DIRECTORATE OF DISTANCE & CONTINUING EDUCATIONS

MANONMANIAM SUNDARANAR UNIVERSITY

TIRUNELVELI – 627012

OPEN AND DISTANCE LEARING (ODL) PROGRAMMES

(FOR THOSE WHO JOINED THE PROGRMMES FROM THE ACADEMIC YEAR 2025 – 2026)

M.A. HISTORY
COURSE MATERIALS
MODERN GOVERNMENT

By

V. DEEPTHI
Assistant Professor
Department of History
Manonmaniam Sundaranar University
Tirunelveli 627012

MODERN GOVERNMENT

Unit I

Forms of Government-Constitution: Meaning. Purpose and Contents - Classification: Written and unwritten-Rigid and Flexible

Unit II

State: Meaning and Features Classification: Unitary-Federal-Quasi Federal Theory of Separation of Powers.

Unit III

Legislature: Types: Unicameral Bicameral; Powers and Functions of legislature Role of Political Parties

Unit IV

Executive: Types: Parliamentary Form Presidential Form Powers and Functions of Executive Merits and Demerits.

Unit V

Judiciary: Rule of Law Role and functions of Judiciary-Independence of Judiciary Judicial

MODERN GOVERNMENT

UNIT I

FORMS AND FUNCTIONS OF GOVERNMENT

Government a necessary feature of every State

As a community building animal man has set up a variety of institutions in order to live with his fellows. Of these institutions the state is the all-embracing and the most important, for it is pre-existing and pre-determined for him as he is born. Each state is known by the territory under its jurisdiction, the people living in it, the bond of cultural or socio-economic unity that keeps the people together, and finally a machinery or system to regulate its life. This machinery or system is what we mean by a government. It is necessary to run the political structure of the state. For a short time a state may not have a government, yet it will continue as state; there cannot, however, exist a government without a state. Such is the relationship between the two.

Forms of government are different in modern states.

Government is thus the machinery through which the political life of a state is conducted. All states do not have similar problems of life; the differences are geographical, economic, cultural, social and traditional. It is these differences that account for the different types of governmental machinery in modern states. It must, how-ever, be remembered that forms of government have differed in all ages of human history and will continue to be varied equally, if not more, in future. Each state adopts the form. Of government best suited to its needs and most practicable in the particular set of its environments.

Classification of governments since ancient times

Even though the forms of government are of a varied character, they may be broadly classified so as to permit their scientific study. Such has been the attempt of a pro-cession of political philosophers from the ancient Greek times up to the present age. Each of these thinkers has adopted his own method of classification and then attempted to evolve a system of government best suited, in his opinion, to a state. The oldest attempt was made by Aristotle who has been acclaimed as the founder of political science as a subject of systematic study. His classification is based on two aspects, viz., the quantitative and the qualitative.

(i) Quantitative classification of governments

From the qualitative point of view, he classifies governments according to the number of participants in the actual administration of a state: If the whole machinery of administration is run by. i, e. according to the views of, one man, the government is monarchic. If the government is run by a chosen few, it is aristocratic. And, finally, if many persons (meaning thereby the whole of the people) actively participate in the administration, the government is democratic. This sort of quantitative classification of governments was adopted by a number of political thinkers during the Roman period, Polybius and Cicero being the most important of them, as: well as during the middle ages.

(ii) Qualitative basis of governments

The Aristotelian classification of governments strikes the imagination and exacts the admiration of thinkers when he adopts the qualitative test to study the various forms of government. According to this basis the test is the end to which the conduct of government: is directed. This at once involves the motives and the attitudes of the rulers. If the government is conducted primarily for the welfare of the governed, which term means, in modern parlance, the bulk of the citizens, the government is normal. In that case, the rule of the one is "Royalty", that of a few "Aristocracy", and that of the whole people "Polity." Taking the reverse view, viz. the conduct of government primarily for serving the ends of the ruling body, the normal forms are converted into corrupt forms. In the latter forms, rule of the one is "Tyranny"; rule of the few is "Oligarchy"; rule of the whole people is "Democracy". Aristotle uses "democracy" to designate the form which we in modern times, would call "monocracy" or "anarchy." Of all these forms which is the best? Aristotle, in answering the question, adopts the stability of government as the criterion, and from this view-point "democracy is best where the poor greatly exceed the rich in numbers; oligarchy, where the superiority of the rich in resources and power more than compensates for their inferiority in numbers; polity, where the middle class is clearly superior to all the rest." Both Polybius and Cicero adopted the Aristotelian classification of governments but considered that system of government the best which com-bines in itself the elements of monarchy, aristocracy and democracy. Hence, they praised the Roman system in which the consuls represented the monarchic element; the senate was the aristocratic element, and the popular assemblies formed the clearly democratic element.

The classification of modern governments is, now-a-days, attempted not entirely from the quantitative or the qualitative view-point. The systems of government in modern states are so complex and varied that a different form of classification is essential. To us, governments are monarchic, or democratic, dictatorial or collective.

Modern classification Governments Ernments

Monarchy may again be benevolent where of the monarch rules with the definite object of serving the best interests of his subjects without impinging upon their rights and liberties, or it Monarchy: benevolent or despotic may be despotic (as in pre-war Russia of the Czars) where the ruler's word is law tic and the aim of government is to promote the interests of the ruler alone.

Democracies too may be classified as direct and representative. In a direct democracy, the whole body of the Democracy: adult critizens takes an active part in the direct or framing of laws, appointment of magis representative trates, and deciding of disputes. Such a democracy now exists in some of the smallest cantons of Switzerland. It had also existed in ancient Greek city states. It is possible only in a small territory where the people can easily be called together to deliberate on the problems of state, where their needs are few and relations with neighbours peaceful. But the modern world, due to the discoveries and inventions of science and the consequent changes in human activities, is made up of large states with extensive territories, with populations running into millions and relations with neighbours complex and even varying. In these states democracy has taken the representative form. Citizens exercise their voice only at intervals when called upon to elect their representatives to legislature, and leave the actual participation in government to these representatives generally for a stated period. Representative democracy began in the eighteenth and nineteenth centuries the Liberal Movement of 1848 resulted in the establishment of democratic governments in most of the countries of Europe. The Industrial Revolution, the advancement of science and intellectualism and the revolt against oppressive monarchic governments have been the chief causes of the rise of representative democracies in the modern world. They are now continued because they have been found to work well.

Democracy is still the most popular form

In the present age democracy, although much abused or criticized, in some quarters, has been a favorite with all constitution makers. Its basic principles have been applied in actual practice through different types of political institutions. In general, the true test of a civilized government is

the extent to which democratic ideals are embodied in its political system. England, France, United States of America, Switzerland, Ireland and the self-governing dominions of the British Empire are cited as examples of the traditional form of democracy of the XIX century Liberalism. It is considered as the final form and not merely a stage in the institutional development of a country.

Different views of Democracy

It will be worthwhile to discuss here the basic principles of democracy in order, as a preliminary, to understand the spirit of democratic governments. Abraham Lincoln defined democracy as the government of the people, by the people, for the people. This puts in a nut-shell the highest praise that could be bestowed on this system. It was, however, unnecessarily twisted by Oscar Wide who said: "Democracy means simply the bludgeoning of people, by the people, for the people", and thus given an entirely different meaning. This condemnation of democracy is not justified by facts. The truth is that democracy tends to give the people the liberty that is essential for their true ends of human 'existence. It creates conditions which permit the rise of the down-trodden and the enriching of the poor.

Principles of Democracy

This may easily be seen from the principles on which it is based. In this form of government "the ruling power of a State is legally vested, not in any particular class or classes, but in the members of the community as a whole." It follows, then, that in a democracy the poorer class, by the very force of its numbers rules. Democracy is founded on Equality and Liberty. This cannot be illustrated better than by the following words of the American Declaration of Independence, 1776:

Democracy considers every man to be the best judge of his own interest. It does not trust any person with unlimited powers, for there is the sure danger of his abusing them. Consequently, the larger the number, of persons associated with administration the greater the chance of eradication of evils and correction of errors. In such an organization, there is little room for any individuals pursuing their selfish aims unrestrained by the community. On the other hand, it gives every citizen a chance to realise his best self and thus contribute to the general weal. No system, however good, can prove useful unless the conditions necessary for its successful working are present. And that is why we find examples of the failure of democratic institutions here and there.

Condition essential to the success of democracy

The first essential condition for the success of democracy is a high standard of general education, not necessarily literacy. Unless the mass of citizens are acquainted with their rights and duties, and possess a high sense of civic life, they cannot run a democratic government successfully. Though much of the education may be acquired in the practical working of democratic institutions, viz. participation in election, legislatures, or other public associations and institutions, it is very necessary to train the would be citizen sat an early age in the elements of corporate life. Freedom of speech and association coupled with a free and well-informed press which presents facts accurately and impartially without attempting too much to thrust its own opinions on an inquisitive public, are some of the necessary conditions of a popular education.

It is but a truism that the present must be founded on the past with an eye on the future, if the best interests of men are to be served and protected, This at once emphasizes the need of traditional equality for the success of a democratic government. Equality in social, political, and economic life is the very spirit of true democracy, Class distinctions which restrict the enjoyment of civil rights to only a few are a great barrier to democratic life, and must be removed. Similarly, offices in the state must be open to all who possess the necessary capacity and qualifications; franchise should be universal and not restricted to those possessing property or tracing their descent to any particular race. And, finally, the economic system must be so arranged as to guarantee not merely some work for every citizen, but also adequate wages to enable him to live a decent human life, Many states, in the modern age, fail to create the requisite economic conditions to stamp out unemployment, starvation and unhealthy conditions of life, with the result that democracy fails to evoke enthusiasm of the masses and finally provokes revolt against the very system that aims at serving their best interests,

Liberty is obtained by fight against despotism.

History of England illustrates the fight people have put up to obtain liberty from unwilling despots, Voltaire has summed up Englishman's fight in these words: "It has cost much to establish liberty in England. It has needed seas of blood to drown the idol of despotic power, but the English do not think that they have bought their laws too dearly. Other nations have not had lesstroubles, have not shed less blood, but in their case the blood they have sacrificed has only cemented their servitude." Fight for democracy or liberty involves the recognition of a system of rights which alone enables citizens to live happily and well. The Americans got their independence in 1783 only as a

result of a war of rights. The Irish people fought for their liberty for hundreds of years before they could choose their own form of government in 1937.

Democracy and Declaration of Rights

In a large majority of modern states rights of citizens are included in their written constitutions. This by itself does not mean much, for the maintenance of the rights is much more a question of habit and tradition than of the mere formality of tradition Written enactment, however, enables a Citizen to attract the executive in a court of law, if it has violated his rights. A declaration of rights in a constitution also reminds the people that it had to fight for its rights; it is a valuable parchment in so far as the sanctity of a principle is concerned. This principle sets limits to the powers or the functions of government. It: establishes conditions, under which a people can freely express its life of instinctive freedom, and enables the citizens to proclaim:

Democracy and the Great War

The Great War, 1914-18, it was asserted by the Allies and their sympathizers, was fought to make the world safe for democracy. No doubt, the twentieth century had opened with a few chapters in democracy. The formation of the Commonwealth of Australia on 1st January, 1901 and the grant of responsible self government to the provinces of the Union of South Africa in 1909, were important signposts on the road of democracy. German violation of Belgian neutrality was the signal for England's entry into the war, followed three years later by the United States of America. President Wilson of America had assured the world, that at the end of the war people would have self-determination as the basis of their government, The establishment of the League of Nations was also a great step towards a better world order in which rights of nations were to be recognized on principles of equality and justice: Unfortunately, how-ever, the Treaty of Versailles, 1919, that ended the war, raised, on the ruins of the Austro-Hungarian, the Ottoman and the German Empires, new pillars of imperialism in total disregard of the principle of self-determination enunciated by President Wilson. The defeated Germany re-started her political life according to Weimar constitution which set up a democratic, federal, republican state. But in Italy, the parliamentarianism of the liberal movement of 1848 failed to realize the expectations raised by the secret: Treaty of London which had brought Italy into the war on the side of the Allies. The Italian parliamentarians were defeated in the diplomatic battle fought at the peace table in Versailles. The consequent disappointment in Italy resulted in the utter defeat of democracy and the rise of Mussolini's dictatorship. In Russia, the Revolution of 1917 had already replaced the Czar's despotism by a new system of government which

was as far removed from the nineteenth century conception of democracy as the new dictatorship in Italy established later. It was the rise of a collective state based on Marxist doctrines.

The spoils of war, viz., large parts of the Austro-Hungarian Empire, the Ottoman Empire, and the colonial possession of Germany brought into existence new states in Central Europe, backed by the League of Nations, and augmented the overseas possessions of the victors, particularly England and France. The principle of self-determination which was expected to be the fundamental basis and the only criterion of post-war democracy, for safeguarding which the war was supposed to have been fought, was completely disregarded in practice.

The world thus remained as unsafe for democracy after the Versailles Treaty as it was ever before. Disarmament by all European nations remained an unrealized dream. Then there was a general economic collapse which affected the whole world and practically killed the spirit of the infant democracies of Germany, Austria, Poland and other smaller states in Europe. The Weimar Republic unable to stand on its legs collapsed, yielding place to the Third Reich under Hitler. Austria too adopted a dictatorship, followed later by Poland to some extent. All this led to a new danger in Europe fanned by a war of ideologies, particularly that between socialism and dictatorships. Fascist doctrines invaded practically every country, and democracy became an unpopular system of government.

Thus the post-war Europe produced two new forms of government, viz., collective soviet rule as established in Russia, and totalitarian dictatorship as it existed in Germany and Italy. Both in their basic philosophy and the nature and forms of institutions, these two types of, government present ample scope and material to a student of modern governments. This is taken up later in the book.

Independent and dependent governments

Of the modern states, some possess independent governments and others are still dependencies. The independent states, like England, France, Germany, Italy, Japan and a host of others have systems of government either actually or impliedly approved by the citizens. The government in all of them is conducted by a party, or according to a constitution, which has immediately or remotely the backing of the people, whether the government is of the democratic or of the dictatorial type. There are, on the other hand, large states like India, Palestine, and most of the mandated territories which are denied the right of self-determination or self-government, either on the plea of their general unfitness or of the special responsibilities of the dominant country. These

countries are the black spots of the civilized world, and present serious problems to true lovers of democracy who would not accept the pretensions of the dominant countries at their face value... England, the mother of parliaments and democracy, holds large parts of the world under his subjection, on the ground of fulfilling a definite, mission. The rule of the dominant country over dependencies, which cannot be justified on any moral grounds in a democratic age, is yet held out to be continued on principles. G. B. Shaw has, in his characteristic way, thus spoken of the Englishmen who rule over vast dependencies. "There is nothing so bad or so good that you will not find Englishmen doing it; but you will never find an Englishman in the wrong. He does everything on principles. He fights you on principles; he rules you on business principles; he enslaves you on imperial principles.' Thus dependencies with their own systems of government as given by the dominant countries, apparently justified on some principles, are a peculiar study by themselves both in the aims and methods for government.

CONSTITUTIONAL GOVERNMENT

The ideally best form of government, it is scarcely necessary to say, does not mean ones which is practicable or eligible in all states of civilization, but the one which, in the circumstances in which it is practicable and eligible, is attended with the greatest amount of beneficial consequences, immediate and prospective. A completely popular government is the only polity which can make out any claim to this character. (JS Mili)

STATE AS THE HIGHEST FORM OF SOCIETY

Man has given expression to the many aspects of his life through the setting up of various associations. But the greatest achievement of human ingenuity is without doubt the organization of society into a political community. The process has involved experimentation of a varied character, beginning with the nomadic hordes and passing through the pastoral tribe, the family, and the group, till the emergence of the modern political society. It is in the life in this society that the individual has been enabled to realize his best self, at the same time, promoting the interests of those to whom he finds himself bound by ties of blood. Sentiment thought and common action. Such a society, technically called the State, alone creates conditions necessary for the evolution of civilization, the development of science. the progress of arts, the propounding and expounding of doctrines and the building up of what is signified by the term progressive man.

Mankind has passed through a long series of alternate successes and failures before it reached the present (coveted?) position. The pendulum of progress has swung backward and forward; in other words, there has been a long series of actions and reactions to complete the tale of human behavior. Civilization is but an extra-natural, super-organic, artificial burden man had to assume in order to survive the struggle of existence. Viewed in this sense, culture is human history writ large.

Any study of the institutional development of mankind must, therefore, be conditioned by the historical setting Historical Basis behind it. But the complexity of historical of State. events. it is true, is such that the cultural life of any people and of any tribe can be understood only as an outgrowth of those unique conditions and environ-ments under which it has lived. Any attempt, therefore, to explain the details of a people's behaviour on merely psychological grounds can never give an adequate idea of the cultual life as it exists to-day, no matter how intimately we may be acquainted with the reactions of the individual to his social and economic environments. Moreover, the diversity of these environments in different parts of the globe explains, to a large extent, if not completely, the variety of institutions and principles. methods and theories which each people for itself has chosen to express its life.

Constitution indicates the pattern of society.

The highest common factor of these institutions in all States is the existence in each State of "a certain power- relationship between its individual and associated institutions." All this is expressed through the constitution which embodies not merely the fundamentals of the institutions but also the frame-work of the political system, that is. The government The different stages of human history are marked also by the variety of the prevalent governmental systems. The most salient difference between the process of government in former times and at present, is that in former times participation in government was confined to a very small fraction of the total number of individuals and groups subject to the authority of the State, while to-day the tendency is to extend the right of participation in government to every individual of mature years and to almost every conceivable group or class of people.

It is clear, therefore, that every State chooses for itself the kind of the constitution which is motivated by the geo-economic and the socio-political environments. These environments being dissimilar in different parts of the world, constitutions too take different shapes. All this accounts for the differences in the political systems or types of government. The prosperity, then, of a people

depends largely upon the nature of the government it has, for. as Burke said. "Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom." In this definition the most significant term is "human wisdom," for no government is worth a penny if it is not founded on the experience of the wise or articulated to the needs of the governed. Cousin rightly remarked: "You can only govern men by serving them. The rule is without exception." Governing by serving may seem to be a contra-government by serving them. The rule is without exception." Governing by serving may seem to be a contra-diction in terms, but it undoubtedly represents the modern conception of the functions of a government. This happy blending is difficult of actual or potential realization until the relationship between the rulers and the ruled is solidly based on stable foundations. It is not enough to be content with a good government at a particular time, what is needed is not merely the way in which the government is conducted. Pope's dictum: may be rejected outright. The form as well as the personnel of a government is of as great importance as the end it has to serve. Francis Osborne's advice (to his son), viz., "To a wise man it is indifferent what card is trumps. The game may be played as fair under clubs as diamonds. If we are to be fettered, it is folly to be troubled whether our fetters consist of many links or but one," is full of flaws. On the other hand, we are more inclined to accept what Ovid said: "Spare the spurs, boy. and hold the reins more firmly." This at once postulates an organization in which the citizens must control, in the ultimate resort, the governmental machinery. This truth has been realized now and that is why every government of to-day rests upon a constitution.

CONSTITUTION DEFINED

According to Lord Bryce "the constitution of a state or nation consists of those of its rules or laws which determine the form of its government and the respective rights and duties of it towards citizens and of the citizens towards the government." Paley defines Constitution thus: "By the constitution of a country is meant so much of its law as relates to the designation and form of the legislature, the rights and functions of the several parts of the legislative body; the construction, office and jurisdiction of courts of justice. The constitution is one principal division, section or title of the code of public laws, distinguished from the rest only by the superior importance of the subject to which it treats." This definition is only an amplification of what is constitutional law which according to Dicey "includes all rules which define the members of the sovereign power, all rules which regulate the relation of such members to each other; or which determine the mode in which the sovereign power or the members thereof, exercise their authority."

Gilchrist defines a constitution to be "that body of rules or laws, written or unwritten, which determines the organization of government, the distribution of powers to the various organs of government, and the general principles on which there powers are to be exercised." We thus see that the content of a constitution is the picture of the fundamental political institutions through which the society lives its life. In the picture a student can see only the broad features and not the finer details; it presents the contour and not the minute specifications. To understand the latter we have to study the social environments, the economic life, the cultural heritage and the historical background of the nation.

NECESSITY OF CONSTITUTION

The long history of mankind is characterized by the special features of each age or epoch. In the dark past a about which the modern archaeologist is now trying to give us partial knowledge, we hardly find any set rules of laws which man's reason could explain in relation to his creative genius. That was a time in which the bludgeon ruled; the law of the jungle prevailed. Survival of the fittest, an important biological principle, was without doubt the only principle at work. In those days men rather than laws governed; the rule was obeyed as he alone could keep the different and warring sections of the community under his control. With the development of man's intellect, and the lapse of centuries which contained the slow transformation of the barbarian into the rational man, there was a distinct move towards a new order. This reversed the process and laws, rather than men, began to control, and, besides the ruler, other parts of the community began to participate in the organized political life. This was the dawn of constitutional govern-ment and an understandable system.

HISTORY OF CONSTITUTION

Among Europeans the ancient Greek philosophers were the first to direct their attention towards a discussion of the forms and kinds of political society. Both Plato and Aristotle, but more particularly the latter who has been accepted as the founder of political science, discussed in detail the groupings through which men could live as organized communities. Some kind of laws or rules, they asserted, were necessary for a State. For over fifteen centuries thereafter attempts were made in Europe at evolving stable organizations of men, each with a cultural or social harmony of its own. With the disruption of feudal society and the rise of forces that threatened to overthrow the autocracy of absolute, national monarchies the movement for a settled life based on known or know-able rules and laws received a new impetus.

In Europe, England was the first country to circumvent the rights of the subjects. Constitutional Government thus originated for the first time in England. Thereafter it was adopted on the continent, in America and other parts of the world.

IN ENGLAND

Constitutional government, then, is a form of government in which laws rather than men control and which to a greater or less degree is popular in character in that it a greater or less degree is popular in character in that it admits to a greater or less degree of the participation of the important elements in the state's life.

"Constitution" was first employed in England to designate certain fundamental customs or ancient usages declared in some form by the English King with the assent of his Great Council. Thus Henry II, in 1164 issued a set of rules governing the relations between the secular and ecclesiastical courts, and these became known as the constitutions of Clarendon. Ostensibly they were not new rules, but merely the old usages put into written form and formally declared. So it was with the provisions which the barons wrung from King John in 1215. On a much broader scale Magna Carta enumerated the various fundamental customs of the realm. It was a document of definition, not of legislation, and might Justas well have been called the constitution of Runnymede. This surrender of the king marked the beginning of constitutional government in Europe, that is, of government based upon a definite understanding among the parties concerned in it. But these constitutions and charter did not embody all the principles upon which the government of England rested during the succeeding centuries. From time to time they were supplemented by successive confirmations of the Great Charter, by the Provisions of Oxford (1258), and by a series of great statutes such as the Statute of Mortmain (1279), Winchester (1285) and Praemunire (1353). Later came the Agreement of the People, drawn up by Cromwell's soldiers in 1647, and the Instrument of Government issued by the Protector in 1653. This Instrument of Government was a formal written constitution in all its essentials, for it set forth in some detail the powers of the executive and the legislature. It established an English republic with legislative power vested in a single chamber and a President (Lord Protector) with life tenure. But Parliament never accepted the constitution, and after Cromwell's death, when monarchy was restored, it merely decreed that the government of England should again be conducted "according to the ancient and fundamental laws of the Kingdom". Thus ended the first and only experience of England under a constitution of this type

and this English Constitution of 1653 is said to be the earliest written constitution of modern Europe.

IN AMERICA

In coming to the conclusion, in 1776 that a written constitution was necessary, the Americans were, however, but following the example of their English kinsmen, who drew up the first written constitution of modern Europe in 1653. The American colonies caught the idea involved in the Instrument of Government and utilized it- During the latter part of the 17th century they revived the practice of using the term constitution to designate their own fundamental laws, especially the one relating to the organization of their government. And after the Declaration of Independence all the thirteen states utilized the word 'constitution' to signify the new instruments of government which they set up. In other words, America borrowed the term from England gave it a more precise meaning, and by her example during the past 150 years she has been largely responsible for its extension throughout the world. We may say, then, that America is the birth-place of the written constitution; the constitution of South Carolina was drafted by John Locke and that of Rhode Island by Roger Williams.

IN EUROPE

The next attempt to frame a written constitution was that made by France in 1791. This constitution was in operation for less than a year, but was followed in that country by a series of written constitutions, which appeared with great rapidity from 1792 to 1815. A number of the smaller German states adopted written constitutions between 1815 and 1830. This early constitutional movement in Germany would appear to have been one of the results of the French Revolution. In 1830, the newly established kingdom of Belgium also framed a written constitution. The independence of the South American colonies of Spain also about that time, brought constitutional government and written constitution in its train. Other states in Europe adopted written constitutions particularly as the result of the revolutionary movement of 1848. Among these ma may be mentioned Prussia and Italy. The movement for national unity which is to be noticed in Europe about 1870, and which resulted in the consolidation of Germany, also brought with it a number of written constitutions, among which may be mentioned those of Austria-Hungary and the German Empire.

ELSEWHERE

Nineteen years later a written constitution was provided for Japan, when that Empire joined, in 1889, the rank of the constitutionally governed states. Within the last few years, Turkey, Persia, China, Egypt and Iraq have also adopted written constitutions. Siam in 1932 is an important addition to the list. We find, therefore, that the movement originating in the United States of America in 1776 has now spread to all the five continents. It is not, however, usually remembered that the constitution of the U. S. A., which had been adopted in 1789 is, apart from a few American state constitutions, the oldest existing written constitution, completing a century and a half of its existence, with only a few minor amendments.

CLASSIFICATION OF CONSTITUTIONS

The distinction between written and unwritten constitutions is of little significance. It is more accurate to call "them enacted!" and "evolved" constitutions. To say that a constitution is unwritten suggests that it is indefinite in its provisions, which the British constitution is not. Its requirements are in some cases more definite than are the corresponding provisions of even written constitutions in some other countries. An evolved constitution, like that of Britain has its origin in custom as contrasted with the one which appeared full grown from the hands of some assembly or ruler. The constitutions of Great Britain and of Hungary would belong to the class of "evolved constitutions." All other constitutions belong to the "Enacted Class." But this distinction between evolved and enacted constitutions is by no means a sharp one. Even an evolved constitution is partly made up of enactments. Magna Carta of 1215 in England and the Golden Bull of 1222 in Hungary are, both of them, enactments, yet they form part and parcel of the evolved constitution in those respective countries. On the other hand, an enacted constitution is never an absolutely spontaneous creation. It is not struck off at a specific date by a designated group of framers or fathers. Even the constitution of the U. S. A. could not have been framed in 1787 as it was then framed, had there not been a body of political usages available for use by the Philadelphia Convention. It must be borne in mind, moreover, that from the moment a constitution is enacted it begins to evolve. In time there will be imposed upon the enated document a great superstructure of custom and precedent, all of it the result of this growth. No constitution is ever wholly the product of evolution or of enactment. Every constitution laps over into both categories.

RIGID OR FLEXIBLE

It is also customary to classify constitutions as rigid and flexible according to the difficulty or ease with which amendments may be made. The constitution of the United States of America is said to be a rigid constitution because the process by which formal amendments can be effected is longer, more elaborate, and more difficult than in any other country. The constitutions of Great Britain, Italy and Hungary are termed flexible because they can be amended by the ordinary process of law-making. In these countries it is, technically speaking, no more difficult to amend the constitution than to enact an ordinary law. Finally, there are constitutions which fall into a class between these two, namely, the ones which are amendable by a special procedure which is more difficult than the ordinary process of law-making, but is nevertheless, within the competence of the national legislature and does not require the participation of any outside authority. Examples of this type are constitutions of France, Germany and Austria.

RIGIDITY IS RELATIVE.

Though the distinction between rigid and flexible constitutions is of some importance, there is danger of laying too much emphasis on it. In actual practice, it has been found that even written constitutions like that of the United States of America are not nearly so rigid and inflexible as some would seem to think that they are. The remark is attributed to a President of the U. S. A. that the constitution of U. S. A. is to the country what a coat too small in size is to a man. If he buttons it up in front, he splits it open behind. Such a characterization of the American constitution is, however, hardly justified by an examination of the constitutional development of the United States of America. The process of formal amendment is not the only agency through which an enacted constitution can be brought into step with the times. It is merely one of several agencies and by no means the most important among these. Great changes take place in a constitution as the result of usage and judicial interpretation, thus obviating in many cases the need for utilizing the prescribed mechanism of amendment. The constitution of the U. S. A. has had only twenty one formal amendments added to it since 1789, but by judicial interpretation it has been amended on innumerable occasions. Viewed from this angle it is no more rigid than the constitution of Great Britain. No vigorous, progressive nation ever tolerates a rigid constitution. If the methods of formal amendment prove too cumbersome, it will find some other agency of change. The U. S. A. with the help of the Supreme Court, found it a century ago. Constitu-tional rigidly is not a matter of law, but of popular tempera-ment. A people inclined to conservatism, like the British and the

Swiss, will change their constitutions slowly and cau-tiously no matter how easy the process of change may be.

WRITTEN CONSTITUTION ONLY A PLAN

In other words, a written constitution is only a proposed plan of government set forth in one document. It does not necessarily exhibit the actual form of government of the country. It is like the rules of a game. If the game as actually played is not played according to the rules, then the rules as set forth do not give an accurate idea of the game played.

So if those living and acting under a written constitution play the political game according to the rules, and it may perhaps be said they seldom do this for a long time, the written constitution may give a fair idea of the actual governmental system. If, however, they do not thus play the political game, then the student of government must, if he would know the political system, find out how the political game is actually played. Take an example like the party system. It does not find any place in the written American constitution nor in the unwritten English constitution and yet every student of government knows what prominent part it plays in the actual working of the American and British systems of government. What we need from students of comparative government is more attention to actual constitutional development and the political psychology of the people and less attention to its purely formal aspects;

Extreme, rigidity is bad

It is, however, true that it is a mistake to make the process of amending a written constitution too difficult. For conditions in almost every country are continually changing, and a constitution, if it is to serve the needs of the people living under it, must change as conditions change. If provision for a reasonably easy amendment is not made, either the constitution will become out of harmony with conditions as they exist, or elso changes will be made in the actual system of government by a strained interpretation of the constitution. This was probably what the American President, who has been quoted above, had in mind when he compared the constitution of the U. S. A. to a coat that was too tight.

If, therefore, we sum up the case for and against the written and the so-called rigid constitutions was, are probably justified in saying that the almost universal experience of the European would, is in favour of this method of deter-mining the principles of constitutional government. We may add that the argument of inflexibility and rigidity, which is often used against

it is justified only partially and only to the extent to which the methods of amending the constitution are made unreasonably difficult.

Popular control over constitution

The doctrine of popular sovereignty has had for one of its effects in the U.S.A. the submission of the original states constitutions as well as amendments thereto to the voters of the states. Such submission to the people in the case of constitutional amendments is not required by the U. S. A. constitution nor by most of the written constitutions of the world. The ordinary method of amendment is through the process of legislation, but with the necessity of a greater than ordinary majority vote, and the observance of special formalities. Thus in France an amendment of the constitutional laws of 1875 was made as follows.

Each of the chambers of the legislature determined by a majority of all its members that an amendment was necessary. After both chambers had thus separately reached this decision, they united in a joint assembly; this decision of this joint assembly for amendment had to be made by a majority of the members forming the assembly.

If we judge from the experience of European nations, we may conclude that every country having constitutional government should have a written constitution and that the constitution should be amendable in some such way as were the French constitutional laws of 1875.

Constitutional Government defined

Every government of to-day rests upon a constitution. What is it now we mean by constitutional government? How does it differ from the other form of government which the history of the world exhibits? What are ear-marks by which we may know it? By constitutional government is meant, in the first place, a form of government which, as opposed to what may be called personal government, is based not on the temporary caprice or whim of those who possess political power but which, on the contrary, is carried on in accordance with rules so clearly defined and so generally accepted as effectively to control the actions of public officers. Constitutional government is, then, in the first place, a government of laws and not a government of men. The fact that constitutional government is a government of laws and not of men, has necessarily involved the formulation of the rules or laws which are to control the actions of government officers- These rules or laws constitute a constitution.

Constitutions made by different methods

Although the same underlying factors enter into the making of all constitutions, the external aspects of the process of constitutional development vary widely in different states. The British constitution, as we have seen, has grown or been evolved by the slow process of accretion and has never been embodied in a single instrument. As a matter of fact, much of the English constitution has never been put into definite documentary form, but consists of long recognized customs, traditions and precedents. In most countries, however, social conditions have not been as stable and social change has not come as tranquilly as in England, and consequently the process of constitution making has been more discontinuous, more deliberate and often more violent. Monarchies have often been obliged, because of rebellion, actual or potential on the part of their subjects, to grant and put into effect complete constitutions. In other instances, the people or a certain part of them have succeeded in forcing the calling of some sort of constituent assembly empowered to frame a constitution; in still other cases the people have gained the right on their own initia tive to summon such a constituent assembly. The American and German. constitutions were framed by conventions consisting of delegates representing the several states, and the former was ratified by a specially elected convention in each state of the U.S. A. Virtually all written constitutions have come into being through somewhat similar processes. A constituent assembly of some sort draws them up, and they are put into effect by this body or by a process of rati-fication in which people directly or indirectly participate.

What a constitution contains

It will perhaps contribute to a better understanding of the nature of constitutional government if we set down in a summary form the principal matters which a constitution regulates.

1. Every constitution, in some way or other sets the limits of governmental power. It makes no differences whether the constitution be the work of a fully representative constituent assembly, or simply the result of an act of self-denial on the part of a monarch, it definitely limits the exercise of governmental authority. What may be done and what may not be done in the name of government are declared and set forth; and to that extent at least the constitution becomes the source of political power.
2. A constitution determines the rights and obliga-. tions of subjects and groups of subjects with reference to their government and also with reference to one another.

3. A constitution determines as to who may partici-pate in the exercise of governmental power, and to what extent and how. Even under governments that are considered thoroughly democratic not all persons are permitted to participate in the process of government, and in governments of less democratic character a great many classes of persons are excluded from all voice in government.
4. A constitution lays down certain fundamental rules and establishes certain fundamental methods by which the governing officials of the state are to be chosen.
5. A constitution always determines in a general way, and often with great minuteness how the government shall be organized, what powers shall be exercised by and how the different organs and agencies shall be coordinated.
6. A constitution establishes in its own terms the fundamental and supreme law of the land and, therefore, anything done in contravention of the constitution is unauthorized and illegal.

Contrast between constitutionalism and absolutism

These things mark the essential differences between constitutional government and absolutism. Constitutional government is not necessarily democratic government, but no government can be democratic that is not based upon a broad-ly grounded constitution.

For instance, the government of Japan is a constitution-al government, though it is far from democratic; the same thing is true of the Soviet government of Russia; the governments of Austria, Germany and Turkey before 1918-were of the same type. All these governments had or have constitutions, very elaborate and detailed constitutions. Yet they could by no stretch of imagination be deemed democratic, because these constitutions make a distribution of political power and provide for a system of governmental organization and operation which accords to certain individuals and groups and classes a great many special advantages, prerogatives and privileges.

Democracy, on the other hand, is a type of constitutional distribution of political authority and organization for governmental purposes which throws open the enjoyment of political power and extends the favours, protections and guarantees of the state to all individuals, groups and classes in the same. In other words, democracy places us all on the same political footing; gives us all, theoretically the same rights, the same obligations, the same privileges, the same opportunities and the same advantages.

This does not mean, of course, that under democratic government, we may all enjoy in the same manner and to the same degree the practical every day result of govern-mental activity; for the group struggle goes on under democratic government just as under any other type of government, and the course of democratic government is likely to be deflected in on way and other by group pressure and group activity. Democracy does, however, or should, remove all arbitrary and unnatural discriminations as between different individuals and groups, and give freer play to individual and group initiative than is possible under any other scheme of government.

UNIT II

STATE: MEANING AND FEATURES

Since the state is one of the important components in the study of political science, a clear understanding of what is meant by the term 'state' is important. From the beginning of social life, mankind has lived under some form of authority. This authority has varied in its nature and has exercised its function through different forms of organization. Beneath these differences in the concrete manifestation of political life may be observed a practical identity of purpose; and by disregarding non-essential elements and modifications that arise because of the demand of time, place and circumstances, we may discover the very essence of state, different from other organizations. From a consideration of matters of terminology, we now come to inquire what the state is. Definitions of the state are, as the German writer Schulze remarked, innumerable. Naturally, these definitions are colored by the opinions of their authors and are affected by the point of view from which the state is envisaged. The sociologists view it as a social phenomenon, while the jurists regard the state as a juridical establishment; writers on international law emphasize certain elements, which the political scientists ignore, and finally philosophical writers formulate their definitions in abstract terms. However, we should remember that the state is both an abstract conception and a concrete organization. i.e. identified with physical elements. Thus, in all these senses, state can be taken to mean the following:

i) An organization of individuals i.e. mankind viewed as an organized unit
ii) Politically organized people of a definite territory
iii) An organization of public law that is monopolistic over the use of violence against a group or population
iv) An organization which in internal matters carries out its functions through a unified set of institutions known as the government.

Elements of the State

The state, as said earlier, may be viewed as both a concrete thing and an abstract idea. A concrete thing means that it is a specific human group or association and viewed in abstract terms, it is a corporation possessing a juristic personality. The state is composed, therefore, of both physical and metaphysical or spiritual elements. These elements are:

i) A group of human beings, i.e. population (Population)

ii) A territory upon which they permanently reside (Territory)

iii) Internal sovereignty and independence from foreign control (Sovereignty)

iv) A political organization or agency through which the collective will of the population is expressed, i.e. government (Government)

Students of political science should, thus, understand that the absence of any one of these elements nullifies the state; all must exist together. The state is not the people, nor the land nor the government, but all of them and in addition, the state must possess that unity which makes it a distinct and independent political entity. These features are common to all states, irrespective of their historically specific manifestations. For instance, it applies to the Greek City states, the medieval kingdom, the modern monarchy and all the other kinds of states that exist today-liberal democracies, military dictatorships and communist regimes. So, this explanation of four elements is common to all the states; this does not, however, clearly throw light on the socio-political meaning of the state.

Distinction between the State and Other Associations

The common man does not make any distinction between the state and many other institutions like society, government, nation and others. But the legalistic view of the state, which says that the state is a law making power, makes a distinction between the state and other institutions. The distinction between state and society is quite important because society is much wider than the state. In a society, all the social institutions and social relationships are included, whereas the state only covers an aspect of society. Many idealists and monistic writers on politics have not made any distinction between society and state. But the liberal writers make such a distinction and contend that the state is the servant of society and is within the society; that society is much older than the state and does not have the four elements like the state; the state is a highly organized institution with sovereignty, while society may be even unorganized and does not possess sovereignty; the state is not a natural institution, whereas society is. The Pluralists have always given importance to the distinction between state and society, because they regard the state merely as an institution, equal to the other associations of society to serve the specific interests of society. Government is one of the constituents of the state, but the two terms, state and government, have been indiscriminately used for each other. But as a matter of fact, government is only an agency of the state through which the collective will is formulated, expressed and executed. In terms of stability, sovereignty and extensiveness, the state is in possession of all these rather than the

government. It is also important to note that the state is regarded as a recently developed institution, while government is very old. Even the most primitive human societies must have developed some elementary form of government to manage the common life of the community. Therefore, government is a necessary, but not a sufficient condition for the existence of the state.

Pluralists do not make a distinction between the state and other institutions of society and maintain that the state is like any other association of society. But, generally, the state is distinguished from other social associations because of its sovereignty. In every liberal democracy, the material apparatuses of state sovereignty viz.: police, military, bureaucracy and prison have become stronger. Today, a sovereign state has got tremendous material power to crush revolts, which the other associations do not have.

The difference between state and nation stroke nationalities has been a matter of great dispute because modern states are also nation-states. But the students of political science should understand the main distinction between state and nation, which is that the basis of a nation is psychological and cultural unity, while that of a state is physical and political unity. Nations emerged with the development of capitalism, whereas states existed prior to it. The essential elements of a state are not the pre-requisites of a nation.

Features:

1. **Population:** The most visible vital aspect of a state is its population. "The most stable regimes are those in which the people has reached a general political and social consensus (an agreement) on fundamental ideas."
2. **Territory:** A state, country, or city has its own set of boundaries. States and countries may disagree about where their borders should be drawn. Boundaries can also be altered as a result of conflict, land acquisition, or government talks.
3. **Sovereignty:** A state's most important characteristic. Political sovereignty refers to the state's absolute supremacy over its territory's boundaries. It has the authority to establish laws, shape foreign policy, and take action without the approval of a higher authority.
4. **Government:** A government is defined as "the entity through which the state maintains social order, delivers public services, and enforces binding choices on its population."
5. **Permanence:** In contrast to the government, which changes from time to time, a state must be relatively permanent. This stability allows a state to develop in the way it should.

6. **Recognition:** A territory must be recognized by other governments and international organizations in order to be termed a state. This understanding will thwart any type of bloodshed or conflict over issues such as borders and the like.

UNITARY AND FEDERAL GOVERNMENT

On the basis of relationship between the centre and the units, the governments may be classified as unitary and federal. In a unitary government, all the powers of government are vested in the central government whereas in a federal government, the powers of government are divided between the centre and the units. Their distinctive feature and comparative merits and demerits are given as follows.

UNITARY GOVERNMENT

Unitary government is a kind of government system in which a single power, which is known as the central government, controls the whole government. In fact, all powers and administrative divisions authorities lies at the central place. Today most of the government systems in the world are based on unitary system of government. It is slightly different from federal model of government. In unitary government, central government has the power to increase or curtail the power of sub national units. It can create and abolished the same. UK, Afghanistan, Italy, China, Saudi Arabia, Spain, etc., are the important examples of unitary government. The unitary government system is based on the concept of consistency, unity, and identity that's why the centralization of power and authority system remains at the top priority. The decision-making power rests with the central governments that are shared by the government with the lower level government when needed. There are not so many options for change and new innovation as the people have a very limited voice in this government system. There are many merits and demerits of unitary government. It is useful in the term that rules and regulations in this government systems remain consist and equal throughout the country. Moreover, it is less expensive as compared to the federal government because the number of powerful people remains very low. In a time of emergency, it makes timely decisions as compared to the federal government system. But at the same time, the concept of freedom of speech and expression always remains at a low priority that's why most of the principles of unitary government are much similar to that of dictatorship system of government. Its distinctive feature is given as follows;

Concentration of Powers:

A unitary government is one in which all the powers of administration are vested in a single centre. The centre is omnipotent. A unitary state may be divided into small units for the sake of administrative convenience but the units do not have any constitutional status of their own. In other

words, the constitution does not confer any powers on the units. It is the central government which dele gates certain powers to the units on its own accord. The units are, therefore, subordinate agents of centre. The powers enjoyed by them are the gifts of the centre and as such these can be taken back at any moment. The units are thus not autonomous and independent in any way.

Single Government:

In a unitary government, there is a single set of governmental apparatus. There is a single supreme legislature, single executive body and one supreme judiciary. England, for example, is a unitary state. She has one parliament as her legislature, the King-in-Council as the executive and the judicial committee of the House of Lords as her supreme judiciary.

Written or unwritten Constitution:

A unitary government may or may not have a writ ten constitution. As for example, England and France are unitary states. France has a written constitution but England has none

Rigid or Flexible Constitution:

Unlike a federation, a unitary state may or may not have a rigid constitution, e.g., the constitution of England is flexible but that of France is slightly rigid.

No Special Judiciary:

There is no need of having a special judiciary with wide powers of judicial veto in a unitary government. Even the highest court of U.K., for example, cannot sit in judgment over the law passed by Parliament.

FEDERAL GOVERNMENT

Federal government is a type of national government in which government have powers to delegates the power to other elected member of the states. There can be two level of federal government in a country either it is performing through common institutions or through powers as prescribed by a constitution of the state. It is totally opposite to the unitary government. In federation or federal government, provinces or territories enjoys some rights as are available to the independent states. However international diplomacy, national security, foreign affairs and other kinds of international dealings are solely made by the federal government. Pakistan, India, Brazil, Switzerland, Australia, Belgium, Canada, etc., are the significant examples of federal government. Mostly the federal government system is referred to the United States government. This government is based on the republicanism and federalism. In the federal system, power is jointly shared between the state and

federal governments. In the federal government system, the powers never rest with one national government. However, there can be certain powers and authorities that remain totally with the federal government like policies on defence, budget, international diplomacy, etc. The hierarchy of power in federal government system starts from the federal level and then flows to the state and then local level. Its distinctive feature is given as follows;

Division of Powers:

In a federal government the powers of administration are divided between the centre and the units. The powers may be distributed in two different ways. Either the constitution states what powers the federal authority shall have, and leaves the remainder to the federating units, or it states what powers the federating units shall possess and leaves the remainder to the federal authority. The remainder is generally known as residuary powers. The first method was employed in America and the second in Canada. The federal government in U.S.A., for example, is weak in relation to the states whereas the federal government in Canada is more powerful. In a federation both the federal and state governments are independent and autonomous in the spheres of their powers. 'One is not subordinate to the other. Both derive their powers from the constitution which is the supreme law of the land. The powers enjoyed by the units are, therefore, original and not delegated by the centre.

Separate Government:

In a federal form of government both the centre and the units have their separate set of governmental apparatus. America is a federation of states. States have therefore separate legislatures and Separate executives.

Written Constitution:

A federal government must have a written constitution. As a federation is a political partnership of various states and consequently there must be a written agreement in the form of a written constitution.

Rigid Constitution:

The constitution of a federation should be more or less rigid. It is regarded as a sacred agreement, the spirit of which should not be easily violated. A flexible constitution allows a scope to the central government to curtail the autonomy of the federating states.

Special Judiciary:

In a federation, there are possibilities of constitutional disputes arising between the federal centre and the units or between one unit and another. All these disputes are to be adjudicated in the light of the constitution. For this purpose a special judiciary with wide powers must be established. It should act as the custodian and guardian of the constitution. It should be vested with powers of declaring any law, national or local, ultra vires if it is at variance with the articles of the constitution. The constitution is thus the supreme law in a federation to which both the centric and the state must adhere to.

Federalism

Federalism is a system of government in which the power is constitutionally divided between a central authority and various constituent units of the country. Usually, a federation has two levels of government.

- One is the government for the entire country that is usually responsible for a few subjects of common national interest.
- The others are governments at the level of provinces or states that look after much of the dayto-day administering of their state.
- Both these levels of governments enjoy their power independent of the other.
- In this sense, federations are contrasted with unitary governments. Under the unitary system, either there is only one level of government or the sub-units are subordinate to the central government. The central government can pass on orders to the provincial or the local government.
- But in a federal system, the central government cannot order the state government to do something. State government has powers of its own for which it is not answerable to the central government. Both these governments are separately answerable to the people.

Quasi Federalism

Quasi Federalism refers to a **system of government where the distribution of powers between the Center and the state are not equal**.

- Quasi-federalism means an **intermediate form of state between a unitary state and a federation.**

- India is a **federation with a unitary bias** and is referred as a **quasi federal** state because of **strong central machinery.**
- The **Constitution of India has not described India as a federation**. On the other hand, Article 1 of the Constitution describes India as a **"Union of States."** This means, India is a union comprising of various States which are **integral parts of it.** The **Indian Union is not destructible**.

- Here, the **States cannot break away from the union.** They **do not have the right to secede** from the union. In a true federation, the constituting units or the States have the freedom to come out of the union.

- **India is not a true federation**. It combines the features of a federal government and the features of a unitary government which can also be called the non-federal features. Because of this, India is regarded as a **semi-federal state**.

- **Prof K.C Wheare** describes it as "**a quasifederal state".**

- The **Supreme Court of India also describes it as "a federal structure with a strong bias towards the Centre".**

    - The SC in **S R Bommai vs Union of India (1994)**, a nine-judge Bench of Supreme Court held **federalism a part of the Basic Structure** of the Constitution.

    - The SC in **Sat Pal v State of Punjab and Ors (1969),** held that the Constitution of India is **more Quasi-federal than federal or unitary.**

Indian Federalism

- Federalism in essence is a dual government system, constituting a Centre and a number of States.
- Unique Characteristics of Indian Federalism: Apart from the above Characteristics, Indian Federalism also has the below mentioned features:

- Single Constitution: In India, there is only one Constitution. It is applicable to both the Union as a whole and the States. In a true federation, there are separate Constitutions for the Union and the States.

- Division of Power: In a federation, power is divided equally between the two governments.

- Constitution is not strictly rigid: The Constitution of India can be amended by the Indian Parliament as per the needs of time.
- Unified Judiciary: India has a unified or integrated judicial system. The High Court's which are the highest Courts in the State come under the Supreme Court in the hierarchy.
- Single Citizenship: Indian States do not provide separate citizenship (Single Citizenship under Part II of the Constitution).
- All the Indian citizens are the citizens of State. This is unlike USA, where there is dual citizenship: one, federal and the other, State.

Features of Quasi federalism

- **Article 3** – Destructible nature of states, unlike in other federations, the states in India have no right to territorial integrity. The parliament can change the area, boundaries, or name of any state.
- **Single Constitution**, it is applicable to both the Union as a whole and the Stares. In a true federation, there are separate constitutions for the union and the States.
- **In Rajya Sabha, the States do not have equal representation**. The populous States have more representatives in the Rajya Sabha than the less populous States.
- **The emergency provisions** are contained in Part XVIII of the Constitution of India, from **Articles 352 to 360**. In the emergency provisions, the central government becomes all-powerful and the states go into total control of the Centre.
- **All India Services** violate the principle of federalism under the constitution.
- **The governor** is appointed by the president. He also acts as an **agent of the Centre**. Through him, the **Centre exercises control over the states.**
- India has a **unified or integrated judicial system**. The High Court's which work in the States are under the Supreme Court of India.
- **Union veto over State Bills:** The governor has the authority to hold certain sorts of laws passed by the state legislature for presidential consideration.

Benefits of a Quasi Federalism

- **National Integration:** The **Constituent Assembly's decision** to not create a true federation was taken after looking at the precarious situation of the time.
- With creation of Pakistan, a Nation created on the basis of religion, there were voices of separate Nation States in other states too. As a result, various provisions like **Article 356** were added. A federal structure with unitary features allowed scope for such maneuver.
- **Cooperation and Coordination**: A Quasi Federal structure **allows Centre to coordinate National level programmes** like Pulse Polio Programme.
- The recent case of **allocation of oxygen to different States as per their requirement during Covid-19** was possible because of a Central authority.
- **Single Market Economy**: Having a quasi federal structure **allows India to be a single market for the World**.
- The recent introduction of **Goods and Services Tax (GST)** has allowed creation of India as a single market.
- Moreover, there is a **single Income Tax** in all of India and the States do not have power to impose it. Thus, Indian citizens are saved from double taxation.
- **Procedural Ease**: The Indian Parliamentary system with **its bicameral legislature** allows for **easy passage of law** as compared to passage in a true federation like the USA.
- A bicameral legislature also ensures proper representation of States in the Upper House.
- **Resolving Inter State Conflicts:** A quasi federal structure allows **centre to act as an arbiter** in case of Inter State dispute.
- For eg, Border dispute and **River Water dispute (Article 262 Constitution of India: Adjudication of disputes relating to waters of inter-State rivers or river valleys).**

Challenges of Quasi Federal system

- Abuse of Power by Centre: The federal provisions of the Constitution can only be amended with consent of the States. Schedule 7 of the Constitution provides for a separate List for Centre and State.
- However, the Centre regularly violates the provision by legislating on State subjects. For eg, the recent Farm Laws.
- Misuse of Governor Office: The power vested upon the governor by the Article 154 of the Indian Constitution states that all the executive powers of the state are held by him.
- This provision implies that the Governor can appoint the Chief Minister and the Advocate General of the State, and State Election Commissioners. This has been frequently misused by the Centre to favour its State unit or a regional Party which is in coalition to it.
- The most paramount executive power at his disposal is that he can recommend the imposition of constitutional Emergency in a state.
- Regionalism: Regionalism establishes itself through demands for autonomy on the grounds of language, culture etc.
- The nation thus faces the challenge of internal security in the form of insurgency and this causes upheavals in the basic notion of Indian federation.
- Other problems: delayed disbursal of resources and tax proceeds, bias towards electorally unfavorable States, evasion of accountability, blurring spheres of authority, weakening institutions etc
- All these signal towards the diminishing of India's plurality or regionalization of the nation a process that is highly antithetical to the forging of a supra-local and secular national identity that preserves and promotes pluralism.

Conclusion

- The Chairman of Drafting Committee, **Dr. Ambedkar** had rightly said that, **"Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances"**

- In view of the above, It would be more apt to consider Indian federalism as a **separate type of federalism** or **Federalism sui generis**.

THEORY OF SEPARATION OF POWERS

Distribution of Powers Functionally and theory of Separation Of Powers. Two methods may be employed for distributing governmental powers, territorial and functional. These two are not alternative methods. The territorial division relates to the splitting up of the State's territory into political divisions and distributing governmental powers among such divisions.

Each of the political divisions is provided with a governmental organization through which it performs its functions. But the work of government is so wide and complex that it is imperative to establish special organs for the performance of the several kinds of work to be done. This is necessary for two obvious reasons: first, the benefits of specialization may be secured, and, secondly, responsibility may be more definitely located.

When the government's work is distributed to political organs following the nature of function to be performed, it is the functional distribution power. Carl J. Friedrich says that a truly constitutional government does not exist unless procedural restraints are established and effectively Operating.

Such restraints involve some division of power, for evidently some considerable power must be vested in those expected to do the restraining. Such a division of governmental power under a constitution has largely taken two forms the functional division, such as that into legislative, executive, and judicial, and the spatial (territorial) division of federalism.

Based upon this principle of distribution, all the powers of government have long been conceived as falling within one or another of three great classes, according to as they have to do with:

1. The enactment of the making of laws.
2. The interpretation of these laws and
3. Their enforcement.

To these three classes have been given the names legislative, judicial, and executive. Structurally considered, the government has been deemed to be made up of three branches having for their

functions the enactment, the adjudication, and the enforcement of the law. The branches to which these functions belong are known as the Legislature, the Judiciary, and the Executive.

This threefold division of governmental powers had received such general recognition that it became a classical division. But recently, it has been held by some writers that this division is unscientific. For example, Willoughby says that attempts to act upon it lead to the confusion of thought and serious difficulties in working out the practical problems of the distribution of governmental powers functionally.

He suggests that electorate and administration are distinct branches of government, and it is important to recognize their distinct character in the practical work of organizing and operating a government. In Sweden, administrative power has been separated from executive power. Carl Friedrich says, without any theoretical recognition, the American federal government tends to differentiate between strictly executive and purely administrative functions.

(4) Gladden, however, does not support this point of view and is of the **Opinion** that administration is subordinate to the main powers or branches of government. Gladden's opinion is convincing, and we adhere to the threefold division, Nor can there be a divorce between the electorate and legislative functions. Political sovereign and legal **sovereign** are the two aspects of the sovereignty of the State. The electors' will is the controlling power behind the legal sovereign, and it is to their mandate that the legal sovereign must ultimately bow.

Theory of the Separation of Powers:

Political liberty, we have emphasized, is possible only when the government is restrained and limited. The theory that the functions of government should be differentiated, and that they should be performed by distinct organs consisting of different bodies of persons so that each department should be limited to its own sphere of action without encroaching upon the others, and that it should be independent within that sphere, is called in its traditional form, the theory of the Separation of Powers.

Montesquieu, the celebrated French scholar, wrote in his famous book, **The Spirit of the Laws**, that constant experience shows us that every man invested with power is apt to abuse it and carry his authority until he is confronted with limits. Montesquieu poses the question clearly enough. He asserts that concentrated power is dangerous and leads to despotism. But how to avoid concentration of power?

His answer is simple: separating the functions of the executive, legislative and judicial departments of government to operate as a balance against another. Thus, power should be a check on power. *Le* pouvoir arrete le pouvoir power halts power. A constitution may be such that none shall be compelled to do things to which law is not obliged or not to do things that the law permits.

Montesquieu thesis is the division of powers by functions, and the theory emerging there is known as that of the Separation of Powers. The exposition given by Montesquieu has now become classical. The idea contained in the theory of the Separation of Powers was not entirely unknown before Montesquieu. Its origin can be traced back to Aristotle, if not indeed to earlier writers. In the Politics is found an analysis of three parts or branches of government, the deliberative, executive, and judicial.

Aristotle did not go into details. He confined himself to a description of their personnel, organization, and functions, without suggesting their separation. From Marsigilo of Padua in the fourteenth century, various political philosophers gave some attention to the Separation of Powers' theory. Still, it meant little to Political Science until the issue of political liberty became urgent in the seventeenth century; it began to acquire eighteenth, with the critical times, items to the forefront of discussion.

There are traces of the theory in John Locke's Civil Government. Locke distinguished between three powers that existed in every commonwealth. These he called legislative, executive, and federate the federate power related to foreign affairs' conduct. The executive and federate powers, he pointed out, always almost unite. He expressed no objection to this union, but he would not permit the executive power's union with the legislative.

The legislative power, he said, in the well-ordered commonwealth, where the good of the whole is so considered as it tough, is placed in the hands of an assembly that convenes at intervals, But since the administration and enforcement of the law is a continuous task, a power distinct from the legislative must always remain in being. In practice, the legislative and executive powers often come to be separated. In principle, too, Locke argued that they should be separate because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them.

This division of authority and the separation of executive and legislative power are justified and explained by Locke that it is necessary to maintain liberty. Liberty suffers when the same human beings make the laws and apply them.

The Ideas of Montesquieu:

Here were the threads for Montesquieu to gather, elaborate, expand, and formulate them in concrete terms. Montesquieu lived in the time of Louis XIV, the author of the famous dictum. I am the State. The monarch combined in his person all the three powers. His word was law, and his authority was unquestionable.

There was no liberty for the people under such an Oppressive and despotic government. Montesquieu happened to visit Great Britain and was tremendously impressed by the spirit of freedom prevailing there. He tried to find out the causes of the liberty of the British people.

He compared the judges' independence and the strength of Parliament there with the judiciary's subordination to the French Monarchy and the virtual extinction of the Estates General. Not foreseeing the rise of the Cabinet system of government in Britain and keenly desiring to substitute political liberty for royal absolutism in France, Montesquieu advocated the separation of powers as a device to make government safe for the governed.

The division of powers that he envisaged was the same as that of Locke, except for renaming Locke's executive power and calling it the judicial power. The executive function, as described by Locke, had been to execute the laws in any case.

He also changed Locke's terminology and named his federative power as the executive power. Still, in his insistence that they must be entrusted separately to different personnel, he went considerably ahead of his predecessor. His most famous statement runs thus.

When the legislative and executive powers are united in the same person or the same body of magistrates, there can be no liberty because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws and execute them in a tyrannical manner.

Again, there is no liberty if the judicial power is not separated from the legislative and executive. Were it joined with the legislative, the subject's life and liberty would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, and the judge might behave with violence and oppression.

There would be an end to everything. They were the same man or the same body to exercise those three powers, enacting laws, executing the public resolutions, and trying the cases of individuals. To explain briefly and in simple language, Montesquieu endeavored to establish that. Whoever has unrestrained power will abuse it. If the legislative and executive powers are combined in the same person or body of persons, there can be no liberty because the same agency becomes the maker and executor of laws.

Similarly, if the legislative and judicial functions are combined, the maker of laws is also their interpreter. If the executive powers are combined with the judicial, the same agency is the prosecutor and the judge. If all the three powers are concentrated a single hand, there would be an end of everything, as there will be tyrannical laws interpreted and enforced with an oppressor's violence.

Montesquieu's thesis is that the concentration of legislative, executive, and judicial functions, either in one person or a body of persons, results in abuse of authority. Such an organization is tyrannical. He urged that the three government departments be so organized that they should be entrusted to different personnel. Each department should perform distinct functions within the sphere of powers assigned to it.

There has been some controversy among students of Political Science whether Montesquieu contemplated an absolute or only a limited separation of thee powers. One school thinks that Montesquieu desired absolute separation so that each department remained independent and supreme within its own sphere. Others believe that he never thought to separate the powers.

He rather suggested modification of the concentration of powers. As Herman Finer observes, Montesquieu was searching for means to limit the Crown to make a constitution to build canals through which, but not over which, power should stream to create intermediary bodies to check and balance probable despotism. Yet, he did not wish to fly to the extreme of democracy? For Montesquieu, the executive convenes the legislature, fixes its duration, and votes legislation. The legislature has the right to impeachment.

It may not arraign the State's chief but, as the person entrusted with the executive power cannot abuse it, without bad counselors, and have the laws as ministers, though the laws protect them as subjects, these men may be examined and punished.

His idea of impeachment is that of the political responsibility of ministers in our times. Locke's analysis of the government structure, too, proves that the various powers of government Were not to be separated into watertight compartments. He made them dependent on the supreme power of the people, the executive functioned in subordination to the legislature, and the judiciary worked as part and parcel of the executive.

The essence of Montesquieu's theory of Separation of Powers is that it imposes teach organ of government the obligation to explain itself and to see that it acted with the law and not beyond it. If the authority exercised is more than permitted by law, it should be checked by the other to restrain its encroachments.

And this is the correct meaning of le pouvoir artery. Le pouvoir power has power. There must be a separation of powers within the government structure to balance against another power. Such check Montesquieu considered necessary for safeguarding the liberty of the individual and for avoiding tyranny. Montesquieu follows Locke, but with more system, and it is important to observe that he never thinks to separate the powers, but rather to modify the concentration of powers.

Practical Effects of Montesquieu's Theory:

Montesquieu's theory of Separation of Powers had a great democratic appeal, and it soon became a political dogma. Montesquieu's teachings gave a fillip to the French Revolution, and nearly all governments of the revolutionary period were organized on the principle of Separation of Powers.

The famous Declaration of Rights issued after the Revolution laid down that every society in which the separation of powers is not determined has no constitution. The Constitution of 1791 made the executive and the legislature independent of each other, and the judges elective and independent. For a short span of the tithe, during Napoleon's regime, it was defied, but the doctrine was constantly in the people's minds. As a constitutional maxim, it is jealously cherished even today.

In the United States, Montesquieu's theory found its best expression. We shall never know, says Herman Finer, whether the Fathers of the American Constitution established the separation of powers horn the influence of the theory or to accomplish the immediately practical task of safeguarding liberty and property.

But they definitely desired liberty in a sense enunciated by Montesquieu. They also desired limits upon despotism. Independence from British suzerainty had given them the first. After the Declaration of Philadelphia, a short experience with legislative supremacy had convinced them that concentration of power in any one institution was fraught with abuse.

While writing about the Constitution of Virginia, Jefferson wrote. All the powers of government, legislative, executive, and judicial, result in the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that a plurality of hands will exercise these powers, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one.

The same point was elaborated by Madison while issuing a similar warning. The legislative department is everywhere extending its activity sphere and drawing all power into its impetuous vortex. They (the founders of our republics) seem never to have recollected the danger from legislative usurpation, which by assembling all power in the same hands, must lead to the same tyranny as it had been threatened by executive usurpation.

If the power concentration was the evil to be avoided, was there besides executive or legislative omnipotence some third possibility? The alternative was what has come to be called Separation of Powers. In fact, Separation of Powers became a political creed with the statesmen and those engaged in framing the national constitution at the Philadelphia Convention. They were not new to the theory.

The governmental system of the Colonial period embodied a species of Separation of Powers. Before 1776, the executive branch, under the Governor, was distinct from the legislative, and controversies between them were rampant in the two decades that led up to the Independence.

With the principle of judicial review, the statesmen of that day were also equally familiar as Colonial Acts' constitutionality could be challenged before the Judicial Committee of the Privy Council in London History, therefore, joined hands with philosophy in writing separation of powers into the federal constitution.

The influence of Montesquieu's was, indeed, powerful and decisive. Madison unequivocally maintained that Montesquieu was the oracle who is always consulted and cited on the subject. Whatever be the respective weights of influence in the Philadelphia Convention, the American. As

Finer observes, Constitution was consciously and elaborately made an essay in the separation of powers and is today the most important polity in the world which operated upon that principle.

But the American Constitution did not explicitly state that powers ought to be separate. It simply distributes the powers, and legislative powers were vested in Congress, the President's executive powers, and the courts' judicial. While apportioning the lion's share of powers to one department of government, the Constitution gave smaller slices to each of the other departments.

This was done to avoid concentration and consequent abuse of power. The maxim with the Constitution's Fathers was that power should be limited, controlled, and diffused. If power is not to be abused, then power must be made a check to power like things. For example, in legislation, the bulk of the lawmaking power was placed in Congress. Still, the President received his share in the powers to recommend measures, summon Congress in special session, and veto bills.

Similarly, the Senate shared with the President his power to make appointments, declare war, and ratify treaties. The Supreme Court, by exercising the power of judicial review, asserted its claim to a portion of the legislative function. Also, Congress acted in a judicial capacity in impeachment cases where the House was empowered to prosecute, and the Senate sat in judgment. The President could intervene in the courts' business through pardon's power for all offenses except treason.

As portions of each function were distributed among different agencies, the Separation of Powers was really attended to result in a system of checks and balances. The system of checks and balances had two obvious results. First, and ordinarily, unless the members of the three branches of government saw eye to eye and cooperated harmoniously, none of the principal functions of government could be adequately performed. Second and conversely, if any department or pair of departments ventured to exceed their constitutional authority, they could be restrained by the refusal of a third to contrive.

In this way, the Fathers of the Constitution destroyed the concert of leadership in government, which is so prominent a feature of our times. Thus, Finer sums up the Separation of Powers theory as it has worked in the United States. He says the Legislative procedure has come to differ essentially from that in Britain and France. The financial procedure is worlds apart. There is no coordination of political energy or responsibility, but each branch has its own derivation and morsel of responsibility.

All are designed to check the majority, and the end is achieved. At what cost? The cost cannot be measured in terms of dollars. With powers divided between the executive and legislative departments without proper coordination, there is always an inordinate delay in agreeing even on pressing matters that demand expeditious disposal. One branch of government may be operating on one policy. In contrast, the other may follow quite a different one, particularly when the executive belongs to one party and the Congressional majority.

Some Presidents have, no doubt, succeeded in bridging the gap separating them from the legislature. But while an emergency may bring, says Zink, temporary coordination and the use of patronage can usually be counted upon to pave the way to some action. The National government is still torn to parts by the provision that the framers made to separate powers.

Evaluation of the Theory of the separation of powers:

The Theory Restated. Much has been said about the theory of the Separation of Powers. But what kind of Separation of Powers is needed? Here much of the clarity is obscured by the use of the ambiguous term power. The government has certain functions to perform to serve the purpose of the State.

If functions are taken as powers, then the idea of service entirely disappears, and the organs of government become invested with power. Wherever there is power, there is force. A government having its foundation on power becomes an engine of force. The use of the term power is most unfortunate and, accordingly, the cause of so much confusion. The doctrine of Separation of Powers is itself a protest against power. Its meaning can be better analyzed and appreciated if we drop the reference to powers and substitute for its functions of the organs or branches of government.

A branch is an organization of agencies with their personnel. The services they undertake are their functions. The functions of the government are legislative (rule-making), executive (rule application), and judicial (rule adjudication).

Accepting this as the criterion of our distinction, the doctrine of Separation of Powers can be restated in the following manner, The activities of government group themselves into three divisions. These divisions are not a matter of theory, but it is a practical fact associated with the functions themselves' character. It is one thing to legislate, another to administer, and a third to judge. By assigning each of the time functions to different government branches composed of

separate personnel and following their own mode of action, separation is obtained. Such a statement transfers the doctrine from the realm of theory to that of political fact.

Absolute Separation Impossible:

But it does not mean absolute separation. Separation of Powers, according to Barker, must certainly mean a distinct mode of action. Each organ of government has its own distinctive mode of action. The legislative mode is deliberate and deliberative. The judicial model is critical rather than deliberative, and the executive mode is a rapid determination of decisions and instructions to give effect to legislative and judicial modes.

In a word, as Barker says, we shall find three organs corresponding to the three different modes of action. Still, we may find one of the organs so absolutely specialized in its mode of action, or so entirely separate in its province, that it cannot also act in the mode and enter the province of others. Madison correctly explained the doctrine of Separation of Powers when he said.

The powers properly belonging to one department ought not to be directly administered by either of the other departments. It is equally evident that neither of them ought to possess, directly or indirectly, an overruling influence over the other in the administration of their respective powers.

The premise of Federalist Paper 47, which is essentially concerned with the political theory of federalism, is that any person or body of persons possessing power may be tempted to abuse it unless controlled. That power can be checked by power. The Separation of Powers attempts to create a balance among the competing units.

The State is an organic unity, and the various departments of its machinery are interconnected. By the nature of their functions, they cannot be divided into watertight compartments. The government must always be viewed as a whole, and its organs, though distinct, must work in unison to be useful and effective in serving the purposes for which they have been created.

According to MacIver, the real problem is to articulate that responsibility shall not be divorced from efficiency. The government functions are divided into different departments so that each department does its job to the host of its efficiency and with due regard to its responsibility. Efficiency demands expert knowledge of the problems that face a country, and responsibility means diversifying that knowledge towards those channels that are responsive to the people's needs.

This is the first principle of democracy. Accordingly, the Separation of Powers is needed for proper articulation and not for government organs' division into watertight compartments. To put it in Almond and Powell's language, the Separation of Powers's theory is per eminently functional theory.

Among its central concerns is the nature of legislative, executive, and judicial power, how best to maintain their separateness, the values resulting from such separation, and how best to mesh these separate institutions of government with the structure of society.

There cannot be any isolation or disharmony between the different departments of government. Isolation is not the essence of the doctrine, and Montesquieu never suggested it. Each department performs some functions which actually do not belong to it. In fact, in all modern systems, institutions exercise overlapping functions of some kind, or provision is made for some degree of cooperation between the different organs and branches to perform government work. The legislative department is not wholly and solely confined to the legislative mode of action, although it is primarily concerned with that mode.

There is a judicial organ primarily concerned with the judicial mode of action, but not necessarily confined to that mode. There is, similarly, an executive organ that may be concerned with other modes of action besides the executive. For example, a judge makes a new law when he decides on a point covered by law or in which there does not exist a precedent. Here is a case in which the judicial and legislative functions combine due to a natural process. Again, the executive everywhere possesses the power of issuing ordinances and proclamations.

This is a practical utility device, but it must be admitted that ordinances and proclamations are a formidable substitute for legislation. The executive is a legislature in another sense too. It suggests and guides the process of law-making by the legislative organ. It does sounder the American system of division of functions between the President and Congress. It does so even more under the Cabinet system, such as the British and the Indian. The legislature, too, performs various executive functions.

A parliamentary government creates the real executive, retains it in office, and controls its functions. In the Presidential system, as obtainable in the United States, the Senate has a share in making appointments and ratifying treaties. Executive and legislative departments perform judicial functions too. The Chief Executive head of the State everywhere possesses the power of pardon.

The House of Lords is the highest Court of Appeal in Britain. The Senate in the United States acts as a court of impeachment.

There is no Separation of Powers in Britain as Montesquieu is claimed to have understood. He had in his mind, longing for liberty against the autocratic powers of Kings and princes. Britain presented to him a sharp contrast with the conditions prevailing in his own country. Without forming a real idea of the actual working of a democratic government, more so responsible, he concluded that liberty could be secured only by a mechanical check of one department over the other.

For him, this was, above all else, a practical recipe for political liberty. But Montesquieu wrote at a time when institutional cheeks appeared to be the only feasible ones. The doctrine's value by dispersing functions among different political institutions is that it attempts to limit political power and a brake on the action by constitutional devices. Power must be limited if liberty exists, for unchecked power is as dangerous as the unity of temporal and spiritual powers. This is precisely what Montesquieu enunciated.

UNIT III

LEGISLATURE

THE UNICAMERAL LEGISLATURE

The United States Supreme Court in Reynolds v. Sims, and its companion cases held that state legislatures must apportion both houses "as nearly of equal population as is practicable." If the decision is implemented, leadership in most states must grapple with the difficult problem of reapportioning both houses.

In view of the many problems involved, it may not be irreverent to suggest that the time has come to abandon the bicameral legislature and to adopt a single chamber. This system may be the logical answer to several obvious questions: Why is it necessary to have two houses organized on a population basis? When both chambers are apportioned on a population basis, isn't a particular county or district as well represented by ten "representatives" as by those same representatives and a "senator?"

These questions have been asked by many people. The press has called attention to the organization of the Nebraska Legislature4 and the issue is vital enough to have caused one Florida newspaper to take a poll of voter opinion on the subject. The reapportionment cases provide the crisis that makes it possible to foresee change, but in implementing this change we can scarcely afford the luxury of ignoring the fundamental requirements of government. There are many arguments in favor of a unicameral legislature as the most effective organization to accomplish the purpose of the legislative branch - the formulation of policy. A study of comparative government teaches us that there is no "natural order" for legislative structure. Although we have known the bicameral system throughout most of our history, the national government under the Articles of Confederation had a unicameral legislature, and, as we shall see presently, some of our states had early experience with unicameral legislatures. At the Constitutional Convention of 1787, Benjamin Franklin favored a unicameral legislature for our national government.

Among foreign governments, we find varied experiences. Sweden once used four houses. In Canada, all provinces except Quebec use the unicameral form. France which long had three chambers now has two. Our own experience is an interesting blend of tradition and pragmatic action, for all of our states, except Nebraska, have retained two houses while our larger cities have abandoned the bicameral assembly for a single chamber. In considering this topic we shall examine

the historical background as well as the existing nature of legislative structure both unicameral and bicameral. We will then examine the advantages and disadvantages, as expressed in arguments and tested in practice, and finally endeavor to draw some tentative conclusions.

Legislative Chambers: Unicameral or Bicameral?

How many chambers a parliament should have is a controversial question in constitutional law. Having two legislative chambers grew out of the monarchy system in the UK and other European countries, where there was a need to represent both the aristocracy and the common man, and out of the federal system in the US. where individual states required representation. In recent years, unicameral systems, or those with one legislative chamber, were associated with authoritarian states. Although that perception does not currently hold true, there appears to be a general trend toward two chambers in emerging democracies, particularly in larger countries. Given historical, cultural and political factors, governments must decide whether one chamber or two chambers better serve the needs of the country.

Bicameral Chambers

A bicameral legislature is composed of two chambers, usually termed the lower house and upper house. The lower house is usually based proportionally on population with each member representing the same number of citizens in each district or region. The upper house varies more broadly in the way in which members are selected, including inheritance, appointment by various bodies and direct and indirect elections. Representation in the upper house can reflect political subdivisions, as is the case for the US Senate, German Bundesrat and Indian Rajya Sabha. Bicameral systems tend to occur in federal states, because of that system's twotiered power structure. Where subdivisions are drawn to coincide with other important societal units, the upper house can serve to represent ethnic, religious or tribal groupings, as in India or Ethiopia.

Federalism is a relatively uncommon political system in which two tiers of government control the same territory and citizens. Laws are made by and resources divided between state, provincial, or territorial governments and the central government. The majority of governments worldwide are unitary, where the powers of local units are determined by the center. In strong federal systems, the state or local governments often have the power to raise their own revenue.

- Federal systems are often bicameral, with the upper house typically representing state or regional interests in the national legislature.

- Federal systems usually allow for the creation of sub national legislatures with jurisdiction over particular kinds of legislation. Some powers are shared between the two levels of government.
- Strong federal systems tend to weaken the power of both the executive and the legislature at the national level.

The balance of power between the two levels of government varies from country to country – the US, Germany and Canada represent strong federal systems, Nigeria a weak one with Mexico somewhere in between. Like Canada, some of the former British colonies combined federalism with a parliamentary system. In India, the federal constitution is characterized by a strong Union (central) government with sole jurisdiction over matters of Defense, Foreign Affairs, Railways, Transport and Communications, Currency and Banking, Customs and Excise Duties. The Indian Parliament shares lawmaking powers with sub national legislatures in 14 states and five territories in areas including economic and social planning, social security and labor welfare. When these powers conflict it is the decisions and laws of the national parliament/Union government that take precedence.

In a bicameral system, the authority of the two houses or chambers varies broadly in each country. In some countries with weak bicameralism, the upper chamber has only consultative powers. In the UK, for example, the lower chamber, the popularly elected House of Commons, has evolved into the superior legislative power, and its decisions override those of the upper chamber The House of Lords. In the U.S. system, however, both chambers pose equal or offsetting powers and legislation must be approved by both. In Canada, the House of Commons has most of the power, but the Senate can amend legislation and investigate policy questions. In Germany, which has a federal system, states' interests are represented by the upper house in the German parliament (Bundesrat), the members of which are appointed by the respective state governments. While their legislative powers are not as strong as those of the lower house, the Bundesrat has the final say in disputes among states and between the states and the federal government.

In centralized states with bicameral systems, some countries use the upper house as a way to reserve representation for certain societal groups and/or to place a further check on the power of the lower house with a more conservative body. For example, the House of Chiefs in Botswana is made up of elected and appointed members of traditional ethnic groups. The House of Chiefs plays a limited role but must be consulted on proposed changes to the constitution and on tribal matters. In

Burkino Faso, the upper house (Chamber of Representations) is a purely consultative body designed to provide a voice for different regional and social groupings. It consists of 178 appointed and indirectly elected members, including representatives from elected provincial councils, women's associations, traditional leaders and other civil society organizations.

Upper Houses are usually chosen in one of the following ways:

- direct elections voters cast their ballots directly for a specific candidate or party (US)
- indirect elections where voters elect local or provincial governments, who in turn select the upper house members (Argentina, Austria, German, India and Yugoslavia);
- indirect elections whereby the lower house selects the upper house (Zimbabwe);
- appointment by the head of state (Canada, Jordan and Thailand); and
- inheritence (UK the majority of members in the upper House of Lords are hereditary peers).

Following are some advantages cited of the bicameral system:

- It has the capacity to formally represent diverse constituencies (regional, class, ethnic, etc.)
- It hinders the passage of flawed legislation (one chamber can act as a check upon the other)
- With two legislative bodies, there is enhanced oversight of the executive branch.

Unicameral Chambers

One chamber or unicameral legislatures have most often been established in countries with a centralized or unitary structure and in small, more homogenous countries. Countries with unicameral systems include Costa Rica, Portugal, Hungary, Iceland, Sweden, Slovenia, Uganda and New Zealand. While constitutional structures have varied a great deal in countries that have transitioned to democratic systems over the past decade, one trend that seems fairly consistent is that smaller countries chose unicameral legislatures. This has occurred in all of the smaller Eastern European countries, with the exception of Ukraine. In a few cases, electoral provisions have allowed for one chamber to represent various points of interest. For example, Slovenia's constitution guarantees certain ethnic minorities one seat each in the unicameral National Assembly. In Uganda, a parliamentary seat from each of the 39 districts is reserved for women in the unicameral legislature, and seats are also set aside for such groups as handicapped and salaried workers.

Advantages of a Unicameral System:

There is the potential to enact proposed legislation more rapidly, since differences don't have to be reconciled by two chambers. There is the potential of greater accountability, since only one body is responsible for legislation. It is less expensive to maintain one body and fewer legislative members.

Methods of Reconciling the Functions and Powers of Two Chambers

When two chambers participate in the legislative process, the legislature must devise methods for reconciling different versions of bills and/or processes for consultation. Pieces of legislation on the same subject may be very different in each house, reflecting the fact that each chamber collectively represents different constituencies. Most bicameral legislatures use a shuttle system, whereby a bill is sent from one chamber to another for review and amendment until an agreement is reached. Under this system, one chamber presents its version of a bill to the other, who can accept the bill, reject the bill or counter with an amended bill. This process can go on until both houses agree on one version, one house prevails, the bill dies or parliament is dissolved.

In many cases, one chamber (usually the lower house) has the final say in determining the composition of a bill. In Slovenia, the upper house, National Council, has the power to veto any law within seven days of its adoption by the lower house, National Assembly. However, the National Assembly may override the veto with a simple majority.

In Russia, the Federation Council (upper house) may reject a law passed by the Duma (lower house), but the Duma may override the Federation Council with a twothirds majority. In some countries, the power of each chamber varies based on the nature of the legislation. In South Africa, if a bill does not directly affect the provinces (i.e. it deals with national issues such as Defense, Foreign Affairs or Justice), a simple majority of members of the lower house, the National Assembly, can accept or reject a bill initiated or amended by the upper house, National Council of Provinces (NCOP). If there is disagreement between the National Assembly and the NCOP about a bill affecting the provinces, the bill must be sent to a mediation committee consisting of members of both houses. If the committee can not reconcile the differences, the bill may be voted on again and can only pass with a twothirds majority of the National Assembly. In some cases, if both houses don't come to agreement, the bill will die. In rare cases, the situation may force the parliament's dissolution. In Kazakhstan, bills are initiated in the lower house (the Mazhilis) and transmitted to

the Senate for approval. The Senate may reject the law and return it to the Mazhilis. With a two-thirds vote of the members of the Mazhilis, it is again sent to the Senate. If the Senate rejects the bill again, the bill dies and cannot be reintroduced during that legislative session. In the Australian parliamentary system, if the lower house (House of Representatives) passes any proposed law that the upper house (Senate) rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the House may try to pass the bill again after a period of three months. If the Senate again refuses to pass the bill at all, or in the form agreeable to the House, the Governor General (in this Constitutional Monarchy, he/she is the representative of the Queen) may dissolve the Senate and the House of Representatives simultaneously.

ROLE OF POLITICAL PARTIES

INTRODUCTION

A country's development depends upon various factors, players and institutions. Political system acts as a catalyst in socio-economic development of the country. The tone and pace of the development is set mainly by the political system of the country, which provides the platform for the development in other walks of life. Political parties are fundamental components of a democratic political system. By electing their candidates to legislative bodies, political parties act as such institutions, allowing citizens to participate in the legislative process. They also encourage participation in political activities. Political parties being in power as ruling party, chalk out the development process of the country. They formulate and implement various policies and development programmes as a part of government. Being in opposition they suggest better alternatives, provide sensible choice, criticise the weaknesses of the government and ensure accountability of the administration. Political parties also act as a link between government and people and also as a mirror of public opinion. In this Unit, we will understand what these political parties stand for and what functions they serve we will also explain their multifarious roles in the development of a country.

MEANING OF POLITICAL PARTIES

In a democracy, a sizable group of individuals who share some similar viewpoints come together and create a party. In essence, a political party is a gathering of people with common goals and ideology. Edmund Burke defined a political party, ideologically, as a body of men and women united on the basis of their shared political ideas so as to promote the national interest. A political

party's primary characteristic that sets it apart from other organizations is that its main goal is to seize power. A pressure group, interest group, or non-party civil society organization often does not strive to gain power, in contrast to a political party. According to Max Weber, parties are characterized as "office seeking." "Parties reside in the sphere of power. Their action is oriented toward the acquisition of social power . . . no matter what its content may be "To maintain control over the government, parties declare their candidates for elections. It is a strategy for encouraging voters to support shared interests, issues, and objectives. Lawson states, "Parties are seen, both by their members and by others, as agencies for forging links between citizens and policy-makers."Fixing the political agenda and policies is the political party's main responsibility. As a result, each party makes the assertion that their policies are superior to those of the other in an effort to win over voters. Samuel J. Eldersveld defined a political party as a system of patterned activity or a group of individuals populating particular roles and behaving as member-actors of a boundaries and identifiable social unit.

An organization called a political party consists of leaders, supporters, policies, and programmers. Its supporters may be formally affiliated with the party or they may provide it support without being formally affiliated. There are various groups. Parties can be distinguished on the bases of their leaders, programmers, policies, philosophies, and internal operations. Political parties serve as crucial ties between the federal government, the state, and society. Political parties impact debates and policies on matters affecting the interests of various social groups in a political system, serving as the essential link between social processes and decision-makers. In a broader sense, a political party is a vehicle through which the populace can communicate with the executive branch and influence national policy. So, each political party needs to have these three essential elements:

- Leaders
- Followers; and
- Shared Political Goals

TYPES OF POLITICAL PARTY SYSTEMS

On the basis of numbers of political parties active in the election process, there are three different party systems:

• One-Party System
• Two-Party System
• Multi- Party System

One-Party System

There isn't any competition under a one-party system. Here, there is only one party that nominates candidates, and there are only two options available to voters like not voting at all or choosing one of the party's nominees. Such a political structure has been prevalent in communist and autocratic nations like China, North Korea and Cuba.

Two-Party System

In this system, there are major two main dominating parties who contest the elections. One of it forms the government and other plays the role of opposition. Therefore, in order to win the election, the winner must receive the majority votes. In America, Canada and Great Britain twoparty system prevails. This system provides a democratic choice to the voters along with the much-needed stability for the government.

Multi-Party System

The multi-party system is the third and most prevalent type of government. In such a system, there are three or more parties who contest the elections. The party which, secures the majority forms the government. If no party wins a majority of the seats in the legislature, several parties band together to create a coalition government. Countries with a multi-party system include India, France, Germany, New Zealand, Argentina etc. Some believe that a multi-party system frequently causes political instability in a nation.

POLITICAL PARTIES IN INDIA

India has encouraged the development of the multi-party system because of the country's unique geographical, socio-economic, and cultural problems. National and regional political parties eventually rose to prominence as essential elements of India, the largest democracy in the world. Every political party has to get itself registered with the Election Commission of India. The Election Commission of India classifies political parties as national, state/regional, and registered/unrecognized parties on the following basis:

National Party

According to the Election Commission, a political party must meet at least one of the requirements listed below in order to be recognised as a national party:

i) It must garner at least two per cent seats in the Lok Sabha. These members must be from at least three different states.

ii) The party must secure six per cent of the valid votes in at least four states in the general elections to Lok Sabha or state legislative assemblies.

iii) At least four states must recognise it as a state-level party.

Bharatiya Janata Party (BJP), Indian National Congress (INC), Bahujan Samaj Party (BSP), Communist Party of India (CPI), Communist Party of India-Marxist (CPI(M)), Nationalist Congress Party (NCP), and All India Trinamool Congress are the seven national parties in India as of 2022.

Regional Party

According to EC, a party must meet one of the requirements to be recognised as a state party in order to be given state party status:

i) It had to have been involved in politics for at least five years;
ii) It had to obtain three per cent of the total seats or minimum 3 seats in state legislative assembly whichever is higher,
iii) It must have obtained the backing of six percent of the valid votes cast in Lok Sabha elections and has secured at least one seat in Lok Sabha.
iv) It has obtained six per cent of the valid votes cast in state legislative assembly elections and has secured at least two seats in state legislative assembly.
v) If a party wins at least per cent of the total valid votes cast in the assembly or Lok Sabha elections, it can still be given the status of a state party even if it doesn't win any seats in the Lok Sabha or the Assembly.

Registered Party

A party that is registered with the Election Commission is one that is neither recognised as a state party nor a national party. It sometimes goes by the name "unrecognised party." In India, there are currently over 2000 registered parties.

ADVANTGES OF POLITICAL PARTIES

Institutions are important in a democratic nation. They make democracy functional by participating in the elections. Without political parties, democracy cannot exist in a contemporary society. They begin by defining and communicating a group's needs in a way that the general public and political system can comprehend and act upon. The essential function of assisting people in placing their local issues in a national context is only performed by political parties. Particularly in varied and pluralizing countries, political parties bring together interests. They establish a foundation for compromise. Out of chaos, they bring about order. They assist societies in becoming and staying cohesive as a result. They can accept direct appeals from the general public since they are seen as the voice of the people in the absence of long-lasting governmental structures. This is particularly true in areas with weak, underdeveloped, or corrupt governments. They provide the system of checks and balances and the respect for the rule of law in a country.

In order to put pressure on the political system, political parties create shared beliefs among a sizable population. The democratic process greatly benefits from a principled difference of opinion and the tolerance of diversity and dissent that this implies. Conflicting opinions being expressed can actually improve comprehension of the problems and hint to potential solutions. These discussions can result in new understandings or feasible compromises that are necessary for the existence of a democratic system when the political system is functioning.

Political parties function regularly to nominate candidates, coordinate political competition, translate policy preferences into public policies, serve as a training ground for political leaders who will eventually assume a role in governing society, and try to win elections in order to control governmental institutions. These objectives are in addition to their core objectives. When out of office, they offer a constructive and critical opposition by portraying themselves as the different type of administration that voters would choose the incumbents are under pressure to respond to the needs of the people more.

Parties have offered orientation to both individuals and civic groups. Parties can organise citizens who may be divided over ideologies, interests, leaders, or policies. Parties establish connections between the institutions of government and the various facets of civil society, including the business, racial, ethnic, cultural, and religious sectors. Every political party must carry out a variety of tasks. Here is a list of a few of them.

• Elections are contested by political parties by fielding candidates.

• Candidates are chosen by party leaders and members.

• Every party has a unique set of policies and initiatives. Voters cast their ballots based on the policies and programmes they find favourable.

• The parties who lose in elections make up the opposition. They express various opinions, criticise the administration for its shortcomings, and organise opposition to the government.

• Public opinion is shaped by political parties. The parties start movements to address the issues that the populace is facing with the aid of pressure organizations; and

• Even access to government resources and social programmes is offered by parties. The local party leader acts as a liaison between the public and the elected official.

ROLE OF POLITICAL PARTIES

The parties now play a key role in maintaining the state's stability as a result of their functions. Fighting to gain power is typically the ideal function of political parties in modern, democratic societies. The leaders and members of the party make the special policies and norms, while remaining unified, exchanging ideas, and taking proposals from their society. The main goal

is to advocate for the welfare of the people before the government. Political parties carry out specific tasks required for managing the political system. They play a greater role in the socio-economic development of the country. Their role can be defined as follows:

Forming the Government

In the era of representative democracy political parties form government by contesting the elections. People's representation in government would not be possible without political parties. If government is formed only by independent candidates without any political party, there will not be consensus on major issues and the entire system will be in chaos. So political parties provide stability to the government by shared ideology and beliefs. The primary goal of political parties is to nominate and elect as many people as possible to public office. Once in office, these representatives work to advance their party's objectives through legislation and programme initiatives. They organise people to take over the government, create laws that benefit their interests or the interests of the organizations they represent, and convince citizens to vote for their candidates. Not all political parties are able to win the majority and form a government. But political parties are heavily involved in the administration of all levels of government, although they are not the government itself, and the Constitution makes no mention of them. Parties offer crucial internal and external opposition to and criticism of the government. Since government is main vehicle of socio-economic development political parties provide the platform to the development process by enabling the formation of the government. This is an essential function of political parties in governance and development.

Ensuring Accountability

While the major responsibility of the ruling party is to efficiently administer the government, the opposition also has their important role in governance. They present themselves as governmental watchdogs, tasked solely with investigating the conduct of the ruling party. They have a responsibility to stop the ruling party from assuming power. At a far larger scale, the opposition takes a critical look at how the government is performing and makes sure that effective governance benefits the entire country, not just certain interests. They openly criticise the government's bad policies and unfair legislation. There have been instances where vehement protests against particular measures forced the administration to back down. Whenever government neglects its duty or is involved in wrongdoing, opposition raises questions, marches protests and mobilise people against them. This always keep the administration on its toes and make them accountable to people. Hence, even in opposition political parties ensure that government is

committed to the development goals of the country and is dedicated to its achievement with greater level of efficiency.

Representing interest groups

Political parties seek the broadest participation possible by raising the issues of different interest groups. Additionally, representing the interests of their own political party, elected officials must also work to win over voters from the opposing party in their districts or states. They can gain this support by promoting non-partisan and bipartisan issues that cut across party lines. Regardless of party affiliation, voters voice their issues to their legislators. Both individuals and groups are represented by political parties. These interest groups have unique issues to consider. They may speak for agricultural workers, small business owners, industrialists, sportspersons, labours, salaried or service class or any other group of people who band together to promote a common cause. Numerous parties have run candidates in elections since the 1990s from a variety of social groups, including underrepresented groups like women, OBCs, and Dalits. In this way, political parties raise the voices of concerned people to government and act as a bridge between people and administration. By providing this communication link, political parties help the administration to identify various development issues and solve them at priority.

Developing policy

Political parties are not by themselves organizations that make policy. They undoubtedly take views on crucial policy issues, particularly to offer opposition to the position of the party in power. A party seeks to enact its philosophy through legislation when it is in power. A candidate may have a mandate from the electorate to implement the platform expressed in the campaign if they win office with a significant majority of the vote. Thus, as ruling party they represent their development agenda in legislature and help in achieving it by passing various policies and programmers for the same. When they are in opposition, they find faults with government's various plans and programmers. Thus, they help in rectifying the government's path to development. By mobilizing the people through various rallies, protests, meetings and campaigns they set the foundation for government's policies on various development issues.

Providing Alternatives

Every political party has its own ideology and set of agenda on various socio-economic issues. Each political party has its own vision and set of beliefs, which are frequently in line with the demands and issues of the state or region to which they belong. They do this by outlining their objectives in broad terms so that voters are drawn to a general philosophy instead of necessarily focusing on every particular issue. People vote candidates according to the basic philosophies of the

political parties. Once a party comes in power it has to work in the interest of people by fulfilling its agenda, In case a party doesn't fulfil its promises or adopt some faulty policies that adversely affect the interest of people and country, opposition parties make issue of the same. They come forward with the criticism of ruling parties and its policies. They bring different set of policies and provide the alternatives to the people. Thus, they make the development process a continuous process by providing different options as and when required.

Promote Democratic Development

Democracies and political parties go hand in hand. This connection is evident in a number of democratic measures, including citizen engagement in decision-making, political mobilisation, raising political knowledge among the populace, articulation of issues, and provision of a vision to address needs. Political parties enable the public to influence governmental decision-making. The parties have the main responsibility for raising political and social consciousness. Parties create a number of smaller goals for themselves under the larger purpose of serving the country and its citizens to make sure that public worries are allayed, social indicators are preferred, and corruption is eradicated. political parties play a democratic role in inspiring public action. In a democracy, opposition parties are supposed to criticise the government's actions and methods of operation. The participation of independent candidates and elected representatives from several parties in the legislative bodies strengthens democracy. Government policies are developed as a consequence of discussions among elected officials, who are typically affiliated with political parties. The parties also help to spread a sense of democracy among the populace.

The Electoral Process

Political parties play an important role in elections in democracies. Candidates are typically chosen by political parties during elections. They provide resources and assistance for political campaigns. To secure votes and safeguard the election of their candidate to the legislature or other public office, political parties must manage their vote bank. However, all political parties work to convince voters that their candidates are more trustworthy than those of their opponents. They establish policies that the electorate must support. Elections have a great role in the development process. Parties declare their manifesto for which the electorate can take ownership since the voter has the power to hold them accountable for the successes or failures of policy. These issues outlined in the manifesto largely depict the development needs of people. So, during elections the tone of future development issues is set by the political parties. Political parties ensure that problems of social importance are included in the political system through elections. They are the primary input systems that ensure that the needs and aspirations of the society are met.

Building Public Opinion and Consensus

The majority of political campaigners in contemporary, democratic democracies are party members. Political parties serve the primary purpose of inspiring people to become political activists in these nations. They are responsible for providing the states with their political principles. By speaking for the people on a national basis, they become the voice of the people. They educate the public about their ideals and outlook on human welfare. The issues raised by political parties through debates, rallies and protests etc. reach the wider range of people. Media gives wide publicity to the actions of political parties. People start talking and discussions on these issues. Hence public opinions are shaped by political parties. Needless to say, that in a democracy, voice of people acts as guiding force for development. So, political parties set the direction of country's development process by building public opinion on important issues.

CHALLENGES OF POLITICAL PARTIES

Political parties aim to achieve power to fulfill its shared goal and ideology. Due to pressure of winning the majority political parties lend themselves into vote bank politics. This leads to their goal displacement. For gaining power political parties members compromise with their ideology and it gives rise to the political defections. A key issue is the ongoing absence of internal democracy. Power remains limited in top leadership or certain dynasties. All the members don't have access to decision making in the party. Ordinary members generally lack the information about the internal activities of the parties. Parties don't conduct regular elections to different posts and organizational meetings are not conducted smoothly. Personal loyalty to a leader becomes more important than loyalty to party or ideology, as well as the rise of political corruption and clientelist behaviour.

Growing role of money and muscle power in the election also adversely affect the political culture of the country. It leads to proliferation of unworthy candidates in politics. Parties generally give tickets to those candidates who can raise funds for the party. It leads to show off the democracy as common people are in disadvantageous positions regarding their opportunities. Criminalisation of politics is emerging as major issues since political parties give tickets to tainted candidates in the greed of high chances of winning the seats. Political parties have lost a charm for ideology. Most of parties are similar to each other in actions and policies. Moreover, leaders frequently keep on changing their parties. So, it confuses the people and they lose their belief in the system. So political parties don't provide any meaningful choice to the voters. These issues can be overcome by strong political will and awareness amongst the masses.

CONCLUSION

One must agree that India has experienced a democratic uprising and consolidated its base through a large number of political parties. In contrast to the 1950s and 1960s, the last three decades have seen a change in the socio-economic milieu. Earlier Parties had a limited impact on democracy at the time since voter turnout was largely influenced by patron-client relationships and the fact that elected officials typically came from the upper classes of society. Over the past few decades, changes to party structures, their proliferation, the establishment of parties championing the rights of women, minorities, OBCs and Dalits, and a rise in public consciousness have strengthened democracy. However, there are drawbacks to excessive interference at different levels of functioning. The development process is frequently halted by over criticism of government for the sake of criticism. Both the ruling and the opposition political parties in India need to use greater restraint and extend their horizons in order to contribute to the overall development of the nation. Parties would be able to deliver policies for a better, more just society if they had a broader perspective on governance and resisted the desire to consolidate power and pursue personal profit. This Unit discussed some of these features.

UNIT IV

EXECUTIVE

INTRODUCTION

Legislature, executive and judiciary are the three organs of government. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people. The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. In a parliamentary system, executive and the legislature are interdependent: the legislature controls the executive, and, in turn, is controlled by the executive. In this chapter we shall discuss the composition, structure and function of the executive organ of the government. This chapter will also tell you about the changes that have occurred in recent times due to political practice. After reading this chapter, you will be able to ± make a distinction between the parliamentary and the presidential executive; understand the constitutional position of the President of India; know the composition and functioning of the Council of Ministers and the importance of the Prime Minister; and understand the importance and functioning of the administrative machinery.

WHAT IS AN EXECUTIVE?

Who is in charge of the administration of your school? Who takes important decisions in a school or a university? In any organisation, some office holder has to take decisions and implement those decisions. We call this activity administration or management. But administration requires a body at the top that will take policy decisions or the big decisions and supervise and coordinate the routine administrative functioning. You may have heard about the executives of big companies, banks or industrial units. Every formal group has a body of those who function as the chief administrators or the executives of that organization. Some office holders decide the policies and rules and regulations and then some office holders implement those decisions in actual day-to-day functioning of the organization. The word executive means a body of persons that looks after the implementation of rules and regulations in actual practice.

In the case of government also, one body may take policy decisions and decide about rules and regulations, while the other one would be in charge of implementing those rules. The organ of government that primarily looks after the function of implementation and administration is called the executive. What are the principal functions of the executive? Executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature. The executive is often involved in framing of policy. The official designations of the executive vary from country to country. Some countries have presidents, while others have chancellors. The executive branch is not just about presidents, prime ministers and ministers. It also extends to the

administrative machinery (civil servants). While the heads of government and their ministers, saddled with the overall responsibility of government policy, are together known as the political executive, those responsible for day to day administration are called the permanent executive.

WHAT ARE THE DIFFERENT TYPES OF EXECUTIVE?

Every country may not have the same type of executive. You may have heard about the President of the USA and the Queen of England. But the powers and functions of the President of the USA are very different from the powers of the President of India. Similarly, the powers of the Queen of England are different from the powers of the King of Bhutan. Both India and France have prime ministers, but their roles are different from each other. Why is this so?

To answer this question we will briefly outline the nature of executive existing in some of these countries. The USA has a presidential system and executive powers are in the hands of the president. Canada has a parliamentary democracy with a constitutional monarchy where Queen Elizabeth II is the formal chief of state and the prime minister is the head of government. In France, both the president and the prime minister are a part of the semipresidential system. The president appoints the prime minister as well as the ministers but cannot dismiss them as they are responsible to the parliament. Japan has a parliamentary system with the Emperor as the head of the state and the prime minister as the head of government. Italy has a parliamentary system with the president as the formal head of state and the prime minister as the head of government. Russia has a semi-presidential system where president is the head of state and prime minister, who is appointed by the president, is the head of government. Germany has a parliamentary system in which president is the ceremonial head of state and the chancellor is the head of government.

In a presidential system, the president is the Head of state as well as head of government. In this system the office of president is very powerful, both in theory and practice. Countries with such a system include the United States, Brazil and most nations in Latin America.

Semi-Presidential Executive in Sri Lanka

In 1978 the constitution of Sri Lanka was amended and the system of Executive Presidency was introduced. Under the system of Executive Presidency, people directly elect the President. It may happen that both the President and the Prime Minister belong to the same political party or to different political parties. The President has vast powers under the constitution.

The President chooses the Prime Minister from the party that has a majority in the Parliament. Though ministers must be members of the Parliament, the President has the power to remove the Prime Minister, or ministers. Apart from being the elected Head of State and the Commander-in Chief of the Armed Forces, the President is also the Head of the Government.

Elected for a term of six years, the President cannot be removed except by a resolution in the parliament passed by at least two-thirds of the total number of Members of Parliament. If it is passed by not less than one-half of the total number of Members of Parliament and the Speaker is satisfied that such allegations merit inquiry then the Speaker can report the matter to the Supreme Court. How is the position of the President and Prime Minister in Sri Lanka different from India? Compare the role of Supreme Court in the impeachment of the President in India and Sri Lanka.

In a parliamentary system, the prime minister is the head of government. Most parliamentary systems have a president or a monarch who is the nominal Head of state. In such a system, the role of president or monarch is primarily ceremonial and prime minister along with the cabinet wields effective power. Countries with such system include Germany, Italy, Japan, United Kingdom as well as Portugal. A semi-presidential system has both a president and a prime minister but unlike the parliamentary system the president may possess significant day-to-day powers. In this system, it is possible that sometimes the president and the prime minister may belong to the same party and at times they may belong to two different parties and thus, would be opposed to each other. Countries with such a system include France, Russia, Sri Lanka, etc.

PARLIAMENTARY EXECUTIVE IN INDIA

When the Constitution of India was written, India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people. The makers of the Indian Constitution wanted to ensure that the government would be sensitive to public expectations and would be responsible and accountable. The other alternative to the parliamentary executive was the presidential form of government. But the presidential executive puts much emphasis on the president as the chief executive and as source of all executive power. There is always the danger of personality cult in presidential executive. The makers of the Indian Constitution wanted a government that would have a strong executive branch, but at the same time, enough safeguards should be there to check against the personality cult. In the parliamentary form there are many mechanisms that ensure that the executive will be answerable to and controlled by the legislature or people's representatives. So the Constitution adopted the parliamentary system of executive for the governments both at the national and State levels.

According to this system, there is a President who is the formal Head of the state of India and the Prime Minister and the Council of Ministers, which run the government at the national level. At the State level, the executive comprises the Governor and the Chief Minister and Council of Ministers.

The Constitution of India vests the executive power of the Union formally in the President. In reality, the President exercises these powers through the Council of Ministers headed by the Prime Minister. The President is elected for a period of five years. But there is no direct election by the people for the office of President. The President is elected indirectly. This means that the president is elected not by the ordinary citizens but by the elected MLAs and MPs. This election takes place in accordance with the principle of proportional representation with single transferable vote.

The President can be removed from office only by Parliament by following the procedure for impeachment. This procedure requires a special majority as explained in the last chapter. The only ground for impeachment is violation of the Constitution

PARLIAMENTARY FORM OF GOVERNMENT

Parliaments are common over the whole of the civilized world. English parliament is the Mother of all Parliaments. The parliamentary system of government, which is also known as the Cabinet Government, is based on close relationship between the executive and legislature. The executive is accountable to the legislature and stays in office inly as long as it enjoys the confidence of legislature. Under parliamentary system of government there are two types of executives-nominal and real. The real executive is accountable to the legislature and when later passes a vote of confidence against it has to render its resignation or seek the dissolution of the legislature

What is Parliament?

Parliamentary Government has been defined as “Government by talk” or more precisely, “control of Government by talk”. The word “Parle” is a French word and it means “Talk”. Parliament is often described as a mere “Talking shop”. Though this description is used opprobrious, that is what the word ‘Parliament’ means and largely it describes the actual institutions. It is a place where people talk about the affairs of the nation. In the U.K. the Parliament consists of the King, the House of Lords and the House of Commons. All three functionaries join together to complete the actions of Parliament. Both the Houses are in fact two different institutions having different characteristics and different functions. The earliest document in which the word Parliament is found is the 11th century “Chanson de Roland”, where it is used simply to refer to a conversation between two persons. However, the word soon acquired a derivative meaning that of an Assembly of persons in which discussions took place. Contemporaries referred to the meeting at Runnymede as the ‘Parliament’ in which King John “gave his charter to the barons. By 1258 ‘Parliament’ had evidently began to acquire a special meaning. In June of the same year, one of the reforms demanded by the barons at Oxford was three ‘Parliaments’ a year to treat the business of

the King and the Kingdom. Therefore, it is clear that the essence of Parliament is discussion and when the word was first applied to the great Councils of the English Kings it was with a view to emphasizes its deliberative function.

The Origin of Parliament:

The origin of Parliament may be traced to two ideas and both these ideas are of great antiquity. The first is that the King, always sought the advice of a council of the wisest and the most experienced of his subjects. The second idea is that of representation. Feeling his way toward an ideal of self government man has invented various Assembly and Parliament, at many different periods and in many different countries. The Norman Kings held their courts in different Parliaments of the country and summoned therein the prominent members of the Church, big Landlords and Knights for discussion on national affairs. They were not the representatives of the people in the sense in which today we understand the word 'representative'. It took eight centuries to transform Parliament into a governing body resting on the suffrage of all adult persons in the country. Earlier its form was very different from what it is today. The origin of Parliament can be traced to the Witanegemot and the Great Council. In 1295, Edward I summoned the ideal Parliament to which attention of the King was drawn to sanction funds for public cause and before which problems of the people were placed. The British King was not empowered to impose taxes without the approval of the Parliament. In a bloodless revolution in 1688, Parliament attained supremacy. But the Parliament was not democratic in character due to its limited franchise. With the passage of time persons of young age were given the right to vote.

The Theory of parliamentary system

There are four things involved in the system of parliamentary democracy. First is the Parliament of elected representative candidates. The second is a system of Parties, each reflecting some general trend of thought pervading all the society-which will submit to the electorate a number of candidates for its choice and the programme of policy for which the candidates stand. A system of parties is a necessary part of any system of representation. Granted an organised electorate and a system of national parties, the third characteristic is a cabinet that guides the parliament, and yet at the same time is itself guided by the parliament. The adjustment of the whole machinery of the representative system of government is very fine and delicate. The last and the foremost characteristic is the idea of representation. Each of the above four concepts has to fit into the other three, each has to play its part and to be content with its part. But practically it is not the easy thing for any of the four to be so content. Every human institution tends naturally to institutionalism. It exaggerates itself. The problem of human government is a problem which can

never be solved absolutely. There are certain requisites for this system to be successful. It is said that an ounce of practice is worth a pound of theory. Factionalism or irreconcilable conflict of parties is the one of the saddest defects of a parliamentary system, for the party system is perhaps the most difficult of all the elements. The great merit of the parliamentary system is that it provides a constant training ground for the statesmen, with an arena of peaceful competition in which they can test and measure their powers before a watching and judging world.

Chief Characteristics of Parliamentary System

In the parliamentary system the chief executive of the state (Prime Minister) is not elected directly by the people, but he is normally the leader of the majority party in the Parliament. He chooses his own Cabinet which again, normally should be out of the Parliament only. The entire Cabinet is accountable to the Parliament and as soon as it looses confidence of the Parliament, it has to resign from the, office. As against this, in the Presidential system, the chief executive i.e. the President is elected directly by the people for a fixed term and he chooses his own ministers (called 'secretaries' in the U.S.). Neither the President nor the Secretaries are accountable to the Parliament i.e. Congress.

1. In a Parliamentary system powers are centered in the Parliament, The Legislature takes the responsibility of government.
2. The executive is divided in two parts- Head of the state i.e. Monarch or the President, and the head of the Government i.e. Prime Minister. The former, is the titular head and the latter is the real executive head. Relationship between the two has been regulated in India by the law of Constitution while in England it is left to the operation of flexible conventions.
3. The head of the State appoints the head of the Government. In case of Majority Parliamentarianism, the President or the crown has no option but in minority Parliamentarianism the President or the crown may enjoy prerogative in this matter.
4. The head of the Government has full say in appointment of his Ministry. Ministers are formally appointed by the crown but Prime Minister alone is responsible for the composition of the Ministry. The Ministerial responsibility is collective. It indicates both the cause and the effect of the cabinet solidarity. The Government can remain in office as long as it enjoys the confidence of popular house.
5. Collegiate Nature of the executive indicates that a decision making process has been shifted to a collective body.
6. Ministers are usually members of the Parliament.
7. The head of the Government may advice the head of the State to dissolve the Parliament.

8. There is a mutual dependence between the government and the parliament.
9. The government as a whole is only indirectly responsible to the electorate.
10. Though the ultimate power to control and supervise the executive rests with the Parliament, in practice, it is the Prime Minister who has become all powerful.
11. This system does not represent truly the principle of separation of powers.
12. There is no separation of personnel between the executive and the legislature.

The presidential system is a form of government in which the president is the chief executive and is elected directly by the people. In this system all three branches – executive, legislative, and judiciary – are constitutionally independent of each other, and no branch can dismiss or dissolve any other. The president is responsible for enforcing laws, the legislature for making them, and the courts for judging. Each is given specific powers to check and balance the others. It operates on the principle of separation of powers and the legislative and executive are independent of each other. The executive head of the state enjoys real executive powers. He is neither the member of legislature nor accountable to it for its actions and policies. The continuance of the executive head in the office does not depend on the sweet-will of the legislature. He holds office for a fixed term and can be removed from his office before the expiry of his normal term only through the cumbersome process of impeachment.

This system was invented by America's founders to provide an alternative to the parliamentary form of government. It became known as 'presidential' because a directly elected president was its most salient difference. This doesn't mean that the president holds supremacy like the prime minister or parliament. In fact, power in the presidential system is divided among many, so no individual or institution can ever become supreme. This rejection of legislative supremacy is not the only fundamental difference. Since the presidential system was designed for a full republic, not a constitutional monarchy, it doesn't have a head of state. The government is not just an executive committee called the Cabinet, it's all three branches. The President, Congress (with two chambers: House of Representatives and Senate) and Supreme Court, work together to constitute a government, and all report directly to the people. Elections are therefore held more frequently than the parliamentary system; every two years for the legislature, and every four for the presidency. The president and legislators are elected for fixed terms. The judges are appointed for life, jointly by the president, who nominates, and the Senate, which approves. Total executive responsibility is assigned to the president as an individual, not collectively to a council of ministers, as in the parliamentary system. The president's cabinet is not made of legislators but of any individuals considered able by the president and approved by the Senate. In fact, legislators are barred from

holding executive offices, and vice versa. Conversely, the president cannot make laws. He can veto, but the legislature can override if there is broad consensus. Another big difference is with respect to state governments. The presidential system is designed for a federation, not for running states from the center. Accordingly, its state governments are independent, cannot be dissolved, and are required to be self-sufficient. Federal and state governments are granted separate and specific powers; residual powers are left with the states.

The Americans invented the presidential system in 1787 to replace their decade-old fraying structure. After gaining independence, the 13 American colonies lived under the Articles of Confederation. But that provided a weak central government and lacked a fair system for inter-state cooperation. The union began to fall apart. The founders knew they had to come up with a better system. Having lived under the British Constitution all their lives, they knew the parliamentary form of government was not the answer. They devised a revolutionary new system of strong but non-oppressive governments. The presidential system grants limited powers, empowers state governments, separates the three branches into different institutions, enables the minority to make laws, grants judiciary the power of review, and above all, gives the people a direct say. Direct elections at all levels of government – federal, state, and local – is this system's best known feature. Many nations have a so-called presidential system, but America is the model to study. In almost all other countries the powers are not as well balanced. The American system is not difficult to understand or replicate, however it cannot be implemented piecemeal. Since it relies on institutions and their checks on each other, the structure of every institution is equally important. The American presidential system is not authoritarian. The general depiction of America's president as "the most powerful man on the planet" has created an erroneous impression of autocracy. But nothing could be farther from the truth. In 225 years, no American president has even been accused of autocratic behavior. Power in this system cannot find a focal point. This system makes it structurally impossible, due to its powerful state governments, division of spending and taxing authorities, and separation of the powers of sword and purse.

Features of Presidential form of government

1. The head of the state enjoys real powers. These powers are vested in him by constitution or ordinary laws and can exercise these powers on his own.
2. The presidential form of government is based on separation of powers. The three organs of government stand independent of each other. The president and his ministers cannot be the members of the legislature nor are they accountable to it.

3. The cabinet under presidential system consists of nominees of the president. They remain in office as long as accountable to the president rather than legislature.
4. The president can appoint secretaries or ministers to assist him, but they are merely advisors and act according to his instructions. The president can also remove them from their post any time he likes.
5. Under presidential system the head of the state enjoys a fixed tenure and cannot be removed from office before the expiry of the fixed tenure. He can be removed from the office through a very special and complicated procedure of impeachment.
6. Under presidential system the legislature cannot dissolve it. Like the executive head the legislature also enjoys fixed tenure and cannot be dissolve before the expiry of his term.

MEANING AND FEATURES OF PRESIDENTIAL SYSTEM

The presidential system is a form of government in which the executive and legislative branches of government are separate and there is mutual independence between the two. In this system, the executive and legislature are elected separately and have independent powers. According to J. W. Garner (1952), presidential form of government "is that system in which the executive (including both the head of the state and his ministers) is constitutionally independent of the legislature in respect to the duration of his or their tenure and irresponsible to it for his or their political policies". The best example of this system is the United

States where it emerged and has been adopted by almost all the states of continental Americas such as Argentina, Brazil, Mexico, Chile, Colombia, etc. It also exists in African countries such as Ghana, Kenya, Zimbabwe, etc. and in some Asian countries as well such as Indonesia, Maldives, Philippines, etc.

The presidential system has its distinctive features that distinguish it from a parliamentary system. Its key features are: (i) single head (ii) separation of powers (iii) President and cabinet members (iv) law-making authority, and (v) fixed terms of offices. Let us examine these features in some detail.

Single Head

In presidential systems, a single elected person, known as President, wears what Andrew Heywood called 'two hats', both the head of state and the head of government. The President directs the government and exercises the political responsibilities as well as performs the ceremonial duties. However, the President is far weaker than Prime Minister in a parliamentary system and has less control over the legislature and its members than Prime Minister has in a parliamentary state. This is primarily because of the doctrine of separation of powers.

Separation of Powers

The defining feature of presidential forms of government is the principle of separation of powers. There is a clear division of powers and responsibilities among the three branches of government-legislature, executive and judiciary. The separation of powers between legislature and executive exists in presidential systems mainly in following forms. First, the executive (President and his cabinet) is not drawn from the legislature. Instead both the President and legislature are elected separately in their own elections. Second, the President is directly accountable and responsible to the electorate, not to the legislature as he or she is elected by the people, either directly or through an electoral college. Third, the legislature cannot remove the President before the expiry of his or her term. It can do so only in the exceptional circumstances through a process of impeachment. Fourth, President cannot dissolve the legislature before the expiry of its term. Fifth, the members of executive including the President cannot be the members of legislature and vice-versa. A member of the legislature cannot join the executive branch and executive members cannot sit in the legislature and take part in the legislative process.

President and Cabinet Members

In the presidential system, the President has complete freedom in the appointment of cabinet members and formation of government though they cannot be drawn from the legislature. The cabinet members appointed by President serve as his or her policy advisers rather than policy makers and are individually accountable only to the President, not to the people or legislature. Since the President is politically responsible to the people, he or she has absolute authority to hire and fire his or her cabinet members who share no decision-making powers with him or her. In this respect, there is unipersonal executive responsibility in presidential form of government and cabinet is a far less important decision-making body.

Law-making Authority

In presidential system, the executive has far less law-making authority than executive in a parliamentary system. The American President, for example, can veto a legislation passed by the Congress (legislature of USA), but the latter can override a veto with a two-thirds majority vote. Similarly, the President can sign treaties but such treaties are subject to approval of the Senate (upper house). Because of mutual independence of executive and legislative branches in terms of their selection, tenure and membership, the legislature is far more independent law-making body than legislature in a parliamentary system.

Fixed Terms of Offices

Another distinguishing feature of presidential systems is the presence of fixed terms. Both the President and legislature have fixed terms of office meaning that neither can usually remove the other before the expiry of given term. The President is elected separately for a fixed term, which varies from four to six years in different presidential states. The President's term is not dependent on the legislative support as in a parliamentary system. This means that the legislature cannot usually remove the President before the expiry of his or her term except in the exceptional circumstances through a process of impeachment which needs extraordinary measures. Similarly, the President cannot dissolve the legislature and remove its members who enjoy their own democratic mandates.

UNIT V

Judiciary: Rule of Law - Role and functions of Judiciary-Independence of Judiciary – Judicial Review

The Rule of Law concept means, that the state is governed by the law and not by the ruler or the representatives of the people. A country that preserves the Rule of Law would be in the Grundnorm of that nation, or the essential and core law from which all other laws derive its authority and becomes the supreme authority of that region. If a representative is governed by the laws arising from the Grundnorm then his powers would be limited by law. The law is king but the king is not the law. No individual, whether rich or poor or even a ruler is above the law. Rule of Law is supreme and no individual is above the law and should thus obey it. Rule of law is a necessity in order to have a disciplined and organized community. The laws adopted through an established procedure implied that the government authorities would be exercised only under those written laws. The rule of law principle protects the individuals from the arbitrary actions of the government's authorities.

It is said that the one who originated the concept of Rule of Law was Edward Coke. According to him, the king must be working under the God and law and corrected the supremacy of the law and said that the Law is supreme over the executive. „La Principe de Legality" is a French phase from which the concept of Rule of Law was derived. It means the principle of legality. The theory of Rule of Law has been traced back to the Ancient Romans and this concept has been supported by many medieval philosophers in Europe like Locke, Hobbs and Rousseau.

In India also, Rule of Law can be traced back to the Upanishads. It states that the law is the king of the kings. No one is higher than the law. Not even the king. Rule of law is much higher as well as powerful than the kings. Many Indian philosophers have supported this Rule of Law concept have interpreted it in their own way. The Indian philosopher Chanakya was of the opinion that the King must be governed by the law.

But the entire credit for the development of the concept of Rule of Law goes to Professor A.V Dicey who in his book, "Introduction to the study of law of the Constitution" which was published in the year 1885. He tried developing the Rule of Law concept. Administrative law is mainly based on this concept. Thus the concept of Rule of Law is one of the most important aspects of modern legal systems and it purely says that „howsoever high you maybe, the law is above you". No human being is above or higher than the supremacy of law.

Dicey's Perception to Rule of Law:

Rule of law is a very important principle which is regulated in the common law countries. But these common law derived countries modern laws have denied few of the important parts of the rule of law. This was stated by Dicey at the beginning of the 19th century. Dicey stated Rule of Law as, "absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of prerogative or even wide discretionary power on the park of government". According to Dicey he stated that whenever there occurs a discretion, there would be room for arbitrariness which would lead to the insecurity of legal freedom of the citizens.

A.V. Dicey proposed in his theory the three important pillars based on the concept of Rule of Law, that a government must be governed by the principles of the law and not of the men. The three pillars are:

1) Supremacy of Law: The basic understanding of rule of law is that the law rules over the people including those people who are involved in the administering of law. Reasons must be given by the law makers that are justified under the law while exercising the power to make and administer the law.

2) **Equality before the Law:** The principle of equality of law is to make sure that the law is not only administered but is also enforced in the same manner. To only have a fair law is not enough. That fair law must be applied in a just manner as well. The Supremacy of law checks over the government and it's administrating and making of the law. People of different sex, religion, case, etc. cannot be discriminated under the law. The law must be equal to all and this has been given under Article 14 of the Constitution of India. It has also been codified in the Universal Declaration of Human Rights under the preamble6 .

3) **Predominance of Legal Spirit**: Dicey believed that just by including the above two principles would not be insufficient to be included in the Constitution of the country or even the other laws for the state which is being followed. According to Dicey there must be some kind of enforcing authority that could enforce the rule of law. Dicey believed that such enforcing authority would be found in the courts. The courts would be able to enforce the rule of law and make impartial decisions that are free from any external influence. Thus it becomes one of the important pillars of rule of law.

Dicey's concept of Rule of Law has had its advantages and disadvantages. It has not only set the base for all common law countries but has also provided a base for Administrative law principles. The power of rule of law has given to the countries of common law system, a philosophy to control the government's power and to keep it within limits, so it does not misuse the power vested in them. It eradicates the bias, unreasoned discretion and arbitrariness from the wide power vested in the executive. The Courts have supremacy over all other officials of the State.

Dicey's theory had a tremendous impact on the growth of Administrative Law in Britain. In 1885, Dicey was factually wrong in his analysis as he ignored the privileges and immunities enjoyed by the Crown, under the constitutional maxim, that the king can do no wrong. Also, Dicey miscomprehended and misunderstood the real nature of the French droit administratif. He though that the system was designed to protect the officials from liability of their acts, and was inferior to the British system of ordinary courts that decided the disputes between the citizen and state.

Therefore, on can say that, on one hand the concept of rule of law helped in safeguarding and preventing the traditions of basic freedoms of the people, and the independence of the judiciary and on the other hand, it generated an irrational attitude insofar as people did not want to face the realities of the situation and find correctives to the problems in the area of Administrative Law if that involved a departure from the Dicey tradition.

Rule of law in India:

Role of Indian

Judiciary The concept of Rule of Law was often brought up to convey to the Administration that it should function according to what the law says and must not exercise any arbitrary powers. The Indian Judiciary has played an important role in determining Rule of Law in India. By interpreting the constitutional provisions and taking a positive approach, the courts ensure that Rule of Law would not only be spoken about on paper but would be executed too.

As stated in the case of Bachan Singh v. State of Punjab, rule of law forms one of the basic features of the Constitution and an essential element of this concept is that the law must not be irrational or arbitrary and it must satisfy the test of reason.

In A.D.M. Jabalpur v. Shiv Kant Shukla, KHANNA, J. has stated that Rule of law is the opposite of arbitrariness. Rule of Law is an accepted norm of all civilized societies. It is identified everywhere with the liberty of the individual.

The case which first encouraged Rule of Law was Shankari Prasad v. Union of India. A question to amend the fundamental rights arose in this case. The issue in this case was settled by the decision laid down in the case of Keshavananda Bharti v. State of Kerala. The Hon'ble Supreme Court in this case held that Rule of Law is the "basic structure" of our Constitution. The decision in the case of Golak Nath v. State of Punjab was overruled by the Hon'ble Supreme Court and held that the Parliament has wide powers of amending the constitution and it extends to all Articles, but does not include the power to destroy the framework or basic structure of the Constitution.

The implied limitations to amend the Constitution under Article 368 are imposed by Rule of Law. The parliament can amend the Constitution under these limitations. The federal structure of Indian

Constitution is founded on certain fundamental principles. Rule of Law being one of them that includes judicial review of arbitrary executive action.

In the case of S.G. Jaisinghani v. Union of India it was laid down that the absence of arbitrary power is the first essential of Rule of Law upon which our whole constitutional system is based.

The Supreme Court put a stamp of approval on the observations made by DOUGALAS J, in the case of United States v. Wunderlich, "law has reached its finest moments when it has freed man from unlimited discretion of some ruler…where discretion is absolute, and man has always suffered.

In Indira Gandhi v. Raj Narayan, the Supreme Court held that Article 14 under which Rule of Law is embodied is the basic feature of the Indian Constitution and cannot be destroyed even by an amendment under Article 368. It was laid down that the law of the land is supreme and must succeed over the will of a person.

In Maneka Gandhi v. Union of India, the Honble Supreme Court held that under Article 21, no person can be deprived of his life and personal liberty, except by procedure established by law. Thus the following requirements under Article 21 must be fulfilled before a person is deprived of his life and liberty:

1. That there must be a valid law.
2. The law must provide procedure.
3. The procedure must be just, fair and reasonable.
4. The law must satisfy the requirements of Article 14 and 19.

The primary postulate of Rule of Law is the absence of arbitrary power on which the Constitution is dependent upon. Any decision being made without any rule is a concept totally opposite to the Rule of Law concept. This was held in the case of Som Raj v. State of Haryana.

Rule of Law has another face which includes power to judicial review and independence of judiciary. In the case of Union of India v. Raghubir Singh, it was stated that any provision which takes away the right of judicial review goes against the Rule of Law.

Also, in the case of S.P. Sampath Kumar v. Union of India, the courts have repeated that judicial review is a part of the basic structure of the Constitution. It was stated in Daryao v. State of Uttar Pradesh that binding character of judgments pronounced by courts of competent jurisdiction is an essential part of Rule of Law. Rule of Law is obviously such basis of the administration of justice at which constitution lays so much emphasis. In all circumstances the Constitution is considered as supreme. Any law made by the legislature must be within the test of reasonableness and objectives of the Constitution. If any structure of the Government crosses the limits or intrudes the power of other structures or even exceeds its jurisdiction, then the act shall be considered as an invalid act which is

abusive of the law and would be declared as void ab initio. Thus, the concept of Rule of Law in India is recognized by the Constitution and is firmly established by judicial pronouncements.

The rule of law is central theme to all democratic and civilized society of this world. The Constitution must in all circumstances be considered supreme, and the laws made by the legislature should pass the test of reasonableness and the objectives of the Constitution. Matters such as the protection of the rights of the people, equal treatment before the law, protection against excessive arbitrariness, the Constitution of India has provided enough mechanisms to ensure that the Rule of Law is followed. Through its decisions the Courts have strived to reinforce these mechanisms and ensure smooth justice delivery to all citizens. The judges are not to act upon the laws which are against humanity or based on unreasonable classification or are arbitrary in nature or are against the moral principles, even if such laws are passed by the Parliament. Similarly, Parliament is to keep in mind that the laws made by it are not against the rule of law, or against the Constitution or public moral and humanity. It should also from time to time keep an eye on the social changes and scientific advancement so that the laws meet the demands from time to time.

Role of Judiciary

An impartial judiciary is a sine-qua-non for the smooth functioning of a political system. It is the third organ of the government and is charged with the deliverance of justice to the aggrieved party. The judiciary does not have a substitute in the present society. The preceding Block dealt with the role of the legislature, the political executive and the bureaucracy in policy making. This Unit will try to give us an idea about the role of the judiciary in policy making. A. R. Ball has opined that a judicial department to ascertain and decide rights, to punish crimes, to administer justice and to protect the innocent from injury and usurpation is indispensable. Thus in this Unit, we shall discuss the nature of \ the judicial system in India, its functions and its importance. The impact of the judiciary on policy making and its role of judicial review will also be dealt with.

The Nature of Judicial System in India

In modem diacritic political systems, the judicial system is known as open, impartial, consistent, stable and predictable. The judiciary operates in accsadance with the prescriptions of the Rule of Law, i.e., equality of all citizens before the law, and a person being innocent unless committed by a court of law. Such judicial system believes in the fairness and openness of proceedings. Sometimes, to protect the interests of the State, certain restrictions may be put on the judicial system in the larger interests of the people, but there is seldom a deliberate attempt on the part of the State to abrogate the usual process and procedure of justice. In India, also, the judiciary is taken, largely, as independent, impartial, fair and real protector of the rights and liberties of the citizens.

India, we have a unified structure of the judiciary despite the fact that of Constitution is quasi-federal. Under our Constitution, we have a single integrated system of courts for the Union, as well as, the states which administer both Union and state laws. At the wax. We have the Supreme Court, below the High Court there is a hierarchy of other courts which are called Subordinate mecum Courts, these are the courts which are subordinate to and under the control of the High Court.

The organization of the subordinate courts varies from state to state to some extent. The state is divided into districts, and each district has a district court which has an appellate jurisdiction in that district. Under the District Courts there are lower courts such as the Additional District Court, the Sub-court, the Munsiff Magistrate Court, the Court of Special Judicial Magistrate, etc. The District Court Judge possesses unlimited original jurisdiction, both civil and criminal. Heis the highest judicial authcrity in the District and hears appeals against the judgements of Munsif Courts and Sub-courts. The Panchayat Courts are at the bottom of the hierarchy of the Subordinate Courts, these courts function under various names such as the Nyaya Panchayats, the Panchayat Adalat, the Gram Kutchery, etc. These Courts deal with both civil and criminal cases.

Functions of Judiciary

The judicial system, the world over, performs a variety of functions starting from the interpretation and application of the existing laws, to the shaping of policies and laws that are likely to emerge in the future. Before dealing with the impact of the judiciary on policies and programmes, it would be better if a brief discussion on the functions of the judiciary in general is made.

1) The most important function of the judiciary is to see that the administration of justice is came out in a fair and independent manner. It is in this context that its significant area of operation is the interpretation of the various provisions of the Constitution. 'The meaning and explanation given by the highest court is taken as final, unless, of course, the legislature amends the relevant provision of the Constitution. It may, therefore, be said that the judiciary is to uphold the Constitution as the supreme law of the land, and, thus, it acts as the guardian of the Constitution.
2) Modern political systems also envisage that the judicial system will act as the protector of the rights and liberties of the citizens. These days, almost every country provides for a set of rights to the people which are called the Fundamental Rights. In the case of India, these rights are considered as the basic structure of the Constitution. The government has tried to change the provisions of some of the rights (especially the Right to Property) but the judiciary has held from time to time that the Parliament cannot change the basic structure of the Constitution.- It is very clear that the judiciary acts as the chief protector of the rights of the citizens.

3) By implication, the judiciary performs the functions of policy making through its pronouncements (judicial verdicts). The Constitution of a country, even if exhaustive, may fail to deal with some aspects of the political, administrative, economic, and social systems. As such, it may be silent on some issues, as in the case of India, the Constitution does not say anything with regard to the President's Ale at the Central level in case of break-down of the Constitutional machinery, though such a provision very clearly exists for the state governments. Moreover, some laws may either be ambiguous or may be inconsistent with the other laws of the land. In such matters, the courts decide what the law. is and what law should prevail.
4) In a federal system, the courts also act as independent and impartial arbiters between the federal government and the governments of the federating units, as also between the federating units themselves. Whenever there is a dispute or conflict between any set of governments, the judiciary is responsible for interpreting the provisions of the Constitution. This interpretation is taken as final. In this way in a federation the judiciary assumes the status of the 'Constitutional Court'. It is in this context that the Cauvery Water Dispute is being examined hy the Supreme Court of India. Moreover, there is a very strong demand from the regional parties in Panjab for reheating the water dispute, between Punjab and Haryana, to the highest court of the country.
5) The judicial system ha; a very significant role in legitimizing the policy outputs of the government. The courts sometimes have to show a conservative attitude and should interpret the meaning of the law in the highest of dynamic situations. It may, be possible that some forward looking decisions of the government are challenged as unconstitutional by some people in a court of law. However, the judges need to analyze the circumstances from a dynamic view point. Taken from this angle, the judiciary can give the character of legitimacy to policy outputs of the government. The change in the attitude of the American Supreme Court since 1937 is a very relevant example in this regard. It is, therefore, essential that the behaviour of the judiciary must not be obstructive or destructive. It should rather allow the political system to function smoothly. In this context, the role of the political culture is very important as the political beliefs and convictions of the people can save the situation from reaching the. point of no-agreement. In the case of the American Supreme Court (1937), people played a significant role in disapproving the move of the President for increasing the number of judges of the Supreme Court. This also led to a distinct change in the attitudes and policy of the Supreme Court.
6) Another. Important function of the judiciary relates to its power of judicial review. This empowers the judiciary to declare any law, executive policy, and administrative action as intra-virus or ultra-virus. We shall discuss this in greater details in Section.

Impact of Judiciary on Policy Making

A description of functions of the judiciary makes it clear that the impact of the judiciary policy making is quite significant. Actually, a variety of factors and institutions cola utile a interact in the policy making process. It is a very complex process throujjil which persons in power authority exercise power or influence over each other. Dr. P. R. Dubhashi explains the policy making process as "something like a policy making ladder with the chief executive like the Prime Minister at the top and apathetic non-voting citizens at the bottom. In between are the Prime Minister's cabinet colleagues, legislative leaders, policy making judges, high level administrators, interested group leaders, politically active citizens, and ordinary voters. The proximate policy makers, skilled practitioners of policy analysis, managerial elite, elite of wealth, are all policy makers. Most citizens influence policy very little but energetic citizens can influence policy to an extent".

The judicial system in a democratic country like India has a major role in the public policy making process. All policies are formulated keeping indie the existing laws and legal provisions. The judiciary enters the area of policy making delivering suggestive or advisory judgments aimed at the effective achievement of the goals of the country as contained in the Preamble and the body of the Constitution. At times, the judiciary issues directions for formulating a particular policy or changing the existing policy to suit a particular purpose. It may also determine certain guidelines for the legislature and/or the executive that ought to be followed in the process of public policy making. It is, therefore, clear that the judiciary is an essential part of the political process wherein cooperation and conflict are of equal significance. In the words of A. R. Ball, the courts "interact with other parts of the political system, not as illegitimate outsiders but as part of the stable ruling political alliance". It is, thus, understood that the judiciary has its share in the political process of the country, especially in the process of policy making. In fact, it is the need of modern times that the role of the courts should be appreciated and confrontation between the legislature, the executive and the judiciary should be minimized il not totally avoided. However, it may be added that there have been situations and occasions when the actions or decisions of the judiciary have been either not welcomed by the political authority or its principal advisory, the bureaucracy. Despite all that, it has been the thinking of a civilized society that a society can be thinkable without a fully developed legislative organ but a civilized State without any viable judicial branch is hardly conceivable.

In the system analysis, the system and its counterparts, the sub-systems, are continually in active or passive interaction at various levels and degrees to bring some acceptable outputs to society. It is, therefore, necessary to view the judicial system as an essential aspect of a political structure be it any form of government. Actually speaking, the political process in a given system does not spare any facet

of the citizens' life. In one way or another, it influences them and their actions and reactions. Ultimately, they become essential ingredients in the interplay of socio-political forces that determine the areas, facets, contents, priorities and distribution of policy benefits in society. However, in all societies, primitive, medieval, traditional Conventional and modern, the judiciary has always, with some 1situationul constraints, played its role in moderating the public demand and the system's capacity to bear such implications of its pronouncements. The judicial system cannot remain immune to major socio-economic developments, as also to the ever changing thinking of the total political process. In this context, Stephen L. Was by observes, "The political situation affecting the of justice at the state and local levels has particularly attracted the attention of political scientists, concerned with the allocation of justice, with why different members of the community are treated differentially by law enforcement officials. The topic is one which comes within the purview of public law mainly because those who have shown interest in it have been previously doing work in the public law field. The same is true with respect to the activities of the legal profession. While it is the sociologists who have undertaken work on what can be called the 'ecology of the legal profession', that is the organization and pattern of legal practice, political scientists have not been behind, particularly in relating this structure to participation in politics."

A very significant area of operation of the judicial system, especially in a developing country like India, is to ensure a desired level of social and economic development/advancement so as to reach a viable equilibrium for a tension free social system. It is in this context that the judiciary "investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist". Moreover, the judiciary establishes the values of equity and justice for stabilizing society in its best possible egalitarian form. The Supreme Court in India has developed new methods and remedies for dispensing justice to the masses through public interest Litigation. It is said that it has taken socio-economic justice to the common man. The former Chief Justice; P. N. Bhagwati has observed that "the Supreme Court has developed several new commitments It has carried forward participative justice. It has laid just standards of procedure. It has made justice more accessible to citizens." It was under the innovative leadership of Justice Bhagwati that public interest litigation reached a new dimension.

The Supreme Court in India has been instrumental in the deliverance of relief to the poor and other under privileged sections of society. It has also provided relief for the under-trial prisoners, licensed rickshaw pullers etc., it has been successful in the release of women from the clutches of those indulging in promoting immoral traffic. f t has tried to lay down that except in serious cases, bail must be granted on personal bond. Again, it was on the insistence of the bail must be granted on personal bond. Again, it was on the insistence of the courts that free legal aid was strengthened. The Supreme

Court has also allowed monetary compensation for administrative wrongs and violation of the citizen's fundamental rights. It is, therefore, clear that the judiciary has made very serious attempts for dispensing social and economic justice to the masses despite of its inherent limitations. It is in this manner that it has been able to put pressure on the legislature and the executive to initiate and implement many major policies. The socio-economic change cannot be brought about only through public interest litigation. It is an arduous task which the social activists must carry forward. The administration has to be imbibed with a missionary zeal for achieving this objective. It is more so because the major responsibility for framing and implementing policies relating to the socio-economic welfare of the masses rests with the government.

Importance of Judiciary in Policy Making

We already know that the judiciary is the third organ of the Government, the other two being legislature and executive. The government, in modern times, has to perform not only a magnitude of functions but has to deal with the complexities and technical nature of functions. In the sphere of policy making, government is helped by the legislature, executive, the judiciary, political parties, interest groups, media and public opinion. The need for an impartial and strong judiciary to influence policy making is clear from the preceding sections. The role of the judiciary in policy making can be understood from the following.

a) The judiciary being the sole guardian of the Constitution ensures that none of its provisions is contravened by the legislative, executive or administrative actions. In order to achieve this goal, the judiciary tries to formulate guidelines to be' followed both by the legislature and the executive. In the absence of such guidelines, the courts restrain the concerned parties from contravening the Constitution by the application of the Rule of Law.
b) Its decisions have facilitated a comparatively smooth working of the Indian federal system.
c) It has helped the government in formulating its policies in a manner that does not dispute with the Fundamental Rights. The 24^{th} and 25^{th} Amendments were struck down in order to protect the basic structure of the Constitution.
d) The decisions of the courts have many a times led to the protection of private interests as was done while rejecting the Bank Nationalization Act, 1% 9.
e) Its pronouncements have molded the thrust and contents of the public policy. Some policies are partly struck down by the courts and certain directions are issued which are mandatory for the government to follow, as was done in the Bhopal Gas Leak Case.

f) We come across a number of court cases in which the administration has either framed rules in a wrong way or their implementation has been faulty or malicious. The cases may relate to selection, promotion, implementation of a particular scheme or consumer protection.

Thus, it is clear that the judiciary has an important role in policy making. However, its nature and extent may vary from case to case. In brief, the judiciary ensures:

a) That only such 'policies are framed which are in accordance with the of the Constitution;
b) That any negligence on the part of the government in not formulating a policy or not implementing all the provisions of a policy is taken very seriously by the courts. In such cases specific directions are issued to the concerned authority; - and
c) c) That all policies are aimed at the protection of the national interest and are likely to increase the pace of social and economic development.

It is clear from the above that the judicial system has a definite role, not only in influencing the process of policy making, but also in its actual preparation as it gives definite direction guidelines to the governments. Hence, it gives more acceptable tenure to the public policies.

Independence of Judiciary

1. Separation of Judiciary from the Executive and Legislature:

Judiciary in India is neither a branch of the executive nor a hand-maid of the legislature. It has an independent identity under the Constitution. It enjoys full autonomy in its working. The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.

2. Appointment of Judges by the President:

The method of appointment of judges has been very sound. The Judges of the Supreme Court and High Courts are appointed by the President. While appointing other judges the Supreme Court, the President consults the Chief Justice of India. In case of the appointment of the Chief Justice, the practice of appointing the senior most judges to this high office is followed. In the case of subordinate courts, the Judges are recruited through competitive examinations.

3. High Qualifications:

The Constitution prescribes specific and high qualifications for the Judges. A person eligible for judgeship has to be an Indian citizen, must have experience as a Judge of a High Court for at least five years or as an advocate of High Court for at least ten years or be a distinguished jurist. Thus, only persons with high qualifications and experience are appointed as judges of the courts.

4. Security of Tenure:

Judges of Supreme Court remain in office till they attain the age of 65 years. This age limit ensures a long tenure for the Judges. The judges of the Supreme Court in India are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

5. Fixed Service Conditions

The Judges in India enjoy good security of service. No judge can be removed from the office except by a very difficult process of impeachment. The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

6. High Salary:

Every Judge of the Supreme Court gets a high salary. Besides this, each judge is entitled to free residential accommodation, medical allowance and several other perks. Salaries and allowances of judges cannot be reduced during their terms of office, except in the situation of a financial emergency in the country.

7. Prohibition of Practice after Retirement:

The retired judges are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.

8. Power to Punish the Contempt of Court:

Courts in India have been given the power to punish all cases involving a contempt of court. The Supreme Court can punish any institution or person who is found guilty of contempt of court. Thus, its actions and decisions cannot be criticized and opposed by anybody. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

9. Vast Jurisdiction and the Power of Judicial Review:

Judiciary in India enjoys a vast jurisdiction. It acts as the guardian interpreter of the Constitution, the protector of Fundamental Rights of the people and the arbiter of disputes between the Union and the States. It has the power to determine the constitutional validity of every law.

It can reject any law in case it is found to be against the Constitution of India. Indian Judiciary is in no way subordinate to the other two organs of the government. Its decisions bind all. Such a powerful

position helps the judiciary to maintain its independence. Thus the Constitution of India incorporates all such features as are considered essential for the preservation of independence of Judiciary.

10. Conduct of Judges cannot be discussed

The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament

Judicial Review

No discussion on the role of the judiciary can be complete without highlighting its role of judicial review. The judicial review is a very important tool in the hands of the judiciary, especially in a federal system, to keep the legislature and executive measures well within the framework of the Constitution. It is largely the outcome of the written Constitution. The rigid procedures for 'judicial review' may be defined as "the power of any court to hold unconstitutional any law or any official action based upon it, as illegal or void". Therefore, it is the power of the courts to examine the actions of the government, so as to ensure that such actions conform to the provisions of the Constitution of the country. It is also based on the fact that although courts use wisdom and experience while delivering judgments, yet some mistake or error may be committed by them unintentionally. The Supreme Court of India is, therefore, vested with the power to review any of its own decisions or orders for rectifying the wrong, if any, in its earlier judgment. Such power is also necessary because there is no appeal against the judgment of the supreme Court, except in inimical cases involving the death penalty.

Supreme Court has this power as can be seen from the provisions of Article 13 which say:

1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.
2) The states shall not make any law which takes away or abridges the rights conferred in this part and any law made in contravention of this cause shall, to the extent of contravention, be void.
3) Nothing in this Article shall apply to any amendment of the Constitution made under Article 368.

It can, therefore, be seen that the scope of judicial review in our country is confined to examination on two counts:

a) whether the law under challenge is within the competence of the authority that has framed it; and
b) Whether it is consistent with Part-111 of the Constitution which relates to the Fundamental Rights.

In India, the struggle between the supremacy of judicial review vs. parliamentary sovereignty in interpreting the Constitution, began soon after the commencement of the Constitution. One of the

principle aspects of the struggle was the meaning of, and limitations on the right to property. The court concentrated on the meaning of compensation which, in effect, was held as the market value. However, the government came with a series of amendments, especially the 24th and 25th, which made the adequacy of the compensation paid by the states for acquired private property as non-justifiable. The Government did try to establish the sovereignty of the Parliament against the judicial review, gnd, to establish the primacy of the Directive Principles of State Policy over the Fundamental Rights. The issue was more seriously taken by the judiciary in the famous Golakhnath Case in which it held that the Parliament had no power to amend Fundamental Rights. However, the governmerit amended the Constitution (24th Amendment) and gave blanket power to the Parliament for amending any part of the Constitution including the Fundamental Rights. The reaction of the court was very clear and assertive in its judgment in tlie Kesllwananda Bharti Case. While agreeing that Fundamental Rights were subject to amendment, the Supreme Court held that the Constitution had a 'basic structure' which could not be amended. Then came the 42nd amendment, a part of which gave primacy to the Directive Principles of State Policy over the Fundamental Rights, and this provision attempted to put the matter beyond the reach of the judiciary. However, the Supreme Court, in the Minerva Mills Case (1980) reiterated that Parliament does not have unfettered power of amendment. Thus, Fundamental Rights continue to have precedence over the Directive Principles of State Policy. It is, therefore, clear that the Supreme Court in India, like its counterpart in America, has an extensive power of judicial review.