demanded a resurrection of the conditions of the Missouri compromise in 1819–1821, on laying the borders of the free and slave territories. It meant the virtual acceptance of the distribution of the slave system in the west, which extended to the south from a conditional line of the 1820 compromise and the entry of new slave states into the union. The conservatives opposed the expansion of slavery, but they did not consider appealing to the federal authorities to help stop expansion by declaring this ploy unconstitutional. They reduced the whole spectre of contradictions between the north and the south to rivalry in the struggle for political power over the union. This was an effort to put an end to the southerners' hegemony in deciding key domestic political issues. The conservatives condemned slavery only from the point of view that it was the foundation of the south's absolute power. They declared their readiness to make new compromises with the southerners to achieve political stability in the country.

The conservative Republicans articulated the interests of the American bourgeoisie from heavy industry, who had long concentrated on markets in the 'free states,' and relied little on the delivery of goods from the slave south. They continued to follow the Whig conception of socio-economic development in the country. They were the supporters of swift industrialization, and they held to the theory of an active role for the government in inspiring economic growth in the US. The conservatives also defended the idea of introducing protectionist tariffs and creating a central banking system.

The conservatives differed rather significantly from their party colleagues, both the radical and moderate Republicans, on the issue of slavery. Both, the radicals and moderates forcefully upheld the principle that had formed the foundation of the Republican Party platform during the campaign of 1860, which limited the system of slavery to within its existing boundaries. A major contingent of the Whigs and the nativists from the mid-Atlantic and Border States and from the states of New England, who did not wish to be associated with the Republican Party, also held conservative views. They came forward on the eve of the election campaign of 1860 with the idea of forming a new organization, a constitutional union party. This development was noticed by the Republican leadership. However, overall, the Republicans pointed to the non-constructiveness of the unionists' course.

The conservative faction of the Democratic Party, which had nominated Stephen Douglas as its own candidate for president drew support mainly from those states in the northeast, where there was a concentrated bourgeoisie of trade and finance, which had prospered from commercial enterprises with the southern plantation. Conservative democrats, brought up in the spirit of northern political traditions, saw a destabilizing influence in the inferno of the slavery problem that endangered the foundations of the political system in the country. They followed the widening conflict between the north and the south with alarm and attempted to crush the topic of slavery with all their power. They tried to counterbalance the growth of the political influence of both, open opponents and extremists from the southern camp.

In spite of all the differences in the views of the conservative groups from various parties on the issue of slavery and the ways to deal with it, they were certainly united by an obvious attempt to prevent conflict between the north and the south from becoming worse. Abraham Lincoln's (Figure 2.2) victory in the 1860 presidential election marked the end of the slave-owners' political hold on national power. It served as a signal to the southern extremists to split and form an independent slave government (the Confederacy).

Main Features of the US Constitution

On the basis of the preceding discussion, the following four features of the US Constitution can be discerned:

1. There is a balance of power between the main components of the government such as the legislative, the Congress, the executive, the President, the various government agencies and the Supreme Court. Congress works outlaws, which the President can veto. If this is not so, these laws have to be enforced by the executive to have any power, and the executive branch decides the due course unless Congress passes a law to forbid the action. Congress

also enjoys the power to impeach the President. The judicial branch has emerged as a part of the balance of powers, as it seizes the power to declare laws as unconstitutional, but this was not the case in the original Constitution.

2. The Constitution renders the federal government only with powers that have been listed for them in the Constitution, and any non-listed powers reside with the states or the people. These are known as ‘enumerated powers.

3. The state governments play the role of keeping a check on the power of the federal government. The Constitution articulates that any powers not actually provided to the federal government are retained by the states or the people.

4. The Bill of Rights actually lists things, which the federal government is not permitted to do. The people also keep hold of the un-enumerated powers, which are not particularly provided to the federal government or the states.

POWERS AND POSITION

The US Constitution has bestowed all executive powers in the hands of the president. The president is the Chief Executive Head of the state in the US. There are presidents in parliamentary democracies also, but they are nominal executives. They have to work according to the advice of the cabinet, and are answerable to the legislature. India is a great example of one such democratic nation. The president is the real executive in the US. He and his cabinet are not answerable to the legislature. He is the supreme authority in the executive vicinity. His cabinet is actually a personal team that is meant to advise him. This team is neither responsible to the legislature, nor does it have any collective responsibility. The Constitution has given powers to the President and made him the real executive.

Federalism

In creating a federalist system the founders were reacting to both the British government and the Articles of Confederation. The British government was — and remains — a unitary system, or one in which power is concentrated in a central government. In England, government has traditionally been centralized in London, and even though local governments exist, they generally have only those powers granted them by Parliament. The national government is supreme, and grants or retains powers to and from local governments at its whim.

In a confederation, the state or local government is supreme. The national government only wields powers granted by the states. Most confederations have allowed the local government to nullify a federal law within its own borders.

Federalism is a compromise meant to eliminate the disadvantages of both systems. In a federal system, power is shared by the national and state governments. The Constitution designates certain powers to be the domain of a central government, and others are specifically reserved to the state governments

Although the federal system seems to strike a perfect balance of power between national and local needs, federations still have internal power struggles. Conflicts between national and state governments are common. In the case of the United States, the argument of state vs. federal power was a major underlying factor that led to the civil war.

Fewer than thirty modern countries have federal systems today, including Australia, Canada, Germany, Mexico, and the United States. But even though few other countries practice it today, federalism has provided the balance that the United States has needed since 1787.

The President

The constitution of the United States of America provides for Presidential form of government and Article-1 of the Constitution states, "The executive powers shall be vested in the President of United States of America." Although, 'Strength and Safety' has been the objectives of the founding fathers of the constitution, yet despite this, today, so much powers have got concentrated around the office of the President that according to Ogg, "He (President) is the greatest ruler of the world."

Harold Joseph Laski, an English political theorist, has rightly remarked about the presidential position: 'There is no foreign institution with which in any sense, it can be compared because basically there is no comparable foreign institution. The President of the US is both more or less than a king; he is also both more or less than a prime minister.'

Article II of the U.S. Constitution vests almost executive power in the hand of one individual –the President of United States of America. The office of U.S. President has been organized on the basis of non-parliamentary or presidential type of government. In U.S.A., the President and his Cabinet are not answerable to the Legislature. The President is supreme in executive field, making, of course, due allowance for some devices of internal checks and balances.

Election Procedure

The President is indirectly elected by an electoral college of each state. Each state elects electors who are equal to the number of senators and representatives in Congress, from the state concerned. They meet in each state and cast their votes on the day fixed for the presidential election. The election of the President of America goes by the calendar.

The presidential electors (Electoral College) are elected on Tuesday after the first Monday, in November of every leap year. These electors meet in the capital of each state, on the first Monday after the second Wednesday in December. They record their votes for their presidential candidate. Then, each state sends a certificate of election to the chairman of the Senate. On 6 January, the Congress meets in a joint session and votes are counted. The candidate, securing the absolute majority gets elected. The new president is sworn into his office on 20 January. In case, no candidate secures an absolute majority of votes, then the House of Representatives is authorized to elect one among the top three candidates, who have secured the highest number of votes. If this method does not succeed, then after 4 March the vice-president will automatically succeed in the presidential office.

Qualification for US Presidency

The US Constitution states that a candidate for the presidency should have the following qualifications:

- He should be a natural-born citizen of the US.
- He must be at least 35 years of age.
- He must be a resident of the US for 14 years.

Term of Presidency

The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term. Earlier, George Washington, the first President of the US (Figure 2.4), was elected twice. He refused to contest the election the third time, though there was no restriction on re-election in the Constitution at that time. After this incident, it became a convention, but this convention was broken during World War II when President Roosevelt was elected four times. His fourth term was in 1944. However, the 22nd Amendment of the Constitution (1952) fixed the total term for any president at ten years. Normally, a candidate cannot be re-elected for the third time. In case a candidate (vice-president) has succeeded a president after two or more years of his term, the vice-president succeeding him will have two chances to contest the election. In any case, the term should not exceed ten years.

The Succession to Presidency

The Constitution has no say on the issue of succession to the presidency, in case the office falls empty due to the death or resignation of the president and the vice president. In 1947, an act that was passed says that under such circumstances, the succession after the vice president would be in the following order:

(i) The speaker of the House of Representatives

(ii) The president pro-tempore (for the time being) of the Senate

(iii) The secretary of the state is followed by other members of the cabinet In case the office of the president falls vacant due to his incapacity or disability, either the president should have given in writing that he is incapable of managing the office or the vice-president, and the majority of heads of executive departments should have sufficient reasons to believe that the president is disabled to discharge his duties. This declaration should be sent to Congress to that effect.

Removal of the President

The President of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes. Impeachment is not a very easy task. The Lower House frames the charges and the Senate acts as a judicial tribunal for impeachment. Its meetings are presided over by the Chief Justice of the Supreme Court. The penalty cannot be more than the removal of the President from office, and his disqualification from holding any office of trust and responsibility under the American government.

Immunities

In the US, the President cannot be arrested for any offence, and he cannot be summoned before any court of law. He loses all immunities only when he is impeached.

Powers and Functions of the President

The president of the US is the most powerful authority. He commands high respect and backing in the country. The Constitution has given limited powers to the president, but in due course of time, due to several factors, this office assumed boundless powers in all areas of administration. The President enjoys enormous executive, legislative, financial and judicial powers, which can be discussed as follows:

(I) Executive powers

Some of the executive powers of the president, as per the Constitution, by interpretation of the Supreme Court and by customs and conventions, can be summed up as follows:

• **Chief administrator:** The president is the chief administrative head of the nation. All administrative functions are carried out in his name. He is responsible for implementing the federal laws in the country. He has to ensure that the laws of the Constitution and the decisions of the courts are enforced and implemented. He must see to it that the Constitution, life and property of the people of US are protected. He executes treaties with the consent of the Senate and agreements with other countries, and protects the country from foreign invasion.

He is also responsible for maintaining peace and order on the domestic front. In case there is a breakdown in the governmental machinery in any state, he can act on his initiative and restore peace and harmony. In the discharge of all these enormous responsibilities, he can make use of all defence forces, civil services, police, etc. For example, John F. Kennedy sent federal troops into the University of Mississippi in 1962 to prevent non-compliance with the order of a federal court, on reconciliation of Afro-American students.

• **Commander-in-chief:** The president is the supreme commander-in-chief of the armed forces of US. He is responsible for the defence of the country. He appoints high officials of the army with the support of the Senate. He can also remove them at will. He cannot declare war because this power resides in the hands of the Congress, but he can create a situation with his administrative insight, where the declaration of war becomes inevitable.

Once war is declared, the military powers of the president increase tremendously. He is given a blank cheque to look after the military operations. Many times, presidents have taken advantage of this power and involved US troops in undeclared wars with other countries.

(II) Delegated legislation

As it is, the President is constitutionally very powerful. He has legislative authority in the form of executive orders. He can make many rules through executive orders. Many presidents have made widespread use of this authority. In addition to this, the recent entry of delegated legislation has empowered the president absolutely. Delegated legislation is when the Congress makes laws in a skeletal form, creates a general outline and leaves the details to be filled in by the executive.

(III) Financial powers

The Congress is the custodian of the nation's finances. Nevertheless, the President also plays a central role in the financial matters of the country. The budget is prepared under his supervision and directions by the Bureau of Budget. High-level technicalities are applied by the Bureau while preparing the budget. Later, the budget is presented before the Congress, which has the power to amend the budget, but normally they avoid disturbing the budget with

amendments because of the technicalities involved. Another reason for avoiding amendments is that Congress lacks any skilled person who can set the disturbing budget right. Therefore, the budget is passed as it is presented.

(IV) Power of patronage

The president has huge powers of patronage. He appoints a large number of federal officers in superior and inferior services. The senators and the representatives would always prefer to be in the good books of the president.

Limitations of the President

It should not be assumed that the powers of the president are limitless. Certain limitations are placed on his powers. This is explained as follows:

(A) Limitations on the powers of the President

The vast powers and liberties have made the presidency in America quite magnificent, and it looks as if the president can easily become a dictator at any time, but the situation is not so. The fathers of the Constitution adopted the doctrine of separation of powers while framing the Constitution. Hence, there are lots of checks on the powers of the president to balance the situation. Some limitations of his executive powers are as follows:

(I) Harmonious working is difficult:

The President of America does not have the power to initiate a bill or participate in the deliberation of a bill in the legislature. The ideology of separation of powers has kept the executive and legislature in separate impermeable compartments.

(**II) Difficulty in executing his policies due to dependence on Congress:**

Congress is the only law-making body, and the President has to depend on it for conductive laws to be passed. At times, he is helpless as Congress may not pass the necessary legislation for the smooth running of his administration. Therefore, he has to struggle a lot and alternate to other areas of power to get things done. Furthermore, he depends on Congress for finances. It is Congress, which is the custodian of the national revenue. Though the budget is prepared under the supervision of the president, Congress has the power to bring changes in the budget and the president has to accept it.

(III) Senatorial approval:

Senatorial approval is a big obstacle in the president's administration. The Constitution has provided that all federal appointments made by him are to be ratified by the Senate. Here also, the president does not have exclusive powers. He is under the check of the senatorial courtesy.

(V) His veto can be nullified by Congress:

The president's veto can be nullified by Congress under the following conditions:

(i) The president can use his veto power against a bill that is sent by Congress. He can veto a bill within ten days and send it back to Congress. However, if the vetoed bill is resent with a two-thirds majority, then the President has to approve it.

(ii) When Congress is in session and the President does not send the approved bill back to Congress in ten days, the bill is considered to be passed without his signature.

(iii) The president has the power for a pocket veto. Even here, Congress has more power. It will not send any important bill to the President for his signature during the last ten days of the session, and the president gets the disadvantage of using the pocket veto in these situations.

(**B) Limitations of holding an elected office**

The President of America is not an inherited authority; he is elected by the people because of his good qualities. He has to follow democratic values and sustain his image to return in the second term.

i) Limited tenure:

The president is elected for a short term of four years or at the most, for one more term. He cannot contest the election for the third term. Due to this limitation, he cannot execute a long-term programme, which according to him will be good for the nation.

ii) Constitutional limitations:

The President must act within the structure of the Constitution, which also puts limits on his free exercise of powers.

The Vice President

The primary responsibility of the Vice President of the United States is to be ready at a moment's notice to assume the Presidency if the President is unable to perform his or her duties. This can be because of the President's death, resignation, or temporary incapacitation, or if the Vice President and a majority of the Cabinet judge that the President is no longer able to discharge the duties of the presidency.

The Vice President is elected along with the President by the Electoral College. Each elector casts one vote for President and another for Vice President. Before the ratification of

the 12th Amendment in 1804, electors only voted for President, and the person who received the second greatest number of votes became Vice President.

The Vice President also serves as the President of the United States Senate, where he or she casts the deciding vote in the case of a tie. Except in the case of tie-breaking votes, the Vice President rarely actually presides over the Senate. Instead, the Senate selects one of their own members, usually junior members of the majority party, to preside over the Senate each day.

Kamala D. Harris is the 49th Vice President of the United States. She is the first woman and first woman of colour to be elected to this position. The duties of the Vice President, outside of those enumerated in the Constitution, are at the discretion of the current President. Each Vice President approaches the role differently — some take on a specific policy portfolio, and others serve simply as a top advisers to the President. Of the 48 previous Vice Presidents, nine have succeeded to the Presidency, and five have been elected to the Presidency in their own right.

The Vice President has an office in the West Wing of the White House, as well as in the nearby Eisenhower Executive Office Building. Like the President, he or she also maintains an official residence, at the United States Naval Observatory in Northwest Washington, D.C. This peaceful mansion has been the official home of the Vice President since 1974 — previously, Vice Presidents had lived in their own private residences. The Vice President also has his or her own limousine, operated by the United States Secret Service, and flies on the same aircraft the President uses — but when the Vice President is aboard, the craft is referred to as Air Force Two and Marine Two.

POWERS:

The vice president serves directly beneath the president and assumes the responsibilities of the presidency if the incumbent president dies or leaves office before the end of their term, as stated in the United States Constitution. The Twenty-Fifth Amendment further states that the vice president must serve as acting president in the event the incumbent president becomes temporarily incapacitated.

The vice president also serves as president of the Senate, may preside over Senate sessions, and may cast tie-breaking votes when the elected senators reach a stalemate. In common practice, however, a vice president tends to spend little time in the Senate and primarily focuses on executive branch duties alongside the president and cabinet members.

The Vice President of the United States, also known as VPOTUS or Veep, is an important position in the executive branch of the federal government. The Vice President is probably best known as being “a heartbeat away from the presidency”, meaning that if a sitting President dies or is impeached, the Vice President takes over. However, constitutionally, the main responsibility of the Vice President is the role of the President of the Senate. Under Article One, Section three of the US constitution:

“The Vice President of the United States shall be President of the Senate, but shall have no Vote unless they are equally divided.”

As head of the upper house of congress, the Vice President votes on legislation or other motions only when Senators are deadlocked 50-50. This has occurred 243 times and involved 35 different Vice Presidents. Whilst in the past the Vice President would actively preside over Senate proceedings, nowadays it is customary that they only get involved in order to break a tie.

The only other formally recognized duty of the Vice President is to preside over and certify the tally of Electoral College votes after a Presidential election has taken place.

Informal Roles of the US Vice President

However, the role also brings with it many visible, informal responsibilities. These would typically vary depending upon the relationship between the President and Veep of the day, but have typically included:

- Making public appearances representing the President
- Performing ceremonial duties in place of the President
- Acting as an adviser to the President
- Meeting with heads of state or governments of other countries

UNIT IV

CONGRESS: COMPOSITION AND FUNCTIONS

In 1787, when the founding fathers of the US-drafted the Constitution (a Constitution which is still valid today), they chose the US Congress for the very first article. The Constitution gave Congress the power to make laws for the federal government, the capability to check the actions of the president and the duty to stand up for the American people.

Constitutions reflect the beliefs, goals and aspirations of their authors and in many cases, the values of a given society. In this way, the American Constitution is no exception. To be able to understand the principles on which the US Congress was established, one must first understand the politics, which surrounded the formation of the United States of America. The founding of British colonies in what was known as the 'new world' is only one part of the history of the Americas, but it is fundamental to the history of the United States. It was from the British colonies that, in 1776, a new nation was born.

The first British colonists landed in 1585, in what is now Virginia. Life was difficult in the new world, and many of the early colonies surrendered to disease, famine and attack by the native 'Indian' tribes. The first colony to conquer these difficulties was established in Jamestown, Virginia, in 1607. Their success was due to two reasons: surviving the first winter with the aid of friendly Native Americans and an ability to grow tobacco. The colonists had discovered a mix of Caribbean and mainland American tobacco leaves, which was appealing to the European taste and trade with the 'old world' had become both, possible and lucrative.

By 1732, thirteen colonies had been established up and down the eastern seaboard of North America. These colonies began to thrive through trade, and soon found a degree of autonomy from the British Government. Colonial assemblies were established in America, and these began to check the power of resident royal governors, often taking control of the characteristics of taxation and expenditure. Steadily, the principles of self-government were becoming ascertained in the minds of the colonists.

As the 18th century progressed, the British Crown and Parliament once again began to look to the west. The colonies had proved to be a success, and Britain wanted to expand its control of the continent. Its efforts directed at westward expansion, however, meant a clash with the French forces who had established a powerful position in North America. The

French-Indian War lasted from 1754– 1763, until the French forces were defeated. This left the British in control of a large area. Presently, this large area is Canada and the US. The cost of the war and the resources needed to control their recently expanded western empire put a strain on British finances and led the Parliament to look for new ways to raise revenue. Having decided that the colonies should pay more for their own defence, the British Parliament passed a series of acts, which levied taxes on colonial trade.

The British actions had endangered the ability of the colonies to trade freely and given the historical importance of colonial trade, this caused a great deal of bitterness. Over the next ten years, protest over British taxation and oppression grew, occasionally breaking into violence. Matters came to a head in Lexington, Massachusetts in 1775 when a raid by British troops on colonial militias led to full-scale fighting. This marked the beginning of the American Revolution.

A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson (Figure 2.5) of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule. Behind the declaration were the ideas of the 18th century philosophers and writers such as Thomas Paine and John Locke. These ideas were widespread among the aristocracy of that time. These ideas would go on to play a large part in writing the Constitution. The War of Independence formally ended in 1783 with the signing of the Treaty of Paris, in which the British Crown recognized the independence, freedom and sovereignty of thirteen former colonies. With the certainty of victory, the thirteen states were faced with the task of devising a system of government. Having just conquered what they viewed as a tyrannical power, the leaders of the new states had no intention of replacing the British Crown with their own monarch, or creating a central government. However, it was recognized that some form of central administration was inevitable for a newfound independent nation.

There was never an issue that the new US would be anything other than federal. A federal state maintains more than one level of government, with each having their own rights and independence. Unlike in Britain, where the government in London is paramount and can create, alter or abolish local governments as it sees fit, the new US Constitution maintained the autonomy of individual states. They created a central or federal government with certain powers and responsibilities that rose out of necessity.

As the failure of the articles of confederation showed, there were certain jobs that were necessary for the success of the new nation that could not be carried out by the state governments alone. On the other hand, under the new Constitution, the state governments

intended to be the primary level of government, with responsibility for their own affairs and those of their citizens. The federal government was to be restricted to those areas, which fell outside of the individual state: regulating trade between states, establishing a national currency, conducting foreign affairs and controlling the national military forces. This ideal, where each level of government had its own separate areas of influence, was known as dual federalism. Such a pure form of federalism was going to be short-lived, but for the early years of the US, it was the state governments which seized power.

The Constitution established a system whereby each branch of government would be checked by another. A bicameral legislature was chosen so that Congress could act as a check upon itself in effect. For any law to be passed, the approval of both chambers would be considered necessary. These two chambers, which make up the US Congress, were the Senate and the House of Representatives.

House of Representatives

A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives. The official manual of house rules is more than a thousand pages long, and is complemented by more than twenty-five volumes of precedents. The ways in which the House applies its rules are moderately conventional, at least in comparison with the Senate. Some rules are certainly more multifaceted and more difficult to interpret than others; but the House does not tend to follow parallel procedures under similar circumstances. Even the ways in which the House does not have a propensity to follow similar procedures, generally fall into relatively limited number of recognizable patterns.

Most of the rules that representatives may call upon and the procedures that the House may follow are fundamentally important. The majority of members should be able to work their will on the floor in due course. While the House rules normally identify the significance of permitting any minority to present its views and sometimes to suggest its alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from prevailing without excessive delay.Modes of procedure There is no one single set of course of action that the house always follows, when it mulls over a public Bill or resolution on the floor. In some cases, the House rules require certain kinds of bills to be considered in certain ways. More often, conversely, the House chooses to use whichever mode of consideration is most fitting for each bill, depending on factors such as the importance and potential cost of the Bill and the amount of controversy over its provisions and merits. The

differences among these packages of procedures rest largely on the balance that each strikes between the opportunities for members to debate and propose amendments, on one hand and the ability of the house to act swiftly, on the other.

House of Representatives, one of the two houses of the bicameral United States Congress, was established in 1789 by the Constitution of the United States.

The House of Representatives shares equal responsibility for lawmaking with the U.S. Senate. As conceived by the framers of the Constitution, the House was to represent the popular will, and its members were to be directly elected by the people. In contrast, members of the Senate were appointed by the states until the ratification of the Seventeenth Amendment (1913), which mandated the direct election of senators.

Each state is guaranteed at least one member of the House of Representatives. The allocation of seats is based on the population within the states, and membership is reapportioned every 10 years, following the decennial census. House members are elected for two-year terms from single-member districts of approximately equal population. The constitutional requirements for eligibility for membership of the House of Representatives are a minimum age of 25 years, U.S. citizenship for at least seven years, and residency of the state from which the member is elected, though he need not reside in the constituency that he represents.

The House of Representatives originally comprised 59 members. The number rose following the ratification of the Constitution by North Carolina and Rhode Island in 1790; the first Congress (1789–91) adjourned with 65 representatives. By 1912 membership had reached 435. Two additional representatives were added temporarily after the admission of Alaska and Hawaii as states in 1959, but at the next legislative apportionment, membership returned to 435, the number authorized by a law enacted in 1941.

Powers

The Constitution vests certain exclusive powers in the House of Representatives, including the right to initiate impeachment proceedings and to originate revenue bills. The organization and character of the House of Representatives have evolved under the influence of political parties, which provide a means of controlling proceedings and mobilizing the necessary majorities. Party leaders, such as the speaker of the House and the majority and minority leaders, play a central role in the operations of the institution. However, party discipline (i.e., the tendency of all members of a political party to vote in the same way) has not always been

strong, owing to the fact that members, who must face re-election every two years, often vote the interests of their districts rather than their political party when the two diverge.

A further dominating element of House organization is the committee system, under which the membership is divided into specialized groups for purposes such as holding hearings, preparing bills for the consideration of the entire House, and regulating House procedure. Each committee is chaired by a member of the majority party. Almost all bills are first referred to a committee, and ordinarily the full House cannot act on a bill until the committee has "reported" it for floor action. There are approximately 20 standing (permanent) committees, organized mainly around major policy areas, each having staffs, budgets, and subcommittees. They may hold hearings on questions of public interest, propose legislation that has not been formally introduced as a bill or resolution, and conduct investigations. Among important standing committees are those on appropriations, on ways and means (which handles matters related to finance), and on rules. There are also select and special committees, which are usually appointed for a specific project and for a limited period.

The committees also play an important role in the control exercised by Congress over governmental agencies. Cabinet officers and other officials are frequently summoned before the committees to explain policy. The Constitution (Article I, section 6) prohibits members of Congress from holding offices in the executive branch of government—a chief distinction between parliamentary and congressional forms of government.

After the census of 1920, Northeastern and Midwestern states held 270 House seats and the South and West held 169. Thereafter, the balance between the two regions gradually shifted: following the 2010 census, the Northeast and Midwest accounted for only 172 seats, compared with the South and West's 263. Most notably, the number of representatives from New York declined from 45 in the 1930s to only 27 in 2012, while the number from California increased from 11 to 53.

The speaker of the House of Representatives

The most significant role in the House of Representatives is that of speaker of the House. This individual, who is chosen by the majority party, presides over debate, appoints members of select and conference committees, and performs other important duties; speakers are second in the line of presidential succession (following the vice president).

The Senate

The Senate of the US is generally known as the greatest deliberative body in the world for a number of reasons. Right from its beginning, the Senate chamber has been the setting of some of the most moving, influential and consequential debates in the American history.

First, the Senate is mainly a legislative body. It has the power to pass legislations that may become law, or to prevent legislations from becoming law. Moreover, it is responsible for approving or denying consent to ratify treaties, for approving and advising on presidential nominees and trying impeachments. Till date, it is more powerful and significant than any upper chamber across the world. Those who framed the Constitution wanted the Senate to be an incomparable legislative body, such that it should be both, unique in its structure and superior as an institution. They believed that this was essential for the republic to endure. So, the framers provided for the following, among other things, in the Senate: equal representation of every state; terms extending six years, beyond those of the house and the president;

Elections in which only one-third of the total members would stand before the people every two years; and a minimum age requirement to attract 'enlightened citizens' to serve the body. These characteristics lent an exclusive character to the Senate–a small, stable, stately, thoughtful, independent, experienced and deliberative body. With equal legislative authority for the House of Representatives, the framers expected that the Senate would remain steady in a representative democracy. This, along with its duties specified in the Constitution, was the framers' design for the Senate. However, the Senate required a structure to operate. And that structure has for more than 200 years taken the form of Senate procedure: standing rules, rulemaking statutes and precedents.

In 1789, the first Senate assumed twenty standing rules. Surprisingly, sixteen of those rules still form the core of the Senate procedure today. Since 1939, the Senate has assumed twenty-five rule-making statutes. The presiding officer has established a quantity of precedents over the course of the Senate's history to fill nearly 1,600 pages in the seminal reference work, known as the 'Riddick's Senate Procedure'.

The Senate's rules and precedents are nothing less than the institution's genetic material: they have evolved over a period; they are entwined and complex. Those who

unlock, understand and apply the Senate procedure have an edge over their colleagues and the course of the Senate's negotiations. Nevertheless, most of all, together, the Senate faithfully reflects the framers' design and ambition for the body. It is a body that remains true to the Senate's two paramount values—unlimited debate and minority rights.

SUPREME COURT: COMPOSITION, JURISDICTION AND ROLE

In addition to being legal institutions, courts are a significant part of the government of the US. They are seen as forums that help to resolve disputes and conflicts in a legal manner. They are the representatives of judiciary or the US legal system for the masses. When a layman refers to the law, they are more often than not picturing the courts in their mind's eye. But the court is a mere institution that is run by the lawyers and judges, plaintiffs and defendants, witnesses and jurors. Broadly speaking, the courts are just one of the key elements of a much expansive legal system.

The term 'legal system' encompasses several governmental bodies and a number of key participants. The lawmakers operate the legal institutions that lie at the heart of the legal system. The next in status are the lawyers and judges who are required to interpret the laws to the wide variety of situations that arise in the society. They also act as the gatekeepers who determine the cases that will be heard at the court. The witnesses, jurors and litigants participate in the legal process, but at the same time, lie outside the periphery of the system. They are the consumers of the legal system. They are the ones who bring cases to the courts and seek their intervention. They are the chief participants in any legal struggle. External factors that may be social, economic and political influence the legal system to a great extent.

Federal Judiciary

The history of the federal courts suggests a disorganized administration structure. The roots of the problem can be traced to the nature of the judicial system created by the first Congress. From the Judiciary Act of 1789 and consequent measures pertaining to the structure of the federal judiciary, emerged three important features: independence, decentralization and individualism. These features were particularly evident in judicial administration. Here, courts in all three tiers enjoyed virtual autonomy. Judges in administrative matters were not only independent of the Congress and of the president, but they were also independent of each other.

Quintessentially, Congress had created a hierarchy of courts that did not have direction and responsibility. Each judge had to take his own decisions. In the administration of his business, he was guided by his own temperament and sense of judgment. Chief Justice

William Howard Taft was an important personality in the field of administrative reforms. In 1922, on Taft's advice, Congress extended the power of the chief justice to assign district judges where they were needed and create a judicial conference. This was an administrative mechanism which provided advice. The changes of the early 1920s were followed by the passing of the Administrative Office Act of 1939, which created the major part of the current administrative structure of the federal judiciary

Supreme Court

There are several types of courts in the US. They can generally be divided into local, state and federal courts. Local courts take care of everyday matters, whereas state courts rule on more serious matters such as robbery or murder. The federal courts rule on cases that deal with the US government law.

As the name suggests, the Supreme Court is like the 'Head Umpire'. When people are not satisfied with the decisions of the state or the federal court, they go to the Supreme Court (Figure 2.6) to review the case.

Types of cases

Like all courts, the Supreme Court hears both civil and criminal cases. In a civil case, there is disagreement between people. In a criminal case, a person is accused of a crime. Criminal cases are brought to the Supreme Court by governments and not by individuals. America won its Independence from Great Britain in 1783. After winning Independence, leaders of the thirteen American colonies formed a new government. The colonies became states. Each state was a part of the United States. The new country's leader wanted to make sure that the US would have fair law and courts. The federal government was divided into the following three parts:

- **(i)** **Legislative**: Included the Senate and the House of Representatives. Jointly, they formed the Congress.
- **(ii)** **Executive**: Made up of the president, vice-president and the people who assisted them.
- **(iii)** **Judicial**: Included the federal courts. These courts construed the laws that were made by the Congress. The Supreme Court is part of the judicial branch.

The Constitution did not pronounce a great deal about the Supreme Court. It was left to the Congress and the justices to define the court's rule. The Congress decided that the Supreme Court would be made up of six justices, appointed by the president. Over the years, that number grew to nine. One of these justices is the chief justice who leads the Supreme Court. The Supreme Court first met on 1 February 1790 in New York City. New York was

then the nation's capital. When the capital moved from New York to Philadelphia, so did the court. In 1800, the Supreme Court was permanently established in Washington, DC.

Powers of the Supreme Court

The Constitution was also not clear about the powers of the Supreme Court. In 1803, the case of 'Marbury versus Madison' helped ascertain those powers. In 1800, President John Adams lost his bid for re-election to Thomas Jefferson. Before leaving office, Adams appointed many of his friends for government jobs, including William Marbury. Jefferson ignored Marbury's appointment. He ordered his secretary of state, future president James Madison, not to give Marbury the assured job. Marbury went to court to get his job back. Congress said the Supreme Court had the right to hear such cases. But Chief Justice John Marshall was afraid that if the court ruled for Marbury, Jefferson would disregard the decision. He did not want the court to appear weak. So, Marshall ruled that the Constitution had never given Congress, the right to frame such a law about the court. Consequently, he said that the court should not hear Marbury's case. Marbury lost because the last court that had heard the case had ruled against him. With this ruling, Marshall instituted the principle of 'judicial review. 'Marbury versus Madison' made the Supreme Court more powerful. The court could now overturn laws that went against the Constitution.

Section 2 of Article Three of the American Constitution delineates the jurisdiction of all federal courts in the United States, including the US Supreme Court. According to it, 'The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.'

This jurisdiction was further limited by a constitutional amendment known as the eleventh amendment to the constitution. The amendment stopped federal courts from hearing cases 'commenced or prosecuted against [a State] by Citizens of another State, or by Citizens or Subjects of any Foreign State.' Federal courts in the United States can only hear cases if the following conditions are met:

1. If there is a diversity of citizenship and the amount of damages exceeds $75,000.

2. If the case presents a federal question, meaning that it involves a claim or issue 'arising under the Constitution, laws, or treaties of the United States, assuming that the question is not constitutionally committed to another branch of government.

3. If the United States federal government is a party in the case as a part of the three branches of the American federal government under the principle of separation of powers, the powers of the United States Supreme Court include the following:

• Interpreting the US Constitution

• Judicial Review

• Interpreting laws and making sure they are faithfully applied

• Dealing with cases involving the Constitution o Federal laws, treaties and o Disputes between states

• Interpreting and ensuring the proper application of the laws written by the legislative branch and enforced by the executive branch Out of all these powers, the power of judicial review is perhaps the most potent. Judicial review gives the US Supreme Court the power to overturn any executive law and actions that it deems to be unconstitutional. Although the power of judicial review is not explicitly given in the American Constitution, the founders of the United States accepted the notion of judicial review and today it is a well-established precedent. It would be pertinent here to mention that the American Supreme Court cannot directly enforce its rulings; instead, it relies on respect for the American Constitution and for the law for adherence to its judgments.

The court in action

The Supreme Court has two main jobs. The first job is to decide whether a lower court has ruled in the approved manner. The court may feel that part of the Constitution applies to the case. In this case, they may decide to hear the case's appeal. Its second job is to decide whether a law is constitutional. But the court does not decide to review the law on its own. The justices only rule on law if a case concerning the law is brought before them.

Sometimes, the justices feel that a constitutional issue in a case has already been addressed. In such circumstances, they can refuse to hear the case. Cases that are refused by the Supreme Court are sent back to the lower courts.

Judicial Review

The Supreme Court holds great powers. Despite Roosevelt's huge electoral majority in 1932, the Supreme Court was able to strike down eight statutes of the new deal as invalid in a period of sixteen months. The power of a court to analyse the actions of other branches

of government is known as judicial review. It is based on the court's ability to act as an intermediary of the Constitution.

The fact that the Constitution of the US is codified means that there must be a body charged with the task of understanding what it means. This power gives rise to judicial review.

The Supreme Court's power to take such actions is not laid down in the Constitution. It is recognized as the supreme judicial power in the US.

As stated above, the American Constitution does not explicitly give the American Supreme Court the power of judicial review. The first time that the power of judicial review was established by the Supreme Court was in 1803 in Marbury v. Madison. In the case, the Supreme Court under Chief Justice John Marshall nullified a provision of the Judiciary Act of 1789 on the grounds that it violated the Constitution by attempting to expand the original jurisdiction of the Supreme Court. The judgement in the case consummated the system of checks and balances that have since become the hallmark of the American system. It made the Supreme Court the final authority on the allocation of power among the three branches of government, i.e., the executive, the legislature and the judiciary, and gave the Supreme Court the power to set bounds to their own authority, as well as to their immunity from outside checks and balances.

Judicial review and the Executive

Judicial review in the US has largely gone unchallenged. Current cases have shown the importance of the Supreme Court's ability to review other branches of government. In 'Youngstown Sheet and Tube Company versus Sawyer' (1952) case, the court ruled that President Truman had exceeded his constitutional power in ordering the takeover of US steel plants which were in the midst of an industrial dispute.

Judicial review and civil liberties

It is by the agency of the judicial review that the Supreme Court protects the civil liberties of the US citizens. The Supreme Court has passed jurisdiction in various civil matters such as the racial issues, citizen rights and the reapportionment of electoral districts. The case of 'Reynolds versus Simms' (1966) established the criterion of one person and one vote regarding the apportionment of electoral districts.

Theory and Separation of Powers:

Checks and Balances

The theory of separation of powers states that all governmental functions should be carried out by separate bodies and departments, where they should perform duties that fall within the ambit of their sphere. It further argues that they should do so without interfering in each other's business and that each of these departments should be independent within their sphere. The theory of separation of powers clearly divides powers into three organs of the government and believes in the decentralization of power and maintaining the liberty of people.

Views of Montesquieu

The classic definition of the theory of separation of powers is explained by Montesquieu. This French political thinker expressed his political thinking in his book, The Spirit of Laws, which was published in 1748. He stressed that there must be the separation of powers if the liberty of the people is to be safeguarded. Montesquieu insisted on intimate relation between liberty and the separation of powers. He said that power should be checked if the law was to endure.

The famous statement of Montesquieu stands for complete separation of powers, which he explained in the following points:

• If the legislature and executive powers are exercised by the same person or authoritative body, the liberty of the citizens is threatened because the person or body might pursue power like a tyrant.

• Again, liberty cannot be present if the powers between the legislative and executive are not separated clearly. The person who makes the laws cannot be expected to be impartial while applying them. This may lead to arbitrariness in matters of judgements. The result would be a violent and oppressive state.

• If all three organs were joined together in one combined power, then there would be concentration of power in one person or body of persons. This would virtually end all liberty and result in despotism of that person or body.

Other supporters of the theory of Separation of Powers American political writers like Madison Hamilton and the British political writers like Blackstone also elucidated the theory after Montesquieu. Blackstone expressed a comparable view in his book, Commentaries on the Laws of English.

He said, 'Whenever the right of making and enforcing the law is vested in the same person or one and the same body then there can be no public liberty.' This theory carried a

deep influence on the theory and practice of several governments in various countries of the world. While writing the constitution of the state of Virginia, Jefferson examined all powers of government: legislative, executive and judiciary. The concentration of these in the same hands is specifically the definition of a tyrannical government.

Theory of Checks and Balance

The theory of separation of powers involves a multifaceted system of checks and balances. E. B. Schulz says, 'The doctrine of Checks and Balances is usually supplementary to the Separation of Powers. One of its important salient features is the idea of enabling each coordinated branch of the government with the power to wield a limited degree of control over others, either by participating to some extent in the exercise of powers allocated to a particular branch or by making the effective functioning of each branch contingent upon the supporting action by the others.' The theory of checks and balances is based on two principles:

(i) Power should not be concentrated in the same persons or in the same bodies of persons, because if all power is vested in the same person, then it is bound to become tyrannical.

(ii) Only power can check power, i.e., to check whether power is being abused, it is very important that those in power should be made to check power. The power of one organ can be checked if the other organ is made just as powerful.

In other words, the theories of separation of powers and of checks and balances are always in harmony. The former stands for separating the three organs of the government and the latter stands for a network of checks and balances on all the three organs of the government. Montesquieu's theories of separation of powers and checks and balances have been adopted by the Constitution of the US. The working of the system of checks and balances can be studied under the following heads:

(i) Legislative checks over the executive and judiciary: The executive and judicial powers are given to the executive and the judiciary, but the legislature has been given the power to check over both these organs. For example:

• All appointments made by the US President (executive) are ratified by the Senate (upper house of the US Congress).

• All treaties made by the president are authorized by the Senate with two-third majority.

• The president depends on the Congress for finances.

• The Congress can remove the president through impeachment.

• The Congress has the power to establish new courts.

• The Congress can remove the judges of the Supreme Court through impeachment. • The Congress has the power of initiating amendments to the Constitution.

• Last but not least, Congress has the power to declare war.

(ii) Executive checks over the legislature and judiciary:

The executive is given the power of checking the two organs of the government. For example, in the Constitution of the US:

• The Bills passed by Congress become acts only when they receive presidential assent.

• The president exercises veto to suspend any bill passed by Congress within ten days of its submission to him

• The president has the power to appoint judges. • He has the right to pardon, reprieve and grant amnesty to any criminal.

(iii) Judicial checks over the legislature and the executive:

The judiciary is free of the control of the legislature and the executive. It is given the checking powers over both these organs with a view to keep the two organs confined to their respective areas of activity, as directed by the Constitution. For example:

• The Supreme Court of the US has the power to decline the laws of Congress and rules made by the executive if it finds these as ultra vires.

• The power of judicial review acts as the greatest check over the power of Congress and the President. The process of impeachment of the President of the US is supervised by the chief justice of the Supreme Court.

• The Supreme Court exercises full control over the President and Congress since it decides the nature and limits of their constitutional rights and powers. This is because it is the custodian of the constitution as well as the protector of the fundamental rights and liberty of the people.

As a theory, checks and balances signify systematic and reciprocated checking and controlling of powers of the three organs of the government. Although they are separate departments, this theory should be used in moderation and not in an unbending manner because it can be counterproductive

Political parties

The United States has two major national political parties, the Democratic Party and the Republican Party. Although the parties contest presidential elections every four years and have national party organizations, between elections they are often little more than loose alliances of state and local party organizations. Other parties have occasionally challenged the Democrats and Republicans. Since the Republican Party's rise to major party status in the 1850s, however, minor parties have had only limited electoral success, generally restricted either to influencing the platforms of the major parties or to siphoning off enough votes from a major party to deprive that party of victory in a presidential election. In the 1912 election, for example, former Republican president Theodore Roosevelt challenged Republican President William Howard Taft, splitting the votes of Republicans and allowing Democrat Woodrow Wilson to win the presidency with only 42 percent of the vote, and 2.7 percent of the vote won by Green Party nominee Ralph Nader in 2000 may have tipped the presidency toward Republican George W. Bush by attracting votes that otherwise would have been cast for Democrat Al Gore.

There are several reasons for the failure of minor parties and the resilience of America's two-party system. In order to win a national election, a party must appeal to a broad base of voters and a wide spectrum of interests. The two major parties have tended to adopt centrist political programs, and sometimes there are only minor differences between them on major issues, especially those related to foreign affairs. Each party has both conservative and liberal wings, and on some issues (e.g., affirmative action) conservative Democrats have more in common with conservative Republicans than with liberal Democrats. The country's "winner-take-all" plurality system, in contrast to the proportional representation used in many other countries (whereby a party, for example, that won 5 percent of the vote would be entitled to roughly 5 percent of the seats in the legislature), has penalized minor parties by requiring them to win a plurality of the vote in individual districts in order to gain representation.

The Democratic and Republican Party candidates are automatically placed on the general election ballot, while minor parties often have to expend considerable resources collecting enough signatures from registered voters to secure a position on the ballot. Finally, the cost of campaigns, particularly presidential campaigns, often discourages minor parties. Since the 1970s, presidential campaigns (primaries and caucuses, national conventions, and general elections) have been publicly funded through a tax checkoff system, whereby

taxpayers can designate whether a portion of their federal taxes (in the early 21st century, $3 for an individual and $6 for a married couple) should be allocated to the presidential campaign fund. Whereas the Democratic and Republican presidential candidates receive full federal financing (nearly $75 million in 2004) for the general election, a minor party is eligible for a portion of the federal funds only if its candidate surpassed 5 percent in the prior presidential election (all parties with at least 25 percent of the national vote in the prior presidential election are entitled to equal funds). A new party contesting the presidential election is entitled to federal funds after the election if it received at least 5 percent of the national vote.

Both the Democratic and Republican parties have undergone significant ideological transformations throughout their histories. The modern Democratic Party traditionally supports organized labour, minorities, and progressive reforms. Nationally, it generally espouses a liberal political philosophy, supporting greater governmental intervention in the economy and less governmental regulation of the private lives of citizens. It also generally supports higher taxes (particularly on the wealthy) to finance social welfare benefits that provide assistance to the elderly, the poor, the unemployed, and children. By contrast, the national Republican Party supports limited government regulation of the economy, lower taxes, and more conservative (traditional) social policies. In 2009 the Tea Party movement, a conservative populist social and political movement, emerged and attracted mostly disaffected Republicans.

Pressure Groups

Pressure Groups (PGs) are also known as invisible Empires. They operate largely outside the formal structures, and their goal is to influence the policies of the government. An energetic interest group community is a sign of a healthy civil society. Their ability to organize and lobby government is a trademark of liberal democracy. But they can also become a barrier to the implementation of the popular will of the government.

The United States of America.

The USA is an extremely pluralistic society as it has a plethora of pressure groups (PGs). The USA can accommodate numerous PGs because of the structure of the government itself. The interest group activity is in waves of concentric circles as once a group is formed in a particular sector, many other groups are formed in the same sector to emulate them. USA

PGs are of diverse types, but we can segregate them broadly by using Jean Blondel classification in terms of functions like Protective and Promotional Groups. The Protective Groups protect the narrow interest of their members and are of mainly three types –Business Groups; Farmers and Professional organizations of labourers (like Trade Unions); Doctors and Lawyers.

The US Chambers of Commerce and the National Association of manufacturers are business groups acting as PGs. Labour organizations like AFL-CIO are the biggest labour organizations in the USA, employing 80% of unionized workers (14.1 Million in 1997). But different states of the USA have different rules, and it varies from closed shops to open shops. As per statistics, only 13-14% of employees are organized in unions, and most employees enjoy the benefits of free-riding. It is one of the least organized as majorities of unionized workers are in public sectors, especially in difficult jobs like fire fighters (71.6%), police officers(63%), flight attendants, postal services, and others. The farmers are organized in the American Farm Bureau Federation, and lawyers and doctors have their own American Bar Association and American Medical Association, respectively.

Right to Life, Pro-Choice, National Rifle Association (NRA), American Israel Public Affairs Committee (AIPAC), American Committee on Africa (ACF), and Public Interest Research Groups are promotional groups. These groups are issue-based and try to ensure government policy does not go against them.

The methods applied by US Pressure groups are Lobbying, and Media Publicity. They usually target the US Congress, Executive, Civil Services, and even Courts in decreasing order of preference. Moreover, the Senators and House members are not dependent on their parties for re-nomination due to direct primaries systems. So election campaigns are candidate-centric platforms where candidates can put forward PG's ideas in exchange for some favours. In the USA, there is an intense lobbying tendency where the lobbyists put forward their clients' (PGs) aspirations before the legislators. US Pressure Groups also hire 'Professional lobbyists' for their cases.

The USA has a climate for lobbying with even 60 lobbyists to every congress member. The inter-relationship among Pressure Groups (provides electoral support, campaign funds, and information to the committee members), Congressional committees

(provides Staff and funding to government departments. and friendly legislation and contracts to the PGs) and the government departments (provides policy suggestions and information to committees and helpful implementation of policies to aid PGs) are very well forged by the lobbyists and also known as Iron-triangles. Then PGs use PACs to influence policymakers. A PAC can be created by PGs to raise money for a candidate or a party in exchange for a commitment to their interests.

Thirdly, Pressure groups also use media sources like newspapers, televisions, emails, televisions, leaflets, and postal emails to build public awareness and support for their causes. For example, AIPAC takes US students, professors, and policymakers to Israel to make them understand how the national security of both nations is interlinked.

Fourthly, PGs in the USA frequently promote cases to bring them to the Supreme Court for constitutional arbitration and PGs can play a role in supporting or defeating Supreme Court nominations.

Unit V:

Swiss constitution

Historical perspective

Until 1848 Switzerland was a confederation of states directed by a Conference of Ambassadors called The Diet. In the year of the springtime of peoples, several months after a civil war which had seen the protestant cantons defeat the catholic cantons, the Constitution of 12 September 1848 made Switzerland a Federal State. It created the parliamentary bodies which we know today, the National Council and the Council of States, borrowed from the Amercian model. The solution arrived at had to satisfy both the conservatives who missed the old Diet and the radicals who wished for a federal convention. The Constitution gave the Confederation, which conserved its name although in reality Switzerland was now a Federal Republic, new powers with regard to foreign affairs and customs. A postal system was established, the currency was unified and the Franc replaced the various cantonal monetary systems. The Swiss Army was established. A Government of seven members was instituted with a revolving presidency exercised for one year by each of the ministers in turn. This formula assured a considerable governmental stability to my country.

After an attempt at constitutional revision in 1872, judged too centralising, a new attempt was successful on 19 May 1874. The right to legislative referendum was introduced on this occasion. In 1891, the right of popular initiative of referendum was also introduced. The Constitution of 1874 gave the Federal State powers in relation to civil law, contractual law, worker protection, bank notes and railway legislation in particular In the course of time a centralising movement developed. This resulted in the extension of the powers of the Confederation. To confine ourselves to the post-war years, one can cite the powers acquired in the areas of nuclear energy, main roads, town and country planning, environmental protection, scientific research, sex equality, and radio and television. In total one hundred and forty articles had been amended during this period of one hundred and twenty five years.

Characteristics of the new Constitution

The Order, which the people accepted on 18 April, corresponded with the mandate issued by the Federal Assembly twelve years ago. According to its terms the Government had to submit to Parliament a draft new Constitution, updating current constitutional law both written and non-written, rendering it comprehensible, ordering it systematically and unifying both its language and the normative density. The up-dating of the Federal Constitution states the essential characteristics of the Swiss State as the rights of citizens, the rule of law,

federalism and the social state. This up-dating takes account of the development of constitutional law. To a significant extent this development has taken place outside the text of the Constitution itself and the jurisprudence of the Federal Tribunal. The practice of Parliament and the Federal Council, as well as the numerous regulations of international law, being of an obligatory character for Switzerland, have during the last decades strongly affected constitutional law. This has particularly been the case for the development of fundamental rights and the general principles of the activity of the State.

Formal amendments

The new Constitution adopts linguistic formulae which correspond to current usage. It avoids as much as possible technical terms and foreign terms. It emphasises a consistency of expression. So as to take account in its language of the equality of sexes, either neutral formulae or a double formula of masculine and feminine is used (consistently in the German text, in the majority of cases in the French and Italian texts). The new Constitution has a more systematic structure. This structure is clear and each article is given a specific title. The articles are often shorter than in the previous version and organised more comprehensively. The new Constitution aims at completeness. The constitutional status of law is in the final analysis a question of political decision-making. Government and Parliament have proceeded to raise to a constitutional level provisions which currently belong to that merely of law, for example, data protection. By contrast, other constitutional provisions have been "relegated" to a legislative level, for example, the forbidding of absinthe which is a Franco-Swiss beverage from the Neuchatel Canton or from the "department" of Doubs which up until now had been the subject of a particular article in the Constitution.

The new Constitution determines the competence of the Confederation in matters of foreign affairs as well as the rights of the Federal Assembly to participate in external policy, which are expressly mentioned. One particular novelty is the article which concerns the rights of Cantons to participate in the preparation of decisions on foreign affairs when their competence and essential interests are implicated. We have an article on languages, which raises to the constitutional level the rights to language and in particular sets out the issues which form the basis of the principle of the territoriality of languages. We have an article on genetic engineering which forbids cloning. We have for the first time an article on political parties. Even if, up until now, the legislation on proportional representation took as understood their recognition, they henceforth appear explicitly in the Constitution.

Constitution:

It came into force on 1 January 2000. The 1999 Constitution of Switzerland consists of a Preamble and 6 Parts, which together make up 196 Articles.

Title 1:General Provisions

Art. 1 Swiss Confederation

The Swiss People and the Cantons of Zurich, Berne, Lucerne, Uri, Schwyz, Obwald and Nidwald, Glarus, Zug, Fribourg, Solothurn, Basel-City and Basel-Land, Schaffhausen, Appenzell Outer Rhodes and Appenzell Inner Rhodes, St. Gall, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchatel, Geneva, and Jura form the Swiss Confederation.

Art. 2 Purpose '

The Swiss Confederation shall protect the liberty and the rights of the people, and shall ensure the independence and security of the country. 2 It shall promote the common welfare, the sustainable development, the inner cohesion, and the cultural diversity of the country. 3 It shall ensure equal opportunities for all citizens to the extent possible. 4 It shall strive to secure the long-term preservation of natural resources, and to promote a just and peaceful international order.

Art. 3 Cantons

The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution; they shall exercise all rights which are not transferred to the Confederation.

Art. 4 National Languages

The national languages are German, French, Italian, and Romansh.

Art. 5 Rule of Law

1 The state's activities shall be based on and limited by the Rule of Law.

2 State activity must be in the public interest and proportional to the goals pursued.

3 State organs and private persons must act in good faith.

4 The Confederation and the Cantons shall respect international law.

Art. 6 Individual and Social Responsibility

All persons are responsible for themselves, and shall make use of their abilities to contribute to achieving the goals of state and society.

Title 2: Fundamental Rights, Civil Rights and Social Goals Chapter

1: Fundamental Rights

Art. 7 Human Dignity

Human dignity shall be respected and protected.

Art. 8 Equality before the Law

1 All human beings are equal before the law.

2 Nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a corporal or mental disability.

3 Men and women have equal rights. Legislation shall ensure equality in law and in fact, particularly in family, education, and work. Men and women shall have the right to equal pay for work of equal value.

4 Legislation shall provide for measures to eliminate disadvantages affecting disabled people.

Art. 9 Protection against Arbitrariness and Principle of Good Faith

Every person has the right to be treated by the state organs without arbitrariness and in good faith.

Art. 10 Right to Live and Personal Freedom

1 Every person has the right to live. The death penalty is prohibited.

2 Every person has the right to personal liberty, particularly to corporal and mental integrity, and to freedom of movement.

3 Torture and any other cruel, inhuman or degrading treatment or punishment are prohibited.

Art. 11 Protection of Children and Young People

1 Children and young people have the right to special protection of their integrity and to encouragement of their development.

2. They may exercise their rights themselves to the extent of their capacity to discern.

Art. 12 Right to Aid in Distress

Persons in distress and incapable of looking after themselves have the right to be helped and assisted, and to receive the means that are indispensable for leading a life in human dignity.

Art. 13 Right to Privacy

1 All persons have the right to receive respect for their private and family life, home, and secrecy of the mails and telecommunications.

2 All persons have the right to be protected against the abuse of personal data.

Art. 14 Right to Marriage and Family

The right to marry and to have a family is guaranteed.

Art. 15 Freedom of Religion and Philosophy

1 The freedom of religion and philosophy is guaranteed.

2 All persons have the right to choose their religion or philosophical convictions freely, and to profess them alone or in community with others.

3 All persons have the right to join or to belong to a religious community, and to follow religious teachings.

4 No person shall be forced to join or belong to a religious community, to participate in a religious act, or to follow religious teachings.

Art. 16 Freedom of Opinion and Information

1. The freedom of opinion and information is guaranteed.

2. All persons have the right to form, express, and disseminate their opinions freely.

3 All persons have the right to receive information freely, to gather it from generally accessible sources, and to disseminate it

Art. 17 Freedom of the Media

1 The freedom of the press, radio and television, and of other forms of public telecasting of productions and information is guaranteed.

2 Censorship is prohibited.

3 Editorial secrecy is guaranteed.

Art. 18 Freedom of Language

The freedom of language is guaranteed.

Art. 19 Right to Primary Education

The right to sufficient and free primary education is guaranteed.

Art. 20 Freedom of Science

The freedom of scientific research and teaching is guaranteed.

Art. 21 Freedom of Art

The freedom of art is guaranteed.

Art. 22 Freedom of Assembly

1 The freedom of assembly is guaranteed.

2 Every person has the right to organize assemblies, to participate in them or to stay away from them.

Art. 23 Freedom of Association

1. The freedom of association is guaranteed.

2 .Every person has the right to form associations, to join or to belong to them, and to participate in their activities.

3 .No person shall be forced to join or to belong to an association.

Art. 24 Freedom of Domicile

1 Swiss citizens have the right to establish their domicile anywhere within the country.

2 They have the right to leave or to return to Switzerland.

Art. 25 Protection against expulsion, extradition, and removal by force

1. Swiss citizens may not be expelled from the country; they may be extradited to a foreign authority only with their consent.
2. Refugees may not be removed by force or extradited to a state in which they are persecuted.
3. No person shall be removed by force to a state where he or she is threatened by torture, or another means of cruel and inhuman treatment or punishment.

Art. 26 Right to property

1. The right to property is guaranteed.
2. Expropriation and restrictions of ownership equivalent to expropriation shall be fully compensated.

Art. 27 Economic Freedom

1. Economic freedom is guaranteed.

2. It contains particularly the freedom to choose one's profession, and to enjoy free access to and free exercise of private economic activity.

Art. 28 Freedom to Unionize

1. Workers, employers, and their organizations have the right to unionize for the defence of their interests, to form unions and to join them or to keep out of them.

2. Conflicts shall be resolved to the extent possible through negotiation and mediation.

3. Strike and lockout are permitted when they relate to labor relations, and when they are not contrary to obligations to keep labor peace or to resort to conciliation.

4 .Legislation may prohibit certain categories of persons from striking.

Art. 29 General Procedural Guarantees

1. Every person has the right in legal or administrative proceedings to have the case treated equally and fairly, and judged within a reasonable time.

2. The parties have the right to be heard.

3. Every person lacking the necessary means has the right to free legal assistance, unless the case appears to be without any chance of success. The person has moreover the right to free legal representation, to the extent that this is necessary to protect the person's rights.

Art. 30 Judicial Proceedings

1. Every person whose case must be judged in judicial proceedings has the right to have this done by a court that is established by law, has jurisdiction, and is independent and impartial. Exceptional tribunals are prohibited. .

2. A person against whom a civil action is brought has the right to have the case heard before the court at the person's domicile. Legislation may provide for another jurisdiction.

3. The court hearing shall be public, and the judgment shall be publicly proclaimed. Legislation may provide for exceptions.

Art. 31 Habeas Corpus

1. No person may be deprived of liberty except in the cases and in the forms provided by statute.
2. All persons deprived of their liberty have the right to be informed immediately, and in a language that they understand, of the reasons for their detention, and of their rights. They must have the opportunity to assert their rights. In particular, they have the right to have their close relatives informed.
3. Every person taken into preventive detention has the right to be brought before a judge without delay; the judge shall decide whether the person shall remain in detention or shall be released. Every person in preventive detention has the right to be judged within a reasonable time.
4. All persons who are deprived of their liberty without a trial have the right to seize a court at any time. The court shall decide as soon as possible whether the detention is legal.

Art. 32 Criminal procedure

1. Every person shall be presumed innocent until the person is subject to a condemnation having force of law.
2. Every accused person has the right to be informed as soon as possible and in full detail of the accusations. The person must have the opportunity to exercise its means of defence.
3. Every condemned person has the right to have the judgment reviewed by a higher court. The cases where the Federal Supreme Court sits as a court of sole instance are reserved.

Art. 33 Right of Petition

1. Every person has the right to address petitions to authorities without suffering prejudice.
2. The authorities must take cognizance of petitions.

Art. 34 Political Rights

1 .The political rights are guaranteed.

3. The guarantee of political rights protects the free formation of opinion by the citizens and the unaltered expression of their will.

Art. 35 Realization of Fundamental Rights

1 . The fundamental rights shall be realized in the entire legal system.

2 Whoever exercises a function of the state must respect the fundamental rights and contribute to their realization.

3 The authorities shall ensure that the fundamental rights also be respected in relations among private parties whenever the analogy is applicable.

Art. 36 Limitations of Fundamental Rights

1. Any limitation of a fundamental right requires a legal basis. Grave limitations must be expressly foreseen by statute. Cases of clear and present danger are reserved.
2. Any limitation of a fundamental right must be justified by public interest, or serve for the protection of fundamental rights of other persons.
3. Limitations of fundamental rights must be proportionate to the goals pursued.
4. The essence of fundamental rights is inviolable.

Chapter 2: Citizenship and Political Rights

Art. 37 Citizenships

1 Every person who has the citizenship of a Municipality and of the Canton, to which it belongs has Swiss citizenship.

2 No person shall enjoy a privilege or suffer prejudice because of his or her citizenship. Exceptions are possible to regulate political rights in bourgeoisies and corporations, and provide for participation in their assets, unless cantonal legislation excludes this.

Art. 38 Acquisition and Loss of Citizenship

1 The Confederation shall regulate the acquisition and the loss of citizenship through descent, marriage and adoption. Moreover, it shall regulate the loss of Swiss citizenship on other grounds, and the reinstatement of citizenship.

2 It shall set minimum requirements for the naturalization of foreigners by the Cantons, and grant naturalization permits.

3 It shall facilitate the naturalization of stateless children.

Art. 39 Exercise of Political Rights

1 .The Confederation shall regulate the exercise of political rights in federal matters; the Cantons shall regulate the exercise of these rights in cantonal and municipal matters.

2 The political rights shall be exercised at the domicile. The Confederation and the Cantons may foresee exceptions.

3 No person shall exercise political rights in more than one Canton.

4 The Cantons may provide that new domiciliary may exercise political rights in cantonal and municipal matters, only once a waiting period of no more than three months has been observed.

Art. 40 Swiss citizens domiciled abroad

1. The Confederation shall encourage links amongst Swiss citizens domiciled abroad, and their links with Switzerland. It may support organizations which pursue this goal.
2. It shall legislate on the rights and obligations of Swiss citizens domiciled abroad, in particular on the exercise of the political rights on the federal level, the duty to render military or alternative service, assistance to needy persons, and social security.

Chapter 3: Social Goals

Art. 41

1. The Confederation and the Cantons shall strive to ensure that, in addition to personal responsibility and private initiative,

a. every person shall benefit from social security;
b. every person shall benefit from necessary health care;
c. the family as a community of adults and children shall be protected and encouraged;
d. every person capable of working shall sustain himself or herself through working under fair and adequate conditions;
e. every person looking for housing shall find, for himself or herself and his or her family, appropriate housing at reasonable conditions;
f. children and young people and people of working age shall benefit from initial and continuing education according to their abilities;
g. children and young people shall be encouraged in their development to become independent and socially responsible persons, and they shall be supported in their social, cultural, and political integration.
2. The Confederation and the Cantons shall strive to ensure that every person shall be insured against the economic consequences of old age, disability, illness, accidents, unemployment, fraternity, orphan hood, and widowhood.
3. They shall strive to realize the social goals within the framework of their constitutional powers and with the means available to them.
4. No direct subjective right to prostrations by the state may be derived from the social goals.
Switzerland has one of the most unique Constitutional Systems in the world.

SALIENT FEATURES OF THE SWISS CONSTITUTION

The Swiss Constitution is indeed unique in character. Its direct democracy devices are the envy of the democratic Constitutions of the world. Its plural executive combining in itself the advantages of parliamentary and presidential executives and avoiding their pitfalls is another laudable contribution to the mechanism of world governments.

1. **The Preamble**:

The Swiss Constitution opens with a Preamble which begins by the words. In the name of God Almighty, We, the Swiss people and Cantons…… "It expresses the firm resolve to renew the alliance, to strengthen liberty and democracy, independence and peace insolidarity, and openness towards the world. It expresses the determination of the Swiss people and Cantons to live our diversity in unity, respecting one another." Further, it records that the Swiss people and Cantons adopt the Constitution with full consciousness of their common achievements and responsibility towards future generations. It affirms faith in two

fundamental guiding principles. “Only those remain free who use their freedom”, and “The strength of a people is measured by the welfare of the weakest of its members.” The Preamble records a firm faith in sovereignty of the people and the Cantons and makes a firm resolve to maintain and strengthen Switzerland. It declares that the Swiss (Swiss Federation) stands organised on the principle of “Unity in diversity” and is committed to secure freedom and welfare for all the people, particularly for the weakest members of the Swiss nation.

2. **A Written, Enacted and Adopted Constitution**:

The Swiss constitution of 1848 as amended in 1874 and in subsequent years, and integrated in 1999 is a written document like that of the U.S.A. although it is double in size to that of the American constitution. The 1999 Constitution consists of One Hundred and Ninety Six Articles.

3. **A Rigid Constitution:**

This Swiss Constitution is rigid in character, though not so rigid as the American constitution. The procedure of its amendment is rather complicated. There are two methods of amending it.

1. **Through Referendum**

If both the Houses of the federal Parliament agree by passing a resolution to revise the Constitution, either, wholly or partially, they may draft such a proposal and submit it to the vote of the people and Cantons.

If a majority of the citizens voting at Referendum and a majority of the Cantons approve of it, the amendment is made in the Constitution. In case, only one House agrees to the proposed revision and other does not, then the proposed revision is referred to the people’s vote to ascertain whether the proposed revision is necessary or not. If the people approve the proposed revision by a majority vote, Federal Assembly stands dissolved. The newly elected assembly takes up the proposed revision. If both the Houses of the Assembly ratify it, which is a foregone conclusion, the revision is submitted to the people and Cantons for vote. If the majority of the people and Cantons approve of it, the revision is effected

2. **Through Constitutional Initiative**

A complete or partial revision of the Constitution can also be effected through popular Initiative, on the petition of at least, one lakh Swiss citizens.

3. **Democratic Republican Constitution:**

Ever since 1291, Switzerland has been a Republic. It is now headed by a sevenmember plural executive whose members are elected by the two houses of Swiss

Federal Parliament. All political institutions in Switzerland are elected institutions. The people elect their representatives and they directly participate in the law-making through the devices of referendum and initiative. The Constitution also provides for Republicanism in the Cantons. Each Swiss Canton has the right to have a constitution provided it assures the exercise of political rights according to the Republican form. Article 51 declares, "Every Canton shall adopt a democratic constitution.

4. **Federalism:**

Article I of the 1874 Swiss Constitution described Switzerland as a confederation. But in reality, it was a federation with 23 Cantons (20 full and 6 half Cantons) constituting the Federation. Now the newly revised constitution (2000) of Switzerland directly describes it as the Swiss Federation. "The Swiss confederation came into being to consolidate the alliance of the Confederated members and to maintain and increase the unity, strength and honour of the Swiss nation."

It further specified that "the objective of the constitution was to achieve the solidarity of the nation." The 1874 total revision of the Constitution was toachieve the solidarity of the nation. This total revision of the constitution was governed by the objective of making Switzerland a centralized federation by eliminating the weaknesses of the 1848 constitution.

The 1999 total revision of the Constitution has further given strength to federalism. Switzerland is now a federation both in name as well as in reality.

The federal character of the Swiss Constitution is reflected by its following features:

(i) Non-sovereign status of Cantons.

(ii) Supremacy of Swiss Constitution.

(iii) Existence of written and rigid constitution affecting a division of powers between the Swiss Federation and the Cantons.

(iv) The division of powers in the Swiss Constitution follows the pattern of the US federation. The powers of the Federation and the joint powers of the Federation and the Cantons have been laid down in the Constitution, and the residuary powers have been left with the Cantons.

(v) The federation has been given powers in respect of subjects of national importance and the Cantons have retained powers in respect of local and regional subjects.

(vi) The Cantons have been given equality of representation in the Upper House of the Swiss Federal Parliament- the Senate, Each full Canton, whether big or small, sends two representatives and each half-Canton one representative to the Senate.

(vii) The Cantons have their separate constitutions.

(viii) The Swiss Federal Court is an independent judiciary with the power of judicial review over the legislation passed by Cantonal legislatures.

(ix) There is dual citizenship, dual administration and a dual system of courts.

All these features clearly establish the existence of a federation in Switzerland. In the words of Zurcher, "Federation is the basic constitutional doctrine upon which the government of Switzerland is now based."

The new Constitution has now eliminated the old practice of describing Switzerland as a confederation. Switzerland is now a Federation both in name and reality. It is a federation with 23 Cantons (20 full Canton and 6 half Cantons) as its non-sovereign units.

5. Direct Democracy:

Switzerland has been the home of Direct Democracy. Zurcher has rightly written: "Switzerland and democracy have, in recent years, become almost synonymous." Since 1848, Switzerland has been working as a direct democracy through such modern devices of direct legislation—Referendum and Initiative. Under the system of Referendum, the people have the right to approve or disapprove the laws or constitutional amendments passed by their legislature. Measures put to referendum become operational only when these secure majority of votes. In case of constitutional amendments, holding of referendum is compulsory but in case of ordinary legislation it is optional i.e., it is held only when 50,000 Swiss voters make a demand for referendum. Under the system of Initiative 100,000 Swiss voters can initiate any proposal for constitutional amendment, which gets incorporated in the constitution when the majority of Swiss voters as well as of Cantons approves it in a referendum. The decision of the referendum is final. Referendum is a negative device by which people can rectify the errors of the Federal Parliament and Initiative is a positive device by which people can ensure desired constitutional changes. In one full Canton and five half Cantons of Switzerland there is at work the institution of Landsgemeinde. It is a Cantonal Council of all the voters which makes laws, approves policies and elects the executive for running the administration. The people of Switzerland use Referendum, Initiative and Landsgemeinde as devices of direct democracy within a system of representative democracy. They have a directly elected assembly of their representatives- the Federal Parliament. But they also directly participate in legislation through the devices of Referendum and Initiative.

6. **Mixture of Parliamentary and Presidential Forms**:

The Swiss system of government is a unique system which encompasses the features of parliamentary as well as presidential systems. There is a close relationship between the Swiss Federal Parliament and the Swiss Executive. The members of the executive (Federal Government) participate in the deliberations of the legislature. The members of Federal Government (Ministers of Federal Government) are responsible before the Federal Parliament for their work and activities. These two are parliamentary features. The Swiss executive-the Federal Government enjoys a fixed tenure and it cannot be voted out of power by the Federal Parliament.

It is constituted by all the political parties and it is a plural executive. It cannot dissolve the Federal Parliament. These are indeed presidential features. As such, the Swiss system of is parliamentary as well as presidential in its organisation and working.

7. **Plural/Collegial Executive**:

A unique feature of the Swiss constitution is that is provides for a collegial/plural executive. All executive powers of the federation are exercised by a seven-member Federal Government. All the seven members collectively exercise power. Article 177(1) declares "The Federal Government shall take it decisions as a collective body." Every year one of its seven members is elected at the President and another as the Vice-president. Next year the Vice-president becomes the President and a new member is elected as the Vice-president. This process continues and each member gets a chance to be the President and Vice-president. The President performs all the functions of the head of the state for one year. The members of the Federal Government do not resign whenever the Federal Parliament rejects any measure or policy sponsored by it. There is no such thing as collective responsibility before the Federal Parliament. Thus, the Federal Government of Switzerland is a unique plural executive.

8. **Bicameral Legislature:**

Swiss Federal Parliaments is a bicameral body. Its two houses are: The House of Representatives and the Senate. The former is the lower, popular, national house which represents the people of Switzerland and the latter is the upper house which represents the Cantons and their sovereign equality. Each full Canton two and each half Canton has one seat in the Senate. The House of Representatives has tenure of 4 years whereas the tenures of the members of the Senate depend upon the Cantons which they represent. In fact the members of the upper house are not elected simultaneously. The Federal Parliament enjoys legislative,

executive, financial and judicial powers which are jointly exercised by the two Houses. Both the Houses have equal powers in all spheres. In the words of C.F. Strong, "The Swiss legislature like the Swiss executive is unique. It is the only legislature in the world, the powers of whose upper house are in no way different from those of the lower house."

9. Secondary Position of judiciary

The Swiss judiciary plays a less vital role than the judiciary in United States of America or India. The Swiss Federal Tribunal has only limited judicial review. It can declare only a cantonal law unconstitutional. The Swiss Constitution makes it specifically clear that "the court shall apply laws voted by the Federal Assembly". In other words, it does not exercise judicial review of the laws passed by the central government. The election of judges by the Federal Assembly further establishes the inferior position in fact denigration of judiciary in Switzerland.

10. Conventions of the Swiss Constitution:

The history of the evolution of the Swiss constitutional system since 1848 has produced several constitutional conventions which have been regulating the behaviour of almost all the political institutions. In the Federal Government, when the President completes his term of one year, the Vice-president becomes the President and a new Vice-president is elected. This practice is repeated every year. The Vice-chairmen of the two Houses of the Federal Parliament become chairmen in the next year. Constitutionally, both the House of Representatives and the Senate have equal powers, but by a convention, the former exercises more powers than the latter. Each judge of the Federal Court has a tenure of six years but by a convention, he is repeatedly elected unopposed. The members of the Federal Government are also repeatedly elected so long as they continue to serve well. By another convention, the Cantons speaking the three main languages are always given a seat each in the Federal Government. Further, the Cantons of Berne, Geneva and Vaud are always given a berth in the Federal Government.

11. Bill of Rights:

A major change affected by the new Swiss Constitution (2000) has been the incorporation of a detailed bill of rights. Under Title 2 Chapters 1 and 2 and Article 7 to 40, the Constitution now describes the basic, civil, social and political rights of the Swiss people. The Constitution recognizes grants and guarantees 34 rights of the people-The Rights of Human Dignity, Equality, Religion and Customs, Freedom of Expression, Freedom of Media,

Association, Domicile, Property, Economic Freedom, Judicial Protection, Citizenship and Political Rights.

The Swiss bill of rights is a very detailed bill and incorporates almost all the rights and freedoms which stand recognized as essential conditions of civilized living and necessary for the enjoyment of the right to life.

12. Purpose of the State:

In its Article 2, the Swiss Constitution lays down the purpose of Swiss Federation. It describes the following purposes:

(i) To protect liberty and rights of the people,

(ii) To safeguard the independence and security of the country,

(iii) To promote common welfare, sustainable development, inner cohesion and cultural diversity of the country,

(iv) To secure to all citizens, as far as possible, equal opportunities,

(v) To work for safeguarding the long term preservation of natural resources,

(vi) To promote a just and peaceful international order.

13. Dual Citizenship:

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

The Federal Council

The executive is a Federal Council that consists of seven members elected for four-year terms by the legislature (the Federal Assembly). They are elected as individuals and are never forced to resign. The Federal Council is made up of seven members, each of which heads a government department. Decisions are made jointly.

The election

Unlike the State Duma and the provincial legislatures throughout Russia, the Council is not directly elected, but instead chosen by territorial politicians, resembling in some respects the structure of the U.S. Senate prior to the Seventeenth Amendment in 1913. Switzerland's Federal Council is elected by the United Federal Assembly, that is, by the two parliamentary chambers jointly. The election takes place every four years in December, following the election of the entire National Council.

Powers:

The Federal Council's tasks are set out in the Federal Constitution.The Federal Council has 61 members. Its major responsibility is the representation of the Federal Provinces' interests in the legislative process at federal level. This is why it is also referred to as the Chamber of Provinces. Its members are delegated by the Provincial Diets of the nine Federal Provinces.The most important task of the Federal Council is to govern. It continually assesses the current situation, determines the objectives of state governance and the means of achieving them, oversees their implementation and represents the Swiss Confederation both at home and abroad.

The Federal assembly

The 200 seats in the National Council are allotted to the 26 cantons according to their respective populations (total number of residents = resident population). The population figures are obtained from the registers in the year following the previous election. Each canton is allotted at least one seat. Politically speaking, the Federal Assembly is not divided into parties, but into parliamentary groups. The groups comprise members of the same party or of similarly-plat formed parties. The Council of States has 46 members who represent the cantons. The cantons each send two representatives, with the exception of Obwalden, Nidwalden, Basel-Stadt, BaselLandschaft, Appenzell Ausserrhoden and Appenzell Innerrhoden, which each send one. Only informal groups exist in the Council of States

The Parliament of Switzerland

Switzerland is a federal state consisting of 26 cantons (member states). The Government, parliament and courts are organized on three levels: federal, cantonal and communal. The federal constitution defines the areas where federal legislation defines standardized solutions, sets guidelines only or leaves things to cantonal autonomy.
Switzerland has – like most other democratic nations – a two-chamber parliament on national level:

The National Council, consisting of 200 members elected under the Proportional Representation System while the Council of States (46 members) represents the cantons.
Both chambers of parliament form several commissions – some to control the work of the administration, some to debate new laws in depth. Specialists in fields like health, military and many more are elected to represent their party in these commissions.

All parties of minimal size (5 members of parliament) are represented at least in a few commissions and smaller parties may join to form a fraction giving them the right to work (and have influence) in commissions.

To know about the functions of the Parliament in India, visit the linked article.

National Council

The National Council is Switzerland's "house of representatives". The 200 members are elected every four years according to a refined proportional representation system in principle, but since every canton forms a constituency and cantons have extremely different numbers of inhabitants, five smaller cantons may only send one deputy to the national council, which results in majority elections for these deputies.

Council of States

The Council of States represents the cantons (like the U.S. senate). Most cantons may send two members. For historical reasons, six cantons are considered half-cantons and may send only, giving a total of 46 members. The rules how to elect the members are made under cantonal legislation, so they may differ from canton to canton. A majority of cantons does elect their members of the Council of States every four years on the same day as the members of the National Council, however.

Federal Tribunal – Compositions Jurisdictions

1 Civil Law

An Introduction

ThischapterfocusesonthejudicialsysteminSwitzerland.Inordertoprovide aconcise overviewofthejudicialsystemandhighlight its mostimportant characteristics, this overview is limited in scope to the system'sessential characteristics and what sets it apart.

Thereisadiscussion of the federal system's philosophy, as well as the judicial structureof the cantons. While the Swiss system is comprehensive and extensive, italso has a notable exception in international comparison: judicial review oflaws and other state acts is not subject to judicial review. Federal laws inSwitzerland are not subject to judicial review (and international law).

Judicial Federalism: **A Pronounced Judicial Organization**

'Reforming the Judiciary' and 'Judicial Federalism'

In Switzerland, the judiciary is still heavily influenced by federalism. Thecantonal judicial authorities are responsible for enforcing cantonal law. Lessnaturally, the application

of federal law is in the hands of the cantonal judicialauthorities to a large extent. This holds true for the vast majority of civil lawas well as the vast majority of criminal law (Art. 122 and 123, respectively, ofthe Swiss Federal Constitution, abbreviated Const.). Because of this, Civil law regulates the legal relationship between individuals and essentially equivalent persons. On the one hand, these “private persons” include “flesh and blood” people, and on the other hand so-called “legal persons”, such as associations or corporations. Civil law encompasses, for example, matrimonial and family law, inheritance law, as well as employment, tenancy or stock company law. A person seeking legal recourse in a civil law case must file a lawsuit with a competent court. In court, the parties to the dispute must explain what they claim, and why they are doing so and produce evidence to corroborate their version of the facts. Only in exceptional cases does the court itself conduct investigations in order to determine the decisive facts. This is the case, for example, in divorce proceedings, when the interests of children are involved. Depending on the nature and amount of the dispute in a civil lawsuit, the plaintiff must first appeal to either the conciliation authority, a court of the first instance or the upper cantonal court. There are specialized courts for certain areas of civil law. These include, for example, landlord-tenant courts and labour courts or commercial courts, which exist in some cantons .

b. Conciliation Authority

Before an appeal can be lodged with a court, dispute resolution through a conciliation procedure should usually be conducted (exceptions are possible, e.g. in the case of a divorce). The aim of this negotiation is, if possible, to settle the dispute at an early stage by mutual agreement and in a cost-effective manner. Depending on the canton, a justice of the peace, a mediator or even a court of first instance is responsible for the attempt at conciliation. If the disputed amount is less than SFr. 2,000 and no amicable agreement is reached, the conciliation authority will render an initial decision at the request of the plaintiff.

c Civil Court of First Instance

Anyone wishing to make a civil claim has to file a lawsuit with the court of first instance, after their attempt at conciliation. The defendant party will be informed by the court that a lawsuit has been filed and will be asked to submit their defence answer. Depending on the circumstances, the parties to the dispute may later submit additional written observations on the submissions of the adverse party. When reaching its decision, the court either completely or partially upholds the claim or rejects it. The court reaches its decision on the basis of its appreciation of the presented evidence and of its legal assessment of the case. The courts of first instance have different names depending on the canton; in German they are

called, for example, Bezirksgericht, Amtsgericht or Kreisgericht. Their decisions may be appealed to the upper cantonal court.

d. Civil Court of Second Instance

In the case of an “appeal” (Berufung), the court of second instance comprehensively reviews the contested decision. In the case of a “complaint” (Beschwerde), the court can only freely examine the correct application of the law, whereas the facts established by the lower court can only be examined to a very limited extent. Depending on the canton, the cantonal court of second instance carries different names (e.g. in German Kantonsgericht, Obergericht or alternatively in French Cour de justice). In certain areas of law, such as unfair competition or intellectual property disputes, there is only one single cantonal instance. Decisions of upper cantonal courts can, under certain conditions, be appealed to the Swiss Federal Supreme Court.

2 Criminal Justice

An Introduction

If someone is suspected of having committed a criminal offence, a criminal case is opened. In the pre-trial proceedings, the police initiate criminal investigations and the prosecutor opens an inquiry. If there are no sufficient grounds for suspicion that a crime has been committed, the proceedings are closed. Such a dismissal may, under certain conditions, be contested by the parties or by other participants to the proceedings. If the prosecution concludes that there is sufficient evidence of the commission of a criminal offence, an indictment is filed with the court. The public prosecutor’s office applies the following principle: “In case of doubt, charges are to be filed” (in dubio pro duriore). Under certain conditions, minor offences can be dealt with directly by the prosecutor’s office, which issues a penalty order. The purpose of the summary penalty order procedure is to deal efficiently with mass and minor offences (e.g. road traffic offences).

It is only if the person concerned files a complaint against the penalty order rendered by the prosecutor that a court reviews the case. Today, more than 90% of all criminal cases are terminated by this summary penalty order procedure. There is also the possibility of a so-called “summary procedure”. If the appropriate conditions are met, the defendant and the public prosecutor’s office agree on the concrete criminal charge and punishment. Such agreements must be approved by a court. The summary procedure is excluded, if the public prosecutor’s office requests a prison sentence of more than five years. If the defendant is a minor at the time of the crime, the case is judged by a juvenile court. In certain cantons, there is also a specialized court for economic crimes (fraud, falsification of documents, etc.). In

criminal proceedings, the so-called inquisitorial principle applies. This means that the authorities themselves seek the truth and are not bound by the claims of the persons involved in the proceedings. The authorities are obliged to seek both incriminating and exonerating material.

b. Criminal Court of First Instance

If the public prosecutor brings charges, a court decides in the main proceedings, whether the person concerned is guilty of the alleged offence. If the court concludes that this is the case, it imposes a sanction. Possible sanctions are a fine, a monetary penalty or a prison sentence. Fines or imprisonment can be suspended for a probationary period. The punishment can be combined with a measure, for example, the obligation to undergo a therapy. If necessary, the criminal judge decides on the further possible consequences in connection with the offence, such as the confiscation of assets, gained as a result of the crime. If the court comes to the conclusion that the defendant has not committed any offence, it pronounces a verdict of acquittal. The acquitted person can file for compensation from the state for the wrongful investigative custody.

c. Criminal Court of Second Instance

First-instance convictions can be appealed to a second instance court (in German Obergericht or Kantonsgericht). The convicted person, the public prosecutor and, under certain conditions, the victim or other persons who have been harmed by the crime can all file an appeal. Criminal judgements issued by a second cantonal instance can be appealed to the Swiss Federal Supreme Court.

3 .Administrative Law

In an administrative dispute at the cantonal level, private individuals contest rulings issued by a municipal or cantonal authority. These include building permits, taxes, and the withdrawal of driving licenses or the collection of fees. Often, but not always, there is initially the possibility of an internal recourse procedure. Subsequently, the persons concerned can file a complaint with the cantonal administrative court. There is only one administrative court in each canton; in most cantons (16), the administrative court is integrated into the cantonal court or the high court of appealed into the cantonal court or the high court of appeal.

B. At the Federal Level

1. **The Swiss Federal Supreme Court**

An Introduction

The Swiss Federal Supreme Court is the highest judicial authority in Switzerland. It adjudicates, in last instance, appeals of rulings of the high cantonal courts of appeal, the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court. The concerned areas of law are civil law, criminal law and administrative law. The violation of federal law, international law, inter-cantonal law or constitutional rights can be invoked. The facts of the case – that is to say, the facts at the basis of the dispute – can only be contested, if they are established in a manifestly incorrect manner or in violation of federal law. The Federal Supreme Court's jurisprudence ensures the uniform application of federal law throughout the country. Its decisions contribute to the continued development of the law and its adaptation to changing circumstances. The other courts and the administrative authorities comply with the Federal Supreme Court's case law and adopt its principles. Proceedings start at the Federal Supreme Court, when an appeal is lodged. Subsequently, the adverse party is invited to comment on the appeal (first exchange of submissions, which, if necessary, is followed by a second exchange). In principle, court hearings in which the parties and witnesses are heard or in which lawyers plead the case no longer take place at the Federal Supreme Court level. In cases where the justices participating in the decision are unable to reach a unanimous decision, a public hearing is held. At the end, the panel of justices votes by show of hands on the various solutions proposed.

In some rare lawsuits (disputes between the cantons or between a canton and the Federal Government), the Federal Supreme Court decides as the first and only instance.

B. Appeals in Civil Matters

Before a civil case reaches the Federal Supreme Court, it has usually already been judged by two cantonal courts. In order to file a lawsuit for property disputes, the amount in dispute must equal at least SFr. 30,000. Employment and tenancy law are the exception, where a lower amount in dispute of SFr. 15,000 suffices. Regardless of the amount in dispute, the Federal Supreme Court adjudicates all cases in which a legal question of fundamental importance arises. An appeal in civil matters may also be filed to contest decisions in debt collection and bankruptcy cases, as well as administrative decisions, directly related to civil law, for example, a decision by an authority to grant or refuse a name change.

C. Appeals in Criminal Matters

The Federal Supreme Court adjudicates appeals in criminal cases, which are brought against judgements of the high cantonal courts of appeal and against decisions of the Federal Criminal Court. As in civil matters, the facts of the case, which the lower court has found to be proven, can only be reviewed to a very limited extent by the Federal Supreme Court. Civil claims related to the criminal case (for example claims for damages or compensation for pain and suffering) may be invoked in the same appeal.

D. Appeals in Public Law Matters

Rulings handed down by the cantonal administrative courts, by the cantonal social insurance courts and (with some exceptions) by the Federal Administrative Court can be contested by filing an appeal in public law matters with the Federal Supreme Court.

E. Constitutional Jurisdiction / Subsidiary Constitutional Appeal

Within the framework of the appeals submitted to it, the Federal Supreme Court also reviews complaints relating to infringements of people's constitutional rights. The European Convention on Human Rights (ECHR) and other international treaties complete the guarantees of fundamental rights contained in the Federal Constitution. If no ordinary appeal is admissible (e.g. because the dispute does not reach the threshold of the contested amount), cantonal judgements may be challenged for violation of constitutional rights with the subsidiary constitutional appeal. Federal laws must also be applied by the Federal Supreme Court, even if they violate the Federal Constitution. Nevertheless, in such cases the Federal Supreme Court is allowed to declare their incompatibility with the Federal Constitution. On the other hand, the Federal Supreme Court may fully review the compatibility of cantonal laws with constitutional law enforcement authorities and to adjudicate appeals on international legal assistance in criminal matters. Decisions concerning legal assistance can only be appealed, to a limited extent, to the Federal Supreme Court.

4. The Federal Patent Court

The Federal Patent Court adjudicates, in the first instance, civil disputes concerning patents. Its decisions can be appealed to the Federal Supreme Court. The Federal Patent Court commenced its activity in 2012 in St. Gallen.

5. Military Courts

Military courts essentially deal with crimes committed by members of the army when on duty. They apply military criminal law.

II. Judges, Lawyers and Fees

Judges preside over trial proceedings. After examining the case file, hearing the parties and their lawyers, witnesses or experts, they review the complaint, the appeal or the accusation brought before them. Depending on the nature of the matter to be reviewed and the instance, either a single judge or a panel of judges delivers a judgement.

In Switzerland, there is no compulsory basic training for judges. Although studying law is not a necessary requirement, it is the general rule. Justices of the peace are often persons who do not have a legal background but who, because of their common sense, enable parties to reach a mutually agreed solution. For the rest, people who hold the office of judges have generally completed a law degree. Federal justices are consistently accomplished jurists who look back on a long professional career, although this is not required by the Federal Constitution. As a rule, they previously served as judges in lower courts, as law professors, lawyers or as senior legal clerks. At the cantonal level, the judges are elected by the people or the parliament or appointed by the court, depending on the canton and the type of function. They must be re-elected or reappointed periodically. Federal justices as well as judges of the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court are elected by the United Federal Assembly for a period of six years. They are re-eligible.

Judges must take utmost care when exercising their duties in order to decide impartially. If there is the mere impression of a conflict of interest, for example if judges are on friendly terms with a party to the proceedings, they must recuse themselves from the proceedings either on their own initiative or at the request of the adverse party.

B Lawyers:

In Switzerland, persons seeking justice can represent themselves in all courts; there is no obligation to be represented by a lawyer in court. An exception applies only in certain criminal cases. In practice, representation by a lawyer is the rule, as soon as a dispute proves to be complex in nature. Anyone who wants to work as a lawyer must have successfully completed a law degree and a bar examination. In order to represent clients, lawyers need to be registered in the official cantonal register of attorneys, which is then valid for the whole of Switzerland. Lawyers are often specialized in one or more areas of law, such as business, criminal, family or tax law. Lawyers must show restraint in the promotion of their professional activity. In many cases, several lawyers associate themselves in a law firm. Lawyers must be able to carry out their work independently and be free from conflicts of interest.

C. Fees:

Costs are incurred when taking a case to court. They consist of court fees – the costs for the court's work – and the legal fees. In civil proceedings, with only a few exceptions (such as a divorce), the party who loses the case bears all the costs. Anyone taking legal action can be requested to pay an advance on costs. The court costs are governed by cantonal or federal law and vary according to the value in dispute as well as to the complexity of the case. If the adverse party does not have sufficient financial means, then the plaintiff runs the risk of not being reimbursed for his or her expenses, even if the outcome of the court case goes in their favour. Legal protection insurance can be taken out to protect oneself against the risk of costs incurred by a lawsuit.

If a party does not have sufficient financial means to take legal action, he or she may request free legal aid. The prerequisite is that the person concerned is effectively indigent and that the cause does not lack any prospect of success. In this case, the court costs incumbent to the petitioner are waived. If legal representation appears necessary, the person can also be provided with a free lawyer. The court and attorney's fees may later be reclaimed by the state, if and when the formerly needy party is able to reimburse them.

In criminal proceedings, if convicted, the defendant must pay the costs of the proceedings and his own legal fees. Even in the case of an acquittal, defendants may be obliged to pay the costs, if they have unlawfully and culpably caused the initiation of the proceedings or if they have obstructed their conduct. Otherwise, in the case of a full or partial acquittal, the defendants will be entitled to a reimbursement of their expenses for the appropriate and necessary exercise of their procedural rights. They may also claim compensation for economic losses, which result from the criminal proceedings and, if necessary, compensation for pain and suffering.

The forms of direct democracy

Direct democracy takes many forms and shows many variations. Our categorization in this Handbook of four broad types of direct democracy – referendums, citizens' initiatives, agenda initiatives and recall – also recognizes that there are variations within each type. Within each category, we define a number of variations concerning the specific circumstances under which they might take place, the extent to which the results are legally binding, the rules governing campaigns and finance, and a host of other issues. Throughout the Handbook, we explore the significance of some of these variations in form and practice

with respect to each of the four main categories of direct democracy instruments considered here.

The subjects on which referendums are held vary widely in different parts of the world. In most of Europe and in Australia, referendums are most often conducted on issues of extraordinary political or constitutional significance (e.g. European integration, institutional changes, etc.), and referendums on more day-to-day policy questions are less frequent. Some examples include the referendums on the proposed European Union Constitutional Treaty held in 2005 in Spain, France, the Netherlands and Luxembourg, and the referendums on adoption of the euro held in Denmark in 2000 and in Sweden in 2003. In Latin America and the United States (at the state level), referendums often address a wider array of internal political issues. Referendums have been held in Latin America on subjects as diverse as constitutional reform, political amnesty and the privatization of state industries. In the Republic of Ireland, the constitution requires that any issue involving a transfer of sovereignty must be put to a referendum. In practice, this has meant that all the major EU treaties have been voted on in a referendum in the Republic of Ireland, while this has not been the case in many other EU member countries. In Switzerland, where several votes take place each year on citizens' initiatives or constitutional proposals (see the case study following this chapter), the subjects of recent votes have included issues as diverse as membership of the United Nations (UN), retirement age and refugee policies.

Referendums

Referendums are procedures which give the electorate a direct vote on a specific political, constitutional or legislative issue. Referendums take place when a governing body or similar authority decides to call for a vote on a particular issue, or when such a vote is required by law under the terms of a constitution or other binding legal arrangement. In some cases, procedures also exist which allow citizens or a minority in a legislature to demand a referendum on an issue. The result of a referendum may be legally binding, as determined by the law or constitution under which it is called, or it may be used by the authorities for advisory purposes only.

Mandatory referendums are usually restricted to what are generally considered very important political issues. Too many referendums may reduce both the efficient working of the polity and political stability. Referendums are costly, as they require money, time and political attention. Hence, the use of such resources needs to be considered carefully.

Optional referendums called by the authorities are sometimes criticized from a democratic point of view because they have been initiated for political and tactical reasons:

the referendum instrument has been used not to strengthen popular sovereignty but rather to bypass popular control or even to extend or maintain control by elites. In order to improve democratic legitimacy it is, in general, recommended to regulate the use of referendums either in the constitution or in ordinary, general and permanent legislation and to avoid ad hoc decisions – in particular in jurisdictions that lack a long democratic tradition and a broad consensus on the democratic rules of the game.

It is important to determine how the referendum fits within the legal system and political culture of the jurisdiction. The advantages of regulating referendums in the constitution or ordinary legislation are transparency and greater popular control, which contribute to the democratic legitimacy of referendums initiated by the political authorities. The disadvantage of regulating referendums in the constitution is reduced flexibility, particularly if the constitutional regulation is exhaustive and prohibits any calling of optional referendums. Thus, a balance has to be found between democratic legitimacy on the one hand and political efficiency and stability on the other.

The alternatives presented to the voters on each and every issue have to be considered carefully. The clearest result is obtained if the voters are asked to choose between two alternatives. If a choice between more than two alternatives is really wanted, a vote where the alternatives are rank-ordered could be applied.

The wording of the ballot text can have an important effect on the result and on its legitimacy. In general, the ballot text should be as precise and clear as possible and should have only one goal and one possible interpretation.

Regulation should be considered on how referendums are to be organized and who shall be responsible for ensuring that voting procedures are carried out in accordance with the law. In general, in order to avoid deliberate manipulation by the political authorities, good practice is to apply the same rules in national elections and referendums.

A critical issue to be considered is when a referendum is judged to have passed. General rules about turnout and approval quorums have to be made clear in advance of the referendum. Legitimacy, transparency, fairness and popular acceptance of referendum results are improved if such quorums are specified in the constitution or in ordinary legislation, and not decided upon in an ad hoc way just before each and every referendum.

The question of whether a referendum is to be considered as binding or is consultative only should also be carefully considered and, if possible, specified in a referendum law. A government that calls a consultative referendum and then ignores the result is open to criticism on democratic grounds. A binding referendum however means that sovereignty has

in effect been transferred to the people. Consideration should also be given to the length of time within which the result should be implemented, and whether a second referendum on the same issue is possible. Governments that have called more than one referendum on an issue because they were dissatisfied with the outcome are also subject to criticism for manipulation.

In the hands of the political authorities, a referendum holds both dangers and democratic possibilities. If the political authorities have the power to determine when referendums are held, if they can decide on which political issues a vote is called, if they control the campaign and the information provided for the voters, and if they can interpret the referendum result as they like, referendums become merely a political tool used to serve the needs of the governing party rather than the interests of democracy.

Initiative

Citizens' initiatives allow the electorate to vote on a political, constitutional or legislative measure proposed by a number of citizens and not by a government, legislature, or other political authority. To bring an issue to a vote, the proponents of the measure must gather enough signatures in support of it as the law under which the initiative is brought forward requires. citizens' initiatives may deal with new proposals, existing laws or constitutional measures, depending on the jurisdiction in which they occur. As with referendums, the result of an initiative vote may be legally binding or advisory, depending on the provisions of the law under which such a vote takes place.

There are several types of initiative procedures designed to be concluded by a referendum vote – citizens' initiatives and citizen-demanded referendums (a) to abrogate or repeal an existing law, and (b) to reject a bill that has already passed in the legislature but is not yet in force (not promulgated). Some countries provide for only one or the other of these instruments (e.g. Italy has only the abrogative referendum).

The citizens' initiative, by offering a new proposal, can best serve a function of political articulation, whereas the citizen-demanded referendum functions more as an instrument of political control. A broad range of these democratic functions can best be realized by providing for both types of procedure.

Restrictions on the subjects that are admissible for initiative instruments are often specified in law. An initiative procedure for constitutional amendments should be allowed since constitutions, as 'fundamental laws', should be based on the consent of the people and therefore should be open for discussion and change by parts of the citizenry. With respect to legislation on ordinary political issues, restrictions should not be too narrowly defined;

otherwise initiative provisions would hardly ever be used and could cause frustration rather than offering opportunities. If subject restrictions are employed it is most important that they are clearly formulated and cannot be subject to too much legal uncertainty. A particularly sensitive area is financial matters. If the budget and/or taxes are to be excluded it should be made clear that this will not exclude all legal or political measures which imply some financial costs.

Initiative procedures should be designed in such a way as to offer realistic opportunities for their use. A critical choice is the threshold of signatures required for qualifying a proposal for the ballot. In jurisdictions which require the signatures of 10 per cent or more of registered electors, there is usually very little initiative activity. A lower threshold, perhaps 5 per cent or less, should be more appropriate to the democratic function of the procedures and more conducive to providing additional channels of political participation to supplement representative structures

Agenda initiatives are procedures by which citizens can organize to place a particular issue on the agenda of a parliament or legislative assembly. As with citizens' initiatives, a minimum number of signatures is generally specified by law in order for the initiative to be brought forward to the legislature. Unlike the procedure followed for citizens' initiatives, no popular vote takes place when an agenda initiative is brought forward. The use of agenda initiatives at both the national and the sub-national level in a number of different countries, as well as proposed procedures for the use of agenda initiatives at the transnational level.

When introducing or practising an agenda initiative mechanism it is of critical importance to clearly differentiate this mechanism from petitions. To avoid confusion with other possible direct democracy mechanisms (including the citizens' initiative or the citizen-demanded referendum), key requirements for an agenda initiative must be legally defined and agreed in advance.

In contrast to petitions, which may just deal with general issues or claims, it is recommended that an agenda initiative should address a statutory or constitutional issue by means of a fully formulated draft law or proposed constitutional amendment.

Consideration should be given to the threshold level for qualification of an agenda initiative. A low level may encourage the legislative body to ignore the issue raised, while a very high threshold will make it difficult to qualify.

Because agenda initiatives enable and regulate an institutional dialogue between citizens and authorities, some public financial or logistical support for an agenda initiative effort should be provided.

The call.

Recall procedures allow the electorate to vote on whether to end the term of office of an elected official if enough signatures in support of a recall vote are collected. Although the process of recall is often similar to that of citizens' initiatives, recall deals only with the question of removal of a person from public office, and the outcome is therefore always binding.

The recall, like other direct democracy procedures, has to balance the principles of participation and effective governance. The rights of citizens as well the rights of the officials involved in the recall process must be protected. The difficulty of harmonizing recall procedures with effective institutions of representative democracy is one reason why recall is not used to the same extent as other instruments of direct democracy. Frequent recall votes may undermine representative democracy. However, making the process overly difficult to use may limit its effectiveness as a means for citizens to exercise control over their representatives. The recall interacts with other institutions and rules of representative and of direct democracy; thus the decision to introduce it in a particular institutional setting must consider its possible impact in that setting.

Where recall procedures are permitted, a number of related questions must be anticipated. When an official is recalled, provision must be made for a replacement to be chosen, and this may require an additional election to be held. Holding a replacement election simultaneously with the recall confuses the recall with issues of electoral politics and may have the effect of turning the recall into a competitive election. If a replacement is simply appointed, the effect may be to supplement a direct democracy process with one that is less democratic. While the mechanics of the recall process are often difficult to manage in practice, the logic of recall is consistent with the underlying principles of direct democracy.