B.A. HISTORY - I YEAR

DJH1C - MODERN GOVERNMENTS

SYLLABUS

Unit – I : Constitution - Written and Unwritten Constitution – Flexible and Rigid Constitution - Federal and Unitary Constitution – Separation of Powers.

Unit – II : The British Constitution - The Constitution of the USA - The Constitution of India

Unit – III : The Constitution of France - The Constitution of USSR - The Constitution of Switzerland

Unit - IV: The Constitution of Canada - The Constitution of Australia

Unit - V: The Constitution of Ireland - The Constitution of Japan

Reference Books:

1. A.S.Irish Bhandari, Samersen -Modern Governments
2. Hari Hara Das- Select Modern Governments
3. M.H.Syed- Encyclopedia of Modern Governments
4. J.Kasthuri- Modern Governments
5. Gomathi Nayagam- Modern Governments

DJH1C - MODERN GOVERNMENTS

UNIT - I : WRITTEN AND UNWRITTEN CONSTITUTION

Constitution - Written and Unwritten Constitution – Flexible and Rigid Constitution – Federal and Unitary Constitution – Separation of Powers.

Written Constitution

Features

A constitution which has written rules and principles is called a written constitution. It is found in the form a document. The rules of this constitution are called articles. It is enacted by a specially created body for that specific purpose. It is a product of deliberation. Each article of the constitution is framed after careful consideration and elaborate discussion. It is enacted during a specific period of time. The articles are numbered and arranged in order. The constitutions of the U.S.A, the U.S.S.R. Switzerland. France, India and Japan are some of the examples for this kind of constitution.

Merits

A written constitution is clear,. As the articles are arranged in a document it is easy for anyone to read and understand. The people can easily understand the national objectives by reading the constitution. As the articles are clear the three branches of the government would function within their jurisdictions. There is the possibility of drafting a constitution acceptable to the people as the members of the constituent assembly would know the public opinion. A written constitution would protect the rights of the people effectively. Changes could be made in accordance with the prescribed procedure.

Demerits

A written constitution is a product of a particular period.It is an artificial product. All the members of the constituent assembly need not be constitutional experts. The framers may lack foresight to assess In she problem. which may written constitution. Sometimes varied interpretations are clear a single article. A. written constitution is said to come out moded within ten years from the date of its inception.

Un written Constitution

Features

An unwritten constitution is not seen in the form of a written document. It is not a product of a particular period. It is a product of evolution. Conventions, customs and usages play a dominant role in it. The constitution of England is the only example for unwritten constitution. Once the political system in England was absolute monarchy. With the advent of democractic ideas there arose conflicts between the monarchy and the parliament. In every such conflict the parliament won. Thus by different political events the constitution of England grew over a period of centuries. Political events, clashes, battles and revolutions caused these changes.

Merits

An unwritten constitution is traditional. It is a product of history. Hence it commands the respect of the people. The political institutions which are centuries old could easily earn the respect of the people. An unwritten constitution is flexible. There are two kinds of laws as constitutional laws and ordinary laws. Changes are made easily to suit the changing ideas of the people. This is a constitution which rightly reflects the sentiments of the people. There is no possibility of contradictory interpretations.

Demerits

An unwritten constitution depends much on customs and conventions. To operate such a system the people should be politically aware and vigilant. There should not be much social religious and economic disparities among the people. Its flexibility may be misused by the persons in power. It is not suitable for a big nation like India. It is also not suitable for federation Constitutional conflicts arise even in a written constitution. Such conflicts would be abundant in an unwritten constitution:

Estimate for this classification

Every written constitution has certain unwritten elements. For example there are conventions un written constitution of the U .S .A and India .The unwritten constitution of England has many written elements. Magna Carta and other agreement s made between the people and king were written. The Acts passed by the Parliament are in the written form. the classification has written and unwritten is described unsuitable .There is neither fully nor fully unwritten constitution .Hence some thinkers advice the classification as documentary and non –documentary. There is another classification evolved as enacted. An evolved is one which has evolved in course of time .An enacted constitution is one which has enacted by a special body .The classification as evolved and enacted is more or less similar to the classification as written and un written .

Flexible and Rigid constitution.

Rigid constitution

A constitution cannot remain unchanged. Changes may be needed due to various reason. Each constitution prescribed a position amendment, The constitutional amendments are the formal instruments of changes. A constitution may prescribed an easy procedure to amend itself whereas another constitution may a prescribe a difficult procedure. A constitution which does not accommodate changes easily is called a rigid constitution. For example, the constitution of the U.S.A. is rigid .It is prescribes a difficult procedure of amendment Each constitutional amendment bill is to be passed with the support of at least two thirds majority is both the houses of congress and it is to be accepted by at least three fourths of the states . Similarly the Swiss constitution is also rigid.

Merits

A rigid constitution refuses does not accepted changes easily .This ensures stability. The people in power cannot change the constitution to suit their will and wish .The right of the people

is strongly protected. In a federation the Central government is to be restricted from encroaching on the power of the states. This could be effectively done only by a rigid constitution. .

Demerits

A rigid constitution refuses to bend easily Refusal to bend may result the break down. If the ideas of the people are not accommodated revolutions may occur. Rigidly sometimes stands as a hurdle on the way to progress this results in the public aversion of the constitution.

Flexible Constitution

Features

A constitution which accepts changes easily is an a flexible constitution. In the case of an unwritten constitution .there are no difference between parliamentary laws and constitutional. Every law brings changes. There is no need for adoption of special and difficult procedure. Hence the constitution of the England is flexible. The constitution of New eland does not prescribe a difficult procedure for constitution amendments. Hence it is also flexible.

Merits

A flexible constitution accepts changes easily. Hence the people are satisfied with it . The possibility of the revolution is limited. There are no complex and difficult procedures to be followed. Hence the people easily understand it.

Demerits

A flexible constitution may be misused by the person in the power. They could be make changes often to suit their wants. Frequent changes would result in instability. A Flexible constitution is not suitable for a federation. The rights of the people may not be effectively protected.

Estimate of this classification

The classification based on the adaptability of constitution is not absolutely right . Some of the constitutions prescribed a difficult procedure of amendment ..In is done easily For example in socialist countries like the U .S .S .R. the decision of the Communist parties are it may easily carried out .Hence it may not be right to be soviet constitution by looking at the formal procedure of amendment. Even in India constitutional are easily done due to the majority of ruling party in the parliament. In the Switzerland are made by enacted ordinary laws. Hence this classification is also said to be thoroughly correct.

Federal and Unitary Constitution

A government in a state has many powers. The Powers are exercised by the for the welfare of the people For the government is designed in a particular form . For the exercise of the powers the government is designed in a particular form. Based on the form of government, a classification may be made. If all the powers are enjoyed by one government at the national level , it is Unitary government .If all powers are divided into two as national land regional and entrusted to two sets of the governments it is federal. The powers of interests are given to regional units. Even modern state constitutional is either Unitary or Federal.

Unitary

A unitary state is one organized under a single government. All governmental power are exercised from one centre. The Central Legislature, Executive, and judiciary are supreme. They do not share powers with any other agencies. There may provincial bodies as local government. But they are subordinates to the central government. In a unitary state the legislature is supreme .All laws needs to the whole country are enacted by it. Unitary form of government is suitable for small countries like Britain and France.

Merits

Unitary form of government promotes stability and unity. As there is only one government, uniformity of law and administration is maintained. Citizens is loyal to the government. Their loyalty is not divided between governments as in a federal state .Policies are decided from one centre. In case of any need for changes. The central government can make them without difficulty. This ensures flexibility. flexibility enables the people to have the changes desired by them. Moreover, administration from one centre is simple. Decision cannot be quickly and implemented. In a federal the central government may have to consult the states on may matters. Decisions can not be taken quickly. Federal system is complex. Unitary system is simple. An ordinary man can understand unitary system easily. Unitary system is less expensive. Only one government is maintained under unitary system. So the expenses of the governmental machinery are limited. In a federation the expenses are more as two sets of governments are to be maintained. The low cost of administration is also merit of unitary form of government.

Demerits

There are some demerits in the unitary form of government.AS there is only one government, there is the possibility of central despotism If the leaders at the center craze for the power. They may misuse their posits on. I n the unitary form of the people at distant areas may not catch the attention of the government. Regional interest and ideas are represented correctly .The interest of the provinces may be left unattended. There are no provinces for local initiatives. Local talent is not given opportunity. In the case of any internal threat or disturbance. the central

government will be that only target .on such occasions there is danger for the survival of the government .The administration in the whole country are paralyzed by the revolution at the capital .Unitary system is the form of big countries like India .

Federal

The term federation is derived from the Latin word foedus. It means entail features. First of there are two sets of government. There is a national and regional government. There is a written and rigid constitution. The judiciary acts as the guardian of the constitution. The constitution contains the clear division of powers between a federal government and regional governments. Power of the national interest is given to the national government. For example defense, currency, foreign policy of nation at importance. These are normally given to a central government in a federation. Police, health education etc at the regional level is given to the regional governments. In a federation the constitution is supreme. The U.S.A the Switzerland the U.S.S.R, India are some among them.

Merits

A Federation scope for small states to come together and develop. In a federation there is a scope for autonomy of the local units The constitution lay down the jurisdiction of the central and regional governments .The jurisdiction of the unit protected by the constitutions. Hence local interest may be importance by unit. Local leaders have a chance to participate in the administration of the units. Federalism avoid central despotism. power are the decentralized. Federal form of the government is suitable for big countries. Countries which have a biodiversity in race religion and languaral and culture could maintain unit in diversity by federal setup. Federal form of government provides a vast field for political experimentation.

Demerits

A federal form of government is expensive. The structure is complex. The process of decision making is difficult .The presence of two sets of governments give room for dispute and controversies. The loyalty of the people is divided. The administration of the federal government is not efficient as the unitary government When two different political dirties become ruling parties at the center and states, problems would arise. Regionalism and other elements would develop against unity.

Certain constitutions with a federal features are called federal constitutions. The constitution of India is a federal constitution with unitary features. Hence it is called a quasi-federation. Usually the federal system is suitable for big nation with people of different language and religion .However two much diversity may a problem of unity. The suitability of a federal system or unitary system depends upon the nature of the people and their political culture .Even the federal features of one constitution may differ from the other to some extent.

Separation of powers

Meaning

A government may be divided into three branches known as legislative; executive and judiciary .The power of government may also be divided as legislative, executive and judicial .the legislative power of the government to implement the laws. The judicial power help the government to maintain justice and to avoid committed either at the time of legislation or execution The theory of separation of powers hold that these three functions should be formed by three different bodies. Combination of two or three the power in hand or single or person or body would lead to misrule or tyranny. Maintain liberty the legislative executive judicial should be separate bodies and their powers should also be separate .This idea is the essence of the theory separation of powers. Aristotle Cicero and Polybius were the earlier contribution to this theory.

Montesquieu Theory

Montesquieu made the clear distinction of three sorts of function of the government. He made of the systems of Britain and France .He felt that the people of Britain enjoyed civil liberties use the English judges were independent of executive. The English parliament was supreme in law making .Hence he thought a system would help the people or people who want to prevent civil liberties. According to Montesquieu when the legislative executive powers are united in the states same person or body of the person they can be so liberty .In the same can be no liberty if the judicial powers are not separated from the legislative or executive .If the powers are joined with the and judges would become arbitrary as they could enact or laws .If the three person are combined in one person orb of person would be an end of everything . This is the essence of the idea of Montesquieu.

The theory and the US constitution

The U.S constitution is based on the theory of separation of powers . Article 1 of the U.S constitution vest all legislative powers in the hand of congress .Article 2 constitution vest all executive power in the hand of the president. Article 3 grant of all judicial power of all the supreme court and inferior courts. The constitution power the presidential form of the government. the president in the head of the state. He has a fixed term. He is a neither member of the congress nor the responsible to it .He does not accept the meeting of the congress and does not answer the question of the member .He cannot remove a post is simple no confidence motion passed in the congress .He cannot dissolve the lower house of the congress .Thus the legislative and the executive are the independent of each other. The president is at the liberty within his jurisdiction .It is not controlled by a president .The judiciary is also the independent. But they cannot removed either by him by the congress. They can be removed only by impeachment .Hence the U.S .A, three branches are separated from each other.

Checks and balance

In U.S.A. the congress is separated the president and the president from the congress. However a complete separation would lead to trouble and dead locks .Hence the U.S.A, constitution provide certain check and balance for the smooth of running of the government .Though the president is not a member of the congress he cannot send of avoid bills .His message are seriously consider by the congress. Moreover no bill will become law without the assent .He has veto power .So he can control the congress. The supreme court can check the congress to some extent .by its power of judicial re can declare any law as constitutional .The judges may be impeached by congress .The president has power to make treaties .But these treaties are to be fortified by the congress .The president can summon the emergency session of the congress .The congress can impeach the president on grave offences .In this manner the U.S. constitution provide certain check and balances.

The theory and British constitution

The British constitution is a parliament form of the government. In a parliament form of the government is difficult to the theory separation of power. In a Britain crown is a nominal head .The is real executive is a cabinet headed by the prime minister. The prime minister and other minister should be member of the parliament .They should attented parliament meeting and answer the question of the member .If a no- confidence parliament motion is passed in the house of commons the cabinet loss its life .Even a government bill is defeated in the house of the common cabinet has to resign .The bill are prepared and introduced by the minister .The parliament is convened and prorogued by the crown .The crown has the power to dissolve the house of commons .The leader of the majority in the house of common become the prime minister .Then the legislature and executive of the Britain and interconnected .By delegated legislation the parliament delegates power of legislation to the cabinet. The house of upper house of the parliament .It is also the highest house of the parliament .It is presided over by a lord chancellor who is a member of parliament .Thus a part of legislature is also a part of judiciary and a member of judiciary. All the member of executive are the member of the legislature .The crown sign all bill passed by the parliament .The crown summons and porogues the parliament .The crown is the normal of chief executive .The crown is said to the fountain of justice Thus in Britain there is a fusion of separation of powers .

Estimate

The theory of separation of powers was given importance by Montesquieu to provide liberties of to the people. In modern times the democratic constitutions are drafted with those ideas. Hence the theory of separation of powers is given attention by the farmer to the possible extent .We cannot say the theory is implemented vigorously in any constitution Full implement of the theory would create a problem .The government is an organic whole .It is not separate to whole this organ completely independent and separate. Modern government have created certain new situation. These situation make three branches inter –dependent .Hence it is not possible to think in terms of complete separation of the three branches .The separation it is implemented in modified manner suitable to the form of government and the nature of the people of nation.

UNIT II : THE BRITISH CONSTITUTION CONTENTS AND THE NATURE OF THE CONSTITUTION

The British Constitution - The Constitution of the USA - The Constitution of India

Content of the Constitution

The British constitution contains many written elements. The sources of the constitution have to be culled from a welter of charters, Statues, judicial decisions, common law and conventions. The following are some of the component parts of the constitutions.

1**. Charters, Petitions, Statues and treaties**

The scattered fragments of the constitution are found in the Magna Carta [1215] the petition of rights [1689] the Bills of rights [1689] the Act of settlement [1701], the Act of the Union with the Scotland[1707], the act of Union with Ireland[1801], The Statue of West minister [1931], etc

2**. Statues**

Apart from the statues mentioned above which are landmark of a far-reaching significance in the constitutional growth of a country, there are other ordinary statues passed by parliament from time to time which are of less significance but useful and essential element to the growth of the parliamentary government in Britain. The various Reform Acts ,for example, attempted to extend the franchise ,and the parliament Acts of 1911and1949curbed the power of the House of lords .

3**. Judicial decisions**

The Constitution of Britain has grown by the decisions rendered by the judges in interpreting the charters, statues and the the common of the land. Dicey was not far from the truth When he quoted that the English Constitution is a judge –made constitution.

4. **Common laws**

The common law forms another important sources of the constitution .It is a body of judge-made rules .The sphere of the action of the parliament ,the prerogative power enjoyed by the King and the fundamental rights of the people like freedom of speech and freedom of Assembly are derived from the common laws of the land .

5. Conventions

Conventions Which are unwritten laws from an essential part of constitution .Such conventions cover a Wide range of Customs, Usage and precedents .The British constitutions stripped off its conventions would be dwarfed in form if not constitution.

6. Commentaries on the Constitution

The Last but by no means the Least are the commentaries on the constitution by the eminent jurists like Anson`s `laws and the custom of the constitution`, May`s `Parliamentary Practice and Dicey `s `Laws of the Constitution`.

Nature of the Constitution

The British Constitution provides a typical example of a federal constitution. The Constitution can be changed according to the needs of the time in the same way as an Ordinary bill is passed .It is Essentially Unwritten. But there are some Written elements in it like the Magna Carta and the bill of Rights .It is Unitary in essence there by implying that there is no surrender of the sovereign authority to the Local bodies

One of the most important features of the Constitution is the Sovereignty of Parliament. Parliament is supreme and no court can declare the laws passed by it unconstitutional .The parliament can Legally do anything and actually do many thing. The Unique position of the parliament is sometimes humorously remarked by saying that it ‘’can do anything except make a man and women a man’’. The British frame work provides a parliament form of government .Though monarchy still survives a Britain; it is only a limited monarchy. It is a cabinet dominated by the prime minister rule the country as long as there is aa pledged majority behind it.

Another noteworthy features is the great disparity between theory and practices of the constitution the constitution say one thing but function entirely in a different way. The King for example, is the Foundation of Justice. But the crown is no longer than the Foundation of Justice except for the cases which some before the Judicial Committee of the Privy Council. Rule of law is another important feature of the constitution.

The King

The King can do no wrong

“The King can do no wrong” is a very important maxim of the British Constitution. The King cannot be used in a court of law. The King answers no responsibility as all the actions of the King are carried on by the ministers responsible to parliament. Every act of the Crown requires a ministerial countersignature. He is not amenable to the jurisdiction of any court of law. He cannot be arrested even if he shoots down his Prime Minister. His property cannot be seized for default of payment and he cannot be made a defendant in a law-suit. But the immunity enjoyed by the Crown is considerably altered by the Crown Proceedings Act of 1947 which has put the Crown on the same footing as that of any other private subject of His Majesty.

Position of the king

This King or the Queen is the ceremonial head of the State. The British Crown is a hereditary institution which parliament regulates by rules of succession. The existing rules were set up by the Act of settlement 1701 laid down that if William died without issues, the Crown should pass on to Queen Anne and after her to Princess Sophia of Hanover, the Protestant granddaughter of JamesI. It was further stipulated in the Act that only Protestants are eligible to the office of Kingship. The Statute of West minister passed in 1931 required the assent of the Parliament of all the Dominions as well as that of the United Kingdom to bring about any change in the law relating to succession As Edward VIII married Simpson, a Catholic lady, the parliament passed the Abdication Act in 1936 denying the right of succession to his descendants.

"Elizabeth II has succeeded to the throne held before her by her father, granddaughter and a long line of ancestors so that it is natural to say that Kingship is hereditary. Elizabeth II reigns not only by the grace of God but also by an act of parliament. The fact that parliament regulates succession to the throne is clearly brought out in the wording of the oath of allegiance taken by the members of parliament "I will remain faithful to Her Majesty Elizabeth II, her heirs and successors as by law appointed". By custom succession to the throne is based on the principle of primogeniture by which the elder son is preferred to the younger and the female in the absence of a male heir. After the abdication OF Edward VIII, George VI came to the throne. As he had no male issues, Elizabeth II succeeded to the throne. When a new monarch ascends the throne, a civil list is granted by an act of parliament to his or her maintenance till the reign ends. Queen Elizabath II receives an annual grant of £ 3,541,300.

Powers of the King

The King wields legislative, executive and judicial powers. The Crown is the chief executive head of the State. The parliament in Britain consists of the King and the two Houses. He summons, prorogues the parliament and dissolves the Lower House. The King is the fountain of justice and thus forms an integral part of the judiciary. The enumeration of the above mentioned ordinary, and extraordinary powers of the King will lead one to believe that the powers of the King are absolute. But the fact remains that the King is only the nominal executive, the ornamental head of the state. The King as a person has no real powers in the government of the country. All such powers are exercised by the Crown on the advice tendered by the Cabinet headed by the Prime Minister. The King governs but does not rule. But the King is not without influence and power in the government of the country. The King has one function of great importance and that is to appoint the Prime Minister. Thus the King takes the first step to constitute a new government when a gap is created. The leader of the party commanding a majority in the House of Commons is chosen as the Prime Minister. This power of the King assumes greater dimensions when no party commands a majority in the House or when the majority party has no accepted leader. When Harold Macmillan resigned, Queen Elizabeth II

selected Alec Douglas-Home, a member of the House of Lords, as the Prime Minister and not someone from the House of Commons.

Executive and administrative powers

It is one of the prerogatives of the highest executive authority in a State to make appointments. The King makes appointments to the high offices of the State. He appoints ministers, ambassadors, military, naval and air-force officers, senior civil servants, etc., on the advice tendered by the Prime Minister. The King can even dismiss them except the judges and a few other officers. The King has supreme control over the army, navy and air- force. He can declare war and conclude peace without getting the consent of Parliament. But the money required for the war should be approved by Parliament. The King controls and supervises the local governments. Diplomatic relations with foreign countries are conducted by the Crown. Relations with colonies, dominions and all the Commonwealth countries are managed and conducted by the Crown. As the King is the fountain of honour, he wields the supreme power of conferring honours and titles.

Legislative powers

Parliament in Britain consists of the King, the House of Commons and the House of Lords. The King summons, prorogues the parliament and dissolves the Lower House. The new parliament is greeted by the King by a speech from the throne. But the King as a person has no real power in these matters. It is for the Prime Minister to decide when parliament should be summoned, prorogued and dissolved. The opening speech itself is written by the Prime Minister to be read by the King. So it reflects the policy of the Cabinet and not that of the King. When a bill has been passed by both the House of Parliament, it does not become law unless the King gives his assent. The assent of the King is only a picturesque formality and he never exercises his veto power. If he does exercise his veto, he would be under the necessity of signing his own death-warrant because parliament is sovereign in the land. The growth of delegated legislation has considerably increased the powers of the Crown. Parliament lays down the general principles and it is for the Crown to supplement them by Orders-in-Council to take effect as law.

Judicial powers

The King is the fountain of justice and in that capacity wields the power to appoint judges and grant pardon and reprieve. The King cannot grant pardon in cases involving a civil wrong or impeachment. Though the King appoints judges, he cannot dismiss them and that can be done only by an address of both Houses. The King is, now, no longer the fountain of justice except in those cases which come before the judicial Committee of the Privy Council.

Miscellaneous powers

The King is the head of the established Church of England and in that capacity appoints archbishops, bishops and other church dignitaries. All measures passed by the National Assembly of the Church of England require the assent of the King for their validity. The Crown is the highest court of appeal for all ecclesiastical cases.

The three informal rights of the King are more important than the formal rights. As Page hot points out, "The King has three rights-the right to be consulted, the right to encourage and the right to warn". Ordinarily the King is consulted in all important matters, "The King after a reign of several years ought to know much more of the working of the machine of government than any other man in the country. A King if he is intelligent, may in course of time become a reservoir of vast political experience Ministers come and go, but the King goes on for ever. He is above party politics. He need not bargain as the ministers do for places and honours. The advice tendered by such an experienced. King will be certainly taken by the ministers who are but amateurs in the field. The advice given by Victoria and George V bears eloquent testimony to the position of the king as an unrivalled store house of information. If the policy of the ministry is heading the country to a disaster, the warning given by the King will not be lightly ignored by the ministers. Finally, if the ministers are carrying our their duties on proper lines, it is the right of the King to encourage them.

Why monarchy survives in Britain?

A strame paradox of the British Constitution is that the powers of the King have disappeared in the thin air but those of the Crown have steadily grown in the past hundred years. So the pertinent question naturally asked is that if the King is only the ornamental head of the State, why should Kingship be retained in England.

The British constitutional monarchy is a deeply founded and dearly cherished institution. To abolish such an institution would provoke great resentment among the people. The Britishers may even damn the government to cheer the King. It is sentiment that keeps the wheels of monarchy rolling. British monarchy is only a convenient device for securing the obedience of the people. "The monarchy gives a vast strength to the Constitution by enlisting on its behalf the credulous obedience of enormous masses".

The British King is a symbol of unity and focus national patriotism. "Government is not merely a matter of cold reason and prosaic policies. There must be some display of colour, and there is nothing more vivid than royal purple and imperial scarlet. During the present century, therefore, we have placed almost an intolerable burden on the royal family. They must not only head subscription lists and appear on State occasions; they must, also, inspect this and that, open this and that, lay this stone and that and undertake a thousand other dull tasks in a blaze of publicity. We can hardly blame Edward VIII if he preferred to make toffee in the kitchen".

It is apply said, "with the King in the Buckingham palace the people sleep the more quietly in their beds". The British monarchy is a hereditary institution with traditions of loyalty and obedience attached to the throne. It is easier for a King to elicit obedience and loyalty than a constitution or government which cannot be heard or seen. The vast bulk of the people are interested in the King as a person as is demonstrated by the vast crowds which throng whenever there is an opportunity of seeing him. "He therefore supplies the picturesque element which catches the popular imagination far more readily than constitutional arrangements which cannot be heard or seen".

The King along with the members of his family wields great influence and plays a vital role in the social fabric of the country. They set fashions and models for the people to emulate. Their contribution in the field of art and literature is immense.

The British sovereign is the symbol of Imperial unity. "He is the magic link of the Empire". He is an essential link with the self-governing Dominions. In the Commonwealth of Nations, the King stands as an indispensable symbol of unity.

The survival of Kingship has in no way proved an obstacle to the free play of democratic principles. The British monarchy costs the nation only a small fraction of the budget. The amount is negligible when considering the returns on the investment.

Sentiment is not the only consideration that keeps the wheels of monarchy rolling. There are practical difficulties in making an alternative arrangement IF MONARCHY IS ABOLISHED IN Britain. It should either be of the Presidential model of America or of the Presidential type that existed under the 3rd and 4th Republics in France. As the two alternative arrangements are wrought with their own drawbacks and shortcomings, the average Englishman prefers a known institution which has been so carefully nursed since the Anglo-Saxon days to an unknown and alien institution in a land when abounds in customs and conventions. Even some of the Labour leaders who are staunch Republicans according to taste are for retaining Kingship in its present set up, as they know fully well the difficulties in providing for an alternative set up. "If the Crown". As President Lowell points out, "is no longer the motive power of the ship of the state, it is the spar upon which the sail is bent, and as such it is not only useful but an essential part of the vessel". With malice towards none and charity for all, the wheels of monarchy keep rolling on.

THE CABINET

Composition

The Cabinet has a close connection with the Privy Council and the ministry and as such the distinction among them should be clearly brought out. The Cabinet consists of about 20 members and it forms a very small and inner circle of the Privy Council which consists of about

380 members. All members of the Cabinet are Privy Councillors but not all Privy Councillors are members of the Cabinet. The Ministry forms the outer-ring of the Cabinet. The strength of the Cabinet varies from time to time. All Cabinet members are ministers but not all ministers are Cabinet members.

A novel experiment was conducted during the First World War by forming a War Cabinet of 5 members later raised to 6. A similar experiment was conducted during the Second World War.

Formation of the Cabinet

The sovereign takes the first step in the formation of the Cabinet, the real executive head or the State, when a gap is threatened. The usual course is for the King to send for the leader of the majority party in the House of Commons and appoint him Prime Minister. It is the duty of the Prime Minister to submit a list of ministers to the sovereign for approval. The task of selecting his colleagues is a hard task indeed, because the Prime Minister has to take into account so many considerations before selecting team of really capable men including a variety of talented people who are quite willing to work under his leadership. This is indeed a laborious and responsible task. Though the selection of the members of the Cabinet rank rests with the Prime Minister, he cannot, however, exclude the Chancellor of the Exchequer, the nine important Secretaries of State, the Ministers of Defence and Labour, the Lord Chancellor and the Chancellor of the Duchy of Lancaster and the President of the Board of Trade.

Characteristics of the Cabinet system

Exclusion of the King

The sovereign is excluded from the meetings of the Cabinet. This practice dates from 1714 when the then reigning monarch George I ceased to attend Cabinet meetings as the English language was alien to him. He did not come to preside over Cabinet meetings. This, of course, made the King irresponsible and the responsibility was shifted on to the shoulders of the Cabinet ministers. The absence of the King necessitated a recognized leader to preside over Cabinet meetings and such a leader became the Prime Minister. Even though the King ceased to preside over Cabinet meetings, he has the right to know the important decisions of the Cabinet, ask for explanations and may ask the Cabinet to reconsider issues.

Close correspondence between the Cabinet and the Commons

The practice of inviting the leader of the party commanding a majority in the House of Commons to form the Cabinet and the rule that every minister must be a member of one or the other house of parliament secure the realization of this principle.

Political homogeneity

The principle that members of the Cabinet must come from the same party or at Least share the same political views is essential to maintain unity in counsel and action. If at all there are any minor differences, they should be sunk and should not be made known to the public. If the Cabinet is drawn from different political; parties professing different principles, coalition ministry is the only alternative. Coalition ministries are proverbially weak and notoriously unstable. There will be no team spirit to inspire them with oneness of propose. Under such an eventuality, the Cabinet is bound to be short-lived.

Collective responsibility to the House of Commons

The Cabinet is collectively responsible to the House of Commons for e very policy and action and it continues in office as long as it commands the confidence of the House. If it loses the confidence of the House, the latter can compel the Cabinet to resign. The Cabinet members as a rule float or sink together it tenders its advice as a single unit and presents a united front to the King as well as to the parliament. "The Chancellor of the Excheq2uer may be driven from office by a bad dispatch from the foreign office, and an excellent. Home Secretary may suffer for the blunders of a stupid Minister of War". Every member is responsible not only for his acts but also for those of the others and cannot turn round and say that he was coaxed and cajoled. Apart from the political responsibility to the House of Commons they are responsible, in law, to the Crown because they are appointed and dismissed by the Crown. As the other officers of the government, they are also usable in a court of law under the Rule of Law.

Ascendancy of the Prime Minister

Although the members of the Cabinet stand on an equal footing with the Prime Minister are speak with an equal voice on the principle of 'one man one vote', he is primus inter pares (supreme among equals) and occupies a position of exceptional and peculiar authority. If the Cabinet is the steering-wheel of the ship of the State, the steersman is the Prime Minister. He is the keystone of the Cabinet arch. "He is central to its formation, central to its life and central to its death". He appoints and dismisses ministers with the consent of the King, presides over Cabinet meetings, settles disputes between departments, supervises all departments especially defence, and takes special interest in foreign affairs. He is the leader of the House of Commons. He is the channel of communication between the Crown and the Cabinet. He enjoys wide patronage. To crown all, he wields the supreme power of dissolution of parliament. With the pledged majority in parliament, he can alter the laws, impose and repeal taxes and employ all the forces of the State-an authority greater than that of the American President.

Functions of the Cabinet

The functions of the Cabinet have been clearly stated by the Machinery of Government Committee. They are: (1) final determination of the policy to be submitted to parliament, (2) the

supreme control of the national executive in accordance with the policy presented by parliament, and (3) the continuous co-ordination and delimitation of the authorities of the several departments of State. On a detailed analysis of the above points, the following functions can be deduced.

Dictation of Policy

It is for the Cabinet to dictate the lines of national policy. Those who play the piper shall prescribe the tune. The Cabinet chalks out the policy to be followed at home and abroad. It is not easy for the President of the United States of America-the real executive head of the State-to get approval for his policy in the Congress. It depends upon 'Senatorial Courtesy'. But in the case of Britain, the Cabinet not only formulates the policy it pleases but also pilots it safely and surely in the parliament. This is because it has a pledged majority behind it in the parliament. This is because it has a pledged majority behind it in the Parliament.

2. Transaction of business

It is for the Cabinet to decide as to what business should be transacted in parliament. The Cabinet prescribes the time-limit and determines what to decide and how to decide. It takes up complete responsibility for the detailed preparation of practically all legislative proposals submitted to parliament. It is the custodian of the public purse. It is responsible for the whole expenditure of State and passes money-bills.

3. Partronage

The Cabinet is the chief custodian of the executive authority of a State. It is one of the prerogatives of the highest executive authority of a State to make appointments. Even though the King is the executive head of the State, it is the Cabinet which enjoys the power of patronage.

4. Responsibility

The Cabinet ministers are responsible for every detail of the administrative work. They are collectively responsible to the House of Commons.

5. Co-ordination

The Cabinet is the only office provided by the English system for co-ordinating the work of various departments. With the enormous growth in the functions of the government and the wide range of field it covers, there is every possibility of duplicating functions. To avoid friction, overlapping and waste, the Cabinet admirably co-ordinates the work of various departments.

THE PRIME MINISTER

Selection of the Prime Minister

Immediately after a general election, the King sends for the leader of the majority party in the House of Commons and the King has no other alternative but to appoint him Prime Minister. A convention was set up in 1923 and it required that the Prime Minister should belong to the House of Commons. But this convention was broken in 1963 when Queen Elizabeth II appointed. Alec Douglas-Home, a member of the House of Lords, as the Prime Minister after the resignation of Harold Macmillan.

Position

In the celebrated words of Lord Morley, the Prime Minister is the keystone of the Cabinet arch. If the Cabinet is the steering-wheel of the ship of the State, the steersman is the Prime Minister. In the words of Laksi, "He is central to its formation, central to its life and central to its death". According to Sir William Vernon Harcourt, the Prime Minister is inter stellasluna minors-a moon among lesser stars. He is not merely primus inter pares. "He is not even as Harcourt said inter stellas Luna minors. "He is rather a sun around which planets revolve". "He is in fact though not in law, the working head of the state endued with such a plenitude of power as no other constitutional ruler in the world possess, not even the President of the United States".

Powers of the Prime Minister

1. Patronage

As the keystone of the Cabinet arch, the Prime Minister wields enormous powers. In the exercise of his powers, he is more or less a dictator. The government is the master of the country and the Prime Minister is the master of the country and the Prime Minister is the master of the government. He uses his discretion in the selection of his colleagues. It is one of the prerogatives of the highest executive authority of a State to make high appointments. The patronage exercised by the Prime Minister is wide indeed. He confers titles of honour, creates peers, and appoints bishops, ambassadors, judges, heads of departments, etc.

2. Policy-maker

As the chief executive authority of the State, he dictates the lines of national policy. As the leader of the House of Commons, he keeps his hands on the pulse of the House. He controls the activities of the members of his party. He exercise a close control over the party whips. Though the Cabinet is formed out of the House of Commons, the Cabinet headed by the Prime Minister can destroy its own creator. The rigidity of the party system, collective responsibility, exclusion of the King, delegated legislation and the growth of administrative justice have all paved the way for the ascendancy of the Prime Minister. He wields the supreme power of

dissolution. His party commanding a majority in the House decides the course of action in the parliament and he controls his party. Even the opening speech from the throne is written by the Prime Minister and as such it reflects the policy of the Cabinet headed by the Prime Minister and not that of the King. Parliament is sovereign in Britain. If parliament can legally do anything and actually do many things, it is for the Prime Minister to decide what it should do, when it should do and how it should do.

3. To make and unmake a government

The most important power of the Prime Minister is to make and unmake a government. It is within his power to make nominations to compose the ministry. Though the King is vested with the power to summon, prorogue and dissolve the parliament it is the Prime Minister who decides when parliament should be summoned, prorogued or dissolved. He is central to the formation of the Cabinet, central to, its life and central to its death.

4. Guide to the Cabinet and adviser to the Crown

The Prime Minister is the guide to the Cabinet and as such controls its activities. He is the link between the King and the Cabinet. He interprets the opinions and decisions of the both and transmits the one to the other. He presides over Cabinet meetings and controls its proceedings. He irons out differences between the ministers. He co-ordinates the work of the several ministers. When quick decisions have to be taken with lightning speed in regard to foreign affairs, there is seldom time to summon a meeting of the Cabinet. In such cases, decisions are taken by him independently in consultation with the Foreign Secretary. This power assumes greater dimensions in times of war. He is the chief adviser to the Crown.

5. Influence as leader of the nation

As the leader of the nation, he exercises a profound influence over the people. When stirring events are on foot, the people look to the House of Commons for the redress of their grievances. As the leader of the House of Commons, his decisions and pronouncements have a soothing effect. He always keeps his hands on the pulse of the nation to elicit support for his policies.

The Prime Minister and the American President Compared

Both represent the real executive heads of their countries. Exercise considerable powers and shape the destinies of their nations. They are the two most powerful functionaries in the world. Yet there are evident points of difference between the two-one being a fixed executive and the other parliamentary. The differences are:-

1. While the American President is indirectly elected and is irremovable for four years, the British Premier is, in law, nominated by the King, but elected indirectly by the people at the polls for a period of 5 years, retaining his position so long as he commands a majority in the House.

The American President can serve only two terms. The 22nd amendment stipulates that he can be re-elected only once, but in Britain any person can become Prime Minister for any number of times provided he can inspire trust and confidence in the people.

2. The President is merely the head of the executive department, but the English Premier is not only the head of the executive but the leader of the legislature as well. Even if the President happens to be a man of less than first-rates ability. He is the head of the nation and excites interest and exerts authority. But the English Premier can excite similar interest and exert similar authority only when he is striking personality with sterling qualities of leadership.

3. While the British Premier with a majority can get any bill passed by the legislature, the American President may not always do so. Thus the British Premier has greater powers than the American President in matters of taxation.

4. The sphere of action of the President is much more restricted than that of the Prime Minister, but within that narrow sphere he is absolute, for he need not consult his Cabinet or accept its advice as the English Premier. While the President is the master of his Cabinet, The Premier is only primus inter pares-supreme among equals.

5. One decisive advantage which the Prime Minister of Britain has over the American President is that he can control and guide party members in the legislature. The rigidity of party discipline and the supreme power of dissolution are two effective weapons used by the Prime Minister to bring the insurgent party members into line. These two weapons are quite unknown to the President. The chief weapons used by the President are his power to appeal to public opinion, the judicious distribution of patronage and veto. But these are comparatively weaker weapons to those stupendous ones wielded by the Prime Minister.

6. The President of America is more than the Prime Minister in the sense that he is a fixed executive. Once elected, he continues in office for a period of four years, within which period he can be removed only be impeachment, which has not so far occurred. He is not bound by the advice of his Cabinet. He dominates the political scene like a colossus and the voice of the members of the Cabinet is only a cry in the wilderness which may or may not be heard. But the British Prime Minister has no fixed term of office. He can continue in officer for a period of 5 years, provided there is a pledged majority behind him. If he loses the confidence of the House, his ministry resigns, parliament would be dissolved and fresh elections take place. So his office depends upon the solid majority behind him. But the American President sticks to his office, for a period of four years, as firm as the rock of Gibraltar.

7. The American President is less than the Prime Minister in the sense that he has to put up with the insults from the Congress. America did not join the League of Nations because the Senate refused to ratify President Wilson's action. Sometimes his measures may be declared unconstitutional by the Supreme Court as in the case of Roosevelt's New Deal. But in Britain no

court can declare the laws passed by the legislature unconstitutional because parliament is sovereign. The British Cabinet headed by the Prime Minister floats or sinks together. He has the power to dissolve the parliament which makes his position superior to that of the President. With the pledged majority in parliament, he can alter the laws, impose and repeal taxes and employ all the forces of the State – an authority greater than that of the American President. The President has no such powers.

8. While the American President is the master of the Cabinet, the British Prime Minister still is not. Lincoin could say, at the end of a Cabinet discussion: "Nose, sevens: Ayes, one: the Ayes have it". But in Britain Ayes are Ayes, and Nose are Nose.

9. The British Prime Minister has to live under constant dread of the Leader of the Opposition. It is humorously remarked that "he British Prime Minister knows the psychology of the Leader of the Opposition better than that of his own wife". The American President need not labour under such fears.

The House of Commons

Composition

The members of the Commons are drawn from various sections regardless of class, education, income, or occupation. Any British subject of 21 years of age or over and is not otherwise disqualified may be elected to the House of Commons. Certain classes of persons are not allowed to sit in the House of Commons. They are aliens, minors, lunatics, bankrupts, persons convicted or treason or felony, candidates guilty of corrupt practices, clergymen, peers and holders of certain offices under the Crown. All adult subjects of Her Majesty are qualified to vote provider they are 18 more years of age and have resided in a constituency for at least 8 months. Criminals, idiots, aliens, peers, paupers and people convicted in a court of law are not allowed to exercise their vote. The House of Commons is elected for a period of 5 years but may be dissolved earlier by the Crown.

Powers of House of Commons

To make laws

The House of Commons has power to make and unmake a government. But this power is fictitious rather than real. It is essentially a law-making body. Money-bills originate only in the Commons. It is true that money-bills have to be sent to the House of Lords but the approval of the latter is not necessary. A money-bill passed by the Commons but rejected by the Lords would automatically become law after the lapse of one month. In regard to ordinary bills, if rejected by the House of Lords. They would become law after the lapse of one year. The House of Commons is the custodian of the public purse and as such controls finance. Thus it has the last word in

matters of legislation. But the fact remains that the House of Commons has yielded to the supremacy of the Cabinet in matters of Legislation.

2. To control the executive

The House exercises supervision and control over the administration of the country. Most of the members of the Cabinet belong to the House of Commons. The ministry remains in power as long as it enjoys the confidence of the House. It has to resign if it gets defeated in the House. The life of the Cabinet can be terminated by the opposition by passing a no-confidence motion, or by defeating a government measure, or by passing a bill opposed by the Cabinet or by making a token – cut in the salary of the ministers. Thus the House controls the executive. But such powers wielded by the House to terminate the life of the executives are used only sparingly. The dread of dissolution is a nightmare to the members if the House of Commons and hence the may not precipitate matters to such an extent. Reelection is costly and it is purely an element of chance. The same person may not be returned as an M. P. Hence they do not wish to become their own grave diggers.

To control finance

As the custodian of the public purse, the House controls the raising and spending of money. New taxes cannot be imposed nor money spent without the consent of parliament. Raising of revenue an d allocation of expenditure depend on the express sanction given by parliament. Such an onerous duty cannot be performed by the House of Commons which today is an unwieldy body. The Cabinet has usurped these powers. This does not mean that the Cabinet can do as it likes. It is under constant criticism on the floor of the parliament and further the accounts are carefully scrutinized and audited by the Committee on Public Accounts.

To redress grievances

The House is a place where the people look forward for the redress of grievances. This is generally done by interrogating the ministers about their acts of omission and commission in the House.

5. Selective functions

The House is a place where people undergo the period of apprenticeship to blossom out alter on as seasoned politicians. It is a training ground for public men where "they have the opportunity of showing their mettle and displaying those qualities of the mind and character, which distinguish the sheep from the shepherd and the rulers from the ruled". The chance to make history and the urge to win the admiration of the public act as an incentive to good work.

Speaker of the House of Commons

The Speaker is the most conspicuous figure in the House of Commons. Although he is called the Speaker, he rarely speaks. He is called the Speaker because he alone has the right to speak on behalf of the House of Commons before the King. Originally the chief function of the Speaker was to take the petitions and resolutions of the House of Commons to the King.

To begin with, a Speaker is elected on party lines. The nomination of the Speaker is made by the party in power and seconded by two private members. This is done with a view too emphasizing the principle that the choice of the Speaker is that of the whole House and not that of the ministers. Although the Speaker is elected on party lines, he becomes a non-party man after his election. He is invariably re-elected to the House without any contest. No political party sets up a candidate to contest his seat. For a long time this was the tradition. But in 1935 and in 1945 the Labour party" set up rival candidates to the Speaker. But the attempts miserably failed. The constituency from which a Speaker is also unanimously re-elected to Speakership so long as he is willing to serve in that capacity. The customary practice to allow the Speaker an unopposed election is by no means a settled practice. Ever since the end of the Second World War, the Speaker has almost always been opposed. Despite the historical origin of his title he rarely speaks, but he is forced to listen to weary speeches. He ceases to attend party meeting. Both within and without the House, he makes no political speeches. He is neutral in politics. He must, in short, wear "the white flower of a neutral political life".

The duty of the Speaker is to maintain order and decorum in the House and control debates. He can punish any member who obstructs the House in its work. He guards the right of the minorities. He can adjourn the House in case of a serious disorder prevailing in the House. Under the provisions of the Parliament Act of 1911, he is required to give a certificate whether a bill is a money bill or not. The Speaker exercises his casting vote only in case of a tie. But it is the custom of the Speaker to give his casting vote in such a way as to avoid making the decision final thus giving the House an opportunity to reconsider the issue.

The British and American Speakers compared.

Unlike the British Speaker, the American counterpart is a party-man and shows partially. He is an active party leader and uses his exalted position to promote the interests of his party. One peculiarity of the American Constitution is that the Speaker can speak and vote as the other members. He is opposed in every election. Unlike the election of the Speaker of the House of Commons, the election of the American counterpart is not unanimous. The Speaker of the House of Commons, on accepting office, becomes a non-party man, dissociates himself from party politics and does not address or attend public meetings. He remains in office even if there is a change of government. His rulings are impartial and final. But the American Speaker takes sides and his rulings are biased. The British Speaker does not participate in debates and get himself involved in political controversies like his counterpart in America. If, for any reason, the

offices of President and the Vice-President fall vacant, the Speaker after resigning his speakership, steps into the shoes of the President.

THE HOUSE OF LORDS

Composition

The House of Lords is the Second Chamber in Britain. It consists of about 1075 members. The House is composed of six groups of members: (i) Princes of the blood royal, (ii) Hereditary peers who constitute nine-tenth of the total. (at present 800), (iii) Sixteen representative peers from Scotland. There were also representative peers from Ireland. The Act of Union of 1801 provided for the representation of 28 Irish peers in the House of Lords. But in 1921, Ireland got separated from the British Union. No new representative peers have been elected since 1922 and none, now, survives. The last Irish representative peer died in January, 1961. (iv) There are 26 Spiritual peers in the House of Lords consisting of the Archbishops of Canterbury and York and 24 senior bishops of England (v) Law lords are appointed for life. Now there are 9 Law lords (vi) According to the provisions of the Life Peerages Act of 1958, the Queen was empowered to confer on any person, including women, peerage for life carrying the right to sit and vote in the House of Lords. The Lord Chancellor presides over the House of Lords.

Powers of the House of Lords

The House of Lords acts as an ordinary legislative chamber. Money bills cannot originate in either Lords. But bills other than money bills cannot originate in either House. The House debates bills brought from the House of Commons. The bill after it is pasted in the House of Lords goes to the King and with his signature becomes the law of the land. The House of Lords is also the highest court of appeal. It has also original jurisdiction to try peers for treason or felony. It also tries impeachments brought by the other House. Thus the House of Lords has legislative, deliberative, and judicial powers.

The House of Lords as a Satisfactory Second Chamber

The test of a good second chamber is. (i) It should be composed in such a way that it should not be a replica of the Lower House. (ii) It should bring to the work of legislation and deliberation men superior to those of the other chamber. (iii) It should help to revise the bills passed by the other House in an inconsiderate, rash, hasty and undigested way and must not be a rival to it or an obstruction. (iv) It should transact business of a non-controversial nature for which the House of Commons has no time to do (v) It should bring into national service as legislators non of ability and experience who are unable or unwilling to take part in the rough-and-tumble of party-politics due to various reasons.

The Standards met by the House of Lords

The House of Lords fulfills to a great extent the standards set above for a satisfactory second chamber. A satisfactory second chamber should not consist of more than 250 members. Though the membership of the House is about 1075, for active deliberation the average attendance is only 250 while the majority of the members play golf. Some of its members are men of considerable ability with administrative experience. The experience enables them to make useful contributions on special topics. In this respect, the House of Lords is complimentary to the House of Commons even though there is a preponderance of the conservative element.

The Parliament Act of 1911 and the Amending Act of 1949 have diminished the powers of the House of Lords. The House has accepted the diminution of its powers with as much good grace as it can muster. So the House of Lords is not a rival or an obstruction to the other House. The Lords are not an invincible barrier to democracy. Whether such a chamber is desirable or not depends on the functions which the House performs. The House debates bills brought from the House of Commons. This is the function in the exercise of which the House of Lords has found itself open to attack. In several ways, it helps the House of Commons. About one-third of the bills which come before parliament are started in the House of Lords. So the abolition of that House would thrust more work on the already overburdened Commons. The Lower House spends a greater part of its time on governmental legislation and finance. The remainder of the time is spent usually on party controversy. There is neither time nor opportunity to discuss the broader issues of policies like foreign affairs, defence, colonies and Common wealth relations which do not require immediate legislation. Such measures can be fully and freely discussed in the second chamber, which it does.

The peers undertake a mass of work in governmental legislation which must be done somewhere else. No government bill will be perfect when it reaches the House of Commons, because neither the civil servants, nor the ministers have the time to study the subject exhaustively. Suggestions for improvement keep pouring in so long as the bill is in parliament and indeed long after. Such bills need a cleaning-up process and that is done by the House of Lords.

The House of Lords undertakes a considerable volume of committee work which receives no publicity but which relieves considerably the House of Commons. If these functions were not undertaken by the House of Lords, they would probably, have not been undertaken by the House of Commons. It must be remembered that the Commons consists mainly of inexperienced administrators who prefer novels to official papers and film shows to committees, whereas the Lords are active politicians who like to talk and hear something useful. Munro says that on the whole the House of Lords appears to be doing its work satisfactorily.

THE PROCESS OF LAW-MAKING

Broadly speaking, bills can be divided into three categories. They are public bills, money bills and private bills. A public bill is one which affects the general interest of the whole people, e.g., a measure to impose a new tax or bring about a change in the suffrage. The money-bill is also a public bill. It is the most important of all. If a public bill is introduced by a minister, it is known as a government bill. Public bills which affect the general interest of the public can also be introduced by members other than the minister. In such a case it becomes a private members' bill. Such a bill can safely be piloted through provided it has the backing of the government. Private bills which are introduced by private members, are those which relate to "the interest of someone locality or corporation", municipality or other particular person or body of persons". Different procedures are adopted for the passage of the different classes of bills.

Public bills other than money-bills

Public bills other than money-bills can originate in either House. Generally they are introduced in the House of Commons. A bill goes through seven important stages before it becomes law.

1. First Reading

The First reading is a formal affair. The minister introducing the bill seeks permission to present it. At this stage, only the title of the bill is read aloud by the clerk of the House of Commons. There is no debate or discussion on the bill. The bill is then printed at government's cost.

2. Second Reading

This is the most crucial stage in the procedure. The sponsor of the bill moves "that the bill be now read twice". Heated discussions follow on the general principles of the bill. If the opposition wants to stultify the bill, it can make a counter-move "that the bill be read this day six months". An adverse vote for the government on the move would involve the resignation of the ministry. After the end of the debate, the bill is put to vote.

3. Committee Stage

After the approval of the bill in the Second Reading, it goes to the appropriate committee. Usually every bill other than a money-bill goes to one of the five standing committees. In exceptional cases, it may be sent to a select Committee of the whole House. In the Committee stage there is sample time to discuss the bill in a detailed manner. Amendments are also suggested.

4. Report Stage

After the Committee Stage, the bill is reported back to the House. If the bill is reported back from the Committee of the Whole House without amendment-a rare phenomenon-there is no Report Stage. But if amendments are suggested, such amendments may be made.

5. Third Reading

The finishing touches to the bill are given in the Report Stage. The Third Reading is purely a formal affair. Only verbal amendments can be made. After a Third Reading is given, the bill is put to vote. Rejection of the bill at this stage is rare and after the bill is passed it will be transmitted to the other House.

6. The bill in the House of Lords

The bill has to pass through the same stages in the House of Lords also.

Royal assent

If the bill passed in the House of Lords, it goes to the King for receiving his assent. With royal assent, the bill becomes the law of the land.

Money-bills

As the custodian of the Public purse, money-bill, which is a public bill, can originate only in the House of Commons. It is for the Speaker of the House of Commons to decide whether a bill is a money-bill or not. The House of commons has four important functions to perform in matters of finance: (1) to determine taxes and decide the sources of revenue, (2) to make appropriation or sanction of the money to be spent, (3) to scrutinize the accounts and (4) to thoroughly check and examine the amount so spent.

The first step, before the money-bill goes to the House of Commons is taken by the Treasury. The detailed estimates of expenditure of the various departments are prepared. The course of the money-bill in parliament begins with the presentation of the budget, sometimes towards the end of February or early in March, by the Chancellor of the Exchequer. After the budget speech, the House resolves itself into two committees known as the Committee of Supply and the Committee known as the Committee of a supply and the Committee of Ways and Means. The Committee of Supply is a Committee of the whole house. It is presided over by the Chairman of the Committee and not the Speaker. It discusses and debates the estimates of expenditure presented by the Chancellor of the Exchequer. Before the discussion begins, the House takes up a brief debate on "grievances"- a legacy of the past when the Commons insisted that redress of grievances should precede supply. After the formal affair, the debate on the estimates ensues. A detailed discussion of the various items is not possible because only 20 days are allotted and this could be extended only for another 3 days. The private members can only

ask for reduction in the estimates and not an increase in the estimates. Usually the amendments suggested by private members are not accepted by the ministry and if any such amendment is carried through contrary to the will of the ministry it has to resign. The real object of the opposition is not to discuss the estimate, but to criticize and oppose the policies of government.

When some headway is made in the discussion of supply, the House goes in to the Committee of Ways and Means. It is also a Committee of the Whole House. This suggests funds for the estimated expenditure. After the estimates are approved by the Committee of Supply and resolutions for raising new funds have been passed by the Committee of Ways and Means, these are incorporated in two bills known as Revenue Bill and Appropriation Bill. These two bills go through the usual stages before they become acts of parliament.

Though the financial year begins on April 1, the Appropriation Bill will get passed only by the end of July. In the meantime, the various departments may require money. This difficulty is overcome by passing 'votes on account' and the required money is granted to the departments by passing various resolutions are embodied in a bill known as Consolidated Fund Bill. This bill is rushed through the usual stages before the next financial year begins.

Private members' Public bills

A slightly different procedure is adopted in regard to Private members' public bills. As the House of Commons is pre-occupied with government bills, it can hardly find time to take up private bills, are sent to the House. As the time at the disposal of the House is limited, some bills are taken by lot for discussion. The bills so selected have to go through the usual stages in parliament before they become acts of parliament.

Private bills

Many Private bills are passed in England every year, These bills deal with matters of local interest such as grant of powers to the local municipalities to work water, gas, electric lights or tramways. Certain formalities have to be gone through before a private bill is introduced. First of all a petition along with the bill should be submitted to the Private Bill office which examines the private bills. Copies of the bill should be sent to the concerned departments. It should be given in the Gazette and in the local newspapers. After these formalities are gone through, the bill is ready to be introduced in either House of Parliament.

The bill after the First Reading goes for the Second Reading. A debate follows in this stage. If the bill is unopposed it goes to the Unopposed Bills Committee. This Committee examines the provisions of the bill clause by clause and the bill is reported back to the House with or without amendments. After this, the bill takes the normal course of a public bill and reaches the final stage. If the bill is opposed, it goes to one of the Private Bills Committees. After a thorough examination, the bill is reported back to the House. Then the bill takes the normal course of a public bill and reaches the final stage.

Provisional Orders

The procedure of the private bill is a costly one. This difficulty is overcome by resorting to what is known as Provisional Orders Parliament has conferred on heads of departments special powers empowering them to grant permission to local bodies the powers sought for. The desirous persons or bodies seeking orders should send an application to the concerned department. After a careful examination of the application, orders will be issued by the administrative heads. Such orders become valid either automatically without parliamentary sanction or subject to the confirmation of parliament. The orders under the later type are Provisional Orders which are purely of a temporary nature and become valid after confirmation given by parliament. Such orders are grouped under a single Confirmation Bill and introduced in parliament as a public bill. But for all practical purposes, it is treated as a private bill. After the First Reading and Second Reading, it goes to the relevant Committee on Private Bills. Then it takes the usual course and reaches the final stage. The system is less expensive and widely practiced.

THE COMMITTEE SYSTEM

The House of Commons may not find time to transact all business in a detailed manner within a stipulated period of time. Want of time and lack of expert knowledge have led the House of Commons to resolve all the issues in committees enable clear and detailed discussion of bills. There are at present five Committees. (i) Committee of the whole House, (ii) Standing Committees, (iii) Select Committees ,(iv) Session Committees and (v) Private Bill Committees. The first four Committees deal with public bills and the last one deals with private bills.

1. Committee of Whole House

The Committee of the Whole House is constituted by all the members of the House . The Committee is presided over by the Chairman of the Committee and not by the Speaker When the committee is in session, the mace of the Speaker is placed under the speaker's table as a sign that the House is not in session. When the Committee considers revenue measures, it is known as the Committee of Ways and Means and when it discusses expenditure, it is known as he Committee of Supply. The proceedings are informal. A motion need not be seconded and a member is allowed to speak any number of times on the same subject. When the session of the Committee is over, it rises and the Speaker resumes his chair. The mace is again put in its place as a sign that the House is in session. The Chairman of the Committee submits his report.

2. The Standing Committees

In the beginning there were two Standing Committees. In 1907, the umber rose to 4 and in 1919 to 6 and in 1947 "as many as shall be necessary". All the public bill other than money. Bills should go to one of the Standing Committees after the Second Reading. Each Standing Committee consists of 16 to 50 members. It is a miniature type of the House of Commons giving

representation to all the parties according to their strength. The Chairman of the Committees are appointed by the Speaker from a panel of not less than 10 members, nominated by the Selection Committee.

3**. Select Committees**

Select Committees are appointed for the purpose of examining specific matters. Each Select Committee consists of 15 members. After submitting the report, the life of the Select Committee comes to an end.

4. Sectional Committees

If the Select Committees continue to exist throughout the session, they are called Sectional Select Committees. They deal with subjects of varied interests.

5. Private bills' Committees

Each committee consists of 4 members and they deal with private bills.

The Judiciary

Civil Courts

1. County Courts

The County Courts (of which there are 337) occupy the lowest rung in the hierarchy of civil courts. It has jurisdiction over cases of contract not exceeding £ 750, trust and mortgage cases not exceeding £ 5.000 and land recovery cases where the net annual value for rating does not exceed £ 1000. The judges who travel the county hold court at busier centers every day, in others weekly, monthly or at longer intervals. The judges of the County Courts are appointed by the Lord Chancellor from among barristers of 7 years' standing.

2. The High Court of Justice

The High Court of Justice is one of the two parts of the Supreme Court of Judicature. The High Court of Justice falls into three division: (a) Queen's Bench Division, (b) Chancery Division, and (c) Probate, Divorce, and Admiralty Division. All these courts have original and appellate jurisdiction. There are 80 High Court judges.

(a) Queen's Bench Division

It is presided over by the Lord Chief Justice who is next in rank to the Lord Chancellor. It hears appeals from the County Courts. Unlike the County Courts, it deals with cases of a more serious nature like action for damages, or cases dealing with taxation, insurance and commerce.

(b) Chancery Division

It is presided over, of course, normally by the Lord Chancellor. It deals with cases regarding administration of estates, company and bankruptcy affairs.

(c) Probate, Divorce and Admiralty Division

It deals with the three wrecks of wills, marriages, and ships.

3. The Court of Appeal

He ex-officio members of the Court of Appeal are the Lord Chancellor, the Lord Chief Justice, the President of the Probate, Divorce and Admiralty Division and he Master of the Rolls. There are 18 ordinary Lords Justices. It is an appellate court for the cases that come from the County Courts and the High Court of Justice.

4. The House of Lords

At the apex of the judicial structure stand the House of Lords, the highest appellate court in Britain for both civil and criminal cases. For transacting judicial business, the House of Lords consists of the Lord Chancellor, those legal peers who hold or have held high judicial position such as former Lord Chancellors and the 9 Law Lords Provision was made in 1876 to appoint 7 professional judges with life peerages. The number of Law Lords was later raised to nine. The office of the Law Lords carries a salary and a pension.

Criminal Courts

1. Magistrates' Courts

The Magistrates' courts occupy the lowest rung in the gradation of Criminal Courts in England. They are presided over by lay magistrates or Justices of the peace. There are 21,000 such magistrates who hold part-time job and are unpaid. The courts deal with minor offences of a local nature. Each court consists of two to seven magistrates. These court have only summary jurisdiction or there is no trial by jury. In addition to the lay magistrate, there are stipendiary (paid) magistrate's also-39 in London and 11 elsewhere.

2. The Crown Court

By the Courts Act of 1971, the Crown Court was set up replacing the former assize courts and quarter sessions. The Crown Court sits at nearly 90 centers spread throughout the country. There are three kinds of centers-the first tier centers, second tier centers and third tier centers. The first two centers and served by High Court and circuit judges and the last one by circuit judges and recorders. The Crown Court deals with criminal cases of a more serious nature and hears appeals from the Magistrates' Courts. Trial by jury is provided in the court.

3. Court of Appeal

The Court of Appeal takes the place of the former Court of Criminal Appeal. The court usually consists of three judges by in cases of particular importance five judges. It is presided over by the Lord Chief Justice or a Lord Justice of Appeal. It hears appeals form the Crown Court.

4. The House of Lords

At the apex of the judicial structure stand the House of Lords. It is the highest appellate court for civil as well as criminal cases.

THE CONSTITUTION OF THE U.S.A

SALIENT FEATURES OF THE CONSTITUTION

1. A written Constitution

The Constitution of the United States of America is a written one. The Constitution along with the 26 amendments can be read in about half an hour. The Framers of the Constitution supplied only the skeleton and the flesh and blood were infused by subsequent legislation of the congress, judicial interpretations and decision. When the Constitution came into existence, it had provision for the Supreme Court only. But it empowered the Congress to ordain and establish inferior courts from time to time. The Constitution did not establish federal courts other than the Supreme Court, but merely provided that they might be set up by the Congress. The Congress lost no time in taking advantage of its authority by enacting the Judiciary Act of 1789, which with its numerous amendments still forms the basis of the federal hierarchy of courts in the U.S.A. The Constitution has been substantially developed by the decrees, orders and actions of the President. The judicial decisions have considerably remade parts of the constitution. Judicial interpretations like the one in the Doctrine of Implied Powers along with other judgments have considerably supplemented the Constitution. Customs and usages-the unwritten part of the Constitution-have also played an important part in modifying the Constitution. The Constitution provided for the indirect election of the President. But in practice it has become direct. The working of the cabinet system itself is based on custom. The 26 amendments have led to the growth of the Constitution.

2. A Federal Constitution

The American Constitution is federal in structure. Dicey defines a federation as "a political contrivance intended to reconcile national unity and power with the maintenance of state rights". It implies that there are two sets of government-the federal and the state. This obviates the need for a distribution of powers between the centre and the states. The states had to be adequately protected against encroachments from the centre. The distribution of powers. Cannot be allowed to rest on customs and conventions. The U.S.A. is a government of enumerated or limited powers. The National government has been restricted from exercising certain powers. The residuary powers belong to the states.

3. Supremacy of the Judiciary

In a federal government disputes may crop up between the Centre and the states. Someone or somebody should act as the arbiter between the two. Generally, the power to interpret the constitution and decide disputed cases between the Centre and the states and entrusted to the Supreme Court. It is made the guardian of the Constitution. It has the power of Judicial Review. It can declare the laws passed by the legislature constitutional or unconstitutional.

4. A Rigid Constitution

As a federal government is a compromise between the federal and state governments, the success of the federation depends on each respecting the sentiments of the other. To avoid loopholes, the framers invariably made the constitution rigid. This recognizes the supremacy of the constitutional law over ordinary law. To put is in other words the constitution is supreme. An amendment to the Constitution should not be made in the same way as an ordinary bill is passed but by a special process. Whenever an amendment is made, the Centre should take into confidence the states and a fair degree of justice should be rendered to the states by giving them an adequate share. The Constitution. Provides for a separate procedure for the amendment of the Constitution. So for 26 amendments have been made.

5. Separation of powers

The principle of Separation of Powers has been consciously adopted in the constitution of the U.S.A. The Congress and the President are elected by the people separately for fixed terms. The members of the executive do not sit in the Congress nor can the former dissolve the latter; the judges are made independent of the executive and are even elected in some states.

6. Checks and balances

The constitution of the U.S.A. is one of checks and balances. The President appoints the judges of the Supreme Court. They hold office for life. The President can summon special sessions of the Congress and can veto bills. But the Congress can impeach the President and the treaties signed by the President require the ratification of the Senate. The Senate should ratify the appointment of the judges. The judiciary has the power to declare the laws passed by the legislature constitutional or unconstitutional. Thus one department checks the other department and thus the balance is maintained.

THE PRESIDENT

Qualifications and term

The candidate for the American Presidency must be a natural born citizen of the U.S.A. He must be at least 35 years of age. He must have been a resident of the U.S.A. for at least fourteen years. The term of office prescribed by the Constitution for the President is four years. In the original Constitution, no limit was set to the number of times a president might be elected. Though the tradition of the land allowed only two terms for the President it was broken by Franklin D. Roosevelt He was re-elected for a third and even a fourth term. The 22nd amendment passed in 1951 stipulates only two terms.

Election of the President

The President is elected by an Electoral Collage consisting of an equal number of Representatives and Senators plus three members from Washington D.C. (435+100+3=538). The candidate getting an absolute majority is declared elected as President. If no candidate gets an absolute majority, the issue goes to the House of Representative. It will select one by ballot from among the three candidates who have secured the highest number of votes though the Framers of the Constitution wanted the election of the President to be indirect, in practice, of course, it has

become direct. As soon as the Electoral College is constituted, it will be quite clear as to who will be the next President, because the college itself is formed on party lines.

Executive powers

Article II of the American constitution contains a statement that "the Executive power shall be vested in the President of United States of America". He has to see that all the laws are faithfully executed. As the time of assuming office, a new President takes the oath to "preserve, protect and defend the Constitution of the U.S". The framers of the Constitution expected that the Congress would be the dominant part of the national government. But the President has become the dynamic and creative part of the government by overshadowing the legislature and the judiciary.

Administrative powers

The President is the general manager of the executive branch of the government. He directs and controls the various departments and their subordinates. In the discharge of administrative duties, the President wields enormous powers. He directs the departments by promulgating ordinances and executive orders. He controls the departments and their subordinates by wielding the supreme power of removal. This removal power was given to him by a court interpretation. The Cabinet members are dismissed at the pleasure of the President. It is one of the prerogatives of the highest administrative head in a State to make high appointments. The President makes appointments to high offices subject to the confirmation of the Senate. The normal procedure is that he nominates and the Senate confirms. Want of this "Senatorial Courtesy" had led to many rejections. He appoints the members of the Cabinet, diplomats and judges of the Supreme Court.

War powers

As the Commander-in-Chief of the armed forces of the Union, the President appoints all the officers of the army, navy and air force subject to the confirmation of the Senate. During times of war, he assumes a new stature and enjoys broad and undefined powers. In this sphere, he shares the powers with the Congress because Congress alone can declare war and appropriate funds for the prosecution of the war. The President may declare the state of condition as so grave the imminent that the Congress will be forced to declare war. During the Korean War, Truman sent military support to South Korea. The Congress instead of declaring war, quickly and quietly provided all support for the military forces. The recourse to such an action has been done more than 140 times since the time of John Adams, the Second President of the United States. The powers wielded by Lincoln during the Civil War, Woodrow Wilson during the First World War and Franklin D. Roosevelt during the Second World War are some examples.

Conduct of foreign relations

Though the Congress is also entrusted with certain responsibilities in the conduct of foreign relations, the President constitutes the chief spokesman and primary agency through which the foreign relations of the United States are conducted. He represents the U.S. in all dealings with foreign countries including the making of treaties. The President is assisted by the Secretary of state for foreign affairs. The President appoints ambassadors or agents to foreign

countries with the consent of the Senate. The Senate can either ratify of reject the treaties entered into by the President. The controls exercised by the Senate have let the Presidents to recourse to what is known as 'executive agreements' between the President and a foreign government, which not being treaties technically, do not require the ratification of the Senate. It was under such an executive agreement that Franklin D. Roosevelt transferred 50 Destroyers to Great Britain in 1940 in return for a 99-year lease for Atlantic bases in British territories. It was by the same process that he obtained from Denmark in 1941 the right to establish bases in Greenland and to occupy Iceland.

Legislative Powers

The principle of Separation of Powers adopted in the constitution would imply that the power of law-making is the exclusive right of the Congress. But it is very difficult to separate the legislative and executive bodies into airtight compartments. Practical necessity has given the President a weighty share in the work of legislation. He is even glorified as the 'Chief legislator'. He can summon special sessions of the Congress. He may sent messages to the Congress summarizing the conditions prevalent in the Union and suggesting legislative policies to tackle the situation. He recommends legislative measures to the Congress. Real legislative initiative belongs to the President. The Congress is not bound by law to accept all these recommendation. It may turn done some of them. But the President has weapon of persuasion. Elaborate fact-finding agencies are at his disposal. He appeals to the people through press, radio and television. He can speak to a nation-wide audience and get support for his programmes. The average Congressman cannot command all these conveniences. Again the use of patronage, personal conferences with party leaders and Chairman of Committees over a cup of tea is all techniques which enable the President to influence legislation. If all these devices fail, he will resort to the veto power as a trump-card. Every bill passed by the Congress, for its validity requires the assent of the president. He may send back the bill to the House in which it originated for reconsideration. This is what is known as the Presidential veto. It the Congress again passes it by a two-thirds majority, it automatically becomes law whether it is signed by the President or not. In this case the veto is not complete but suspense because it can be overridden by a two-thirds majority. If the President neither signs nor returns, it automatically becomes law after the lapse of 10 days without his signature provided the Congress is in session. If the President neither signs nor returns and the Congress is adjourned within 10 days, he bill fails to become law. This is known as the pocket veto. Usually if a bill is vetoed by the President, it is very difficult to muster a two-thirds majority and it practically become dead. President Franklin D. Roosevelt vetoed 631 bills and Truman 278 but only 9 were repassed in the first case and 12 in the second. The mere threat of a veto is enough to bring about the necessary modifications in the proposed measure.

Judicial powers

The President appoints judges of the federal courts with the consent of the Senate. As the chief executive authority in the State, he possesses the power to pardon, reprieve and grant amnesty for offences committed against the United States. But he cannot pardon offenders convicted by impeachment.

Voice-President

The same qualifications governing the office of the President are laid down for the Vice-President. The candidate for the Vice-Presidency must be 35 years of age. He must have been a resident of the U.S.A. for at least 14 years. In the case of the election of the Vice-President, if no candidate gets an absolute majority, then the Senate will select one from the two candidates who have secured the highest number of votes. If for any reason the office of the President falls vacant, the Vice-President will step in to his shoes. When President Kennedy was assassinated in 1963, Lyndon Johnson-the Vice-President-became the President. The President can nominate a Vice-President with the consent of the Congress if the Vice-Presidency falls vacant. When Agnew resigned his Vice-President ship in 1973, President Nixon nominated Gerald Ford as Vice-President. When Nixon resigned in 1974, Gerald Ford stepped in to his shoes. So the office of the Vice-President fell vacant. Gerald Ford nominated Rockefeller as the Vice-President. Death of the President in office or resignation alone can bring the Vice-Presidents-for-gotten men into national prominence.

THE CONGRESS

Parliament in America is known as the Congress. It is a bicameral body consisting of the House of Representatives and the Senate. The House represents the nation and the Senate the states. The American legislature is not sovereign like the British legislature The British Parliament is sovereign in the sense that the laws passed by the legislature cannot be declared unconstitutional by the judiciary or by any other body. The federal nature of the Constitution imposes certain restrictions on the authority of the Congress. It could legislate only on subjects which are granted to the national government. Further, it is the Supreme Court and not the Congress which has the final word as to the meaning of the Constitution.

The House of Representatives
Composition

The House of Representative-The Lower House-consists of 435 members elected directly by the people for two years on the basis of universal adult suffrage. All the states are given representation according to their population.

Qualifications

Any American citizen who has been a citizen of the U.S.A. for at least 7 years and who is 25 years or more can stand for election to the House. He must belong to the state in which he stands for election. The custom of the land requires that he should also be a resident of his district.

The Speaker

The House elects its own presiding officer. As he is elected by the majority party, he remains a party-man and shows partiality. He is an active party leader and uses his exalted position to promote the interests of his party. One peculiarity of the American Constitution is that the Speaker can speak and vote as the other members. He is opposed in every election. The rulings of his counterpart in Britain are impartial and final. But he takes sides and his rulings are biased. The British speaker does not participate in debates and get himself involved in party

controversies like his counterpart in America. If for any reason, the offices of the President and the Vice-President fall vacant, the Speaker, after resigning his Speakership, will step into the shoes of the President.

Functions of the House

The House has equal powers with the Senate in the law-making process. Money-bills can originate only is this House. But they can be accepted, amended or rejected by the Senate. The House is the only competent body to frame charges against the President, Vice-President and any other civil officers for treason, bribery, high crimes and misdemeanor. Thus it possesses the sole power of impeachment and the trial, of course, being conducted by the Senate. It shares with the Senate the power to propose amendments to the Constitution and to admit new states into the Union. It performs a very important non-legislative function. When no candidate gets an absolute majority in a presidential election, it will elect one by ballot from among the three candidates who have secured the highest number of votes. The House is the final judge of the election, returns and qualification of its members.

The Senate

Composition

The American Senate-the Upper House-is the most powerful second chamber in the world. It consists of 100 members, two from each of the 50 states. The Senators are directly elected by the people on the basis of universal adult suffrage for a period of 6 years, one-third retiring every two years.

Qualifications

The constitution requires that a candidate to enter the Senate must be 30 years of age, a citizen of the U.S.A. for at least 9 years and must be a resident of the state from which he seeks election. The Senator should not hold any office during his term of office under the U.S.

Powers

(i) The Senate has equal powers with the House of Representatives in ordinary legislation. (ii) Though money-bills cannot originate in the Senate, it can accept, amend or reject money-bills passed by the House of Representatives (iii) The approval of the Senate is necessary for the treaties negotiated by the President. Though Woodrow Wilson signed the Covenant of the League of Nations, the Senate did not ratify his action. So America was not able to one the League of Nations-the brain-child of Wilson. (iv) Again ‘Senatorial Courtesy’ is necessary for the appointments made by the President, viz, the members, of the Cabinet, judges of the Supreme Court, ambassadors, high army and naval and air-force officers, etc. (v) It joins with the House of Representatives in proposing amendments to the Constitution. (vi) It performs two important non-legislative functions. The first one is that if in the election of the Vice-President no candidate gets an absolute majority, then the Senate will select one from the two candidates who have secured the highest number of votes. The Senate is the final judge of the elections, returns and qualifications of its members. The Second one is that it acts as the chief Court of Justice in cases of impeachment of President, Vice-President and other federal officers.

Ordinarily, the Senate is presided over by the Vice-President of the U.S.A. The Senate elects its own Presiding Officer known as the President Pro tempore from among its members. He presides over the meetings of the Senate in the absence of the Vice-President.

THE PROCESS OF-LAW-MAKING

Public bills, Private bills and Joint resolutions

Generally, bills are of two kinds –public bills and private bills. If a bill affects the general public, it is called a public bill and if it is for a particular individual, corporation or body. It is called a private bill. There is yet a third one called joint resolution. A bill and a joint resolution are almost the same. A joint resolution is used casually by the Congress on measures such as expressing thanks, setting aside treaties, rectifying previous errors of law, etc. It has to undergo the same legislative procedure in both Houses and must get the consent of the President for its validity. A joint resolution is different from a concurrent resolution or a simple resolution of the House or the senate. A concurrent resolution expresses the opinions and objectives of both Houses. It need not be submitted for the approval of the President. A simple resolution of the House of senate expresses the opinions and purposes of the concerned chamber and it need not be endorsed by the other.

The origin of legislation

The Constitution of the U.S.A. debars the executive from originating legislative measures. Only a member of either House can introduce a bill. But the practice is entirely different. The President and the executive branch may require a large number of measures to get passed. So most of the bills originate in the executive branch. The drafted bill will be introduced in either House by a member belonging to the President's party. But money-bills can originate only in the House of Representatives. In some cases, vested interests outside the Congress may draft bills.

Introduction of bills

For the sake of simplicity, we shall assume that the bill is introduced in the House of Representatives. A Representative introducing a bill endorses the copy with his name and drops it into the hopper or basket on the clerk's desk. The bill is numbered, recorded and sent to print.

Committee stage

After the first Recording, the bill goes to the appropriate Standing Committee. The bills sent to the Committee will be clearly examined. Most bills die in the Committees. The bills on the basis of merit will be sorted out and the rest will be pigeonholed or ignored. Important bills are referred to a subcommittee for detailed examination and consideration. In the case of complicated bills, the Committee may consult interested offices and outside persons with vested interests to give testimony and present arguments. After these formalities have been gone through, the Committee goes into executive session on a bill. After this the decision of the Committee may take one of the four following forms: (a) It may recommend the bill in its original form. (b) It may report the bill in an amended form. (c) It may redraft and substitute a new bill. (d) It can kill a bill by simply refusing to report it to the House.

Calendar stage

After a bill has been reported by a committee, it is assigned to one of the three principal Calendars. The three Calendars are (a) the Calendar of the Whole. House on the State of the Union to which are referred bills dealing with revenue, appropriations and public property measures, (b) the House Calendar for all public bills other than money-bills, and (c) Private Calendar or the Calendar of the Committee of the whole House for private bills.

Second Reading

It is during this stage that the first real opportunity is given to the Representatives for a detailed discussion of the bills. Heated debates follow and amendments are proposed. The unimportant bills are discussed by the House and the most important bills are discussed by the Committee of the whole House. In the latter case, the Speaker yields the chair to a special Chairman, the mace is removed from the Speaker's desk and the discussion becomes informal. The quorum is 100 and each speaker is allowed 5 minutes. But this time-limit can be extended by the unanimous consent of the House. After the Committee has arrived at a decision, the Speaker resumes the chair; the mace is restored to its place indicating that the House is in session. The bill is then put to vote. If it survives, then the bill is ready for the Third Reading.

Third Reading

This is only formal and the reading is usually by title only. After the bill is passed, it is signed by the Speaker and sent to the Senate.

The bill in the Senate

The legislative procedure in the Senate is almost the same as that in the House. But there are some slight differences. The Senate uses only on Calendar in legislation, while a time-limit is prescribed for the Representative, the Senators enjoy the right of unlimited debate. If a Senator wants to kill a measure, he adopts a technique known as *filibuster* by which he will go on talking for days. By this procedure, a bill can be "talked to death". The Senate for want of time and also desirous of getting other bills passed may by-pass the controversial bill. In 1917, a new rule was adopted by the Senate limiting the time to one hour per Senator provided that the Senate passes a motion signed by 16 members and ratified by a two-thirds majority. But this rule is seldom resorted to. The Senators still hold the right of unlimited debate.

If the Senate rejects the bill reported from the House. The matter ends. If the Senate passes the bill, it goes to the approval of the President. If the Senate amends the bill, it again goes back to the House. If the House accepts, the measure goes to the approval of the President.

THE COMMITTEE SYSTEM

Committees in the House of Representatives

The old practice was to appoint a committee for each bill. Such a Committee was known as a Select of Special Committee. During the Third Congress, the number of Committees rose to 350 in each house. In 1913, the two Houses had 135 Committees. But after the Second World War, it came down to 81 Committees.

Standing Committees

By 1945 there were forty-eight Standing Committees in the House of Representatives. But the number was reduced to 21 by an act in 1946. Some of the important Committees are Ways and Means, Appropriation Committee, Committee on Rules, Banking and Currency, Judiciary, Agriculture, Interstate and Foreign Commerce and Armed services. The Committee of Ways and Means is the most important because it deals with the raising of funds to operate the government. The Appropriation Committee is also important. The Committee of Rules is also equally important because it decides the whole legislative procedure. The number in the Committees varies from 9 to 50. The members of the Committees are elected by the House. Each party gets representation proportionate to its strength. Representations in the most important Committees are given to people with long-standing service. The Chairmanship of the Committees go to the members of the ruling party by the seniority rule.

Conference Committees

In case of disagreement between the two Houses on a legislative measure, a Conference Committee consisting of 3 and in exceptional cases 5 members elected by each chamber is appointed to examine the points of disagreement. The decision arrived at in the Committee may either be accepted or rejected by each House.

Special Committees

The House may also set up Special or Select Committees for investigating a specific problem. But such Committees are seldom used in recent years. The places of these Committees have been taken over by the Special Investigating Committees. The members of the Committees are appointed by the Speaker of the House of Representatives. These Committees are dissolved soon after their work is over.

Joint Committees

When the two chambers disagree on the details of a bill rather than its principle, a Joint Committee consisting of members of both Houses is set up to iron out the differences. They get dissolved soon after their work is over.

Committees in the Senate

By 1945 there were 33 Standing Committees in the Senate. But the number was reduced to 17 by an act in 1946. The Senate Committees are smaller in size. The number in the committees varies from 9 to 15 but the Appropriation Committee consists of 23 members. The most important Standing Committees are the Committee of Finance, Appropriation, Foreign Relations Committee, Judiciary, Armed Services, Labour and Public Welfare and Agriculture. Apart from these Standing Committees, there are Conference Committees, Special Committees and Joint Committees.

The Judiciary

There are two distinct sets of courts in America- State Courts and Federal Courts. The State courts own their origin to their respective state Constitution. The State Courts mainly deal with cases arising in the State Judges of the State courts or usually elected by the people.

The Supreme Court

As federal government is compromise between the federal and state governments, the success of the federation depends on the each respecting the sentiments of the other. But on certain occasions, disputes may crop up between the centre and the states. Someone or somebody should act as the arbiter between the two. Generally, the power to interpret the Constitution and decide disputed cases between the centre and the states is entrusted to a Supreme Court. It is made the guardian of the constitution. Hence a Supreme Court is a necessity in a federation. This function of interpreting the Constitution and holding the balance between the national and state governments in the U.S.A. is performed by the federal courts of which the Supreme Court is at the apex. It is the highest appellate court of the U.S.A. in disputes involving constitutional issues.

Composition

The Supreme Courts consists of 8 ordinary judges and one Chief Justice. They are appointed by the President with the consent of the senate for life. They continue in office during good behavior. They cannot be removed from office except by impeachment on grounds of treason or misdemeanor. None of the judges has been so far removed from office on grounds of treason or misdemeanor. The salary of the judges is fixed by the Congress and cannot be reduced during their tenure of office. The annual salary of the Chief Justice is $96,800 and that of the Associate Justices $93,000 each.

Jurisdiction

The jurisdiction of the Supreme Court covers both civil and criminal cases. It has original jurisdiction in certain matters and appellate jurisdiction in others. Its original jurisdiction extends to cases affecting the ministers, ambassadors and consults and cases in which the federation or any state is a party. It is in the appellate field that the supreme Court enjoys larger jurisdiction. Its appellate jurisdiction covers cases involving a constitutional issue whether civil or criminal, maritime, marriage and divorce. It acts as a courts of last resort for cases appealed from the State or lower Federal Courts for the determination of some legal and constitutional points. If a case is appealed from the highest State court, it goes directly to the Supreme Court. It has no advisory jurisdiction.

Judicial Review

The most important function of the Supreme Court is to act as the guardian and savior of the American Constitution and the rights and liberties of the individuals and the States. This all important function of the Supreme Court goes by the name of Judicial Review buy which it declares the laws passed by the Congress or the State legislatures **intra vires or ultra vires.** This power of invalidating an act of the Congress or of a State legislature is called the power of Judicial Review. It is to be borne in mind that it is not the duty of the Supreme Court to declare a law **intra vires or ultra vires** the moment it is an act. It is also not the function of the Supreme Court to review all the laws passed by the legislatures as if it is a Second Chamber. It reviews only those laws involving the interpretation of constitutional or legal points brought before it. Its function is to see whether the laws of the land agree with the Constitution or not.

CONSTITUTION OF INDIA

Salient Features

The Indian Constitution is said to be borrowed constitution as it has taken many good aspects of the main constitutions of the world.

Written and lengthy

The Indian constitution is written. It has been enacted by a Constituent Assembly. It is the lengthiest Constitution in the world. It has 395 Articles and 9 schedules as the framers of the constitution wanted to add all good aspects they came across and as they aspired to make a detailed document, the size of the constitution was unavoidable. To the original document, a considerable number of amendments have also been added.

The Preamble

The Indian constitution has a Preamble. The Preamble declares that India is a Sovereign Democratic Republic. India is Sovereign. Its constitution provides a democratic system of government. As the President the head of the state, is elected for a particular period, India is a Republic. The 42nd constitutional amendment has added the words "socialist and Secular" to the Preamble. So now the preamble says that India is a Sovereign Socialist Secular Democratic Republic.

Quasi-federation

India is a union of States. The constitution provides for a federation. But there are many unitary features. The constitution combines the qualities of rigidity and flexibility. The central government has been given more powers. Many federal principles followed in the U.S.A. and Switzerland are violated in the Indian Constitution. Hence India is said to be a Quasi-Federation.

Parliamentary form

India has parliamentary form of government. The President of India is the titular head. The Prime Minister and the Cabinet enjoy real powers. The Cabinet is responsible to the Parliament. The Parliamentary form of Government in India is based on the British model.

Fundamental rights and duties

The people of India are provided with certain Fundamental Rights by the constitution. It is based on the model of American bill of Rights. Right to equality. Right to liberty, cultural and educational rights are some among them. The constitution mentions certain constitutional remedies to protect the Fundamental Rights of the citizens. The Judiciary stands as the guardian to these rights. At the time of adoption the constitution did not contain fundamental duties. The 42nd amendment of the constitution has added certain duties of citizens. It is the duty of the citizens to abide by the constitution. Defending the country, upholding and protecting the sovereignty, unity and integrity of India, safeguarding public property are some among them there are 10 fundamental duties. These are added on the Soviet model.

Directive principles

The Directive Principles of the State Policy are the principles to be followed by the state. Promotion of a welfare state, right to equal pay for equal work, the right to education, the promotion of the interests of the back ward classes, enactment of a uniform civil code are some of the Directive Principles. Some Gandhian ideas are there among the Directive Principles. The 42nd amendment has added certain new principles like the participation of workers in the management of undertakings and improvement of the environment to safeguard the forest and wildlife of the country. The Directive Principles are not justifiable. They cannot be enforced by courts.

Independent judiciary

The Indian Constitution provides for an independent judiciary. The judiciary cannot be easily influenced by the Executive. The judiciary is powerful. The Supreme Court is said to be the guardian of the constitution. It has the power of Judicial Review. By using the power of Judicial Review, the Supreme Court has struck down many laws passed by the parliament.

Bi-cameral parliament

The Indian Parliament is bi-cameral. The Council of States or RajyaSabha is the Upper House. The Parliament is stronger. The 42nd amendment has increased the strength of the Indian Parliament. The Lower House is directly elected whereas the Upper House is elected indirectly.

Provision for emergency

In case of external threat or internal disturbance. Emergency could be declared by the President. If chaotic economic situation prevails, he can declare Financial Emergency. During Emergency the President has vast powers. India becomes more or less a unitary state. The 45th amendment has introduced certain changes connected with the declaration of emergency.

Method of amendment

Each constitution has its own method of amendment. Depending upon the method of amendment, the constitutions are classified as flexible and rigid constitutions. If the method of amendment is difficult it is a rigid constitution. If the method of amendment is easy it is a flexible constitution. The Indian constitution can be amended in three methods. Certain matters can be amended easily. Certain matters can be amended by a little difficult procedure. There is a little more difficult method to amend certain other matters. Hence, the constitution combines the qualities of rigidity and flexibility.

FEDERALISM IN INDIA

India is an example of the State which combines the features of a unitary state with those of a federal state. The Union Government is stronger the in any other federation. Michael Stewart describes the Indian Union as a "hybrid between a federal and a unity state". It is significant to note that the word 'federation has not been used in the Constitution. For the superficial observer, the Constitution of India may appear to be federal in character. But, if one goes deep into it, some unitary features can be detected.

Unlike in the U.S.A. and Switzerland, there is only one citizenship in India. Though double citizenship is not a very important federal feature, a single citizenship reveals the unitary color. (2) Even the distribution of subjects in the three lists is in favor of the central government. While ninety-seven subjects are in the Union List only sixty-six subjects are in the State List. In the Concurrent List, there are forty-seven subjects on which both the Centre and the states can exercise power. In matters of dispute, the authority of the central government will be binding on the states. In a true federal government, the residuary powers should rest with the states. But in India the residuary powers are vested in the Centre. (3) A further feature which goes to illustrate the unitary aspect can be seen in the composition of the RajyaSabha. In a true federal government, the states should be given equal representation in the Upper House irrespective of the size and population of the states. In the U.S. A. the Senate is represented by two members from each state. A duplication of the same principle can be seen in Switzerland. But in India, curiously enough, the states are given representation on the basis of population. Twelve members are nominated to it by the President. (4) The Union Parliament can make laws on any subject – even on the one in the State List – provided the measure is declared by the RajyaSabha as of great national importance. The measure to be effective must be supported by not less than two-thirds of the members of the RajyaSabha present and voting. (5) Practice of the state to obey the directions given by the Union Government is another unitary feature. (6) Bills passed by the state legislatures may be reserved by the Governors for approval of the President. This roughly corresponds to the veto power exercised the Governor – general of Canada on provincial laws. Though this practice has become absolute in Canada, it is meticulously observed in India. (7) The power of the President of India to appoint Governors of the states closely corresponds to the same wielded by the Governor-General of Canada. But in the U.S.A Which is the well-

known example of a federal government the Governors are elected by the states. Thus the state have a wide discretion in the election of their Governors. (8) The states are financially dependent upon the centre. When requisitions are made by the states. Only a fraction is allotted to each, which is too meager an amount to cope with the ever –increasing expenditure of the states. This dependence seriously affects their policies and hampers growth. (9) The method adopted in the amendment of the Constitution itself discloses the unitary feature. With the exception of some items. (10) The Constitution of India provides for a single system of judicial administration. The U.S. consists of two systems of courts – one to administer federal laws and the other to administer state laws. In India, on the contrary, there is only a single integrated judiciary with one system of law courts throughout the land with the Supreme Court at the apex. (11) The powers wielded by the President in times of emergency are a gross violation of the federal Principle. (Refer emergency powers of the president)

From a study of the above provisions, it is obvious that though the Indian Constitution is federal in structure, it is unitary in essence.

FUNDAMENTAL RIGHTS AND DUTIES (pending)

Part III of the Indian Constitution contains certain fundamental rights. These rights are given to the people of India. These rights enable the people to enjoy the benefits of democracy and help in the development of human personality. This provision is modeled on the American Bill of Rights. The duties were added in 1979.

Right to equality

Right to equality is the first right mentioned in the Indian constitution. This right ensures social and political equality to all the people of India. According to this right, all are equal before law. There will be no discrimination based on caste, colour, creed religion or sex. In matters so appointment to public officers, there will be equal treatment to all. However the state may reserve certain seats in public service for Backward and Scheduled Caste people. The State can also require residential qualification for some posts. Article 17 of the constitution abolishes untouchability. In any form is punishable. Universal adult franchise is ensured by the constitution. This guarantees political equality to the people.

Right to Freedom

The Indian constitution gives some freedoms to the people They are freedom of speech and Expression, peaceful assembly without arms, freedom of movement, freedom of professing any religion freedom of forming unions and Associations and freedom to reside and settle in any part of India. These freedoms enable the people develop their intellectual and spiritual tastes without any restriction from the state. However, these freedoms are not absolute. They are subject to certain limitations. The parliament may impose certain restrictions in the interest of the public and the state.

Other Rights

Right against exploitation prevents certain inhuman activities. It prohibits traffic in women. Forced labour is declared unconstitutional. It is punishable under law. The children also are safeguarded from exploitation as the constitution forbids employment of children under 14 years of age Each religion has right to establish religious institutions. The constitution declares India as secular state. The people of India are granted cultural and educational rights. Any Section of the citizens who have separate language and script can preserve it. All minorities have right to establish and administer educational institutions. Besides, Article 20 to 22 ensure personal liberty No one will be deprived of his life or liberty except by the procedure established by law. This right is limited by the provision for Preventive Detention. Originally, Article 31 provided the right to property. But the 44th constitutional amendment has deleted this article. Now, the right to property is not a fundamental right. It is only a legal right.

Right to Constitutional Remedies

The fundamental rights are to be fully enjoyed by the people. In case of infringement of any of the above rights, the people should be given some means of redress. Article 32 of the constitution provides certain remedies. Any affected person can file a write in court of law to safeguard his fundamental rights. Write of Haebeas Corpus is the most valuable Writ. It may seek the court to direct the executive to produce and arrested person in the court. This safeguard personal liberty. Writ of Mandamus may be issued by a higher court to a lower court or to a person or a corporation. This writ may direct the person or institution to do a particular part of his duty mentioned in the writ of Prohibition may be issued from a higher court to a lower court to stop proceedings. The writ of certiorari may be issued to send the records of a case pending at a lower court to the higher court. The writ of quo-warranto is like an injunction. If a person acts in a capacity to which he is not entitled he can be prevented from continuing his office through this writ. These are the safeguard of Fundamental Rights.

Fundamental Duties

The 42nd constitutional amendment was made in 1976 It added certain duties as the fundamental duties of citizens. Now, like the Russian Constitution. The Indian Constitution also enumerates certain duties of the citizens. The citizens have to abide by the constitution the National Flag and the National Anthem. It is the duty of the citizens to cherish the noble ideals of national struggle for freedom. They have to uphold the sovereignty. Unity and integrity of India. It is the duty of citizen to defend the country and to render national service when called upon to do so. To promote harmony and the spirit of brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of woman is another duty. The citizens have to protect and improve natural environment of scientific temper is another duty. The citizens are obliged to safeguard public property and abjnre violence. It is their duty to strive towards excellence in all spheres of individual and collective security.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Indian constitution prescribes certain directive principles. These principles are found in part IV of the constitution. The idea of including certain directive principles was borrowed from the Irish Constitution.

Economic Principles

The establishment of a social order with social, economic and political justice is the first principle. Providing adequate means of livelihood, distributing the ownership of material resources in a way that it does not lead to monopolization, securing equal pay for equal work and suitable employment for men and women and children without affecting their health and strength, guarding the children and the youth against exploitation are some of the economic principles. There are some more principles which care for the workers. Taking effectives steps to provide for work, education and public assistance in cases of unemployment, old age, sickness and disablement, improving the conditions of work, securing for all the workers reasonable wages and a decent standard of living, reasonable leisure and cultural opportunities and making arrangements within ten years from the commencement of the constitution for free and compulsory education for all the children up to the age of 14 are the other principles. These principles aim to establish a socialist state.

Gandhian principles

There are certain principles which reflect Gandhian ideals Organization of village panchayats, encouragement to cottage industries, uplift of the scheduled castes and tribes by educating them and protecting their economic interests, prohibition of intoxicating drinks and drugs improving the breeds of cattle and stopping the slaughter of cows and calves are based on Gandhian ideals.

Principles regarding international understanding

Article 51 says that the state make efforts to secure international peace and security, to maintain good and honorable relations between nations, to foster respect for international law and treaty obligations and to encourage settlement of international disputes by arbitration and other peaceful means.

Principles added by 42nd amendment

The 42nd constitutional amendment has added certain new principles. They are provision free legal aid. Securing the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry and protection and improvement of the environment.

PRESIDENT OF INDIA

The Indian Government is parliamentary in form. In a parliamentary form of government a nominal chief executive is needed. The President of India is the nominal chief executive. He acts on the advice of the Council of Ministers.

Election

The President of India is indirectly elected. Article 54 says about his election. He is elected by an electoral college consisting of the elected members of both the House of the Parliament and the elected members of state Assemblies. The method of his election is based on proportional representation.

Qualification and tenure

Articles 58 of the constitution prescribe certain qualifications for a presidential candidate. He must be a citizen of India. He has to be completed the age of 35 years. He must have the qualifications to become a member of the LokSabha. At the time of submitting nomination, he should no hold any office of profit under the union or state government.

Powers and functions

Executive

According to Articles 53, the executive power of the union is vested with the President. The President appoints the Prime Minister. Other members of the Council of Ministers are also appointed by him. The Governors, Lieutenant-Governors and Chief Commissioners are appointed by the President. They are responsible to the President. The President appoints the Chief Election Commissioner and other high officials of the Election Commission.

Legislative powers

The President is a part of the Parliament. But he is not a member of the Parliament. The President summons and prorogues both the House of the Parliament. He has the power to dissolve the lower House of the Parliament. He nominates 12 members to the RajyaSabha. When a bill comes to him he may give his assent. On his House of its origin for reconsideration. Or he may refuse his assent.

Judicial

The President appoints the Judges of the Supreme Court and High Courts. The rules and procedure of the Supreme Court are decided after consulting the President. The President has the power to grant pardon reprieve and remission.

Emergency Powers

The Indian constitution provides for Emergency. During Emergency the President gets vast powers. The President may declare Emergency in case of external aggression or threat to security of India.

PRIME MINISTER OF INDIA

The constitution provides that there shall be a Council of Minister headed by the Prime Minister. The Prime Minister is appointed by the President. The constitution does not say anything about the eligibility for to be appointed as the Prime Minister. By convention the President appoints the leader of the majority party in LokSabha as the Prime Minister.

Powers and functions
Appointment of Minister

Articles 75 (I) lays down that the Prime Minister shall be appointed by the President, and the other Minister shall be appointed by the President on the advice of the Prime Minister. So the Prime Minister can choose any one to his council of minister. As per the constitutional provisions a member of the council of Minister is to be a member of the Parliament. If not so, at the time of appointment as a minister, he should become a member of parliament within six months from the date of assuming office The Prime Minister has no restriction in choosing members to the Council of Ministers. However the Prime Minister has to give representation to all the states and union territories. He (or she) has to give representation to the backward classes and scheduled castes and tribes. He cannot ignore important leaders of the ruling party. Generally the Prime Minister gives due consideration to these factors and select the members of the council of ministers. The Prime Minister decides the ranks of the different members. The Prime Minister also decides the allocation of portfolios. The Prime Minister also may drop a minister at any time. Shuffling and re-shuffling may be done by him at any time for any reason.

Sometimes the Prime Minister may be persuaded to drop a minister. Nehru had to drop V.K.KrishnaMenon due to the pressure of opinion in the parliament and Press. V.K. Krishna Menon was accused for the defeat of Indians in the Chinese aggression of 1962. K.D. Malaviya had to be dropped by Nehru due to corruption charges on him. The Prime Minister may be adamant in keeping a person in the cabinet. For example K.D. Malaviya who was dropped by Nehru was included in the cabinet by Mrs. Indira Gandhi in January, 1974. This was opposed by many political parties inside and outside the parliament. But she was firm in keeping his in. During her earlier career as the Prime Minister, Mrs. Indira Gandhi had reshuffled her ministry ten times within ten years she changed Railway portfolio seven times within seven years.

It is the privilege of the Prime Minister to include or exclude a person. She forced Morarji Desai to go out of the cabinet. Rajiv Gandhi also changed the minister at his will and

wish. V.P. Singh took a bold measure to oust Devisal from the post of the deputy Prime Minister of India. These are all normal in any cabinet system of government.

Prime Minister as a Link

Article 78 of the constitution establishes the role of the Prime Minister as the link between the President and the Government. According to the Article, the Prime Minister has to communicate to the President all decisions of the council of ministers. He has to furnish such information relating to the administration of the affairs of the union. The President may request the council to consider a matter on which a minister might have taken a decision. The Prime Minister may convey the same to the council of ministers. Though the President is a constitutional head, he may express his opinions on the performances of the Government. He may express his displeasure on particular issues. The opinions of the president may be given consideration by the Prime Minister.

Prime Minister as the Leader of the Cabinet

The Prime Minister is the leader of the cabinet and the council of ministers. He presides over the meetings. The Prime Minister in supervises the functioning of different departments. He guides the ministers in administration. He acts as the coordinator among different Ministers. The Prime Ministers plays an important role in shaping the policy decisions of the cabinet. Though there is collective responsibility, the press and the people would praise the Prime Minister for the achievements of the Government. They would criticize the Prime Minister for debacles and non-performance of the government. Hence the Prime Minister has to tone up the activities of his cabinet.

Prime Minister as the Leader of the LokSabha

The Prime Minister is the leader of the LokSabha. It is the responsibility of the Prime Minister to keep both the Houses of parliament, informed of all important matters. The Prime Minister makes statements in the parliament on domestic and foreign affairs. Sometimes confusion may prevail in the House of Parliament. The members may behave rudely. On such occasions the Prime Minister as the leader of LokSabha may try to restore normalcy. The Prime Minister may consult the leaders of the opposition parties and formulate ways and means to conduct the business of the House properly.

THE PARLIAMENT

The Union Parliament consists of the President and the two chambers-the LokSabha and the RajyaSabha. Thus the President is an integral part of the legislature. The LokSabha is the Lower House and the RajyaSabha, the Upper House.

The House of the People (The LokSabha)

Composition

The LokSabha is composed of representatives of people chosen by direct election on the basis of adult suffrage. Maximum strength envisaged by the Constitution is now 552 (530 members to represent States, 20 to represent Union territories and not more than two members of Anglo-Indian Community to be nominated by the President, if, in his opinion, that community is not adequately represented in the House). Provision is also made in the Constitution for the reservation of seats for Scheduled Castes and Scheduled Tribes. Though the normal life of the LokSabha is 5 years, the President can dissolve it on the advice tendered by the Prime Minister. During times of emergency, the President can extend its life by one year and in no case its life shall be extended beyond 6 months after the state of emergency has ceased to operate. The Parliament should meet twice a year and the internal between two sessions could not be more than 6 months.

Qualifications

The qualifications for membership are as follows: Any citizen of India who has completed 25 years or more may stand for election. He cannot be a member of both Houses. He should not hold any office of profile either under the Government of India or any State Governments. People of unsound mind are not qualified to become members. If a member absents himself without leave for more than 60 days, he would cease to be a member.

The Speaker and the Deputy Speaker

As soon as the House is constituted, it elects its own Speaker and Deputy Speaker to conduct the proceedings of the House. Unlike the British Speaker, the Indian Speaker is an active party man. He continues to be a staunch adherent of the party and takes sides in the House. His rulings are tinged with partiality. The impartiality of the Speaker is unthinkable in India, because the people have not cultivated that healthy convention of re-electing a Speaker unopposed in the succeeding general elections. The Indian Speaker is opposed in every election.

Powers of the LokSabha

The LokSabha has equal powers with those of the RajyaSabha in matters of legislation. But as the LokSabha is the custodian of the 'Public Purse', money-bills can originate only in this House. Bills other than money-bills can originate in either house. Such bills to become laws require the concurrence of the RajyaSabha. Difference of opinion on between the two Houses is resolved by a joint-session of the Parliament summoned by the President in which decisions are arrived at by a majority vote. In such an eventuality, the LokSabha has a clear advantage by virtue of its numerical strength. The RajyaSabha enjoys a14-day veto money-bills passed by the LokSabha. At the expiration of that period, notwithstanding the veto of the RajyaSabha, the bills automatically become laws with the assent of the President. The President cannot veto a money-bill. It is for the Speaker of the LokSabha to decide whether a bill is a money-bill or not. The

President may send back ordinary bills for reconsideration within 6 weeks. If after reconsideration the bills are passed by both Houses with or without amendments, the President cannot withhold his assent. The Cabinet is collectively responsible to the LokSabha. The powers exercised by the House are similar to those of the British House of Commons. The LokSabha makes laws, controls the executive, controls finance, and redresses grievances. The House is a place where the people undergo the period of apprenticeship to blossom out later on as seasoned politicians.

The Council of State (The Rajya Sabah)

Composition

The RajyaSabha is the Second Chamber and is composed of not more than 250 members. The President nominates 12 members to the RajyaSabha, who have distiniguished themselves in science, art, literature or social service. The RajyaSabha is to a certain extent an ideal second chamber in the sense that it embraces the principle of nomination of brilliant men who cannot undergo the dust and din of election. The rest of the members are elected by the elected representatives of the legislative assemblies of the states. In allocating seats in the RajyaSabha among the different states, roughly on the basis of population, the Framers of the Indian Constitution ignored one of the fundamental principles of federalism. In a true federal government, the states should be given equal representation in the Upper House irrespective of the size and population of the states. The unequal representation of the states in the RajyaSabha is one of the reasons why India has been called a union of states and not a federation of states. The RajyaSabha is not subject to dissolution. The members are elected for a period of 6 years, one-third retiring every 2 years. The Vice-President is the ex-officio Chairman of the RajyaSabha. It elects its own Deputy Chairman to conduct the proceedings of the House in the absence of the Vice-President.

Qualifications

The qualifications for membership are as follows: Any citizen of India who has completed 30 years or more may stand for election. He cannot be a member of both Houses. He should not hold any office of profit either under the Government of India or any State Governments. People of unsound mind are not qualified to become members. While any citizen of India can stand for election to the LokSabha from any constituency, the electoral law clearly lays down that a candidate seeking election to the RajyaSabha should be an elector in any of the parliamentary constituencies of the state from which he stands for election.

Powers of the RajyaSabha

It has equal powers with the Lower House in all measures. But money-bills can originate only in the LokSabha. The RajyaSabha has a 14-day veto power over money-bills. If at the expiration of that period bills are further delayed, they automatically become laws with the assent of the President. His assent is only a picturesque formality because he is bound by the

advice of the Council of Ministers responsible to the LokSabha. In the case of ordinary bills, it has equal powers with the Lower House. But this is also severely limited, for in the case of a deadlock between the two Houses, a joint-session resolves the deadlock. In this case the LokSabha has a clear advantage by virtue of its numerical strength.

THE SUPREME COURT

The Government of India being federal-a compromise between the union and state governments-disputes may arise between the two governments. So a court is highly essential to decide disputes between them. The Supreme Court of India is the direct creation of the new Constitution. It interprets the Constitution and acts as the guardian of the Constitution. The supremacy of the judiciary is recognized in the Indian Constitution. India has only one system of law-courts with the Supreme Court at the apex. The Supreme Court at first consisted of a Chief Justice and 7 other judges, though parliament has raised the number to 18. Judges are appointed by the President and hold office till the age of 65. They can be removed by the President by an address of both Houses passed by a two-thirds majority in each House. The salaries of the Chief Justice and other judges are fixed by the Constitution and are not votable by parliament. Any such change means an amendment to the Constitution. Thus the judges have been guaranteed perfect security of tenure and independence. But in times of financial stringency, the President can reduce their salaries. A judge of the Supreme Court must be a citizen of India and must have been a High Court judge for at least five years or an advocate of a High Court for at least ten years or must be in the opinion of the President a distinguished jurist. The Chief Justice gets a salary of Rs. 10,000 per mensem and the other judges each Rs. 9,000 per mensem.

Powers of the Supreme Court

The Supreme Court enjoys jurisdiction in three fields. (a Original jurisdiction, (b) Appellate jurisdiction, and (c) Advisory jurisdiction.

Original jurisdiction

The Supreme Court has original jurisdiction in any dispute between the centre and one or more states or between states themselves. When a case, instead of going through the inferior courts, is directly heard by the Supreme Courts, the power so possessed by the Supreme Court to try cases at first instance is called its original jurisdiction.

Appellate jurisdiction

The Supreme Court is the highest appellate court, i.e., an ultimate authority, an authority from which there is no appeal. The appellate jurisdiction consists of constitutional cases, civil cases and criminal cases-all tried in the inferior courts.

Advisory jurisdiction

The Indian Supreme Court is also vested with advisory jurisdiction. Regarding it, Article 143 lays down that if it appears too the President of India at any time that a question of law or fact has arisen or is likely to arise of such nature and such public importance as makes it

expedient too obtain the opinion of the Supreme Court upon it, then the President may refer the question to that Court, which may after such hearing as it thinks fit, report too the President its opinion. The opinion of the Supreme Court, however, on such questions is purely advisory and not binding. In addition to ordinary channels of appeal, the Constitution confers on the Supreme Court powers where justice might warrant the interference of this Court. Its power to grant special leave from the decisions of any court or tribunal except military tribunals is not subject to any constitutional limitation.

Court of Record

The Supreme Court is a Court of Record and as such its acts and proceedings are of such high and super eminent authority that their truth cannot be questioned in any court.

Judicial Review

To crown all, the Supreme Court is vested with the power of judicial Review, i.e., to declare laws passed by the legislature intra vires or ultra vires. The Supreme Court alone has the authority to interpret the Constitution. Its decisions can set aside the laws passed by the parliament. The Supreme Court acts as the protector of the Fundamental Rights guaranteed under the Constitution. Thus it acts as the guardian of the Constitution. The Supreme Court of India has become the watch-dog of the Constitution in the true sense of the term. The Supreme Court in the Golaknath case declared that parliament has no power to abridge or take away fundamental rights guaranteed under the constitution. But the 24th amendment to the constitution empowered the parliament to amend any part of the constitution including the chapter on Fundamental Rights. But the Supreme Court in the KesavanandaBharathi case conceded this right to parliament but ruled that it has no right to change the basic structure of the constitution. Under the Maintenance of Internal Security Act (MISA), many smugglers were detained under custody. But some of the High Court's set aside the detention of a number of persons. So the President issued an order suspending the Right to move any Court for enforcement of fundamental rights in respect of persons detained for smuggling only. The 42nd amendment relegated the Judiciary to a subordinate position to that of the Parliament. Parliamentary supremacy was established in the country. But after the 1977 General Elections, the position is completely changed. Independence of Judiciary is restored by the 44th amendment.

UNIT – III : THE CONSTITUTION OF FRANCE

The Constitution of France - The Constitution of USSR - The Constitution of Switzerland

THE CONSTITUTION OF FRANCE
Salient Features

Written and Rigid

The fifth constitution of France is written. There are ninety two articles in it. They are divided into fifteen divisions. The method of amendment provided in the constitution is a difficult one. Hence the constitution is rigid.

Secular and Republican

The second article of the constitution mentions France as a Secular Republic. A state which does not recognize a particular religion may be called a secular state. In a secular state all religions are to be given equal opportunities. France gives constitutional recognition for the concept of secularism. A state which has an elected head is called a Republic. The French President is elected by the people. Hence it is a Republic. The constitution has declared Liberty. Equality and Fraternity as the ideals aimed by it.

Bi-cameral and week Parliament

The legislature in France is called the Parliament. It is bi-cameral. The senate is the Upper House. The Lower House is known as the National Assembly. The members of the Lower House are directly elected whereas the members of the Upper House are indirectly elected. The powers of the French parliament are limited due to certain constitutional provisions Hence it is not as powerful as the British Parliament. Thus the French constitution provides for a bi-cameral and weak Parliament.

Quasi-Presidential and Unitary

Like England Erarce is also a unitary state. There is only one government in France. The fifth Republican constitution on France provides for a strange executive system. In a Parliamentary system the President is only a nominal head Under the Presidential system the President is all powerful. In France the President is neither a nominal head nor a powerful head. He has certain formal powers as the nominal head under a parliamentary system. He enjoys certain real powers like the real head in a presidential system. Hence the system in France is called Quasi-Presidential. This strange system has been introduced due to certain political conditions of France.

The Constitutional Council and the Economic Social Council

There are two important councils established by the constitution. The Constitutional Council is a body which has certain judicial powers and functions. It has the power to regulate the election of the President and the referendums. The council performs a sort of judicial review. There is no such institution in any other constitution. The Economic and Social Council advises the government on bills related to economic and social problems. There is no such council in any other country under our present study. Thus the French constitution provides for these two important councils.

Administrative Law

Administrative Law and the Rule of Law are the two judicial concepts. France is the best example for Administrative Law. There are two kinds of courts in France namely the Administrative Courts and Ordinary Courts. The cases related to the government servants are tried only in the Administrative Courts. The French people claim this system as better than the Rule of Law.

Multi-party system

France has multi-party system. There are many political parties in France. The multi-party system had its impact on the political system of France Under the fourth Republican constitution the Cabinets were unstable. Hence the quasi-presidential system was introduced in the fifth Republican constitution to overcome the problems created by the multi-party system. The political parties in France advocate different ideas and ideologies. Some of them are conservative. There are moderates too. The nature of the French people is an important reason for the presence of multi-party system there.

President is only a nominal executive. But the French President is not a mere nominal executive. He has certain real powers. Under Presidential system the president enjoys all the powers. There is no office of the Prime Minister. But in France there is the Prime Minister and his Cabinet. The Prime Minister shares certain powers with the President. The French President is neither powerless like the British Queen nor powerful like the American President. Thus the fifth Republic of France provides for a strange system. The purpose is to tackle the evils of multiparty system.

Method of amendment:

The fifth Republican constitution of France provides for a special procedure of amendment. Hence it is rigid constitution. Article 89 of the constitution describes the mode of amendment. According of Dorothy Pickles this clear in many aspects. As per the articles may be proposed in two ways. It may the President on the request of the Prime Minister nominal member of the Parliament may propose a constitution amendment. In both the ways the amendment bill is to be passing. In the Parliament with the support of a simple majority. Then the bill is sent to the people for their approval in a referendum. If the amendment bill gets the

support majority voters it will come into effect. If the amendment bill is introduced by the Government the President may place it before the joint session of the Parliament instead of sending it for referendum. If the bill is approved in the joint session with at least three fifths of those present and voting it will come into effect. The constitution puts two clear limitations on the power of amendment. The Republican nature of the constitution cannot be amended. In the same manner, no amendment can be proposed when the country is under Emergency. The Articles which describes the mode of amendment is very concise and not clear on many points.

It is laid down in the constitution that an amendment bill is to be passed in both the Houses in identical terms. Hence the Senate has the power to detain an amendment bill. An amendment bill passed in the Lower House may be rejected by the Upper House.

PRESIDENT OF FRANCE

Election of the President

The President of France is elected for 7 years. The constitution prescribes no qualification for a Presidential candidate. It does not even mention any minimum age. Originally the French President was elected by an electoral college consisting of about 8000 persons. They were members of National Assembly Senate and local bodies. But a constitutional amendment made in 1962 changed the election method. Now the French President is elected directly by universal adult suffrage and by two ballots. To win the election a candidate has to secure absolute majority of votes cast in the first ballot. If no candidate gets absolute majority in the first the second ballot is held on then second Sunday after the first. At the second ballot those who came first and second alone are permitted to contest. The supervision of Presidential election is done by Constitutional Council. The election of the new President takes place not less than twenty and not more than thirty-five days before the expiry of the term of the retiring President. In case of vacancy of the office of the President, the President of the Senate acts as the President until the new President is elected.

Powers and Functions of the President Shared powers and functions

The French President has many powers. He shares certain powers with the Prime Minister. The President appoints and dismisses ministers on the proposal of the Prime Minister. He presides over the meetings of the Council of Minister, Councils and Committees of National Defense and of the superior Council of the Judiciary. The President is the Commander in Chief of the armed forces. He negotiates treaties with foreign countries. He appoints ambassadors and other diplomatic representatives. He makes appointments to some civil and military posts. He signs the decrees and ordinances prepared by the Council of Ministers. He may send messages to the Parliament. The President has also the power to grant pardon. In exercising the above powers the President shares the right with the Prime Minister. On every order passed regarding

any of the above matters, there must be the counter signature of the Prime Minister or any other responsible Minister.

Independent power and functions

The French President enjoys certain independent powers. He may exercise these powers without the approval of the Prime Minister. He appoints the Prime Minister. In these matters he has more discretion than the British King or the Indian President. The British King has to appoint the leader of the majority as the British Prime Minister. He may have discretion only when there is no clear majority for any party. But the French President has discretion in selecting the prime Minister. The President also has the power to dissolve the National Assembly at any time for any reason. The only restriction is that he cannot dissolve it twice within the same year. In Britain the King may dissolve the Lower House on the advice of the Prime Minister. So the real power of dissolution rests with the British prime Minister. But in France the President has the real power to dissolve the National Assembly. The President has the power to submit any bill to the people at a referendum in case of any external threat the President may declare Emergency. During Emergency the President enjoys full Powers.

THE PREMIER OF FRANCE

Appointment and tenure

The French Premier is appointed by the French President. Usually, the leader of the majority party in the Lower House of the Parliament is appointed to this office. However the French President can use his discretion in appointing the Premier. The British queen has no discretion in appointing the Prime Minister of Britain. She may exercise some discretion only when there is no clear majority for any political party in the House of Commons. Such an occasion is very rare in England. But under the mulity-party system of France the question of majority arises often, Hence the President has more discretion in appointing the Premier. The tenure of the Premier is five years. However he can be removed earlier by a no confidence motion passed in the Lower House of the French Parliament.

Powers and functions
Legislative

The Premier of France is a member of the National Assembly. He has the power to imitate any bill in the Parliament. He can request for a special session of the Parliament. This session is called extraordinary session and it may be convened for a specific agenda. He can advise the President to dissolve the National Assembly. The powers of the French Premier in matters of legislation are comparatively lesser than those of the British Prime Minister.

Executive

In any Parliamentary form of government there should be a nominal executive and a real executive. In France, the President is the nominal executive. But he is not as Powerless as the British Queen of the Indian President. Hence the Premier does not enjoy the powers enjoyed by the British Prime Minister and the Indian counterpart. The Premier is the head of the Government. He selects his ministers and they are appointed by the President. Besides the Premier has the power to appoint certain important officials. But he does not enjoy an important executive power. He does not preside over the meetings of the Cabinet. The meetings of the Council of Ministers are presided over by the President. The Premier may be permitted by the President to preside over some of the meetings of the Council of Ministers for specific agenda In England, the Prime Minister alone can preside over the meetings of the Council of Ministers. But the French Premier has no such power.

THE FRENCH CABINET

The Fifth Republican Constitution was drafted to rectify certain difficulties experienced in the operation of the fourth Republic. Hence many of the provisions of the fourth Republic were changed. The eighth article of the fifth Republican Constitution says about the Cabinet and the Premier.

Composition

The Premier is appointed by the President. On his advice other ministers are also appointed by the President. The President acts only on the advice of the Premier in appointing and removing ministers. The President presides over the meetings of the Cabinet. The Cabinet is responsible to the Parliament. The article 49 of the Constitution stipulates this If the National Assembly refuses its approval for any of the policies of the Cabinet or if a motion is passed against the Cabinet, the Cabinet loses power.

The powers and functions
Legislative

Most of the bills are prepared by the cabinet. Article 38 of the Constitution says about the role of the Cabinet in drafting the bills. The Cabinet has the power to pass decrees to meet emergency. The Cabinet decides about such decrees. Such decrees are passed in consultation with the Council of State. The martial law can be declared only in the Cabinet. If the martial law is to be continued for more than twelve days the approval of the Parliament is needed.

Executive

The Cabinet decides all the executive policies. The armed forces are under its control. There is a strange arrangement in the Cabinet system of France. Each minister is empowered to appoint certain advisors. There advisors are selected from among the senior administrators. Many of the executive orders of the President are passed only with the counter signatures of the Ministers in France also there is the distinction as the Council of Ministers and the Cabinet.

The position

The French Cabinet has in fact many strange features; In a Parliamentary system the Cabinet is superior. But the French Cabinet is not holding such a powerful position. The President exercises many real powers. Such powers are not exercised by the nominal executive of a parliamentary form of Government. Article twenty three of the constitution lays the condition that a minister should not be a member of the Parliament. If a Member of Parliament becomes a minister he should resign his membership in the Parliament within a month. This practice is not seen in any limited powers. Many of the powers are shared between the President and the Premier.

The Constitution provides for vast emergency powers to the president. The position of the Cabinet is very inferior. The fifth Republican constitution provides for such a system due to the bad experiences under the fourth Republic. Under the fourth Republic the Cabinet was weak. Many Cabinets were toppled. For example between 1924 and 1931 there were sixteen Cabinets in France. This affected the functioning of the Government. The farmers of the fifth Republican constitution wanted to remove such a defect in the new constitution. In order to ensure the stability of the Cabinet it is placed in an inferior position.

THE FRENCH PARLIAMENT

The fifth republican constitution of France provides for bi-cameral Parliament. The Senate is the Upper House and the National Assembly is the Lower House.

The Senate

The members of the senate are indirectly elected. There are about 320 members in the Senate. They are elected for a term of nine years. As one third of them retire every three years the House is permanent. The French constitution provides for representation for the French citizens of France who resides abroad. A candidate who contests in the election to the senate should have completed thirty five year of age. The Senate elects a President to preside over its meetings. He has the power to conduct the meetings of the Senate properly.

The National Assembly

The National Assembly is directly elected. It consists of 465 members. The tenure of the House is five years. The House may be dissolved earlier by the President. The President may dissolve the House on the advice of the Premier He may do so even without the advice of the Premier. There is only one restriction on him in exercising this power. He cannot dissolve the House twice in a year. The candidates to this House should have completed at least 22 years of age. The election is conducted on two ballot majority system. Each candidate selects a substitute. After the election the successful candidate becomes the Deputy and his substitute becomes Optional Deputy. When a seat becomes vacant due to resignation, disqualification or death of a Deputy, the optional Deputy becomes the Deputy for the rest of the period. The member of the National Assembly is called the Deputy. The National Assembly elects its own President to preside over the meetings.

Powers and Functions of the Parliament

France is unitary. Hence the French Parliament can enact laws applicable to the whole of France. The bills are prepared and introduced by the members of the Cabinet. They are sent to the President after being passed in both the Houses of the Parliament. The President has the power to submit any bill passed by the Parliament for the consent of the people in a referendum. Thus the legislative power of the Parliament is restricted. Even in the matters of financial legislation there is the possibility of by passing the Parliament. The French Constitutional Council has the power to review the bills. Hence the French Parliament is not powerful like the British Parliament in legislative matters.

The Cabinet is responsible to the Parliament. The members of the cabinet attend the meetings of the Parliament. They have to answer the questions asked by the members of the Parliament. The National Assembly can send a Cabinet out of power by passing a no-confidence motion. Thus the French Parliament enjoys considerable executive powers. Its judicial powers are limited.

The two Houses of the French Parliament are equal in many aspects. All the bills except the money bills can be introduced in either House. The money bills can be introduced only in the Lower House. In cases of legislative deadlocks the bill is taken for second consideration in both the Houses. If disagreement still continues after the second consideration, a joint committee consisting of equal number of members from both the Houses is appointed. The joint committee prepares a new draft of the controversial bill. Is the new draft of the joint committee is also disagreeable the government has two choices. It can request the National Assembly to pass a definite rule. The National Assembly may accept the old controversial bill or the new draft of the joint committee. In that case the will of the Senate will be overruled. The government may

leave the controversial bill to die. In that case the senate has the possibility of blocking a bill passed by the Lower House. In matters of constitutional amendments the Senate has absolute by equal power to that of the Lower House.

Committee system

The Parliamentary Committee in France plays an important role. There are Six Committees in each House. The number of members of one committee varies from the other. France the bills are sent to the Committees even before a discussion in the House. The Committee discusses the bill. It can also amend the bills. Sometimes the bills are completely changed by the amendments made by the Committees. Each Committee has a 'Reporter'. He reports the bill in the House He presents the bill in the House and sees that it is passed. He defends it. He performs the duty of a minister in defending the bill. The committees also have the power to supervise the departments the department officials may be summoned by them. In France, the committees are very powerful.

JUDICIARY IN FRANCE

The French Judiciary is based on the concept of Administrative Law. There are two sets of courts known as Ordinary Courts and Administrative Courts.

Ordinary Courts

There are two types of courts in France known as Ordinary Courts and Administrative Courts. The lowest Ordinary Courts is the Justice of Peace. These courts are presided over by salaried officers called Judges of Peace. In each Canton there is a Court of Justice of Peace. The next Courts are Correctional Courts which hear both civil and criminal cases. These Courts are entitled to hear cases involving up to the property of 3000 francs. Above Correctional Courts there are District Courts Appeals against the decisions of the District Courts are heard in the Provincial Appellate Courts. The civil cases go to the Court Appeal and the criminal cases go to the Assize Courts. Among the Ordinary Courts, Courts of Cessation is the highest courts. It consists of three sections namely, Civil Section, Criminal Section and Petition Section. While hearing appeals these Courts consider only legal matters and questions.

Administrative Courts

In France, Administrative Courts have been established for some special purposes. The Officers of France exercise vast powers. It is the duty of the Administrative Courts to see that these Officers do not misuse their powers.

Structure

The composition of Administrative Courts is called Departmental Prefectural Councils. Each Council has one bead and 3 or 4 Councilors. The members of the Council are appointed from the National School of Administration. There are Inter-departmental Councils too. Above these there are Councils at the Provincial level. They are called Regional Councils. Above all there is the Council of state. It is the highest Administrative Court.

The Council of State consists of a Head of the Council and other members. There are deputy head and 5 heads if the sessions. Further there are 22 councilors, 45 masters of petitions and 24 auditors. This Court has Original and Appellate Jurisdiction. It has also the power to declare the rules made by Departmental Councils invalid its jurisdiction is limited to administrative matters. It has no jurisdiction in political and legislative matters. The Council of State is divided into several sub-departments.

Other Judicial Organs

Constitutional Council

In France, the courts have no power of Judicial Review. The power of Judicial Review is given to a special body known as the Constitutional Council. The Council consists of nine members. Three of them are nominated by the President of the Republic, three are nominated by the President of the National Assembly and three by the President of the Senate. They are appointed for nine years. In addition to the nine members, the former Presidents of French Republic become ex-officio members. The President of the Council is appointed by the President of the Republic.

Functions of the Constitutional Councils

The Judicial Council conducts the election of the President of the Republic. It also looks into the question of disputes regarding the election of members of both the Houses of the Parliament. The most important function of the Council is to give is decision on the constitutionality of the bills and laws. It examines the bills before they are passed. It examines the laws before they are enforced. There is no provision for appeal against the decision of the Constitutional Council. The President of the Republic consults the Constitutional Council before declaration of Emergency. The Council conducts referendums and declare the results.

Apart from the judicial organs seen above, there is a Court of Conflicts which decides whether a case has to go to Ordinary Court or Administrative Court.

CONSTITUTION OF USSR

Salient features of the Constitution

The new Constitution which was adopted on October 7, 1977 and which came into force on the same day contains 21 chapters and 174 articles. The U.S.S.R. is a socialist state. In the political system emphasis is now shifted "From the dictatorship of the proletariat" to the people. Article 2 of the Constitution states that "All power in the U.S.S.R. belongs to the people". The state runs on the principal of democratic centralism. Matters of vital importance of the state are decided by conducting nation-wide discussions followed by a referendum. The CPSU (Communist Party of the Soviet Union) is the leading and guiding force of the Soviet Society and the nucleus of its political system.

The economic system is based on socialist ownership of the means of production in the form of state property. No individual has the right to use socialist property to personal ends. The personal property of the people includes articles of daily use, a small-holding, a house and earned savings. The inheritance of personal property is protected by law. But property owned should not be used to earn unearned income. The Marxian dictum of "From each according to his ability, to each according to his need' is slightly modified in the new Constitution by substituting the word "work" for "need".

The new Constitution contains a chapter on foreign policy. In foreign policy the U.S.S.R. stands for universal and complete disarmament and peaceful co-existence. War propaganda is banned in the U.S.S.R. The relation of the U.S.S.R. with other states are based on the following principles "Sovereign equality: mutual renunciation of the use of threat of force: inviolability of frontiers; territorial integrity of States; peaceful settlement of disputes; non-intervention if internal affairs; respect for human rights and fundamental freedoms".

Article 31 lays down that Defence of the Socialist Motherland is one of the most important duties of the State and is concern of the whole people.

The Constitution contains a chapter on fundamental rights and duties. (For details refer fundamental rights). The right to housing given to the citizens is something novel in the new Constitution. The new Constitution makes free provision of all forms of education. The whole of secondary education is made universal and compulsory. Apart from the usual duties enlisted like preservation and protection of socialist property, military service, *etc.*, a new duty introduced is that children are obliged to care for their parents and help them.

The Constitution is written and federal in structure. The Constitution is rigid in the sense that a separate procedure is adopted to amend it. Russia contain 15 Republics. The republics are given the right to secede from the Union and enter into diplomatic relating with other countries. Based on the second provision. Ukrainian and Belorussian republics are members of the United Nations. Besides the Republics, there are 20 Autonomous Republics, 8 Autonomus Regions and 10 Autonomus areas. Citizens who have reached the age of 18 are qualified to vote. The stand for election to the Supreme Soviet is fixed at 21. There is distribution of powers between the centre and the component units. The residuary powers rest with the centre. The presidium continues to the a novel feature of the Constitution. It has legislative, executive and judicial powers (Refer Presidium). The legislature is a bicameral body. The duration of the parliament is

5 years as against 4 years prescribed in the 1936 constitution. The Deputies can be recalled if they do not discharge their duties satisfactorily. The Judiciary has no power to declare the laws passed by the legislature *intra vires or ultra vires.* It is only a department of the government. The Constitution allows only one party to exist.

Parliament (Supreme Soviet)

The Parliament in Russia known as the Supreme Soviet is a bicameral body consisting of the Soviet of the Union and Soviet of Nationalities. The Soviet of the Union is the Lower House and represents the citizen in the same way in which the House of Representatives represents the citizens of the U.S.A. The Soviet of Nationalities represents the constituent republic. It is laid down that the two Chambers shall have equal numbers of Deputies and equal rights. The Soviet of Nationalities is represented by 32 Deputies from each Union Republic, 11 Deputies from each Autonomous Republic, 5 Deputies from each Autonomous Region and one Deputy from each Autonomous Area. The new Constitutional Act emphasizes that an equal number of members should be in the Federal Soviet. (But according to the Constitution 1936, a representative was elected for every 3,00,000 citizens). In the elections held in 1974, 767 members were elected to the Federal Soviet. As the population increases, the number of members will also increase. But according to the new Act both the Chambers must have an equal number of members and so, there can be only 750 members in the Soviet of the Union as there are only 750 members in the Soviet of the Nationalities.

Each chamber consists of a Chairman and Four vice Chairman. In the event of joint-sessions, such meeting will be presided over by the Chairmen of the two Chambers alternately. Though the qualifying age for voting is 18, the qualifying age to entry in the Supreme Soviet is fixed at 21.

Powers

The two Chambers enjoy equal powers in legislation. There is no distinction between a money-bill and an ordinary bill. A bill can be initiated in either House. Every bill to become law must be passed in each House separately by a majority of the total number of its deputies. The two Houses meet twice a year. Bills and other important measures of state may be submitted to nation-wide discussion by the Supreme Soviet of its Presidium on its own initiative or on the proposal of a Union Republic. Deadlocks between the two Houses are resolved by a Conciliation Commission consisting of an equal number of Deputies from both the Houses. The matter will be considered for a second time by both the Houses on the recommendation by the Conciliation Commission. If agreement is still not reached, the two Houses will not be dissolved as in the Stalin Constitution. It will be conserved at the next session of the Supreme Soviet of will be submitted to the referendum of the people. The Supreme Soviet is empowered to amend the Constitution, admit new Republics and deal with all matters arising within the jurisdiction of the U.S.S.R. The Supreme Soviet elects Council of Ministers, the members of the Presidium and the Judges of the Supreme Court.

The Presidium

The Presidium is a curious creation of the Soviet system of government. Under the 1936 Constitution, it was 37-man body consisting of Chairman, 15 vice-Chairmen (one from each

Republic), 20 members and a Secretary. Under the 1977 constitution, it is 39-man body consisting of a Chairman, First Vice-Chairmen, 15 Vice-Chairmen (one from each Republic) a Secretary and 21 members. All the members are elected by the Supreme Soviet of the U.S.S.R in a joint-session. The Chairman of the Presidium is often referred to as the President of the U.S.S.R. He is the counter part of the British monarch in Russia. The Presidium acts during the recess of the Supreme Soviet and Is accountable to it.

Powers of the Presidium

- It announces the date of elections of the Supreme Soviet of the U.S.S.R.
- In convenes session of the Supreme Soviet of the U.S.S.R.
- It co-ordinates the work of the Standing Commission of the Chambers of the Supreme Soviet.
- It interprets the laws of the U.S.S.R.
- It ratifies and denounces international treaties of the U.S.S.R.
- It annuls decisions and orders of the Council of Ministers of the U.S.S.R. and the Union Republics if they do not conform to the law.
- It awards decorations and institutes titles of honour of the U.S.S.R.
- It exercises the right of pardon.
- It institutes military titles, diplomatic ranks and other special titles.
- It appoints and recalls ambassadors of the U.S.S.R. to foreign countries.
- It receives letters of credence and recalls diplomatic representative accredited to it by foreign countries.
- It appoints and dismisses the supreme command of the Armed Forces of the U.S.S.R.
- It proclaims Martial Law in separate localities of throughout the U.S.S.R. for the maintenance of order and security to the State.
- It orders partial or general mobilization.
- In the intervals between the sessions of the Supreme Soviet of the U.S.S.R., it proclaims a state of war in the event of military attack on the U.S.S.R.
- In the intervals between the sessions of the Supreme Soviet of the U.S.S.R., it relieves and appoints ministers of the U.S.S.R. on the recommendation of the chairman of the Council of the Ministers of the U.S.S.R. subject to later Confirmation of the Supreme Soviet of the U.S.S.R.
- It also amends existing acts and approves changes in the boundaries of Union Republics, both subject to later Confirmation of the Supreme Soviet.

- It promulgates decrees and adopts decision.

It would thus appear that the Presidium has far-reaching powers. It wields legislative, executive and Judicial powers. But it to be clearly borne in mind that it is the Communist Party and not the Presidium that outline the policies and decisions to be executed by the Presidium. The Presidium is subordinate to the Supreme Soviet because it is accountable to it. The Presidium continues in office even after the term of the Supreme Soviet until the election of a new Presidium. The newly-elected Supreme Soviet should be convened by the outgoing Presidium within two months after the elections.

The Council of Ministers of the U.S.S.R.

The Council of Ministers is the highest executive and administrative organ in the U.S.S.R. The ministers are elected in a joint-session of the two chambers of the Supreme Soviet for a period of 5 years. The Council of Ministers is responsible to the Supreme Soviet while it is in session and to the Presidium of the Supreme Soviet while it is not in session.

The Council of Ministers consists of the Chairman of the Council of Ministers of the U.S.S.R. First Vice-Chairmen and Vice-Chairmen, Ministers of the U.S.S.R. The Chairmen of the Council of Ministers of the Council of the Ministers of the U.S.S.R. The Supreme Soviet of the U.S.S.R. on the recommendation made by the Chairman of the Council of Ministers may include the heads of other bodies and organizations in the Council. The Council of Ministers must tender its resignation to a newly-elected Supreme Soviet at its first session.

Powers

The Council of Ministers of the U.S.S.R. is given power to deal with all matters arising within the jurisdiction to the U.S.S.R. except those which come within the competence of the Supreme Soviet or the Presidium. Article 131 enumerates the powers of the Council. They are: (1) It ensures direction of economic, social and cultural development: implements measures to promote the well-being and cultural development of the people; follows a uniform price, wages, and social security policy; and organizes the management of industrial and agricultural enterprises. (2) It drafts current and long-term state plans for the economic and social development of U.S.S.R. (3) It maintains public order and guarantees and safeguards the citizens' rights and freedoms. (4)It undertakes measures to ensure state security. (5) It fixes the annual contingent of citizens to be called up for active military service and directs the general organization of the Armed Forces of the country. (6) It under takes measures to honour U.S.S.R.'s international treaties and set aside inter-governmental international agreements. (7) It sets up, whenever necessary, special committees and central boards under the Council of Ministers the U.S.S.R. to deal with the development of economic, social and cultural affairs and defence. (8) It is empowered to suspend the decisions and orders of the Council of Ministers of the Union Republics. (9) It co-ordinates and directs the work of All-union and Union-Republican Ministries.

The Judiciary

The nature and organization of the Soviet Judiciary are quite different from those existing in other countries. In the first place, the judiciary has no power to declare a law passed by the

legislature unconstitutional. The second noticeable peculiarity is that justice is always relative to the social situation and partial to the interest of the ruling class. In the third place, the judges and people's assessors are rendered Independent and subject only to the law. In the fourth place, all the judges are either elected by the people or by the Soviets at different levels for a term of 5 years and the people's assessors for 2 ½ years. In the fifth place, it has only one system of law courts organized hierarchically with the Supreme Court at the apex. In the sixth place, the judges and people's assessors may be recalled by the bodies which elected them.

The Supreme Courts of the U.S.S.R, the Supreme Courts of Union Republics, the Supreme Courts of Autonomous Republics, territorial, Regional, and City Courts, Courts of Autonomous Regions, Courts of Autonomous Areas, district (city) people's courts, and military tribunals in the Armed Forces are the courts in the U.S.S.R. People's judges of district (city) people's courts are elected for a term of 5 years. People's assessors of district (city) people's courts are elected for a term of 2 ½ years by a show of hands at meetings of citizen at their place of work or residence. Judges of the Higher Courts and elected for a term of 5 years. The judges of the military tribunals are elected for a term of 5 years by the Presidium of the Supreme Soviet of the U.S.S.R. The People's assessors in such courts are elected for a term of 2 ½ years by meetings of servicemen. The qualifying age for the Judges or the people's assessors is 25 years. The judges and people's assessors may be recalled. At the apex of the gradation of courts is the Supreme Courts of the U.S.S.R. The judges of the Supreme Court are elected for a period of 5 years at a joint-session of the Supreme Soviet. It consists of a Chairman, Vice-Chairmen, Members and People's assessors. The Chairmen of the Supreme Courts of the 15 Union Republics are ex-officio members of the Supreme Courts of the U.S.S.R. It has original and appellate jurisdiction. But it has no power to declare the laws passed by the legislature constitutional or unconstitutional. The strict and uniform observance of all the laws in the land is supervised by the Procurator-General of the U.S.S.R. is appointed by the Supreme Soviet of the U.S.S.R. and is accountable to it. The subordinate Procurators are appointed by the Procurator-General of the US.S.R. The term of office of all Procurators is 5 years.

HOW FAR IS RUSSIA A FEDERATION?

As a federation is a contract between the federating units on the one hand and a newly established government on the other-it is highly essential that the terms of the contract must be written down in the form of a constitution. When the rules and regulations governing the powers of the government and the rights of the governed are clearly laid down and made rigid, the constitution becomes supreme. It is rigid in the sense that the constitution cannot be amended in the same way as an ordinary bill is passed, but by a special process. A federal system implies a division of powers between the centre and the states. On the other hand, a unitary state does not allow any subsidiary sovereign authority. In a federal government, matters of common interest to all the states are entrusted to the union government and the rest being left to the states. In a true federal government, the residuary powers should belong to the states. Supremacy of the judiciary is another characteristic feature of a federal government. Disputes may arise between the two governments. So some machinery should act as the guardian of the Constitution. This work is usually performed by a court. Its duty is to see that the terms of the contract are not violated by the parties. In this respect, it acts as the balance-wheel of the Constitution.

All these characteristic features except the last one are found in Russia. The Constitution of the U.S.S.R. fulfills some of the essential principles of a federal Constitution. In addition to these usual features found in the true federal government, there are some peculiar features in the Constitution. The components republics are given absolute freedom to secede from the Union. Further, the republics are allowed to enter into diplomatic relations with foreign countries. Such extraordinary powers wielded by the republics may tempt one to jump into the sudden conclusion that these powers conceded to the republics are found only in paper and not in practice. The fifteen republics are not autonomous politics units as the states of the United States. The rights given to the republics to secede from the Union and enter into diplomatic relations with foreign countries are more apparent than real. The U.S.S.R. is not a true federation. On the contrary, there is a high degree of centralization.

Russia is an example of a state which combines the features of a unitary state with those of a federal state. The federal government is stronger than in any other federation. Just like the Indian Constitution, it is a hybrid between a federal and a unitary state. Where classifies the Constitution of the U.S.S.R. as quasi-federal. For the superficial observer, the Constitution may appear to be federal in character. But if one goest deep into it some unitary features can be detected.

(2) Unlike in the U.S.A. and Swizerland, there is only one citizenship in Russia. Though double citizenship is not a very important federal feature, a single citizenship reveals the unitary colour. (2) Even in the distribution of powers between the Union government and the republics the scales are heavily tilted in favour of the Union government. In a true federal government, the residuary powers should belong to the federating units. But its character depends upon the amount of power granted to the central government. In Russia, no doubt, the residuary powers belong to the republics. Article 73 of the 1977 Constitution enumerates the powers allotted to the Union government. It practically includes almost all subjects under the sun. If at all anything is left out, over which the republics have jurisdiction, it is only cultural autonomy on very few important matters. So the U.S.S.R. is a closed federation. (3) The laws passed by the Supreme Soviet of the Union are to be operative throughout the country. In short, the Union Government intervening in the local affairs of the republics has not parallel in any other Constitution. Further, in matters of dispute between the Union law and the law of a republic, the Union law prevails. (4) A further characteristic feature which goes to illustrate the unitary aspect is the composition of the Soviet of Nationalities. In a true federal government, the states should be given as equal representation in the Upper House irrespective of the size and population of the states. In the U.S.A the Senate is represented by two members from each state. A duplication of the same principle is found is Switzerland. In Russia, each republic irrespective of its size and population, no doubt, is represented by 32 Deputies in the Upper House. But a noval feature of the Constitution is that it gives representation to various racial groups. Eleven Deputies are sent from each autonomous republic, five from each region and one from each area. The R.S.F.S.R. is by far the largest republic with a greater number of autonomous republics, regions and areas. So its membership in the Soviet of Nationalities is greater than that of the other republics. This practice of giving representation to ethnical groups breaks down the principle of equality of representation in the Upper House. (5) The method adopted in the amendment of the Constitution itself discloses the unitary feature. The Constitution of the U.S.S.R. can be amended by the decision of the Supreme Soviet, by a majority of not less than two-thirds of the votes in each of its Chambers. In a true federal government, the component units should also be taken

into partnership, whenever, the constitution is amended. The practice obtained in Russia is that the Union legislature can even change the distribution of powers in favour of the Union government without consulting the republics. This is a gross violation of the federal principle. (6) In a true federal government, the judiciary should be the guardian of the Constitution. The Soviet Judiciary has not powers to decide on the constitutionality of the laws passed by the parliament. This the most essential principle of a federal form of government is conspicuous by its absence in Russia. (7) The Union government has power to suspend the acts of the Soviets or the executives of the republics. This strongly reveals the unitary feature.

All these features make the government of the U.S.S.R. a unitary one. It is not Federal except in nature. Where regards the Constitution of Russia as quasi-federal but he does not consider it a "working example of federal Government.

THE CONSTITUTION OF SWITZERLAND

SALIENT FEATURES OF THE SWISS CONSTITUTION

Switzerland is a Federal Republic. The Constitution is written. The Constitution is modeled on that of the American Constitution. The Constitution is rigid in the sense that it provides for a different procedure other than the ordinary law-making process for amending the Constitution. The executive is collegiate or plural in nature. The Framers of the Swiss Constitution provided for a unique executive by combining the advantages of both Presidential and Parliamentary types and avoiding the defect of both, but entirely different from the two. The two Chambers of the federal legislature have equal powers, but in actual practice it is the Lower House which is more powerful than the other. The Federal Judiciary has no power to declare the laws passed by the legislature unconstitutional. Thus an important federal principle is conspicuous by its absence in the Swiss Confederation. Provision is made in the Constitution for direct democratic checks like the Referendum and the Initiative.

THE COLLEGIATE EXECUTIVE

The Federal Executive in Switzerland is plural or collegiate in nature. The Framers of the Swiss Constitution provided for a unique executive by combining the advantages of both Presidential and Parliamentary types and avoiding the defects of both, but entirely different from the two. Executive power is vested in the Federal Council consisting of 7 members. They are elected for a period of 4 years by the two Houses of the Federal Assembly. On being elected ministers, they resign the Federal Assembly are filled by a fresh election. The old members are re-elected to the Council as many times as they care to serve. The lengthy tenure has contributed much to the stability of the executive.

Nature of the Federal Executive

The Federal Council is a non-partisan body. To quote the federal Councilors are selected from four different parties. The Swiss ministers are more like heads of bureaus in other countries than like the political ministers of France or England. It has no legislative leadership. The Federal Assembly has not power to remove the executive. Yet it is not without legislative functions like the American Executive. Of the members, one member is annually elected as President and another as Vice-President.

All the seven members of the Federal Council are elected by the Federal Assembly. They remain in office for a period of 4 years. Constitutional usage prescribes that the cantons of Zurich, Berne and Vaud shall be represented by one member each. The convention was, however, broken twice. The present arrangement is that 4 Councilors come from German-speaking areas, two from French-speaking cantons and one from Ticino, the Italian-speaking canton. Thus by giving representation to the important languages, regional interests of the minorities are adequately protected.

The President of the Council

The Chairman of the Council is chosen annually by the Federal Assembly and is called the President of the Confederation. It is for the discharge of dignified functions like receiving a foreign dignitary that the Federal Assembly designates one of them as the President of the Confederation. He continues in office for one year. The Constitution debars him from holding office for two consecutive years. However, the same person may be re-elected to the office after a break of one year. The same rule applies to the Vice-President who usually succeeds the President. The two offices go by rotation to the other members of the Council according to seniority.

Powers of the President

The President is often described as a "President of no great importance". He neither dominates the political scene like a colossus nor is he ***primus inter pares***. He neither reigns nor governs. He is one among equals. He has no power to appoint and dismiss his colleagues. Again it is not within his purview to appoint federal officers. In short, he is not within has purview to appoint federal officers. In short, he is not the chief executive head of the nation, but only the ornamental head of the state. He presides over the meetings of the Federal Council and has no overriding powers. He gets the same salary like his other colleagues besides an entertainment allowance. He is merely the Chairman of the Federal Council exercising a casting vote in case of a tie. Like the American President, he is the first citizen of the Confederation. He has no special power or authority. He performs the duties of a general overseer supervising the various departments. As the other members of the Federal Council are appointed by the Federal Assembly like himself, he has to consider them as his colleagues and not as his subordinates.

Position of the Federal Executive

The seven Federal Councillors are the heads of seven departments of the Swiss government. The Council is not a Cabinet in the British sense. Cabinet responsibility is understood in a different sense in Switzerland. They are responsible to both Chambers. They attend the sitting in either House, Make speeches and answer question. But they do not possess the right to vote. They do not go out of office on an adverse vote in the legislature. On the contrary, they will pocket the insult with a much good grace as they can muster and remodel the proposed measure to suit the tastes of the legislature. The executive is the servant of toe legislature and has to carry out its decision. In this respect, the Swiss Federal Council is like a lawyer or an architect who does not give up his job in haste, whenever his client or employer insists upon having something done differently from that of the expert advice tendered. After all the Federal Council is a "sort of glorified legislative drafting bureau".

Executive powers

The federal Council enforces laws and ordinances passed by the federal legislature. It has to prepare and submit to the legislature an annual report of its work in domestic and foreign affairs. The federal executive conducts the foreign affairs of Switzerland. It controls and supervises the army. The defence of the country is in its hands and it maintains peace and order. It is the duty of the Federal Council to guarantee the cantonal Constitution. It examines the treaties made by the cantons among themselves or with foreign countries. It supervises the conduct of all federal employees. It administers the finances of the federation and prepares the budget. It makes such appointments to all federal offices as are not entrusted to the Federal Assembly and Federal Tribunal or any other authority.

Legislative powers

Apart from the administrative duties, the Swiss Executive has certain legislative functions to perform. The members of the executive attend both Houses, answer questions but do not vote. As a matter of fact, they introduce most of the important bills including the budget on their own intiative or in compliance with the specific request made by members of the federal legislature. Bill introduced by private members are first referred to a members of the Federal Council.

Judicial powers

The Federal Council has also certain judicial powers. It tries cases regarding the behavior of federal officials. It is its duty to see to the execution of the verdicts of the Federal Tribunal. In the beginning, the Federal Council served as the chief administrative court of the State. But of late, much of its jurisdiction over administrative cases has been transferred to the federal court.

THE FEDERAL ASSEMBLY

The federal legislature in Switzerland known as the Feral Assembly is a bicameral body consisting of the National Council and the Council of States.

The National Council

The National Council is the Lower House. The Constitution is silent in regard to the total strength of the House. It varies from time to time according to the population. The Deputies are chosen by direct ballot on the bases of proportional representation. Citizens who have completed 20 years or more elect one Deputy for every 24,000 people. Once in 10 years, a federal census taken place and on the basis of that, the number of representatives to be elected form each canton is fixed. The National Council, now, consists of 200 members. Every Swiss citizen entitled to vote is eligible to membership in the National Council. Clergymen are not allowed to become members of the National Council. It is elected for a period of 4 years and cannot be dissolved earlier except when the two Houses differ on an issue of the total revision of the Constitution. The House elects its own President and Vice-President every year and the office goes by rotation to other members. The President discharges the usual duties of a presiding officer and exercises a casting-vote in case of a tie.

The Council of States

The Council of States is the second chamber. It represents the cantons and not the people as in the case of the states in the Senate of America. Each full canton is represented by two members and each half-canton by one member. Thus its-total membership is 46 represented by 2 each from the 19 full cantons and one each from the 6 half-cantons. No uniform procedure is adopted in electing the members. In 4 of them the members are elected by the cantonal legislatures and in about 21 cantons by the people directly or in the Primary Assemblies. Terms of office are not uniform. Fourteen cantons elect their representatives for 4 years, eight for 3 years and three for one year.

The Swiss Council of States resembles the American and Australian Senates in respect of getting equal representation for the cantons. But the resemblance ends here. As Woodrow Wilson points out that "the Council of States can hardly be called the federal chamber, neither is is merely a second chamber. Its position is anomalous". A true federal second chamber should safeguard the interests of the component units in a federation and a normal second chamber should have certain well-defined legislative powers. But the Swiss Council of States neither safeguards the interest of the states nor has any defined legislative functions of its own. It has co-equal powers with the other House in matters of legislation. It is not a powerful second chamber. It justifies its existence helping the other House in the transaction of legislative measures. As Munro says. "No one ever speaks of the Swiss Council of States as a citadel of reaction or a brake upon the wheels of progress". As the Council has 'acquired and on deserved reputation for idleness' the best talents in political life prefer to sit in the Lower House.

Powers of the Federal Assembly

Under the Swiss Constitution, supreme power of the Confederation rests with the Federal Assembly subject to certain rights reserved to the people and the cantons. The Makers of the Swiss Constitution conferred on the Federal Assembly, all kinds of authority-legislative, executive and judicial- in utter disregard of the theory of Separation of Powers. It has been aptly pointed out that very few legislatures in the world perform such miscellaneous functions as the Swiss Federal Assembly is called upon to perform.

Legislative powers

The Federal Assembly legislates laws on all federal subjects, passes the annual budget, audits and approves the accounts of the Federal Council, authorizes loans, creates federal offices and fixes their salaries and revises the Federal Constitution.

Executive powers

The Federal Assembly elects the members of the Federal Council and appoints the judges of the Federal Tribunal. It also appoints a Commander-in-Chief of the army when the situation warrants and other federal officials of the Confederation. It approves the treaties made by the cantons among themselves or with foreign countries. It has to take measures for the defence and neutrality of the country. It also declares war and concludes peace. It has to guarantee the cantonal Constitutions and the territorial integrity of the cantons and intervenes whenever the internal peace of a canton is threatened. It controls the federal army, supervises the civil service

and fulfills federal obligations. Though the above mentioned powers are exercised by the federal executive, it has to be borne in mind that it has to get the approval of the legislature in all cases.

Judicial powers

The Federal Assembly grants amnesty and pardon. It acts as a court of last resort for administrative cases and conflicts of jurisdiction between federal authorities.

Relation between the two Houses

The unique feature about the Swiss Federal Legislature is that the two Houses enjoy co-equal powers. Bills can be introduced in either House. Any legislative measure, for its validity, requires the concurrence of both Hourse. The Federal Councilors are responsible to both Houses. In the words of Strong, "Swiss Legislature, like the Swiss executive, is unique, it is the only legislature in the world the function s of whose Upper House are in no way differentiated from those of the Lower". But in actual practice, it is the National Council which is more powerful than the Council of States. The reason is quite obvious as the former represents the nation and the latter the cantons. In disputed cases, the deadlocks are usually resolved by convening a conference consisting of representatives of both House, If no agreement is reached, the measure will be dropped. But if a decision is insisted upon, the two Houses in joint session will decide the issue by a majority vote. In such a case, the National Council has a clear advantage by virtue of its numerical strength.

DIRECT DEMOCRACY

A noteworthy feature of the Swiss democracy is the extensive use made of the popular Referendum and Initiative. The growth of population all over the world and rendered direct democracy a mere mockery. But Switzerland still remains as the classical home of direct democracy. Four institutions of direct democracy still survive in the Swiss system of government. They are : (1) Primary Assembly, (2) Compulsory Constitutional Referendum, (3) Optional Legislative Referendum, and (4) Constitutional Initiative. It should be clearly borne in mind that there is no provision for Legislative Initiative for the Confederation of Switzerland. But it does exist in the cantons.

The Primary Assembly

The Primary Assembly or the Landsgemeinde or the Democracy of the open – air type still survives in 5 of the Swiss cantons. It is the most curious and picturesque of all the political institutions of Switzerland. Like the city states of Athens and Sparta where all the adult male citizens took an active part in the administration of the country, the *Landsgemeinde* in Switzerland is represented by all the adult male citizens of the canton. Every adult male citizen is entitled to attend the Landsgemeinde, participate in the discussions and exercise his vote , It meets once in a year under a president called *Landamman*. It passes new laws and approves those which have been already passed by the Executive Council. The Primary Assembly elects the members of the council and other cantonal officials including the judges. Though the *Landsgemeinde* is a political anachronism in the modern days, it still survives as a political curiosity in 5 of the Swiss cantons. The citizens of the *Landsgemeinde* cantons still zealously guard and prefer this type of self-government to representative government.

Referendum and Initiative in the Confederation

The twin direct democratic checks of Referendum and Initiative –the shield and sword of democracy-are extensively used in Switzerland. The Referendum is an instrument which permits the citizens to approve or veto a law passed by the legislature. The Initiative, on the other hand, involves the right of the citizens to bring forward the actual proposal of laws to be accepted or rejected by the people . The Referendum and initiative are so widely developed in Switzerland that they serve effective safeguards for the acts of omission and commission by the legislature .Referendum is of two types –Compulsory Constitutional Referendum and Optional Legislative Referendum.

Compulsory Constitutional Referendum

Changes in the Constitution can be made either totally or partially. Total change is called revision and partial change amendment, No constitutional change can be effective without the approval of the people. If both Houses of the Federal Assembly agree on revision or amendment, the proposed measure may be submitted to the people at a referendum. If it is approved by a majority of the people in the majority of the cantons, the revised Constitution or amendment will come into effect. If on the other hand, only one House approves of the measure, the matter will be referred to the people at a referendum. If at the referendum the majority of the people in the majority of the cantons are in favour of the measure fresh elections to the legislature take place. The newly constituted legislature will prepare the measure and after it is duly approved, it will be submitted to the citizens. The measure, for its validity, requires to be approved by the majority of the people in the majority of the cantons. The first two methods are called Compulsory (Obligatory) Constitutional Referenda.

Optional Legislative Referendum

While changes in the Constitution have to be approved by the citizens, ordinary laws can enter the statute book without popular approval. A legislative measure passed by the federal legislature may or may not be referred to the people. It is purely optional. But if 30,000 citizens or 8 cantons demand that the matter be referred to the people, provided it is not declared urgent by the legislature, there is no other alternative but to refer it to the people. It should be clearly borne in mind that Compulsory Constitutional referenda require both popular the cantonal majorities. Optional Referenda one laws and treaties require only popular majority.

Constitutional Initiative

If the initiative is taken by the people instead of the legislature to amend or revise the Constitution, it is called Constitutional Initiative. If 50,000 Swiss citizens desire a complete revision of the Constitution, the proposed measure will be submitted to the people at a referendum. If the stipulated majorities are obtained, fresh elections take place and the newly constituted federal legislature will carry out the wished of the people. If 50,000 Swiss citizens desire to have an amendment, they may send the proposal in general terms (unformulated constitutional initiative or in the form of a definitely worded amendment (formulated constitutional initiative). If the legislature approved of an Unformulated Constitutional Initiative, it will draft an amendment incorporating the desire of the citizens and submit it at a referendum. If the stated majorities are obtained, the amendment shall be deemed as passed. Even if the Federal Assembly is not favourably disposed to the amendment, the proposed amendment has to

be referred to the people at a referendum. If the people are in favour of the measure, the legislature has no other alternative but to undertake the amendment and submit it to popular vote. If 50,000 Swiss citizens submit a definitely worded amendment and if it is approved by one of the Houses, then it will be referred to people at a referendum. If the two Houses oppose the measure, they may either appeal to the people to vote against the amendment or submit a counter-proposal along with the original. This issue will be finally decided by the people at a referendum.

Referendum and Initiative in the cantons

As in the case of the Confederation, provision is made in cantonal Constitutions for Constitutional Referendum and Constitutional Initiative. While the Legislative Referendum is optional in the Confederation, it is compulsory in all the cantons except those retaining the *Landsgemeind*. Popular Legislative Initiative-a thing unknown to the Confederation-exists in the majority of the cantons.

UNIT - IV: THE CONSTITUTION OF CANADA

The Constitution of Canada - The Constitution of Australia

THE CONSTITUTION OF CANADA

The constitution of Canada consists of many laws as well as political conventions and judicial practices. The Constitution is an amalgam of British and American Constitutions. It adopts federal idea from the U.S.A. and parliamentary democracy from Great Britain.

Salient Features:

a) Written :

The Canadian constitution is mostly written as British North America. Act is its very base. Besides the amendment effected in it from time to time. In short the written part of the Canadian constitution unlike the American is not a single document.

b) **Rigidify – cum – flexibility**:

The British North America Act was silent regarding amendment of the constitution. It contained only a provision that the provinces were authorised to amend their constitutions. Thus, originally the constitution could be amended by the British Parliament to his majesty, the king of U.K. From 1949 the position underwent some changes.

c) A Federal Constitution:

The powers have been divided between the dominions and the provincial governments. The governments of Dominion and provinces are district in personnel. The Canadian Supreme Court is equipped with the ultimate authority to resolve the conflicts of jurisdiction between the centre and the provinces. The Central government exercises numerous powers over the provinces and their governments.

d) Parliamentary Government

The Canadian constitution is based on Bristish Parlimentary model. The Govern Gender is the nominal executive head. The Prime Minister, the leader of the majority party in the in the House –of Commons, is the real head of the Government.

Supreme Court:

The Supreme Court is the highest judicial tribunal in the country.

A bicameral Legislature.

The Canadian Parliament is bicameral, the House of commons us its lower House and Senate the upper. The lower house is a directly elected chamber whereas the senate is a nominated chamber.

Executive:

The executive of Canada comprise two parts – nominal and real. The crown and its representative, the Governor – General, constitute the nominal whereas the cabinet forms the real e3xecutive. The powers of the Governor – General seem to be imposing but in actual practice like the Queen of U.K. he is only a rubber stamp of what the ministers do. He appoints the lieutenant Governor of the provinces and can remove them from office as well.

Legislative:

He summons prorogues and dissolves the parliament. Infect, it is the Cabinet which decides when parliament is to be summoned or prorogued.

Judiciary:

We appoints Judges of the supreme Court and provincial courts. As representative of the crown he exercises crowns prerogatives of reprieve and pardon.

Power of the senate:

The powers of the senate have not been defined by law the only provision in that all appropriation or taxation bills must be initiated in the House of commons. The senate possesses coequal legislative powers with the commons as it has not been specifically debased from originating non-money bills. As a revising chamber, the senate has played a significant role.

The judicial System

Supreme Court provincial courts hear cases concerning both provincial and federal laws. They also hear election petitions and entertain appeals from the lower courts. In each country there is a country court.

Its Jurisdiction:

The Supreme Court possesses mainly appellate Jurisdiction. The Federal Court also acts as a court of Admiralty. In this capacity, it possesses original as well as appellate jurisdiction. It may be emphasised at the end that the judiciary in Canada is independent and impartial and is held in high esteem. The Country is administered according to the rule of law and the litigants have faith the impartiality, independence and integrity of the Judges.

CONSTITUTION OF AUSTRALIA

The present Constitution of Australia is to be found in the commonwealth of Australia Act 1900 which came into force on January 1, 1901. The constitution is divided into eight chapters and contains 128 sections. Its main features are as follows.

Preample:

The opening words of the preamble proclaim that the constitution of the commonwealth of Australia is founded on the until of the people. It is clothed with the form of law by an Act of the imperial Parliament of the Government of Britain and Ireland.

A Union between Independent states:

Before the federation came into being in 1901, the present Australian states were self-governing British colonies. The federal scheme proposed in the common wealth Act does not go very far in the Centralising direction. The Act continues the constitution of the states, the section 107 emphasises this by continuing the powers of the state parliaments.

A federal Constitution

The constitution declares Australia a federation. All the requisites of a federation, written and rigid constitution, division of powers and judicial review are found in the constitution. The powers of the federal government have been specified, the residuary being left to the states.

Parliament Government

The constitution of Australia provides for a parliamentary government at the centre. The powers of the Governor-General are exercised by him only on the advice of federal ministers or the Executive Council. The real power vests in the Federal Executive Council headed by the Prime Minister who is the leader of the party in majority in the lower house.

Civil Liberties

Although the Australian Constitution does not contain any separate chapter on the fundamental rights of the people, the persons living in Australia are guaranteed their basic rights and liberties.

Rigid Constitution

The Australian Constitution is a rigid one. Any law proposing an amendment passed by an absolute majority in both the Houses of Parliament must be submitted to the electors of the House of Representatives in each State and Territory to vote upon it by means of a referendum.

Equal Representation in the Senate

Like the American Constitution, the Australian Constitution also provides for equal representation of the states in the upper House. Originally, every state had Six Senators. The Senators are elected by the people directly.

Independent Judiciary

In the organisation of Judiciary, the Australian Constitution follows the American Model. The High court of Australia has been given the power of judicial review. It can declare any law unconstitutional.

States Constitutions

Like the American constitution bat unlike the Indian, the Australian Consstitution does not include the structure of the State Governments.

Therefore, the Australian constitution like the Indian Constitution is a mixed from of the British and American Constitutions. It is a parliamentary democracy with a federal scheme but unlike the Indian Constitution the States in Australia have their own constitutions with the power to amend them.

Executive Government

Australia is a sovereign independent nation, but has retained its links with the British Crown. The Governor-General of Australia is her majesty's representative in the commonwealth and is appointed by the Queen chapter 11 of the Australian Constitution mentions as executive council, which is to include the Ministers of state. The real business of supreme policy control is carried out at meetings of Ministers which have come to be called cabinets.

Judiciary

The Organization of the judiciary in Australia has been influenced by the general structure of federalism. There are state courts and federal courts and then jurisdiction, arising under state and the federal law respectively. The High court is directly created by section 71 of the constitution. It consists of the chief justice and such other judges who are appointed for life by the Governor-General in council. The jurisdiction, of the High Court falls into two parts: (a) Appellate jurisdiction. The federal Court is one of the two specialised Courts created to deal with laws passed by the federal Parliament. The family court was created in 1975. In each of the states, there is a state judicial structure under which the names of various types of courts differ, but the outer structures are identical.

UNIT - V: THE CONSTITUTION OF IRELAND

The Constitution of Ireland - The Constitution of Japan

CONSTITUTION OF IRELAND

The Constitution of the Irish Free State was the second constitution of the Independent Irish state. It was adopted by Act of DailEireann Sitting as a constituent assembly on 25th October 1922 and was proclaimed by Royal Proclamation. The constitution established a parliamentary System of government under a form of constitutional monarchy, and contained guarantees of certain fundamental rights. It was intended that the constitution would be a rigid document.

Legislative Competence

On 31 March 19922, an act of the united kingdom Parliament called the Irish Free State Act 1922 was passed. If also provided by for the election of a body to be called the "House of Parliament", sometimes called the "Provisional Parliament", to which the provisional Government established under the act would be responsible.

Main Provisions

Structure

As enacted, the constitution proper consisted of 83 separate articles, totalling around 7600 words. The Constitution of the Irish Free State Act 19922 consisted of only a short preamble and three short sections. The articles of the constitution broke down

Roughly as follows	:	Constitutional amendment
Introductory provisions	:	Cabinet
Fundamental Rights	:	Governor General
Legislature	:	Regulation of State Finances
DailEireann	:	
The Senate	:	Courts
Initiative and referendum	:	Transitory Provisions.

Preamble

The Constitution itself had no Preamble. However the constitution of the Irish free state Act 1922.

Characteristics of the State

- Common wealth Membership
- Popular Sovereignty
- Citizenship
- National Language

Individual Rights

- Prohibition of titles of nobility
- Liberty and habeas corpus
- Inviolability of the home
- Freedom of Conscience and worship
- Prohibition of Establishment
- Religious dissemination
- Freedom of Speech, assembly and association
- Right to education
- Trial by Jury.

Organs of Government

The Constitution provided for a Parliamentary System of Government. The legislative was called the Oireachtas, consisting of the monarch and two houses. The chamber of Deputies, to be known generally as DailEireann, was established as the lower house, and the senate to be known generally as second Eireann, as the Upper house.

The Executive branch consisted in practice, of a cabinet called the Executive Council headed by a Prime Minister, the President of the Executive Council. The Constitution provided that the Judiciary would consist of the Supreme Court, the High Court and any lower courts established by law.

The head of state was the monarch represented by the Governor General of the Irish Free State.

CONSTITUTION OF JAPAN

Japan is often called the England of the East. Both the Countries Japan and England have many Similarities.

Salient features of the Constitutions:

i) Written Constitution

The Shova Constitution has been termed as the "Constitution of Japan" whereas the Meiji Constitution was named as the Constitution of the empire of Japan. Then Shova Constitution consists of 11 chapters and 103 articles. It opens a new chapter in the history of Japan.

ii) Sovereignty of the people

The Constitution vests sovereignty with the people whereas the Meiji Constitution was a gift to the people.

iii) Rigid Constitution

The Constitution of Japan is rigid, and the procedure proposed to amend it is tough. But now the diet proposes the amendment and the people ratify it No amendment has so far been made in the Constitution.

iv) Parliamentary Government

The new Constitution of Japan establishes a parliamentary government of the British partners. The diet is the highest Organ of the State and is the sole law making body. The Prime Minister is appointed by the Diet and along with his cabinet is responsible to it.

Unitary Government

The Constitution of Japan is unitary whereas that of America and India is federal. There is no division of powers in Japan but there is centralization.

Bicameral System

The Diet is the highest law making Organ of the State. It has two chambers. The Upper chamber is called the House of Councillors. The lower chamber is called the House of Representatives.

The Executive

- The Emperor appoints the Prime Minister as designated by the Diet.
- He attests the appointment and dismissal of ministers of state and other officials as provided for by law.
- He receives foreign ambassadors and Ministers accredited to Japan.

The Judiciary

The Constitution vests the whole judicial power in Supreme Court and in such inferior Courts as are established by law. At the apex of the Judicial structure is the Supreme Court located at Tokyo.

Jurisdiction of the Supreme Court

The Supreme Court has not been burdened with work. It has been given only appellate courts below the Supreme Court. There are 49 district Courts. At the bottom of the Judicial structure are the summary courts numbering 570 and located in major cities and villages.

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