

M.A. (Political Science)
SECOND YEAR
MAPOLS-508

INSTITUTE OF DISTANCE EDUCATION
IDE
Rajiv Gandhi University

www.ide.rgu.ac.in

COMPARATIVE POLITICAL SYSTEMS

COMPARATIVE POLITICAL SYSTEMS

MA [Political Science]

Second Year

MAPOLS - 508

RAJIV GANDHI UNIVERSITY
Arunachal Pradesh, INDIA - 791 112

BOARD OF STUDIES	
1. **Prof. P K Panigarhi** Department of Pol. Science Rajiv Gandhi University	Chairman
2. **Prof. M N Das** Department of Political Science Dibrugarh University Dibrugarh, Assam	Member
3. **Mr. N N Hina** Department of Pol. Science Rajiv Gandhi University	Member
4. **Dr. Ashan Riddi** Director, IDE	Member Secretary

Authors

Dr Biswaranjan Mohanty: ***Units*** (3.3, 6.2, 7.2-7.3) © Dr Biswaranjan Mohanty, 2014

Vikas Publishing House: ***Units*** (1, 2, 3.0-3.2, 3.4-3.10, 4, 5, 6.0-6.1, 6.3-6.9, 7.0-7.1, 7.4-7.9, 8, 9, 10) © Reserved, 2014

All rights reserved. No part of this publication which is material protected by this copyright notice may be reproduced or transmitted or utilized or stored in any form or by any means now known or hereinafter invented, electronic, digital or mechanical, including photocopying, scanning, recording or by any information storage or retrieval system, without prior written permission from the Publisher.

"Information contained in this book has been published by Vikas Publishing House Pvt. Ltd. and has been obtained by its Authors from sources believed to be reliable and are correct to the best of their knowledge. However, IDE—Rajiv Gandhi University, the publishers and its Authors shall be in no event be liable for any errors, omissions or damages arising out of use of this information and specifically disclaim any implied warranties or merchantability or fitness for any particular use"



Vikas® is the registered trademark of Vikas® Publishing House Pvt. Ltd.

VIKAS® PUBLISHING HOUSE PVT LTD
E-28, Sector-8, Noida - 201301 (UP)
Phone: 0120-4078900 • Fax: 0120-4078999
Regd. Office: 576, Masjid Road, Jangpura, New Delhi 110 014
• Website: www.vikaspublishing.com • Email: helpline@vikaspublishing.com

About the University

Rajiv Gandhi University (formerly Arunachal University) is a premier institution for higher education in the state of Arunachal Pradesh and has completed twenty-five years of its existence. Late Smt. Indira Gandhi, the then Prime Minister of India, laid the foundation stone of the university on 4th February, 1984 at Rono Hills, where the present campus is located.

Ever since its inception, the university has been trying to achieve excellence and fulfill the objectives as envisaged in the University Act. The university received academic recognition under Section 2(f) from the University Grants Commission on 28th March, 1985 and started functioning from 1st April, 1985. It got financial recognition under section 12-B of the UGC on 25th March, 1994. Since then Rajiv Gandhi University, (then Arunachal University) has carved a niche for itself in the educational scenario of the country following its selection as a University with potential for excellence by a high-level expert committee of the University Grants Commission from among universities in India.

The University was converted into a Central University with effect from 9th April, 2007 as per notification of the Ministry of Human Resource Development, Government of India.

The University is located atop Rono Hills on a picturesque tableland of 302 acres overlooking the river Dikrong. It is 6.5 km from the National Highway 52-A and 25 km from Itanagar, the State capital. The campus is linked with the National Highway by the Dikrong bridge.

The teaching and research programmes of the University are designed with a view to play a positive role in the socio-economic and cultural development of the State. The University offers Undergraduate, Post-graduate, M.Phil and Ph.D. programmes. The Department of Education also offers the B.Ed. programme.

There are fifteen colleges affiliated to the University. The University has been extending educational facilities to students from the neighbouring states, particularly Assam. The strength of students in different departments of the University and in affiliated colleges has been steadily increasing.

The faculty members have been actively engaged in research activities with financial support from UGC and other funding agencies. Since inception, a number of proposals on research projects have been sanctioned by various funding agencies to the University. Various departments have organized numerous seminars, workshops and conferences. Many faculty members have participated in national and international conferences and seminars held within the country and abroad. Eminent scholars and distinguished personalities have visited the University and delivered lectures on various disciplines.

The academic year 2000-2001 was a year of consolidation for the University. The switch over from the annual to the semester system took off smoothly and the performance of the students registered a marked improvement. Various syllabi designed by Boards of Post-graduate Studies (BPGS) have been implemented. VSAT facility installed by the ERNET India, New Delhi under the UGC-Infonet program, provides Internet access.

In spite of infrastructural constraints, the University has been maintaining its academic excellence. The University has strictly adhered to the academic calendar, conducted the examinations and declared the results on time. The students from the University have found placements not only in State and Central Government Services, but also in various institutions, industries and organizations. Many students have emerged successful in the National Eligibility Test (NET).

Since inception, the University has made significant progress in teaching, research, innovations in curriculum development and developing infrastructure.

SYLLABI-BOOK MAPPING TABLE

Comparative Political Systems

	Syllabi	Mapping in Book
Unit 1	**Understanding Comparative Political Systems** – Methods of Comparison: Historical, Legal, Comparative and Behavioural. – Importance of Studying Contemporary Political System.	**Unit 1:** Understanding Comparative Political System **(Pages 3-12)**
Unit 2	**Constitution and Constitutionalism** – History of Constitutionalism, Problems and Process of Making of constitution	**Unit 2:** Constitution and Constitutionalism **(Pages 13-26)**
Unit 3	**Major Political Systems** – Democratic, Totalitarian and Authoritarian Systems	**Unit 3:** Major Political Systems **(Pages 27-49)**
Unit 4	**Government and Political Structures** – Parliamentary, Presidential, Unitary and Federal	**Unit 4:** Government and Political Structures **(Pages 51-86)**
Unit 5	**Rule Making** – Structure, Function and Process of Law Making – (UK, USA, Switzerland and China)	**Unit 5:** Rule Making **(Pages 87-117)**
Unit 6	**Rule Application** – UK, USA and Japan	**Unit 6:** Rule Application **(Pages 119-148)**
Unit 7	**Role of Judiciary** – UK (Rule of Law) – USA (Judicial Review) – China (Committed Judiciary)	**Unit 7:** Role of Judiciary **(Pages 149-173)**
Unit 8	**Party System** – (USA, Japan, Switzerland, China)	**Unit 8:** Party System **(Pages 175-203)**
Unit 9	**Federalism** – (USA, Switzerland and Canada)	**Unit 9:** Federalism **(Pages 205-223)**
Unit 10	**Election and Representation** – Electoral Process in UK, USA and Switzerland	**Unit 10:** Election and Representation **(Pages 225-242)**

CONTENTS

INTRODUCTION 1-2

UNIT 1 UNDERSTANDING COMPARATIVE POLITICAL SYSTEM 3-12

1.0 Introduction
1.1 Unit Objectives
1.2 Methods of Comparison
  1.2.1 Historical Method
  1.2.2 Legal Method
  1.2.3 Comparative Approach
  1.2.4 Behaviourial Method
1.3 Importance of Studying Comparative Politics
1.4 Summary
1.5 Key Terms
1.6 Answers to 'Check Your Progress'
1.7 Questions and Exercises
1.8 Further Reading

UNIT 2 CONSTITUTION AND CONSTITUTIONALISM 13-26

2.0 Introduction
2.1 Unit Objectives
2.2 History of Constitutionalism
  2.2.1 Importance of Implementing Constitutions
  2.2.2 Constitutions as Symbols and Manifestos, and Legal Rules
2.3 Constitutionalism: C. J. Friedrich
2.4 The Making of a Constitution: Process and Problems
  2.4.1 Choices for Makers of Constitution
  2.4.2 Responsibilities and Duties
  2.4.3 Process of Constitution-Making
  2.4.4 Making of the Constitution of India
2.5 Summary
2.6 Key Terms
2.7 Answers to 'Check Your Progress'
2.8 Questions and Exercises
2.9 Further Reading

UNIT 3 MAJOR POLITICAL SYSTEMS 27-49

3.0 Introduction
3.1 Unit Objectives
3.2 Concept of Political System
3.3 Democratic Political System
  3.3.1 Direct Democracy
  3.3.2 Indirect Democracy
  3.3.3 Characteristics of Democracy
  3.3.4 Political, Social and Economic Democracy
  3.3.5 Safeguards of Democracy
  3.3.6 Classical Theory of Democracy
3.4 Totalitarian Political System
  3.4.1 Features of a Totalitarian Government

3.5 Authoritarian System
3.5.1 Forms of Authoritarian Government
3.6 Summary
3.7 Key Terms
3.8 Answers to 'Check Your Progress'
3.9 Questions and Exercises
3.10 Further Reading

UNIT 4 GOVERNMENT AND POLITICAL STRUCTURES **51-86**

4.0 Introduction
4.1 Unit Objectives
4.2 Parliamentary Government
4.3 Presidential Government
4.3.1 Powers and Functions of the US President
4.3.2 Comparison between the US President and the British King and Prime Minister
4.3.3 Comparison of the Presidential Powers in America and Britain
4.3.4 Election of the US Vice-President
4.3.5 Cabinet in USA
4.3.6 Composition and Powers of the American House of Representatives
4.3.7 Powers and Functions of the US Senate
4.3.8 Procedure in the American Congress
4.4 Unitary Form of Government
4.4.1 Salient Features of Unitary Government
4.5 Federal Government
4.6 Summary
4.7 Key Terms
4.8 Answers to 'Check Your Progress'
4.9 Questions and Exercises
4.10 Further Reading

UNIT 5 RULE MAKING **87-117**

5.0 Introduction
5.1 Unit Objectives
5.2 Structure, Function and Process of Law-making in the UK
5.2.1 The House of Lords
5.2.2 House of Commons
5.3 Structure, Function and Process of Law-Making in the USA
5.3.1 The Senate
5.3.2 House of Representatives
5.4 Structure, Function and Process of Law-Making in Switzerland
5.4.1 Composition of the National Council
5.4.2 Council of States
5.4.3 Legislative Procedure
5.4.4 Powers of the Federal Assembly
5.5 Structure, Function and Process of Law-Making in China
5.6 Summary
5.7 Key Terms
5.8 Answers to 'Check Your Progress'
5.9 Questions and Exercises
5.10 Further Reading

UNIT 6 RULE APPLICATION **119-148**

6.0 Introduction
6.1 Unit Objectives
6.2 The Cabinet System of United Kingdom
6.2.1 The Executive
6.2.2 The Cabinet
6.2.3 The Prime Minister
6.3 The US President
6.3.1 Powers and Functions of the President
6.3.2 The Presidential Cabinet
6.4 Executive Body in Japan
6.4.1 Local Government
6.5 Summary
6.6 Key Terms
6.7 Answers to 'Check Your Progress'
6.8 Questions and Exercises
6.9 Further Reading

UNIT 7 ROLE OF JUDICIARY **149-173**

7.0 Introduction
7.1 Unit Objectives
7.2 Judiciary in the United Kingdom
7.2.1 Rule of Law: A Citadel of Liberty
7.3 Judiciary in the United States of America
7.3.1 Judicial Review
7.4 Judiciary in China
7.4.1 Committed Judiciary
7.4.2 People's Courts
7.4.3 The Supreme People's Court
7.4.4 The Higher People's Courts
7.4.5 The Intermediate People's Courts
7.4.6 The Basic People's Courts
7.4.7 The Special Courts
7.5 Summary
7.6 Key Terms
7.7 Answers to 'Check Your Progress'
7.8 Questions and Exercises
7.9 Further Reading

UNIT 8 PARTY SYSTEM **175-203**

8.0 Introduction
8.1 Unit Objectives
8.2 Concept of Party System
8.2.1 Classification of Party Systems
8.2.2 Origin of the Party System
8.3 Party System in the USA
8.3.1 History of Party System in the USA
8.3.2 American Ideology and Polarizing Issues
8.3.3 Contemporary Party System in the USA
8.4 Party System in Japan
8.5 Party System in Switzerland

8.6 Party System in China
8.6.1 Communist Party of China
8.6.2 People's Liberation Army
8.7 Summary
8.8 Key Terms
8.9 Answers to 'Check Your Progress'
8.10 Questions and Exercises
8.11 Further Reading

UNIT 9 FEDERALISM **205-223**

9.0 Introduction
9.1 Unit Objectives
9.2 The US Federalism
9.2.1 The Era of Marshall and Taney, and Dual Federalism
9.2.2 Great Depression and Abrupt Change
9.3 Federalism in Switzerland
9.3.1 Features of Switzerland's Political System
9.4 The Canadian Federal Structure
9.4.1 Levels of Government in Canadian Federalism
9.4.2 Confederation and the Division of Powers
9.5 Comparative Federalism
9.6 Summary
9.7 Key Terms
9.8 Answers to 'Check Your Progress'
9.9 Questions and Exercises
9.10 Further Reading

UNIT 10 ELECTION AND REPRESENTATION **225-242**

10.0 Introduction
10.1 Unit Objectives
10.2 Electoral Process in the UK
10.2.1 Electoral Systems
10.3 Electoral Process in the United States
10.3.1 Eligibility
10.3.2 Presidential Election
10.3.3 History
10.3.4 Electoral College
10.3.5 Presidential Nominating Convention
10.4 Electoral Process in Switzerland
10.4.1 Voting Process
10.4.2 Mail-in Ballots
10.4.3 Council of States
10.4.4 Cantonal Elections
10.4.5 Referendums
10.4.6 Municipal Voting
10.5 Summary
10.6 Key Terms
10.7 Answers to 'Check Your Progress'
10.8 Questions and Exercises
10.9 Further Reading

INTRODUCTION

NOTES

Since ancient times, scholars, thinkers and political scientists have been studying various models of governance and politics. The study so far may not have been conclusive but it draws upon a general systemization of socio-economic and political factors at play. The focus has been the government and political process, institution and their behaviour, and political thoughts. Comparative government covers many of the same subject but from the perspective of parallel political behaviour in different countries and regions.

In the study of political science, while it is certainly important to learn about the facts pertaining to the institutions of three or more countries, it cannot be called comparative politics until it is a comparative study. What are the useful types of comparisons? The earliest and the most original form of comparative government is the study of constitutions. The base of this study is Aristotle's compilation of the constitutions and practice of 158 Greek city-states. Of these, only the *Constitution of Athens* is still existent. Although undeniably, the comparative study of different city-states consolidates a few of the generalizations in Aristotle's *Politics*. This is similar to the manner in which the comparative study of different living organisms constitutes his biological writing. However, since Aristotle, biology scaled new heights, but the comparative study of constitutions has not achieved such heights. This is partly because it is not easy to achieve the optimum balance of generality. A few research studies have compared countries all over the world. These studies provide some useful statistical generalizations. However, no academic agreement has been found on basic questions like the relationship between the economic development of a country and its level of democracy. A different way of looking at it is by considering all cases of a common phenomenon—such as revolutions, totalitarian states, or transitions to democracy. In few of the cases, this point of view is difficult to define, for instance, revolution.

The most popular form of comparative government is still the elaborate study of selected policies in two or more countries. Researchers are always focused on the issues of 'too few cases' or 'too many variables'. There may be a large number of factors which cause a country to become a corporatist nation and other factors which influence the rate of growth of economy. Yet, the present-day researchers are more sensitive to the problems pertaining to generalization and correspondingly more cautious in their conclusions, than the researchers of ancient times.

This book – *Comparative Political Systems* - has been designed keeping in mind the self-instruction mode (SIM) format and follows a simple pattern, wherein each unit of the book begins with the **Introduction** followed by the **Unit Objectives** for the topic. The content is then presented in a simple and easy-to-understand manner, and is interspersed with **Check Your Progress** questions to reinforce the student's understanding of the topic. A list of **Questions and Exercises** is also provided at the end of each unit. The **Summary**, **Key Terms** and **Activity** further act as useful tools for students and are meant for effective recapitulation of the text.

This book is divided into ten units:

Unit 1: Covers the various methods of comparison—Historical, legal, comparative and behavioural. It also delves into the importance of studying contemporary political system.

Unit 2: Examines the history of constitutionalism, problems and process of making of constitution.

NOTES

Unit 3: Describes the major political systems namely, democratic, totalitarian and authoritarian systems.

Unit 4: Describes the government and political structures like parliamentary, presidential, unitary and federal.

Unit 5: Explains the law-making bodies of countries like UK, USA, Switzerland and China.

Unit 6: Deals with the executive bodies of UK, USA and Japan.

Unit 7: Recognizes the role of judiciary in countries namely, UK, USA and China.

Unit 8: Identifies the different kinds of party system existing in USA, Japan, Switzerland and China.

Unit 9: Discusses the existence of federalism in USA, Switzerland and Canada.

Unit 10: Elaborates the electoral process in UK, USA and Switzerland.

UNIT 1 UNDERSTANDING COMPARATIVE POLITICAL SYSTEM

NOTES

Structure

1.0 Introduction
1.1 Unit Objectives
1.2 Methods of Comparison
  1.2.1 Historical Method
  1.2.2 Legal Method
  1.2.3 Comparative Approach
  1.2.4 Behaviourial Method
1.3 Importance of Studying Comparative Politics
1.4 Summary
1.5 Key Terms
1.6 Answers to 'Check Your Progress'
1.7 Questions and Exercises
1.8 Further Reading

1.0 INTRODUCTION

Political Science is divided into several fields. Among them, comparative politics is one such sub-discipline which uses methodological approach, characterized by an empirical approach, in its understanding. However, authors like Arend Lijphart argue comparative politics lack substantive focus in itself. While it focuses on 'how', it does not specify 'what' of the analysis. Hence, it is often said that the content and boundaries of this field is poorly defined, partly because the 'field' is an ambiguous compound of method and subject areas. Further, some scholars have contended that comparative politics has a 'messy centre'; the reason being its focus on comparison as a method of political inquiry. While the comparative approach is essential to understand a phenomenon, comparative politics teaches us how to do so. It attempts to instill into this exercise scientific rigour and technique. Comparative politics, however, is a relatively new field, which gained significance after the Second World War. The subject and definition of the subject has undergone several changes and, today, has once again emerged as a subject of interest.

However, we find that scholars have difference of opinion. The two main areas of thought are those of the area-specialists and the social scientist. This difference is further divided into those who are primarily inductive in their approach and those who prefer a more deductive approach. Besides there is also difference between those who are mainly concerned with qualitative rather than quantitative approaches. To understand comparative politics in a society, it is necessary to have specialized knowledge. More important is to understand the society-specific politics while examining the politics of a foreign country. In the United States, sometimes comparative politics is defined as the study of foreign political systems.

Institutional investigation has a notable pedigree in comparative politics. Simultaneously, modern work has upsurged to new disputes. Now it is conservative to

differentiate three diverse varieties of institutionalism—socio-logical institutionalism, historical institutionalism and rational choice institutionalism.

According to Hall & Taylor 1996, 'Each of these three schools in fact represent a sprawling literature characterized by tremendous internal diversity, and it is often also difficult to draw hard and fast lines between them'. The modifications and transformations that have been recognized amount to inclinations that apply unequally across particular authors within each school of thought.

According to Bates, 'The walls dividing the three perspectives have also been eroded by 'border crossers' who have resisted the tendencies toward cordoning these schools off from each other and who borrow liberally (and often fruitfully) where they can, in order to answer specific empirical questions.'

According to Levi (1999), 'This strategy, which they call analytic narratives, represents an attempt to construct explanations of empirical events through analyses that respect the specifics of time and place but within a framework that both disciplines the detail and appropriates it for purposes that transcend the particular story.'

The studies offered include features of inference and induction in ways that overcome customary differences between historical institutionalisms and rational choices which characterize search for generalizable features of political behaviour rooted in the incentive structures that individuals face.

According to several historical intitutionalists, institutions which aid in resolving collective problem are useful in comprehending the political outcomes. This has, however, been a point of contention for rational choice theory and a concern for historical institutionalists as well. Thus, an increasing number of historical studies focus precisely on explaining the emergence and persistence of institutions that do facilitate coordination among employers and other groups.

In this unit, you will be introduced to the comparative methodology to study the various political systems.

1.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the historical approach to understand comparative political system
- Describe the comparative approach
- Discuss the behaviourial approach to study comparative political system
- Assess the legal approach to comparative political system
- Analyse the importance of studying comparative politics

1.2 METHODS OF COMPARISON

1.2.1 Historical Method

The historical method can be distinguished from other methods in that it looks for causal explanations which are historically sensitive. Eric Wolf emphasizes that any study which seeks to understand societies and causes of human action could not merely seek technical solutions to problems stated in technical terms. The important thing was to

resort to an analytic history which searched out the causes of the present in the past. Such an analytic history could not be developed out of the study of a single culture or nation, a single culture area, or even a single continent at one period in time, but from a study of contacts, interactions and 'interconnections' among human populations and cultures. The world of humankind 'constitutes a manifold, a totality of interconnected processes, and inquiries that disassemble this reality into bits and then fail to reassemble it falsify reality'.

Historical studies have concentrated on one or more cases seeking to find causal explanations of social and political phenomena in a historical perspective. Single case studies seek to produce general statements which may be applied to other cases. Theda Scokpol points out that comparative historical studies using more than one case fall broadly into two categories, 'comparative history' and 'comparative historical analysis'.

Comparative history is commonly used rather loosely to refer to any study in which two or more historical trajectories are of nation-states, institutional complexes, or civilizations are juxtaposed. Some studies which fall in this genre, like Charles, Louis and Richard Tilly's *The Rebellious Century 1810-1930*, aim at drawing up a specific historical model which can be applied across different national context. Others, such as Reinhard Benedix's *Nation Building and Citizenship* and Perry Anderson's *Lineages of the Absolutist State*, use comparisons primarily to bring out contrasts among nations or civilizations, conceived as isolated wholes. Skocpol herself subscribes to the second method i.e., comparative historical analysis, which aims primarily to 'develop, test, and refine causal, explanatory hypothesis about events or structures integral to macro-units such as nation-states. This it does by taking 'selected slices of national historical trajectories as the units of comparison', to develop causal relationship about specific phenomenon (e.g. revolutions) and draw generalizations.

There are two ways in which valid associations of potential causes can be established. These methods laid out by John Stuart Mill in his *A System of Logic* are (i) the method of agreement and (ii) the method of difference. The method of agreement involves taking up for study several cases having in common both the phenomenon as well as the set of causal factors proposed in the hypothesis.

The method of difference, which is used by Skocpol, takes up two sets of cases: (i) the positive cases, in which the phenomenon as well as the hypothesized causal relationships are present and the (ii) the negative cases, in which the phenomenon as well as the causes are absent but are otherwise similar to the first set. In her comparative analysis of the French, Russian and Chinese Revolutions, in *States and Social Revolutions, A Comparative Analysis of France, Russia and China*, (Cambridge, 1979), Skocpol takes up the three cases as the positive cases of successful social revolution and argues that the three reveal similar causal patterns despite other dissimilarities. She also takes up a set of negative cases viz., failed Russian Revolution of 1905, and selected aspects of English, Japanese and German histories to validate the arguments regarding causal relationship in the first case.

Critics of the historical method feel that because the latter does not study a large number of cases, it does not offer the opportunity to study a specific phenomenon in a truly scientific manner. Harry Eckstein for instance argues that generalizations based on small number of cases 'may certainly be a generalization in the dictionary sense.' However, 'a generalization in the methodological sense' ought to 'cover a number of cases large enough for certain rigorous testing procedures like statistical analysis to be used.' (Harry Eckstein *Internal War: Problems and Approaches*, 1964).

DID YOU KNOW

The ancient Greek word demokratia was ambiguous. It meant literally 'people-power'. But who were the people to whom the power belonged? Was it all the people - the 'masses'? Or only some of the people - the duly qualified citizens? The Greek word demos could mean either. There's a theory that the word demokratia was coined by democracy's enemies, members of the rich and aristocratic elite who did not like being outvoted by the common herd, their social and economic inferiors. If this theory is right, democracy must originally have meant something like 'mob rule' or 'dictatorship of the proletariat'.

1.2.2 Legal Method

Since we are exploring the traditional approaches, we will also refer to the methods like legal and juridical. As evident, this means that we shall analyze political systems along with the institutions and legal processes that comprise it. For political scientists using this method, law and justice are not limited to being the matters of jurisprudence but the state itself is treated as in charge of an equitable and effective system of law and order. Therefore, for political scientists, organizational matters, as well as those related to jurisdiction and independence of judicial institutions, are matters of concern. State has been analyzed as a corporation or a juridical person by analytical jurists from Cicero in ancient times to Dicey in the modern period. Politics thus became a science of legal norms, independent of the science of the state as a social organism. This approach, therefore, treats state as the prime entity to craft and implement laws.

Applied to the study of national and international politics, the legal method presumes that any action which is to be taken in case of an emergency is prescribed in law. It forbids action taking in some other situations, thus fixing the limit of action permitted. Moreover, it emphasizes that where rule of law prevails, its very knowledge among the citizens can help in determining their political behavior. However, by its very nature, the legal method is very narrow.

1.2.3 Comparative Approach

The comparative method, its nature and scope has its own supporters and critics. Theorists like A. N. Eisenstadt argue that the approach has no specific method but involves focuses on cross-societal institutional or other macro aspects of societies for social analysis. On the other hand, theorists like Arend Lijphart, contend that while comparative approach is a method and not just a vague term that symbolizes or indicates towards the focus of one's research. Lijphart defines this method a basic method compared to others that are more experimental, statistics-based or rely on case studies to make generalizations. Another theorist, Harold Lasswell, argues that the comparative nature within the scientific approach cannot be avoided and thus to anyone who uses such an approach to a political phenomena, a completely independent comparative method seems redundant.

Comparative approach has also been equated to the scientific method by Gabriel Almond. Yet, there is a general agreement between different scholars that the comparative method is not a method of measurement but aimed at discovering empirical relationships between variables. The first step is to measure variables before a relationship is explored

Check Your Progress

1. What has been the approach of historical method of comparative political theory?
2. Historical approach does not look at the phenomenon scientifically. (True/False)

among them. It is the latter step which is referred to as the comparative method. Theorists argue that a distinction must be made between the technique and the method and identify comparative method as a broad, general method and not a narrow, specialized technique. Keeping these arguments in mind, theorists refer to it as the comparative approach method or a method of comparison because it lacks the nature and principles of a method. Therefore, the comparative approach can also be thought of as a more basic research strategy than a strategic tool of research.

When compared with the experimental, statistical or case study methods, the comparative approach can be better understood. For instance, the experimental method is a process to understand the relationship between two variables in a controlled environment. Such experiments are rare and difficult in political science, therefore, an alternative is used by the way of statistical method. Within statistical method, the empirical data is conceptually manipulated to discover controlled relationship among variables. Control is ensured through division of the sample into many different groups, also referred to as parting correlations or cross tabulations, like differentiating on basis of age, income, gender, education etc. This is followed by finding the correlation between two selected variables in each case. This is the standard procedure followed in this method and applied to most empirical research. The two methods – experimental and statistical – use the same logic and are often referred to as the approximation of each other.

Therefore, comparative method essentially resembles the statistical method except that the number of cases it deals with is often too small to permit statistical methods. But it is necessary to understand that the comparative method is not an adequate substitute for the experimental method as in the case of natural sciences. But these weaknesses can be minimized in a number of ways. The statistical method is best to use as far as possible, except in cases where entire political systems are being compared, then the comparative method has to be used. The two can also be used in combination. In this comparative analysis it is the first stage in which macro hypotheses are carefully formulated, usually covering the structural elements of total systems, and the statistical stage is the second, in which through micro replications these are tested in as large a sample as possible. Second, too much significance must not be attached to negative findings: for example, rejecting a hypothesis on the basis of one deviant case especially when the sample is small. Rather, research should aim at probabilistic and not universal generalizations. Third, it is necessary to increase the number of cases as much as possible (Though small samples are not of much use). Comparative politics has advanced because of the formulation of universally applicable theories or grand theories based on the comparison of many countries or political phenomenon within them. For example, structural functional analysis theory opened up a world of comparative research unknown before. Fourth, increase the number of variables if not the number of cases; through this more generalizations are possible.

Fifth, focus on comparable cases i.e. those that have a large number of comparable characteristics or variables which one treats as constants, but dissimilar as far as those variables which one wants to relate to each other. This way we study the operative variables by either the statistical or comparative method. Here the area or regional approach is useful for example, while comparing countries within Latin America or Scandinavia or Asia. But many scholars have pointed out that this is merely a manageable argument, which should not become an imprisonment. Another alternative is studying regions within countries, or studying them at different points of time as the problem of control is much simpler as they are within the same federal structure. Here it may be mentioned that the states within the Indian Union provide a rich laboratory for comparative

research that has not yet been undertaken. Many scholars feel that focus should be on key or contextual variables, as too many variables can create problems. This not only allows manageability but also often leads to middle range theorizing or partial comparison of political systems. This has been used successfully in anthropological studies as tribal systems are simple. Political scientists can also do this by limiting the number of variables.

The case study method is used whenever only one case is being analyzed. But it is closely connected with the comparative method, and certain types or case studies can become an inherent part of the comparative method whenever an in-depth study of a variable is needed prior to comparison with other similar ones. The scientific status of the case study method is somewhat ambiguous because science is neither generalizing nor a ground for disapproving an established generalization. But its value lies when used as a building block for making general propositions and even theory building in political science when a number of case studies on similar subjects are carried out. Case studies can be of many types, for example, a theoretical or interpretative, theory confirming or informing each useful in specific situations. Thus, the comparative and the case study method have major drawbacks. Due to the inevitable limitations of these methods, it is the challenging task of the investigator in the field of comparative politics to apply these methods in such a way as to capitalize on their inherent strengths and they can be useful instruments in scientific political inquiry. Many scholars have spent much of the post war period constantly improving the use of these methods.

1.2.4 Behaviourial Method

Behaviourlists study the behaviour of a person or groups rather than the structure, institutions, ideologies or events. The debate on the nature of behaviourial political analysis and its departure from the traditional approach in terms of nature, goals and methods would enable the students of government and politics to understand in a clearer perspective, and objectively review the major paradigms, conceptual frameworks and contending approaches and models, with a view to assessing their relevance for the study of comparative government and politics at a time when the 'great debate' between the empirical and normative theories is still continuing.

Historically, the behaviourial approach originated as a protest movement within political science. Behaviourialists share a strong sense of dissatisfaction with the achievements of conventional political science, especially the historical, philosophical, and descriptive-institutional approaches. Dahl (1961: 766) observed that all behaviourialists share 'a mood of skepticism about the current intellectual attainment of political science, a mood of sympathy toward 'scientific' modes of investigation and analysis, a mood of optimism about the possibilities of improving the study of politics.' Apparent in the mood of behaviourialists are methodological and theoretical questions. The advent of the behaviourial approach signals the absorption of scientific method into political science. It also underscores the efforts within political science to give meaning to behaviour by relating it to some empirical theoretical context. Thus, the behaviourial approach sought to improve our understanding of politics by seeking to explain the empirical aspects of political life through methods, theories, and criteria of proof that are acceptable according to the canons, conventions, and assumptions of modern empirical science (Dahl 1961: 767).

The behaviourial approach emanated as a psychological concept adopted to help eliminate from scientific research all reference to subjective issues such as intentions, desires, or ideas (Easton 1967: 12). To the behaviourialists, only those observations

Check Your Progress

3. Comparative method essentially resembles the statistical method. (True/False)
4. Comparative approach is a foolproof theory. (True/False)

obtained through the use of the sense organs or mechanical equipment were to be accepted as data. The subject matter of behaviourial research is the observable behaviour generated by external stimuli rather than inferences about the subjective state of mind of the person being observed. As a psychological concept, the behaviourial approach is concerned with the individual, especially the face-to-face relationship among individuals. Behaviourialists look at actors in the political system as individuals who have emotions, prejudices, and predispositions of human beings.

As such, they tend to elevate human beings to the centre of research attention. They argue that the traditionalists have been institutions, treating them as entities that stand apart from the individuals that constitute them (Easton 1953: 201-205). Behaviourialists, therefore, study the political process by looking at how it relates to the motivations, personalities, or feelings of human actors. The key idea behind the behaviourial approach is the conviction that there are certain fundamental units of analysis relating to human behaviour out of which generalizations can be made, and that these generalizations might provide a common base on which the specialized science of man in society could be built (Easton 1967: 23). This has led to the search for a common unit of analysis that could easily feed into the special subject matters of each of the social science disciplines. Ideally, the units would constitute the particles out of which all social behaviour is formed and which manifest themselves through different institutions, structure and processes. The adoption of the label 'behaviourial science' symbolizes the expectation that some common variable may be found, variables of a kind that will stand at the core of a theory useful for the better understanding of human behaviour in all fields.

1.3 IMPORTANCE OF STUDYING COMPARATIVE POLITICS

While comparisons form an implicit part of all our reasoning and thinking, most theorists would argue that a comparative study of politics seeks to make comparisons consciously to arrive at conclusions which can be generalized i.e., held true for a number of cases. To be able to make such generalizations with a degree of confidence, it is not sufficient to just collect information about countries. The stress in comparative political analysis is on theory building and theory testing with countries acting as units or cases. A lot of emphasis is, therefore, laid, and energies spent, on developing rules and standards about how comparative research should be carried out. A comparative study ensures that all generalizations are based on the observation of more than one or observation of relationship between several phenomena. Twhe broader the observed universe, the greater is the confidence in statements about relationships and sounder the theories.

Comparisons for scientific rigour

The comparative method gives these theories scientific basis and rigour. Social scientists who emphasize scientific precision, validity and reliability, see comparisons as indispensable in social sciences because they offer the unique opportunity of control in the study of social phenomena.

Comparisons leading to explanations in relationships

For a long time comparative politics appeared merely to look for similarities and differences, and directed this towards classifying, dichotomizing or polarizing political

Check Your Progress

5. Behaviourialists look at _____ and theoretical questions.
6. The behaviourial approach emanated as a _____ concept.
7. Legal approach studies organization, jurisdiction and independence of judicial institutions. (True/False)
8. The legal approach has a broad perspective. (True/False)

phenomena. Comparative political analysis is, however, not simply about identifying similarities and differences. The purpose of using comparisons, it is felt by several scholars, is going beyond identifying similarities and differences or the compare and contrast approach as it is called, to ultimately study political phenomena in a larger framework of relationships. This, it is felt, would help deepen our understanding and broaden the levels of answering and explaining political phenomena.

ACTIVITY

What in your opinion is the best method to study the comparative political system?

1.4 SUMMARY

In this unit, you have learnt that:

- Among the several fields or sub-disciplines, into which political science is divided, comparative politics is the only one which carries a methodological instead of a substantive label.
- The two main areas of thought are the area-specialist and that of the social scientist. This difference is further divided into those who are primarily inductive in their approach and those who prefer a more deductive approach.
- The historical method can be distinguished from other methods in that it looks for causal explanations which are historically sensitive.
- Historical studies have concentrated on one or more cases seeking to find causal explanations of social and political phenomena in a historical perspective.
- Theda Scokpol points out that comparative historical studies using more than one case fall broadly into two categories, 'comparative history' and 'comparative historical analysis.'
- Comparative history is commonly used rather loosely to refer to any study in which two or more historical trajectories are of nation-states, institutional complexes, or civilizations are juxtaposed.
- Critics of the historical method feel that because the latter does not study a large number of cases, it does not offer the opportunity to study a specific phenomenon in a truly scientific manner.
- Scholars such as A.N. Eisenstadt, argue that the term comparative method does not properly refer to a specific method, but rather a special focus on cross-societal institutional or macro societal aspects of societies and social analysis.
- It is essential to underline that scholars do recognize that the comparative method, is a method of discovering empirical relationships among variables and not a method of measurement.
- The comparative method is best understood if briefly compared with the experimental, statistical and case study method.
- Comparative method essentially resembles the statistical method except that the number of cases it deals with is often too small to permit statistical methods.

Check Your Progress

9. According to social scientists, comparisons is indispensable in the social sciences. (True/False)
10. Comparative politics studies only similarities and differences. (True/False)

- Comparative politics has advanced because of the formulation of universally applicable theories or grand theories based on the comparison of many countries or political phenomenon within them.
- The case study method is used whenever only one case is being analyzed.
- Case studies can be of many types for example a theoretical or interpretative, theory confirming or informing each useful in specific situations.
- Behaviourlists study the behaviour of a person or groups rather than the structure, institutions, ideologies or events.
- Historically, the behaviourial approach originated as a protest movement within political science.
- Apparent in the mood of behaviourialists are methodological and theoretical questions. The advent of the behaviourial approach signals the absorption of scientific method into political science.
- The behaviourial approach emanated as a psychological concept adopted to help eliminate from scientific research all reference to subjective issues such as intentions, desires, or ideas.
- Behaviourialists, therefore, study the political process by looking at how it relates to the motivations, personalities, or feelings of human actors.
- In the realm of traditional approaches, we will also refer to the legal and juridical approach.
- Matters relating to the organization, jurisdiction and independence of judicial institutions, therefore, become an essential concern of a political scientist.
- Themes of law and justice are treated as not mere affairs of jurisprudence, rather political scientists look at state as the maintainer of an effective and equitable system of law and order.
- While comparisons form an implicit part of all our reasoning and thinking, most comparatives would argue that a comparative study of politics seeks to make comparisons consciously to arrive at conclusions which can be generalized i.e., held true for a number of cases.
- A comparative study ensures that all generalizations are based on the observation of more than one or observation of relationship between several phenomena.
- The comparative method gives these theories scientific basis and rigour.
- Comparative political analysis is however, not simply about identifying similarities and differences.

1.5 KEY TERMS

- **Scientific rigour:** It means strictness in judgment or conduct; rigorism.
- **Behaviourism:** It is a highly influential academic school of psychology that dominated psychological theory between the two world wars. It was concerned exclusively with measurable and observable data and excluded ideas, emotions, and the consideration of inner mental experience and activity in general.

1.6 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Historical studies have concentrated on one or more cases seeking to find causal explanations of social and political phenomena in a historical perspective.
2. True
3. True
4. False
5. Methodological
6. Psychological
7. True
8. False
9. True
10. False

1.7 QUESTIONS AND EXERCISES

Short-Answer Questions

1. State Theda Scokpol's approach to comparative political system.
2. What is the case-study method?

Long-Answer Questions

1. What are the various approaches and debates related to comparative political study? Give your view.
2. Critics say comparative history is commonly used rather loosely to refer to any study. Give your arguments.
3. Why scholars do not agree on the comparative method and its nature and scope?
4. Behaviourlists study the behaviour of a person or groups rather than the structure, institutions, ideologies or events. Do you think this approach is correct to study political systems? Give your arguments.
5. Discuss the legal approach to do a comparative study of political systems.
6. Discuss the importance of studying comparative politics.

1.8 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

UNIT 2 CONSTITUTION AND CONSTITUTIONALISM

Structure

2.0 Introduction
2.1 Unit Objectives
2.2 History of Constitutionalism
  2.2.1 Importance of Implementing Constitutions
  2.2.2 Constitutions as Symbols and Manifestos, and Legal Rules
2.3 Constitutionalism: C. J. Friedrich
2.4 The Making of a Constitution: Process and Problems
  2.4.1 Choices for Makers of Constitution
  2.4.2 Responsibilities and Duties
  2.4.3 Process of Constitution-Making
  2.4.4 Making of the Constitution of India
2.5 Summary
2.6 Key Terms
2.7 Answers to 'Check Your Progress'
2.8 Questions and Exercises
2.9 Further Reading

2.0 INTRODUCTION

The previous unit explained the comparative political systems. This unit will introduce you to the constitution and the processes of constitution making. Succinctly saying, a constitution is a book of law; it comprises a set of norms as well as principles and values that create, structure and even define the framework for the government power. It is crucial to understand the role a constitution plays in a governmental set up before one writes it. The process of writing a constitution involves much more. It also requires creating an environment where knowledge is appreciated and public participation in governance is encouraged; these are basic staples to not only ensuring a good constitution but also having the right prospects for its implementation.

2.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Describe the history of constitutionalism
- Discuss the importance of constitution
- Explain the process of making a constitution
- List the problems of making a constitution

2.2 HISTORY OF CONSTITUTIONALISM

In the last few decades, there has been a growing concern about the constitution and the process of making of a constitution. As students are aware, the face of many political

systems has transformed in these years – colonial powers left many states independent, new states emerged, even military regimes ended. Communism failed towards the end of the century and there were growing efforts to curtail the growing civil conflicts in multiethnic states. These developments added to the significance of the constitution across the world, with many nations adopting a constitution.

As mentioned earlier, the knowledge of what role a constitution plays in the day-to-day activities of a country is crucial to the procedure of making one. This may thus vary from nation to nation. Similarly, how a constitution is conceptualized, understood and even respected in a nation may differ from the rest. Since it is the supreme book of law, the respect for a constitution depends on the country's national history and the support it seeks from law in organizing its multi-cultural society and the state. Thus, a constitution or the term constitutionalism does not always have similar reference or even influence in all countries.

Students must keep in mind the context of a country whose constitution is being read. This will reveal the primary purposes with which a constitution was set and the role it was assumed to serve. For instance, in a newly-emerged state, a constitution can play the role of nation-building. In a country which has been freed of the clutches of military or totalitarian rulers, constitution can consolidate and promote democracy; while in a nation battling inter-ethnic conflicts, it can promote cooperation. For states that reject communism, constitution can encourage liberalism and the opening up of private markets. Therefore, the ideologies of a country actually determine the orientation of the constitution as well as the processes through which it is made. National contexts and histories also impact the constitutions in other ways.

2.2.1 Importance of Implementing Constitutions

A constitution can only find its footing in a country which upholds the rule of the law and provides a necessary structure for the same. Constitution can come into conflict with the social and political orders of those countries where authoritarianism is deep-rooted. In countries which run by charismatic politics or where a one-party or one-person phenomenon prevails, or where religion is considered paramount in watching and deciding upon the social norms, institutions, and hierarchies, the autonomy of a constitution is often at stake. Homogenous societies, where persons of common ethnicity, values and norms and even aspirations live, make changes or reforms to the constitution easier as compared to heterogeneous societies. However, constitution holds a significant meaning in the latter kind of societies.

Here is an example. In heterogeneous societies, it often happens that the state itself becomes the means through which its representatives like ministers, bureaucrats and other persons working for the government indulge in corruption. Thus, accumulating wealth, getting illegal jobs, red tape and protecting themselves from the law under the influence of the state are a common occurrence in such societies. Institutions put into place to check on such malpractices and curb corruption too fail due to the influence that such persons are able to exercise. A multi-cultural society, with different languages, religions, or modes of social organization relied less on shared and common values to regulate the society.

Instead, it often draws from the values, aspirations, rules, institutions, and procedures which are weaved into the constitution. It is important to understand that in a multi-cultural society, with varied people, their own interests and values take on a more important meaning and political significance than the book of law. Yet, constitution here gains

Check Your Progress

1. What is a constitution?
2. List some of the purposes of a constitution.

utmost significance as it is able to protect the rights of all the people, and promote within them ideals of equality and social justice, while at the same time, ensuring the integrity and accountability of the government towards its people.

2.2.2 Constitutions as Symbols and Manifestos, and Legal Rules

Over the last few decades, nations as well as citizens have adopted the principle of sovereignty as against authoritarianism and thus, a constitution is seen as a rule book on ways in which people like to be governed. Ideally, a constitution lays down the organizing principles of a state. It is a state through which a society exercises its political, administrative, and judicial powers, in turn ensuring the rule of the law, protection of the rights of its citizens and the promotion and regulation of its economy. Critics call such an understanding utopia, as citizens for whom the constitution is laid, have really no say in the making of the rule book. They argue that because of the popularity of the ideas of sovereignty and protection of people's fundamental rights to participate in governance, it is a compulsion to encourage them to participate in the making of the constitution.

People often make decisions which influence the constitution on the basis of their relationship with other communities. Therefore, a constitution reflects not only the relationship of the people with the state but, in multicultural societies, their relationships with other communities. Therefore, in such societies, the constitution is able to promote partnerships among people and different communities and even within the political corridors and encourage sharing of power. Thus in societies which are fragile on account of the diverse identities of its people, the constitution becomes a social contract; it not only binds individuals but also diverse communities in a state.

2.3 CONSTITUTIONALISM: C. J. FRIEDRICH

There are two schools of constitutional theory which are contrary to each other. One is at the normative level and the other at the explanatory or casual level. In the modern societies, mostly all constitutions are designed in a way to protect a democracy. Therefore, the greatest failure of a constitution could be the failure to institutionalize a sense of democracy. However, even a constitution cannot ensure democratic systems since all such systems are expected to produce different results.

However, the failure of constitution herein is actually the failure of the democratic theory as well as practice and also of the collective human capacity to act in large groups. Therefore constitutionalism for modern nation seeks to place limits on the powers of a government. This is central to the theories of constitutionalism:

> 'Constitutionalism is descriptive of a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law. Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials.... Throughout the literature dealing with modern public law and the foundations of statecraft the central element of the concept of constitutionalism is that in political society government officials are not free to do anything they please in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme, constitutional law of the community. It may, therefore, be said that the touchstone of constitutionalism is the concept of limited government under a higher law'.
>
> ***Source:*** Philip P. Wiener, ed., "Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas", (David Fellman, "Constitutionalism"), vol 1, p. 485, 491–92 (1973–74)

NOTES

Makers of constitution advice against assessing its normative qualities from the contents only. It is said that the fundamental role of the constitution is to organize the politics and social life of a society in particular ways. In fact, constitutions have been regarded as 'consequentialist devices', i.e. one is required to focus on its actual consequences to judge its normative qualities. In turn, the consequences of a particular constitution depend on the nature of the society that it is to govern. Therefore, a constitution that may work well for one society might prove to be disastrous for another.

That being said, it is important to keep in mind that abstract discussions of constitutions and constitutionalism can misdirect and be futile. In understanding the theories of constitutionalism, one must look at some specific examples to ensure that a theory works in practice and is adequate for a deeper understanding of the subject. While discussing constitutionalism, exploring the context of specific countries helps us recognize that no theory is complete in itself and relies on circumstance and contexts.

The fundamental basis of all these discussions is the backdrop for a practical and calculated theory of political economy. The political economy approach towards politics and institutions stands upon economic inspirations. One may recall Thomas Hobbes here, who said: "If mere consent to living in justice were sufficient, we would need no government at all, because there would be peace without subjection." However, his assessments can be proved incorrect for a society requires harmonization in a number of areas and also combined actions under many circumstances where impulsive stipulation would be improbable. Hobbes's rejection of the possibility that people can be collectively inspired by obligation towards fairness and justice is convincing. Therefore, Hobbes is considered as one of the first and early political economist.

Modern day political philosophers also place important on intense enthusiasms for justice or public spiritedness of the citizens as against the suppositions of political economy. For instance, philosopher Brian Barry presumes that if citizens have the right modes of inspiration, contractualism will work. However, there are no good reasons to presume that people can be re-cultured into having influential enthusiasm towards justice more than being self-centered. Constitutional political economy appears to be bound to deal with cases where interests triumph time and again. John Rawl, for instance, assumes that once we set up a fair management, government or management will teach future generations to be fair. According to him, institutions "must be not only just, but framed so as to encourage the virtue of justice." He also states that once fair institutions are set up, the first stipulations of self-centeredness will no longer apply and governments and its citizens will be obliged to sustain such institutions.

However, this theory goes against the experience and the outlook of James Madison and David Hume who argued that we ought to plan the foundations ourselves to testify against the exploitation by office-holders. In fact, Hume and Madison saw liberalism as naturally stuck in the mistrust of political office-holders and not in assumption that these leaders will by and large work towards the interest of the citizens. Madison's constitution is thus the paramount constitutional reply to liberal mistrust. The essential argument which serves as the basis for constitutionalism in political economy theory is that in most cases, it is in the interest of all to safeguard the society since its conservations serves everyone. It is obvious that shared benefits can have multiple propositions in cases of disproportionate organization and very frequently can lead to compound possible harmonization, which serves as an added benefit.

C. J. Friedrich on Constitutionalism

NOTES

Carl Joachim Friedrich was a political scientist and observer. He worked as a professor of science of government at Harvard from 1955–1971. He had liberal views pertaining to constitutionalism, which were that the state should have its own rules and regulations to preserve the ideals of law, rights, justice, liberty, equality and fraternity in the fundamental law of the land. These rules may be written, unwritten, framed at a particular time or developed over a very long period of historical development, easily amendable or amendable with great difficulty.

Friedrich and a host of other western writers like Thomas Jefferson, James Madison and Harold Laski, to name a few, believed that constitutionalism was both an end and a means; that it was both value-free and value-laden and comprised of both normative and empirical dimensions. The constitution was not only an end that ought to be respected by all but also the means to an end, the end being the achievement of security and the protection of the liberty of the people.

On the whole, it desires a constitutional state having a well-acknowledged body of laws and conventions for the operation of a 'limited government'. If there is a change, it should be peaceful and orderly so that the political system is not subjected to violent stresses and strains. There is the rule of law that ensures liberty and equality to all; there is the freedom of the Press to act as the 'fourth estate'; there is a plural society which has freedom for all interests to seek the 'corridors of power'; there is a system that strives to promote international peace, security and justice.

Difference of Opinion

The Marxist view of constitutionalism is contradictory to that of the liberalists. The Marxists argued that in a socialist country, constitution was not an end in itself; it was just a means to put into practice the ideology of 'scientific socialism'. They contended that constitution was a tool in the hands of the 'dictatorship of the proletariat' that sought to create a classless society which would ultimately turn into a stateless condition of life. According to the Marxists, the purpose of having a constitution was to not limit the powers of a government but to make them so vast and inclusive that the ideal of a workers' state was realized and a 'new kind of state' came into being. The real aim of the constitution in such a country was not to ensure liberty and equality, rights and justice for all but to see that the enemies of socialism were destroyed and the new system was firmly consolidated. In this way, the real significance of the constitution 'was to firmly anchor the new socialist discipline among the working people'. The Marxists believed that all power was in the hands of the communist party whose leaders laid down their programmes and implemented them according to their best judgment, without caring for the niceties of a limited government. The communist party was thus viewed as the state and its leaders as the custodians of the new socialist order.

Challenges and Prospects

At present, the concept of constitutionalism is faced with broadly three challenges: rise of totalitarianism, emergence of war conditions and socio-economic distress of people across the world. Every constitutional state has to deal with these problems keeping the fundamental principles on which it is based in mind. The rise of fascism in Italy and of Nazism in Germany coupled with the advent of communism in Russia and then emergence of totalitarian systems in other countries of the world like Spain and Japan in the period after the First World War and then emergence of such systems in a very large number

Check Your Progress

3. What may be said to constitute the hallmark of the concept of constitutionalism in the Third World countries?
4. How have C.J. Friedrich and a host of other western writers viewed constitutionalism?
5. What are the three challenges faced by the concept of constitutionalism?

NOTES

of Afro-Asian and Latin-American countries after World War II, are instances that have offered a grim challenge to the illustrious concept of constitutionalism in the past. Conditions were also raised where the rulers of a state to resort to emergency measures in the face of war. The political system of a country may survive in the midst of warlike conditions, as in the cases of Britain and France, or it may collapse giving place to an authoritarian system of any sort, as in many countries of the Third World.

Lastly, there is the problem of securing the goal of social and economic justice in the country. Many a times, the administrators of a democratic country exert the influence of their power for the sake of affecting some radical schemes of social and economic justice putting the constitutional principles at jeopardy. In some cases, they are opposed by legislators and judges of the country. For instance, in the United States, the New Deal Policy of President Roosevelt suffered a setback after facing invalidation under the National Recovery Act by the Supreme Court.

However, it is likely that the people of democratic countries would understand the nature of problems facing them and try to solve them within the framework of their liberal constitutions. For this, it is required that the convictions of the people in the system of democracy should be strengthened so that they are not attracted by the forces of totalitarianism.

It can be argued to conclude this sub-section that that the concept of constitutionalism should change or be modified in response to the changes in urges and aspirations and social and economic conditions of the people. This would not be possible by blindly following the views and arguments of great constitutionalists. It calls for the modification of old values and systems in the light of new hopes and requirements of the people.

2.4 THE MAKING OF A CONSTITUTION: PROCESS AND PROBLEMS

A constitution is not a document of the policies of the state. It is within the framework of the constitution that the policies of a state are developed. Fundamentally, a constitution provides the structure and explains the powers of the state. After the 19th century, with enlightenment and the rise of awareness among people about their rights, some of these concerns were incorporated in a constitution. For instance, there was a growing tendency among nations to include civil rights for citizens, including citizenship and property, in the framework for policy and lawmaking criterions for the state. However, state power and the restrictions on it were not mentioned seriously. Over time, as the functions, duties and powers of the state increased, the makers of the constitutions also started to incorporate those rights that would protect the weaker sections and give them equal social and economic opportunities whether in education, health, economy or other matters of the society.

The role and the conception of the state are continuously evolving. Its understanding has gone beyond ensuring a just ruling to public welfare and policies directed towards common good, promoting and protecting the rights of the people, non-tolerance towards corruption and a sustainable environment for governance. One can see that the scope of a constitution has thus considerably increased in modern times. In fact, India was among the first countries which drafted its constitution as a means to ensure transformation of social, political, and economic relations. Inclusion of such 'human' aspects in the

NOTES

constitution has its critics. They argued that the main function of a constitution was to define and detail the functions of state institutions. Further, critics believed that the 'human' aspects of the constitution were not achievable and thus it delegitimized the constitution. However, such comments are ideologically driven and should be contextually studied.

In countries where poverty indexes are high, a constitution needs to commit itself to social justice to find respect and legitimacy among the citizens. On the flip side, however, a constitution committed towards larger social ends automatically raises the expectations of people and, in case it is disregarded continuously, it loses its legitimacy. Theorists believe that every constitution that seeks to transform unequal social and economic relations of a society, is at the risk of being resisted and even misused by the privileged and those at the helm of the power who have enough power to undermine the constitution.

2.4.1 Choices for the Makers of Constitution

Constitution-making is a tough job and its writers are faced with much dilemmas. There can be many issues, essentially contextual. For instance, in a multi-cultural society, the makers will have to think about the degree of salience required towards ethnic differences. They will need to reach a proper balance between national, tribal, religious, and linguistic identities. At the same time, they have to ensure a balance between principles and policies. There is a thin line that divides the guidelines of the constitution and the policies that governments have to devise keeping in mind the demands of the people and the makers have to make sure they do not breach that line. However, in some matters, a constitution can really come to the aid of the governments in devising policies and thus they have to also decide how these should be incorporated into the constitution. Similar decisions have to be made for institutions and especially independent institutions, their numbers and role.

The makers also have to face questions like: morally, is it correct to make decision on basis of voting patterns? Should the principles on which a constitution is based be stated in it? Should it be rigid and thus fail to respond to the needs of the changing times? How can it respond to even the unanticipated problems? What should be the ideal length of a constitution, can it be too large? What are the criteria of the success of a constitution? How can they ensure its longevity? Should the longevity of the constitution even be of concern? Should they leave a constitution open or let each generation decide on its own system of governance?

Constitution making is thus not an easy job but experts have to have many brainstorming session before deciding on the final words of the constitution. Giovanni Sartori, while assessing many such issues and dilemmas that constitution-makers are faced with, thus concluded: "most recent constitutions are poor instruments of government" (Sartori 1997: 197). His statement is clearly in contrast to those of many political scientists who have explore constitutionalism and who believe that a constitution must serve several significant functions in nation building and have the power to balance competing interests in multicultural societies. Thus, it is upon the constitution-makers to decide on both the orientation and scope of the constitution.

2.4.2 Responsibilities and Duties

It is important to keep in mind that a constitution is not just a book of law but the supreme law itself. This means that any law or policy that goes against the principles of the

constitution of a nation is eligible to be declared invalid and inconsistent. This should be done to ensure that the social contract and the vision of the constitution-makers are safeguarded, both symbolically and in all its substantive elements. Moreover, it should be done to ensure that the rule of the law is supreme as against personal interests. A constitution should thus bind people of all identities as well as their institutions and not serve as a guide book for government and governance.

Experts have concluded that the goals and purposes of the constitution are not easy to reach. It is a challenge to propagate the rule of the law while at the same time ensuring the government functions as per the purposes for which it has been formed and in accordance to the principles enshrined in the constitution. The challenge is paramount in societies which have other modes of power, like customs or religion which are often not concomitant to those of the constitution. Therefore, the constitution-makers have to pay special attention to ensure that rules and procedures are implemented and even enforced when they have to be.

2.4.3 Process of Constitution-Making

The processes involved in the making of the constitution have evolved with times. At one time, it depended on the monarch to decide and grant a constitution to the people he ruled. This was followed in principle in the making of several constitutions till the late twentieth century, for instance in countries like Ethiopia, Jordan, Kuwait, Nepal, and Saudi Arabia. Constitutions were also used as tools of the colonizers and were imposed on the vanquished people for further exploitation..Examples can be drawn from many imperial systems like the MacArthur constitution in Japan after World War II, those introduced in postwar Germany or in other colonies after their independence.

It was only in the early 20th century and the years following that, that a democratic process was followed in the making of a constitution. Under these rules, the prime responsibility to draft the constitution was granted parliament or constituent assembly. But these were not followed in all countries. However, since the last quarter of the 20th century, the focus shifted to promote and encourage public participation – of individuals, organizations or communities as a while – in the process of constitution making. This can be seen in countries like Bolivia, Kenya, Papua New Guinea, Thailand, and Uganda. This shift is the result of the experience of colonialism, totalitarian governments, wars and thus an appreciation of democracy and people's democratic rights including public participation in governance. The International Covenant on Civil and Political Rights and particularly the Right of Self-Determination are the examples of these.

By seeking public participation, the process of making of a constitution, especially in the contemporary times, becomes a complex as well as a lengthy process. In earlier times, experts in the field of constitutional law or political science, under the eye of the executive, played an important role in the drafting of the constitution. In contemporary times, however, the number of participants to the constitution-making has considerably increased. This coincides with times when the number of issues that a constitution seeks to address has also gone up. Therefore, a greater attention has to be paid towards the design of the constitution as well as its process and also the principles that determine the qualitative nature of the constitution. The design of the process of constitution making is often affected by the domestic negotiations, which can protract the process in turn. In case of countries ravaged by intense internal and multi-cultural conflicts, the international community can also influence the process, as in the case of Afghanistan, Cambodia, Kenya, Kosovo, Namibia, and Zimbabwe.

That the process of the making of the constitution involves a designed process can indicate towards a high degree of rationality which is based on the understanding that different arrangements can have varied consequences. Researchers in the recent years have been trying to gauge if, for instance, the parliament or the constituent assembly should take the lead role in constitution-making; or whether ensuring transparency or confidentiality in negotiations between all parties will lead to reaching a consensus; whether the whole process should have a deadline and most importantly, the results of having high public participation in the process. The research in this area is still in a nascent stage but is being able to provide some initiations on the work on designing a constitution.

However, even if the makers had sufficient knowledge about designing the process of constitution making, it is still an extremely political process, with the interest of many groups involved, especially politicians. Many a times, active steps are taken to control the political actors who seek to influence the process. Therefore, one can safely say that the constitution-making process is not so much designed as it is negotiated.

Here is an example. At the end of the year 2000 when the Kenyan constitution was being made, there was considerable understanding on the design of the same. The process involved some key experts and also enjoyed a high degree of public participation. During the process, as the consequences of drafting a people-friendly constitution became clear, the agreement reached between different parties fell through as politicians tired to wield their influence and keep out other interest groups. By 2004, the political class took charge of the project and by 2008, it was entirely in their hands.

Besides these complications, the process has its own momentum in each context. Participation of the public leads to broadening of the reform agenda, excluded groups seek inclusion and parties seeking to spoil the movement can unexpectedly appear on the scene. This can have clear implications on the original schema of constitution making. Moreover, an interest group can suddenly decide to keep itself out of the process and, in some cases, the majority groups may try to intimidate the minority. This was reflected in the constitution making process in Iraq and Somalia. Thus, an important part of the whole process is negotiation at different stages and levels of constitution making even though the results of such negotiations are unpredictable. That the process will survive depends on the ability to include contrasting forces and be able to constructively respond to their new demands.

Often, while designing the process of constitution-making, attention is given to what is referred to as the 'official' process: for instance on the institutions that are created to deliberate on the issues and take decisions; on the interests of groups and constituencies being represented and on the rules to be followed for decision-making, among others. However, not all of these can capture the complex nature of the activities, including lobbying and scheming, that take place outside of the formal process of constitution making. Often, organizations, either national or foreign civil society, run a sort of parallel process to the making of constitution. There is no denying the fact that the international community can play a hidden but at the same time critical role in the process. There can also be a parallel process run by different parties involved. They may negotiate and have a significant impact on the results of the constitution. Something similar happened in Japan's post-World War II constitution; the United States also had an informal, at times clandestine, pressure in Afghanistan and Iraq during the making of their constitution. The official process can often miss out on including the interests of all and even leave out some groups. Nevertheless, such activities have the potential to

NOTES

undermine or delegitimize the key principles, objectives, and procedures of constitution making. All of this points towards the limitations of national sovereignty in safeguarding the process.

The process and the substance, both are crucial in ensuring the success of constitution-making. This is because a constitution plays a crucial role in peaceful political transitions within a state and post-conflict peace building. It also plays an important preventive role. Besides, its making is a great opportunity for the creation of a common vision of a state and therefore, its results can have significant and lasting effects on peace and stability within a country.

Even the United Nations (UN) supports the constitution-making processes and it is an important part of its rule of law. The UN, under its definition of constitution-making, includes both the process of drafting and the substance as well as amending the existing ones.

The approach of the UN relies on national ownership and its support of participatory, inclusive and transparent processes. It believes that support should be gained in the context of a specific country and should be drawn from various levels of expertise both within and outside its system to guarantee access to international and comparative best practice. Following its principles, the UN has participated in several constitution-making processes, including in countries like Afghanistan, Cambodia, Iraq, Nepal and Timor-Leste.

The UN also believes in a structured national dialogue that gives due consideration to people's views as well as those of the makers in the drafting of the constitution. It considers debate as an essential element of a participatory, inclusive and transparent process. Therefore, the UN gives assistance in different forms to the constitution-making processes, including political and strategic, legal and human rights, capacity-building and institutional development, and financial, logistical and administrative support. The UN has a Rule of Law Coordination and Resource Group, supported by its Rule of Law Unit, which provides constitutional assistance for ensuring timely and helpful expertise towards constitution making. The UN also supports constitutional approaches that both incorporate and consider supreme the standards for human rights. This includes an independent judiciary as its supports the rule of law. The UN also promotes following up on each constitution to ensure its effective implementation as well as amendments that may be required once it is adopted. Therefore, the international body works with support of many partners to develop knowledge as well as practice on constitution-making.

2.4.4 Making of the Constitution of India

It was on August 14, 1947, a day before the formal independence of the country, that an Assembly was convened and the proposal to form various committees was presented. These included committees such as the Committee on Fundamental Rights, the Union Powers Committee and Union Constitution Committee. On August 29, 1947, a Drafting Committee, with Dr B. R. Ambedkar as the chairman, was appointed. Six other members were part of the panel and were assisted by a constitutional advisor.

These members were Pandit Govind Ballabh Pant, Kanaiyalal Maneklal Munshi (former home minister, Bombay), Alladi Krishnaswamy Iyer (former advocate general, Madras State), N Gopalaswami Ayengar (former prime minister, J&K and also a member of the Jawaharlal Nehru Cabinet), B.L. Mitter (former advocate general), Mohammad Saadullah (former chief minister of Assam and a Muslim League

NOTES

member) and D.P. Khaitan (a renowned lawyer). The constitutional advisor was Sir Benegal Narsing Rau, who also served as the first Indian Judge in the International Court of Justice from 1950–54. After his resignation, B.L. Mitter was replaced by Madhav Rao, who was the legal advisor to the Maharaja of Vadodara. Following the demise of D.P. Khaitan, T.T. Krishnamachari was included in the drafting committee.

The makers of the Indian Constitution were clearly influenced by the former colonizers – the British – and their model of parliamentary democracy. The makers also adopted a number of principles from the constitution of the United States of America like separating the powers of the three main branches of the government, establishment of a supreme court and the role and powers of the President and the Prime Minister. From Canada, the principles of a federal government i.e. a strong government at the centre and the distribution of powers between central government and the states, was adopted. The directive principles of the state were adopted from Ireland. The principle of suspension of fundamental rights in the time of emergency were taken from Germany while having a Concurrent List of shared powers and some words for the Preamble were taken from Australia.

With such influences, the panel prepared a draft constitution, which was presented to the Assembly on November 4, 1947. This was duly debated in Parliament and over 2,000 amendments were made within a period of two years. The process was completed on November 26, 1949, with the Constituent Assembly adopting the Constitution. With the signatures of 284 members, the process was declared closed. Following this, the Assembly met in public sessions for 166 days, spread over a period of 2 years, 11 months and 18 days before the Constitution was formally adopted. Two copies of the document — one in Hindi and the other in English – were signed by the 308 members of the Assembly on January 24, 1950. On January 26, 1950, the Constitution of India became the supreme law of all the states and territories of the country. The original Indian Constitution is handwritten in beautiful calligraphy, and page has been decorated by artists from Shantiniketan, including Beohar Rammanohar Sinha and Nandalal Bose. It was estimated that the expenditure on the constituent assembly was nearly Rs 1 crore. Since its adoption, the constitution has undergone many amendments.

The Indian Independence Act

With its coming into force on January 26, 1950, the Constitution of India repealed the Indian Independence Act. India was no longer a colony of the British and became a sovereign democratic republic. With this, November 26, 1949, also came to be known as the National Law Day, to mark the adoption of the constitution.

It is important to know that the Indian Independence Act had been passed by the British Parliament on July 18, 1947, leading to the division of the British India into the new states of India and Pakistan. They were dominions under the Commonwealth of Nations till they finished the drafting and implementation of their respective constitutions. For the now two separate states, the Constituent Assembly was also divided into two. Each new Assembly had sovereign powers for its dominion. This Act also ended the British right to rule over the Indian princely states and each of them were asked to decide whether to accede with either India or Pakistan or to continue as independent states in their own right.

ACTIVITY

Find out the details of the constitution of US and compare the same with the constitution of India.

DID YOU KNOW

The US Constitution was written in the same Pennsylvania State House where the Declaration of Independence was signed and where George Washington received his commission as Commander of the Continental Army. Now called Independence Hall, the building still stands on Independence Mall in Philadelphia, directly across the National Constitution Center.

2.5 SUMMARY

In this unit, you have learnt that:

- The conception and understanding and the respect for constitutions vary. It depends considerably on the national history and the reliance and respect for law as a key mode of organizing society and state.
- The terms 'constitution' and 'constitutionalism' do not always have the same meaning or impact in all countries.
- The variety of contexts on which constitutions have been made shows that the primary purpose a constitution serves varies.
- A state that has several communities with different languages, religions, or modes of social organization is less able to rely on common values and social institutions for the regulation of society. Instead it may have to hinge in part on the values, aspirations, rules, institutions, and procedures incorporated in the constitution.
- The constitution has come to be regarded as a contract among the people on how they would like to be governed. Fundamentally, a constitution is the basis for the organization of a state.
- Fundamentally, a constitution is the basis for the organization of the state. The state is the mechanism through which a society provides for the exercise of political, administrative, and judicial powers in order to ensure law and order, the protection of the rights of the people, and the promotion and regulation of the economy.
- There are two schools of constitutional theory which are contrary to each other. One is at the normative level and the second one is inherently explanatory or casual.
- In a socialist country, constitution is not an end in itself; it is just a means to put into practice, the ideology of 'scientific socialism.'
- A constitution does not specify policies of a state but are developed by political processes within the framework of the constitution.

Check Your Progress

6. Write any two issues that cause dilemma for the constitution-makers.
7. Who was the chairman of the drafting committee of the Constitution of India?
8. Name some of the countries in which UN has played a major role in constitution-making.

- Constitution is not only law, it is the supreme law. This means that no law or policy that is inconsistent with the constitution is valid—and the social contract is safeguarded, both in its symbolic and in its substantive elements.
- The UN has been involved in a number of constitution-making processes, including in recent years in Afghanistan, Cambodia, Iraq, Nepal and Timor-Leste.
- The UN encourages constitutional approaches that directly incorporates and makes supreme international human rights standards, including an independent and impartial judiciary as a strong foundation for the rule of law. It promotes adequate follow-up to ensure implementation of the constitution or constitutional reforms once adopted.

2.6 KEY TERMS

- **Constitutionalism:** Government in which power is distributed and limited by a system of laws that must be obeyed by the rulers.
- **Liberalism:** A political theory founded on the natural goodness of humans.
- **Consequentialist:** The view that the value of an action derives solely from the value of its consequences.
- **Contractualism:** The term can be used in a broad sense—to indicate the view that morality is based on contract or agreement.

2.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. A constitution consists of a set of norms (rules, principles or values) creating, structuring, and possibly defining the limits of, government power or authority.
2. The variety of contexts on which constitutions have been made shows that the primary purpose a constitution serves vary—nation building, consolidation of democracy liberalism and the creation of private markets with the end of communism, peace and cooperation among communities to end internal conflicts.
3. A possible mixture of the liberal and Marxist notions, with a heavier part of the former may be said to constitute the hallmark of the concept of constitutionalism in the Third World countries.
4. C.J. Friedrich and a host of other western writers have viewed constitutionalism as both an end and a means.
5. The concept of constitutionalism is faced with three challenges rise of totalitarianism, emergence of war conditions and socio-economic distress of the people.
6. The dilemmas for constitution-makers are —What is the proper balance among national, tribal, religious, and linguistic identities? Is it morally right to design all decisions for majority voting? What is the appropriate balance between principles and details of policies?
7. Dr. B. R. Ambedkar was the chairman of the Drafting Committee of the Constitution.
8. The UN has been involved in a number of constitution-making processes, including in recent years in Afghanistan, Cambodia, Iraq, Nepal and Timor-Leste.

NOTES

2.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is a constitution?
2. Define constitutionalism.
3. Write the names of any five people who were responsible for making the Indian Constitution.
4. Write a short note on the problems that the concept of constitutionalism is facing.

Long-Answer Questions

1. How does C.J. Friedrich's view constitutionalism?
2. State the importance of implementing a constitution.
3. How does a constitution help in creating a bond amongst the people of a country?
4. Elaborate the process of constitution-making and the challenges it faces.

2.9 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

NOTES

UNIT 3 MAJOR POLITICAL SYSTEMS

Structure

3.0 Introduction
3.1 Unit Objectives
3.2 Concept of Political System
3.3 Democratic Political System
- 3.3.1 Direct Democracy
- 3.3.2 Indirect Democracy
- 3.3.3 Characteristics of Democracy
- 3.3.4 Political, Social and Economic Democracy
- 3.3.5 Safeguards of Democracy
- 3.3.6 Classical Theory of Democracy

3.4 Totalitarian Political System
- 3.4.1 Features of a Totalitarian Government

3.5 Authoritarian System
- 3.5.1 Forms of Authoritarian Government

3.6 Summary
3.7 Key Terms
3.8 Answers to 'Check Your Progress'
3.9 Questions and Exercises
3.10 Further Reading

3.0 INTRODUCTION

In the previous unit, you studied about the history of constitutionalism and the problems and process of making of Constitution.

By 'political system' we mean a system of politics and government. Usually, it is compared to the economic system, legal system, cultural system and other types of social systems. Nonetheless, it is a very simplistic analysis of a rather complex system of categories comprising of issues such as: 'Who should handle power and authority? How should the religious issues be handled? What should be the government's influence on its people and economy?'

In this unit, you will study about the various political systems in the world namely, democratic, totalitarian and authoritarian systems of government.

3.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Interpret the concept of political system
- Analyse the criticism levied against the authoritarian government
- Define the concept of democracy
- Identify the characteristics of democracy
- List the merits and demerits of democracy
- Recognize the classical theory of democracy
- Analyse the emergence of totalitarian political system
- Summarize the features of totalitarian government

NOTES

3.2 CONCEPT OF POLITICAL SYSTEM

The term 'political system' consists of two words—political and system. The first word 'political' refers to the subsistence and role of state in empirical terms. The second word 'system' entails a set of parts in interdependence as well as in operation. According to G. A. Almond, a system constitutes 'the interdependence of parts and a boundary of some kind between it and its environment.' In this context, Easton says that a political system allocates values by means of its policies that are binding on the society by virtue of being authoritative.

A policy is visibly authoritative when the feeling exists that it must, or it ought to, be obeyed whether it is formal or effective. It must be accepted as binding. In the words of Almond, political system involves the feature of 'comprehensiveness' which means that when we speak of the political system, we include in it all the interactions (inputs and outputs) which affect the use or the treat of the use of physical coercion. By 'interdependence' we mean that a change in one subset of interactions produces changes in all other concerned subsets. Finally, the existence of 'boundaries' means that where other systems end, political system begins. The result is that while the word 'political' signifies and attempts to separate a certain set of interactions in a society in order to relate it to other sets, by 'system' we mean an attribution to a particular set of properties of these interactions.

We have various definitions of political system:

- A political system comprises an inclusive set of institutions, interest groups (e.g., lobby groups, political parties and trade unions), the relationships among these institutions and the political standards and rules governing their functions (constitution, election law and so on).
- A political system consists of the members of a social organization (group) who are in power.
- A political system is a theoretical concept on which the government formulates policies and makes them more organized in administration.
- A political system ensures order and sanity in the society and simultaneously enables some other institutions to have their complaints and grievances put across during the course of social existence.
- A political system essentially possesses two properties: a set of inter-reliant components and boundaries towards the environment with which it interacts.

According to D. M. Wood, the term 'political system' refers to the study of state and government in the empirical dimensions and also from an interdisciplinary standpoint. Thus, political system becomes a set of inter-related variables conceived to be politically relevant and treated as if they could be separated from other variables not immediately relevant to politics. A set of concepts considered to make up a political system is advanced not to help one to understand the government and politics of a particular country but to aid in understanding the government and politics of any country of the world.

In academic discourse, there are three reasons for using the term 'political system'. First, the word 'state' does not facilitate us in understanding all political situations. As a concept, the state came into common use during the 16th and 17th centuries. Second, the concept of state is not adequate for social analysis, as this has been mainly used like

NOTES

a social myth in the struggle for national unity and sovereignty. Third, this concept does not have satisfactory kind of definition. In this way it's clear that a change from the study of state and government to the study of political system should be attributed to the shift in the emphasis from the formal political institutions to that of the real political processes. It has occurred due to certain developments indigenous to the discipline of political science in which writers have sought to study the state and government in relation to the role of 'extra governmental' agencies.

A definition of the term political system is provided by Almond:

'What we propose is that political system is that system of interactions to be found in all independent societies which performs the functions of integration and adaptation (both internally and *vis-a-vis* other societies) by means of the employment or threat of employment of more or less legitimate order-maintaining, or transforming system in the society. We use the term 'more or less' to modify legitimacy, because we do not want to exclude from our definition political systems, like the totalitarian ones, where the degree of legitimacy may be very much in doubt, revolutionary systems where the use of legitimacy may be in process of change, non-western systems in which there may be more than one legitimate system in operation'.

Beer and Ulam describe political system as 'a structure that performs a certain function for a society.' It includes an arrangement for making decisions which have 'legitimacy', because the members of a society accept them as being in conformity with their conceptions of authority and purpose.

Check Your Progress

1. Fill in the blanks.
   (a) A political system is a theoretical concept on which the _____ formulates policies.
   (b) The term 'political system' consists of two words— _____ and _____.
2. State whether True or False.
   (a) A political system consists of the members of a social organization (group) who are in power.
   (b) A political system essentially possesses two properties: a set of inter-reliant components and boundaries towards the environment with which it interacts.

3.3 DEMOCRATIC POLITICAL SYSTEM

In the texicography of political science, no word is more controversial than democracy. There is no individual who does not like it but he may raise its 'question of suitability and efficacy at particular circumstances'. The suitability of democracy is related to the question of the form of government and not to that of principle. Many scholars object to the application of democracy to particular circumstances but they are not opposed to democratic principle. Today many people ask whether the circumstances or environment will be moulded to make them suitable for democracy or democracy will be changed to mould the environment for its own development.

As to the proper meaning of the word, there is also a controversy. As G. C. Field observes, 'In recent years, controversy has arisen about the proper meaning of the word democracy...' In spite of differences of opinion, democracy is regarded as a useful form of government. Where it does not exist, men are fighting for it and where it already exists, men are striving to make it perfect. Sukarno's Indonesia called itself guided democracy and Ayub's Pakistan called itself basic democracy. The communist and socialist countries call themselves socialist democracies.

Etymologically, democracy is derived from two Greek words 'demos' and 'kratia'. *Demos* means people and *kratia* means power or rule. Therefore, democracy means the power or rule of the people. Here are some more definitions of democracy. C. D. Burns says, 'Few words have been more loosely and variously defined than democracy. It has literally meant all things to all men.' Laski observes, 'Democracy has a context in every sphere of life; and in each of these spheres it raises it special problems which do not admit of satisfactory or universal generalization. Burns also remarks, 'Democracy may be found both in social and political organization; and indeed it is possible to speak

NOTES

of democracy in every form of social life, in religion, in industry as well as in politics.' Abraham Lincoln defines democracy as 'the government of the people, by the people and for the people.' Seeley says that 'democracy is a government in which everyone has a share.' Mac Iver defines democracy as 'not a way of governing whether by majority or otherwise, but primarily a way of determining who shall govern and broadly to what ends'.

According to Maxey, 'Democracy is a search for a way of life in which the voluntary free intelligence and activity of man can be harmonized and coordinated with the least possible coercion.' In the words of Sartori, 'Democracy denotes a political system characterized by the absence of personal power and more particularly, a system that hinges on the principle that no one can proclaim himself as a ruler, that no one can hold power irrevocably in his own name.' Ivor Brown is right when he says that 'the word has come to mean anything; or rather so much that it means nothing at all.' UNESCO questionnaire speaks of the vagueness of democracy. Robert Dahl says that a responsible democracy can exist only if the following institutional guarantees are present:

- Freedom to form and join associations
- Freedom of expression
- Right to vote
- Right to be elected and hold public offices
- Right of political leaders to compete for support and vote
- Alternative sources of information
- Free and fair election
- Institutions for making government policies depend on votes and other expression of preferences

Democratic Government, State and Society

Democracy is not merely a form of government. Some claim it to be a form of state and some regard it as a form of society. A democratic government is one which is based on the accountability of the people; a democratic state is one which is based on popular sovereignty. Democracy, in its wider meaning, is a form of society. A democratic government implies a democratic state, although a democratic state may not imply a democratic government. Example, the United States is a democratic state but does not have daily accountability to the Congress. For a democratic government, there must be a democratic state and democratic society.

Besides, democracy is an order of society and a way of life. It has political, social and economic implications. It has faith in the equality of all men and the recognition of individuality or human beings. A democratic way of life is characterized by tolerance, mutual respect and fraternity. It implies equitable distribution of wealth. If the majority government suppresses the minority opinion, it is contrary to the democratic ideal.

3.3.1 Direct Democracy

Democracy is of two types, viz., direct democracy and indirect democracy or representative democracy.

NOTES

Direct democracy

Direct democracy prevailed in the city states (polis) of ancient Greece. There, the people directly participated in the affairs of the government. All citizens would gather at a particular place and decide matters relating to legislation, taxation and policy making. It was possible because of the small size of the city states. Modern states are quite big in size and population. Hence, direct democracy as was prevalent in Greek city states is not possible in any modern state. But direct democracy can be found in Switzerland. There direct democracy operates through the instruments of referendum, initiative and recall.

Referendum: It means 'to refer to the people'. It means that no law passed by the legislature can be effective unless it is referred to the people in a referendum and receives their approval. Similarly, constitutional amendment can be valid when it is approved by a majority of people and the majority of the Cantons in a referendum. It is a remedy against legislative commission.

Initiative: It is a remedy against legislative omission. If the legislature does not pass an act, people can propose legislation through initiative. That law will come into force when approved by the people in a referendum. It may bring the legislators in touch with the people, but it gives the people a power, which they cannot properly utilize.

Landsgemeinde: In some Cantons of Switzerland, the institution of landsgemeinde or open assembly prevails. There, like the city state of Greece, people gathered at a particular place and decide their own affairs. In this sense, it is similar to direct democracy, which prevailed in the Greek city states.

Recall: It means withdrawing the representatives from the Assembly or legislature if they do not work for the betterment of the people. Recall is advocated in modern democracy to withdraw representatives who do not perform their duties properly.

These devices are weapons in the hands of the people to check legislators and to enable them to take part directly in the government.

Merits of direct democracy

The following are the merits of direct democracy:

- It enables the people to get experience of government and administration.
- It makes the government responsible.
- It creates a sense of responsibility and patriotism among people.
- It enhances political consciousness of people.
- It keeps voters in touch with the government.

Demerits of direct democracy

Direct democracy has the following demerits:

- It is not suitable for large states.
- It misleads the people because opportunists take advantage of it.
- All the people are not suitable to give their opinion under this system. They simply say 'yes' or 'no'.
- It cannot take secret decisions on war and emergencies.
- It requires a high sense of responsibility, which the people lack.

NOTES

3.3.2 Indirect Democracy

In almost all countries of the modern world, except Switzerland, indirect democracy prevails. Switzerland presents a blend of direct and indirect democracy. Due to the large size of the modern state, it is not possible for all people to gather at a particular place and take decisions. Hence, people elect their representatives who sit in the parliament and make laws. This is called indirect democracy.

Features of indirect democracy

Indirect democracy has the following features:

- It is a representative form of government in which people's representatives take decisions.
- Sovereignty is vested in the people.
- Government works on behalf of the people.
- People do not get a chance to participate in the affairs of the state.

Merits of indirect democracy

Indirect democracy has the following merits:

- It is suitable for big countries only.
- Here, political demagogues play an important role. They can mobilize the voters in their favour.
- The government runs on behalf of the people.
- Secrecy can be maintained where it is required.

Demerits of indirect democracy

- The voters are ignorant. Hence, it is not possible to vest power in their hands.
- Direct contact between the voters and representatives cannot be established under this system.
- After their election, the representatives seldom work for their constituencies.
- It gives rise to corruption. Political parties vitiate the atmosphere of the country.
- It is very expensive. For example, the holding of an election in a country of India's size entails heavy expenditure.

3.3.3 Characteristics of Democracy

Democracy has certain characteristics. R. M. MacIver says that democracy is not a way of governing, whether, by majority or otherwise, but primarily, a way of determining who shall govern and broadly to what ends. Democracy is not a one way traffic. It implies responsibilities both on the part of the ruler and ruled. It is based on the cooperation of both. The main characteristics of democracy are as follows:

1. **Popular sovereignty:** Democracy is based on the sovereignty of the people. That is to say people exercise supreme power in a democracy. They have the right to elect the government and the government remains responsible to them. If the government does not fulfill the wishes of the people, people have a right to overthrow it and institute a new government.

NOTES

2. **Political, social and economic equality:** In a democracy, there is political, social and economic equality. As far as political equality is concerned, all rich or poor, educated or uneducated, have one vote only. In the social sphere, there shall not be any discrimination against any one on grounds of religion, race, sex, caste or place of birth. In the economic sphere, there shall not be great gulf between the rich and the poor or haves and the have nots.
3. **Majority rule:** Democracy is rule of the majority. It is the majority that governs in a democracy. No party can govern unless it has acquired majority of seats in the legislature.
4. **Respect for the opinion of the minority:** In democracy no doubt, the majority rules, but it cannot ride rough shod over the minority. The opinion of the minority should be given due consideration.
5. **Rights:** Democracy provides various kinds of rights to individuals. Example: The right to freedom of speech and expression, right to form unions or associations, religious freedom, right to free movement and educational and cultural rights are some of the rights that the people enjoy in a democracy. It upholds individual dignity.
6. **Government by adjustment and compromise:** Democracy is a government by adjustment and compromise. Different opinions are likely to arise in a democracy within the ruling party itself. Therefore, it has to function with adjustment and compromise with a variety of opinions. Therefore, it allows plurality of ideas.
7. **Value system:** It is a form of government in which people can realize their best ideals and highest qualities. Therefore, it is a system of values. Three things are important in a democracy, efficiency, realization of best ideals and qualities and self–rule. If democracy lacks efficiency, it will be the worst form of government.
8. **Democracy is a welfare-oriented concept:** America, which is one of the best democracies used, realized during the great Depression and afterwards highlights that democracy should be used to promote the needs and welfare of the people. Most of the democratic countries today are welfare countries. They aim at promoting the welfare of the people without destroying individual freedom.
9. **Rule of law:** In democracy, there is rule of law. It means the supremacy of law as against that of man. It also stands for equality of law. A.V. Dicey is an exponent of the rule of law in Britain.
10. **Independence of judiciary:** Democracy is characterized by independent judiciary with the exception of England. The judiciary acts without fear or favour, affection or ill will. It can declare a law as ultravires, if it violates the constitution.
11. **It is opposed to coercive methods:** It is based on persuasion not coercion.
12. **Democracy is a theory of society as well as government:** A.D. Lindsay has explored this concept of democracy. The purpose of every democratic government is to serve the community. For this purpose, it has to remove disharmonies from the society and provide a congenital atmosphere for democratic values and principles to thrive.

NOTES

13. **Leadership:** Democracy provides scope for producing leaders starting from the village level to the national level. Those who have the qualities of leadership can get scope to prove their talents. For example, Jawaharlal Nehru was the chairman of the Allahabad Municipality however, he rose to the position of the prime minister. There are many such examples in which leaders have started their career from lower levels and proved to be efficient as national leaders.

Therefore, democracy is not only a form of government, but also a way of life.

3.3.4 Political, Social and Economic Democracy

Democracy has political, social and economic dimensions.

Political democracy: In the political sphere, it stands for liberty, freedom of speech and expression, majority rule and tolerance of the views of the minorities.

Social democracy: Operates in the social sphere; it means that there shall be equality and no discrimination against any one on grounds of religion, race, sex and place of birth.

Economic democracy: It means that in the economic sphere, there shall be equitable distribution of wealth. There shall not be a great gulf between the rich and poor.

Merits and demerits of democracy

Democracy has both merits and demerits. In a democracy, you agree upon certain common principles. You respect one another's point of view. Democracy provides the framework within which the moral life of the individual is possible. Thus, democracy is an ideal, a means and a way of life.

Merits of democracy

The merits of democracy are as follows:

1. **A rational form of government:** It is based upon the premise that no man is infallible. Every man is liable to commit mistakes. As no man is infallible, democracy adopts a process of discussion and criticism in which every man is allowed to take part. The continuous process of discussion and scrutiny acts as a necessary corrective of abuse of power.
2. **It provides rights to the individual:** Democracy provides political, social and economic rights to the individuals. The right to vote, the right to life, the right to religion, the right to education, the right of minorities, the right to work, the right to a reasonable way of life and the right to rest and leisure are some of the rights, which democracy provides. There have been some movements for rights, such as the American War of Independence (1776), the French Revolution (1789) and the Russian Revolution (1917). Without these rights, life will be meaningless.
3. **Equality:** Democracy not only provides rights but also provides equality. All are equal in the political, social and economic spheres. All enjoy equal rights. There is no discrimination on the grounds of religion, race, sex, caste and place of birth.
4. **Democracy is an efficient and responsible form of government:** The method of free election at certain intervals and the method of popular control at every stage of administration, either through criticism inside the legislature or outside through public opinion, make it extremely efficient and responsible.

NOTES

5. **Democracy promotes the welfare of the people:** It is clear from its definition that democracy is the government of the people. It also provides security to the individuals. Welfare is the yardstick of the security of the government.
6. **It is government by the majority:** In democracy, the majority rules. In other forms of government, it is one man or a few who form the government. Hence, in democracy, majority opinion counts.
7. **Tolerance:** Though the majority rules, the opinion of the minority is tolerated. There are different shades of opinion in the society. Every shade of opinion is given due consideration.
8. **Checks in democracy:** Maciver justifies democracy because it is less dependent on the psychology of power. There are many checks on democracy. Hence, it cannot create a consciousness of superiority in the governing class.
9. **Liberty:** Mills classic defence of democracy is based on the argument that the rights of the individual are secured in democracy because he is able to stand up for them. Democracy offers every individual the liberty to vindicate his privileges.
10. **Character-building:** Democracy has an ennobling influence on the character of the people. It is an active school for character building. Bryce says that manhood of the individual is dignified by his political enfranchisement and he is raised to a higher level by the sense of duty, which it shows upon him.

Demerits of democracy

Democracy has the following demerits or weaknesses:

1. **Since the time of Plato and Aristotle democracy has been criticized:** Plato criticized democracy because it put his master Socrates to death. Aristotle regarded it as a preventive form of government. It is the government of average men and women. The average men, in the words of Maxey, are sheep-minded, ape-minded and wolf-minded.
2. **It is said that democracy is based on numbers:** It counts the heads but not the contents in the heads. So, it is based on quantity instead of quality.
3. **Cult of incompetence:** The French writer Fagot describes democracy as the cult of incompetence. Bryce says that it is government by the incompetent. It is the ignorant and inefficient men who come to power. Such men are unintelligent, uninformed, prejudiced, emotional and resentful of the superiority of others. They are the most numerous in society.
4. **Tyranny of the majority:** The majority may impose their will on the minority. The minority view is either suppressed or ignored. The majority in the legislature walk like a colossus. Hence, it may ignore the view of the minority.
5. **Expensive:** Democracy is very expensive. There are frequent elections in democracy. Besides, much money is spent on propaganda and mobilizing public opinion. There is wastage not only of money, but also of time and opportunity. It is the most extravagant and indifferent system.
6. **Democracy is an unscientific dogma:** The psychological study of democracy is based on the study of mass psychology. As Graham Wallas says, 'Politics is only in a slight degree the product of unconscious reason.' In a democracy, where masses are supposed to take part in a government, the operation of crowd psychology and, hence, the play of the irrational are much in evidence.

NOTES

7. **It is characterized by indecision and instability:** In the words of Maxey, democratic government is 'prone to indecision, feebleness, instability.' Government changes so often that administrative stability is seldom possible. Discussion also results in delay.
8. **Corruption:** Corruption is another demerit of democracy. It is said that power corrupts and absolute power, corrupts absolutely. When power remains in the hands of the people, it leads to corruption. Votes are bought and sold.
9. **Unsuitable for emergency:** It cannot take quick action. Hence, it is unsuitable for emergencies like flood, famine, cyclone, war, etc.
10. The present system of democracy, based on geographical representation, is faulty. A representative cannot represent the varied interests of the individuals. So G. D. H. Cole advocates functional representation.
11. Lord Bryce sums up the weaknesses of democracy as follows:
    (i) The power of money to prevent administration and legislation.
    (ii) The tendency to make politics a gainful profession.
    (iii) Extravagance in administration.
    (iv) The abuse of the doctrine of equality and failure to appreciate the value of administrative skill.
    (v) The undue power of party organization.
    (vi) The tendency of legislators and political officials to play for votes in the passing of laws and in tolerating breaches of order.
12. Faguet attacks democracy and says that it is a biological misfit or a biological monstrosity. Democracy is not in line with the process of evolution. He argues that the higher we descend the scale of evolution, the greater is the tendency towards centralization.

3.3.5 Safeguards of Democracy

Certain conditions are necessary for democracy to be successful. Aristotle pointed out to the economic basis of politics. Politics cannot succeed unless people are economically sound and there is no great gulf between the rich and poor. Sometimes, it tends towards dictatorship. Hence, it is necessary to discuss at length the safeguards of democracy, which are as follows:

1. **Faith in democracy:** This is the most important condition for the success of democracy. People must have faith in democracy and should be read to be governed democratically. Then they can develop qualities like majority rule, tolerance, responsibility, independent voting power, etc.
2. **Universal education:** Universal education is another condition for the success of democracy. Without education, people cannot distinguish the right from wrong. Therefore, J.S. Mill said that 'Universal education should precede universal franchise.'
3. **Removal of poverty:** Removal of poverty is another safeguard of democracy. If half of the population remains below the poverty line, they cannot take any interest in the democratic process. Their time will be spent in earning two square meals a day. Instead of exercising their conscience, they will vote for money.

NOTES

4. **Spirit of law-abidingness:** In a democracy, people should develop a spirit of law abidingness. It enhances discipline and builds the national character. It established and maintained political morality. In its absence, there will be anarchy and corruption.
5. **Rule of law:** Rule of law is another safeguard of democracy. It means supremacy of law as opposed to supremacy of rulers. There should be equality before law and equal-protection of law. Then only democracy can be real.
6. **Bi-party system:** Bi-party system is the best safeguard of democracy. In England and America, democracy has been successful because of bi-party system. In a bi-party system, one or the other party must secure a majority. The party that does not secure a majority sits in the opposition. In Britain, the opposition is known as his majesty's opposition and the leader of the opposition is the shadow prime minister. There is also a shadow cabinet. It is the opposition corresponding to every minister in the government.
7. **Independent media:** The media, like the press, radio, T.V. etc., should be independent and impartial. They should report news and views independently. They should not indulge in yellow or sensational journalism. If the media is free and impartial the government will function with caution.
8. **Strong opposition:** The opposition should be strong. What is necessary in a parliamentary democracy is that the opposition should be equally strong. It should not oppose for the sake of opposition but offer constructive criticism.
9. **Patriotism:** People should have loyalty towards their nation. They should be willing to sacrifice themselves for their country.
10. **Agreement on fundamentals:** People should have faith in the basic and fundamental principles of democracy. They should have some common programmes for the development of the country. Whichever party comes to power it should strive to implement these principles. There should be change of government through constitutional means.
11. **Wise constitution:** The constitution should ensure social, economic and political justice to the people. It will build a strong foundation for democracy. If the aim of the constitution is to create merely a police state, democracy cannot survive for long. For example, Pakistan's constitution led to the overthrow of democracy because of weak constitution.
12. **Eternal vigilance:** It is said that eternal vigilance is the price of liberty. It can also be equally applied to democracy. There may be enemies from outside the state. People should be vigilant against them. There may be danger of antisocial elements from within the state. People should keep a watchful eye on them.
13. **Decentralization of power:** It is another safeguard of democracy. It gives power to the people at the grassroot level. If the above safeguards are observed, democracy can work successfully in a country.

3.3.6 Classical Theory of Democracy

Democracy is a very old form of government and so its theory dates back to the days of the Greeks who identified it with 'people's power' (Pericles), or a system in which 'rulers are accountable to the people for what they do therein' (Herodotus). Such a view saw its reaffirmation in modern times when Abraham Lincoln in his Gettysberg oration of 1863 called it 'a government of the people, by the people, and for the people.' Great

NOTES

liberals like John Locke and Edmund Burke developed the same theory of democracy in the direction of a 'limited government' bound by the laws of the land. Later on, the utilitarians like Bentham and John Stuart Mill justified the case of democratic government in the name of their formula of the 'greatest good of the greatest number' and Mill gives the same tone to the force of his moral or ethical argument. This trend continued in the present century and saw its powerful reiteration at the hands of Dicay, Bryce and Laski. Apart from this, the idealistic argument of democracy prevailed side by side that had its brilliant manifestation at the hands of Rollsseau, Green and Lindsay. All such affirmation constitutes, what is now called, the classical theory of democracy.

The classical theory of democracy as espoused by the liberals and the idealists of the modern age has the following salient features:

1. Power is vested in the people and its exercise is given to them or to their chosen representatives accountable to them for their acts of commission and omission. All decision must be based on the consent of the people, whether express or majority. Thus, it stands on the premise that 'people are always right' (in theory), or the decision of the majority is always correct' (in practice). We may take note of the fact that, though a great idealist, Rousseau also went to the extent of laying down that, for all practical purposes, the general will should be taken as the will of the majority. So James Bryce defined democracy as 'a government in which the will of the majority of qualified citizens rules, taking the qualified citizen to constitute the great bulk of the inhabitants, say, roughly, at least three-fourth so that the physical force of the citizens coincides (broadly speaking) with their voting power.'
2. The people have certain natural and inalienable rights, which the government cannot abrogate or diminish. The doctrine of 'natural rights', as it came to be known, emerged as the most powerful instrument at the hands of the democrats who struggled for the rights of the people against arbitrary power of the kings. Notably in England in the mid-17th century, the 'independents', the 'levellers' and other protagonists of the 'Commoner's set forth the ground of their resistance to the autocratic claims of the Crown, the established Church, and the entrenched hereditary nobility. During the days of the Puritan Revolution pamphlet issued by the Levellers, inter alia, said. 'We, the people, derive from Adam and right reason certain natural rights of liberty, property, freedom of conscience, and equality in political privileges.' Reacting against the arbitrary powers of thinking, John Milton asserted that 'all men are naturally born free' and from this principle he derived 'the liberty and right of freeborn men to be governed as seems them best.' Most powerful was the argument of John Locke coined to justify the Glorious revolution of 1688–89 that to understand political power right, we must begin with the recognition of natural and original freedom of all men to order their actions and dispose of their possessions as they think fit, within the bound of the laws of nature, without asking leave or depending upon the will of any other man.
3. The doctrine of 'natural rights' lost its significance with the growth of the idea of positive liberalism that sought to reinterpret the relationship between individual liberty and state activity. Thus, Bentham offered his principle of utility that sought to give a new interpretation to the justification of democracy. The doctrine of natural rights was rejected rather replaced by the doctrine of the happiness of man measured in terms of material pleasures. He gave the formula of 'one person, one vote.' It implied that although all persons are not naturally the same in intelligence, energy, thrift, inventiveness and preservance, yet all normal men—just as they have equal rights to life, freedom and access to the courts of law—have equal rights to a voice in government because they have equal stakes in the justice and efficiency of governmental action.' This argument implies that since political government has no other end that the well-being of the individual men and women that make up society and since each individual's well-being ought to count for as much as that of any other individual, a society is properly organized politically to the extent that its constitution and policy tend to promote the interests, conserve the rights and extend the capacities and opportunities for happiness of the greatest number of individuals in the community. Democratic government satisfies these requirements, since it is least likely to subordinate welfare of the majority of the community to that of any part. Democracy means government by those who have the greatest concern and the greatest awareness of the interest and rights of the people generally. The natural self-interest of human being is the best security against political action that is oppressive or tolerant of oppression.'
4. If Benthamite utilitarianism displaced the line of 'natural rights', a revisionist of the utilitarian creed like Mill replaced the materialistic content of Bentham by the force of his ethical argument in favour of democracy. The argument of Bentham was based on the self-interest of the individual that ought to be harmonized with the interest of the society in the framework of the greatest good of the greatest number.' The defenders of Bentham called it enlightenment of benevolent hedonism. But Mill defended the case of democracy as the best form of government on moral grounds. As he says:

   'The most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institution is how far they tend to foster in the members of the community the various qualities... moral, intellectual and active.

   Highlighting this point of difference between the views of Bentham and Mill, it is well commented; 'Bentham's principle of utility in a society of wolves would exact wolfishness; in a society of saints it would exalt saintliness. Mill was determined that saintliness should be the criterion of utility in any society whatsoever.'
5. The classical theory of democracy has a peculiar dimension when we examine the view of the idealists like Rousseau and Green. To Rousseau, democracy alone ensures prevalence of the 'general will.' In every community, there is a section of really selfless and enlightened people who think in terms of public interest and it is the inherent force of their selfless argument that ultimately prevails in any matter under discussion before a body of people. Through the process of cancellation good would set aside the bad; all contradictions would be resolved and in the end only 'dominant good' would emerge. This good, which would be what was left at the will would emerge. This good, which would be what was left at the will becomes integrated, would be in effect the same as the 'general will'. Influenced by the idealistic interpretations of Rousseau, Green says that 'will, not force, is the basis of the state'. As he observes;

NOTES

NOTES

'The sovereign should be regarded not as any abstraction as the wieldier of coercive force, but in connection with the complex of institutions of political society. If it is to command habitual obedience and obedience will scarcely be habitual unless it is loyal and forced.'

6. Most importantly, from a practical point of view, there are no substitutes in a democracy for excellence. While each kind of governmental system has its own merits and demerits, the merits of a democratic system far outweigh its demerits. It is thus substitute of less form of government. However, if one analyzes, the demerits of democracy appear few in number than other 'non-democratic' or anti-democratic systems. It is argued by the liberal democrats in present times that there is no form of governmental system that can revolutionize or perfect human nature because all such systems have some characteristic defects. However, even while forwarding these arguments, the liberals have adopted the view of democracy as propagated in the West. This is based on the principles of universal adult franchise, free and fair periodic polls, a multi-party system, independence of press and judiciary, basic rights to the people, freedom of dissent, tolerance of opposition. Bryce asks that if "democracy has not brought all the blessings that were expected, it has in some countries destroyed, in other materially diminished, many of the cruelties and terrors, injustices and oppressions of former times." Even though it has its critics and theorists offer grave indictments against the system, its supports have always reacted with the same counter-question, "what alternative do you have?"

It is from the certain ideas of rights of man that the classical or traditional doctrine of democracy emerges in part. This is a view that believes that a government is formed to keep the rights of the man and it must conform to them. It further believes that all men have the right to participate equally in political power because they have the right to be free from enslavement or to appeal equally to judicial tribunals for protection of their lives and property against assaults, trespass or encroachment of any kind. It is part of the democratic methods which refer to those institutional arrangements where political decision are arrived at through election of individuals who are expected to carry out common good. They are elected by the people and are their representatives. Common good is part of all political policies; such policies are formulated on the needs of the people, these are simple to define and can be seen by a layman through rational judgment. Therefore, in a democratic setup, it is believed that each citizen is conscious of the goal of common good, can discern what is good and what is bad and participates actively and responsibly in furthering this good and fighting the bad. People are therefore active players and thus control their public affairs.

The classical theory of democracy has been criticized on many counts. First, it is thoroughly normative. It is flooded with high ideals and bombastic propositions like 'general will', 'people's rule', 'people's power', 'common good', and the like that cannot be subjected to an empirical verification. All these terms are quite elusive. Second, it attaches no importance to the role of numerous interest groups and organization that play their part in the struggle for power, or which compete among themselves and that all constitute the stuff of a democratic-system in practice. The utilitarian talk about 'greatest happiness of the greatest number' without taking into consideration the powerful role of groups, functions and elites that ever strive to protect and promote their specific interests. Third, the socialists and the Marxists have their own version of democracy that stretches the system of political democracy to social and economic spheres. To the Marxists, it is all like a defence of the discredited bourgeois system.

NOTES

Yet the classical theory of democracy has its own salient merits, which are thus summed up by Schumpeter:

1. Though the classical doctrine of collective action may not be supported by the results of an empirical analysis, it is powerfully supported by its association with religious beliefs. The very meaning of a term like 'equality' may be in doubt, there is hardly any rational warrant for exalting it into a postulate, as long as we move in the sphere of empirical analysis. Christianity harbours a strong equalitarian element. Any celebrated word like 'equality' or 'freedom' may become a flag, a symbol of all a man holds dear, of everything that he loves about his nation whether rationally contingent to it or not.
2. There is no one version of democracy. Different nations identify with the forms and phrases of classical democracy with the episodes and developments that are significant part of their history. Their citizens identify with such events and approve of them; even the opposition to such a regime uses the same forms and phrases never mind what its social roots and meanings many be. Under difficult historical circumstances, the advent or adoption of democracy meant freedom and self-respect and the democratic creed meant a gospel of reason and betterment. However, even these advantages soon found themselves enmeshed between democratic principles and practice and the affair with it soon hit rough patches. Yet, its merits mean the affair continues.
3. One should remember that with a sufficient degree of approximation, there will emerge patterns wherein the classical doctrine will fit facts. This will provide an effective framework to make and implement decisions. It is true to small countries like Switzerland and also large and industrialized society of the United States. It has been held true in many small and primitive societies which actually served as examples for political scientists to develop the theory of classical liberalism. It can be the case with those societies also which are not primitive; however, they should have lesser degree of differentiation and should not harbor serious internal conflicts.
4. Of course, the politicians appreciate a phraseology that flatters the masses and offers an excellent opportunity not only for evading responsibility but also for crushing opponents in the name of the people.

The intrinsic merits of the democratic system cannot be defined. At the same time, some other points should be taken into account that have been stressed by the empirical theorists like role of numerous groups, factions, elites, leadership, etc., so as to present a theory of democracy approximating the world of reality. However, before passing over to the study of empirical theory of democracy, this point must be stressed with any amount of force that the new interpretation is a revision, not a rejection, of the classical theory of democracy. The spirit of liberalism informs both. As political scientist, C.B. Macpherson, the author of *The Life and Times of Liberal Democracy* says:

> What the addition of democracy to the liberals state did was simply to provide constitutional channels for popular pressure to which governments would have had to yield in about the same measures anyway, merely to maintain public order and avoid revolution. By admitting the mass of people into the competitive party system, the liberal state did not abandon its fundamental nature; it simply opened the competitive political system to all the individuals who had been created by the competitive market society. The liberal state fulfilled its own logic. In so doing, it neither destroyed nor weakened itself; it strengthened both itself and the market society. It liberalized democracy, while democratizing liberalism.

Check Your Progress

3. Fill in the blanks.
   (a) Authoritarianism is a principle of blind submission to _____, as opposed to individual freedom of thought and action.
   (b) Authoritarian systems do not allow _____ of speech, press and religion and they do not follow majority rule nor protect minority rights.
4. State whether True or False.
   (a) An authoritarian government has the authority to govern the people without their consent.
   (b) An authoritarian government does permit plurality of parties of state.

NOTES

3.4 TOTALITARIAN POLITICAL SYSTEM

It was after the First World War that the totalitarian form of government gained prominence. The Weimar republic in Germany is one form of democratic government that countries tried to set up after the war. A democratic government gave its citizens the right to participate in politics, to vote and even form political parties. However, this kind of freedom to the citizens attracted much negative reactions from different leaders and eventually led to the collapse of governments, even the Weimar Republic. This meant that the democratic governments were replaced by the totalitarian form of government.

Pros and Cons

A totalitarian political system compromises with the freedom of the people to quite an extent even though a single political party in this system can bring in stability in any turbulent country. Propaganda is also much prevalent under such systems as the communication and media industry in under the control of the government. Naturally, citizens under such a system are more patriotic compared to those in other countries since they only get to hear pro-government material. Since such a system is 'totalitarian', the government aspires to have 'total' control over the people. In contrast to people under democratic systems, those in totalitarian control have no right to speak against the government, form political parties, have any other say in governance or even the right to choose their religion. Thus, there is a complete control over people's minds as only one political party rules the country. In Germany, for instance, between 1933 and 1945, Nazis ruled the country completely and all other political parties were banned except the German Nationalist Party led by the Nazis. This meant that the party remained in power all those years and the citizens had no right to vote and were forced to follow the whims and fancies of the government. Few other examples of totalitarian political systems were Russia which was a communist state and Germany and Italy which were Fascist states.

Impact of totalitarianism on society

In totalitarian countries, scientists have no freedom to invent since technology and sciences are under the complete control of the government. For instance, Jewish inventions in Nazi-ruled Germany were restricted. Scientists had no freedom to carry out research of their own interest which they could in a democratic system. Significantly, the totalitarian state had the complete freedom to use the inventions of the scientists in any way they liked.

3.4.1 Features of a Totalitarian Government

The characteristics of totalitarian systems are said to be in contrast with the authoritarianism and dictatorship systems. Political scientists have defined many such differences. Firstly, it is contended that under such a system, only one political party is existent in a country and all others are either under the control of the state or are eliminated. All companies and organizations also belong to the state. Since communication and other such technologies are also under the state, the ideologies of the government get solidified. The government thus makes the people hear whatever it wants them to hear. Thirdly, such a government has complete control over the weapons of all kinds. This helps the government prevent any revolutions in the country. By keeping the weapons under control, the rulers make sure no revolt takes place. Fourthly, the state also has a total control over the economy. Since the state controls all companies, it has free access to any resources it needs for its own projects which are always not in the interest of the people. In turn, the citizens become even more dependent on the state for jobs and any complaints against the state only serves to leave them jobless. Another significant feature of such a state is that it uses terror to rule over the people.

For instance, the Nazi Germany had the Sturmabteilung (SA) and Schutzstaffer (SS) to inculcate fear in the minds of the people. All threats to their rule, in form of individual, groups or organizations, are effectively eliminated. Even members of the ruling party are at risk and any dissent is followed by police enquiry or even execution. One example is the ruthless 'Night of the Long Knives' as part of which even the members who were loyal to the Nazis were killed if they were perceived as threat or if the state believed they could go against it.

3.5 AUTHORITARIAN SYSTEM

The state takes control of many aspects of the citizens' lives under the authoritarian form of government which had led political scientists to define it as a system which erodes people's civil liberties and freedom. However, the degrees of authoritarianism vary and even democratic and liberal states can display some features of authoritarianism. One such area can be national security. Mostly, the authoritarian form of government is not democratic as it governs the people without their consent. Political scientists also establish a link between authoritarianism and collectivism as under both such systems, group goals and conformities dominate over the right of individuals. Another group of political scientists which supports collectivism also tends to criticize collectivization and term it the opposite of authoritarianism.

3.5.1 Forms of Authoritarian Government

There are various forms of authoritarian government and they can be broadly categorized as follows:

- Monarchies: Depending upon the monarch, a monarchy can be authoritarian.
- Communism: As per the theory propounded by Lenin: "Communist states must always be authoritarian when on the path to 'socialism', because of the special repressive force needed to attain their goals." A stateless society is the final aspiration of the communists and found supporters in theorists like Karl Marx. Government who rule as part of such systems never term it as a 'communist' but call themselves 'socialist'. All authoritarian governments which are ruled by self-proclaimed communists will mostly be described by Non-communists and anti-communists with the Communist label.
- Dictatorships are mostly authoritarian.
- Authoritarian characteristics can be found in democratic states too.
- Fascist states are always authoritarian.
- Despotism is another name of authoritarianism.
- Those countries which are under military autocracies are almost always authoritarian.

Check Your Progress

5. Fill in the blanks.
   (a) Democracy is based on the _____ of the people.
   (b) _____ democracy prevailed in the city states of ancient Greece.
6. State whether True or False.
   (a) Bi-party system is the best safeguard of democracy.
   (b) The psychological study of democracy is not based on the study of mass psychology.

NOTES

NOTES

- Theocracies are also authoritarian. In Consensus decision-making, an exception is found the Quaker Consensus: 'Decision-making arrived at by finding a 'spiritual consensus', rather than voting, was developed by the Religious Society of Friends (Quakers) early in the 17th century and is in use to the present day.'
- Authoritarian states hand over extensive control to law enforcement agencies. Where such a responsibility to law enforcement agencies is found in the extreme, it leads to what is called a police state. Rule of law may or may not exist in authoritarian governments.

Authoritarianism and the Economy

Before 1997, it was widely believed that authoritarian governments were likely to have stronger economies and out-perform democracies. The myth was shattered with the Asian financial crisis. This was the time when political theorists in the East and Southeast Asia strongly believed that authoritarian states were more likely to be economically successful than their democratic counterparts. The examples were given in the form of the states of South Korea, Singapore, Malaysia, and Taiwan. These states were strictly authoritarian and were witnessing bumper economic growth. However, despite the fall brought about by the Asian Financial Crisis, the idea that authoritarianism promotes economic development remains very popular, especially in developing countries. For instance, the Communist Party of China which rules over the world's fastest growing economy, uses this argument to continue its authoritarian rule in the country. At the same time, however, there are many examples of other nations where authoritarian rule failed to promote economic growth. One such good historical example is Spain in post-war Europe. Some of the recent examples of nations which have failed economically despite authoritarian regimes are Myanmar and Zimbabwe. It is difficult to establish a link between political authoritarianism and economic growth yet political thinkers in anarchist and anti-authoritarian traditions have used 'economy' as one of the characteristic features of analysis of authoritarianism. The common ground between business corporations and the state have often been cited as examples. This is because both the institutions are hierarchical and collective entities and have clear markings in terms of authority and command.

Criticism

Authoritarian systems have many critics and most of them are supporters of democracy:

- As compared to poor dictatorships, poor liberal democracies have better education, longer life expectancy, lower infant mortality, access to drinking water and offer better healthcare. This is because liberal democracies are in the knowledge of maximizing their usage of available resources and not because they have the higher levels of foreign assistance or that they spend a larger percentage of GDP on health and education.
- Democratic peace theory has found supporters in numerous studies which have used different kinds of data, definitions, and statistical analyses. As per the original finding, liberal democracies had never initiated war with one another. Recent research has even extended this theory and found that democracies have few Militarized Interstate Disputes. This means there were less than 1000 battle deaths with one another. Democracies have few civil wars and those MIDs that have occurred between democracies have caused fewer deaths.

NOTES

- Despite an initial decline, most democratic nations that were earlier Communist nations achieved greatest gains in life expectancy.
- Prominent economist Amartya Sen has argued that no functioning democracy has ever suffered a largescale famine. He even included democracies which were never prosperous historically, like India which suffered a great famine in 1943 and many more before this in the 19th century even when it was under the British Rule. Some critics ascribed the Bengal famine of 1943 to the effects of the World War II .
- Liberal democracies are associated with several strong and significant health indicators like life expectancy and infant and maternal mortality than they have with GDP, per capita income or income inequality or the size of the public sector.
- Research has shown that liberal democratic nations have less instances of democide or murder by government. They also have less genocide and politicide incidents.
- It is in non-democracies that mostly the refugee crises occurs. It was in autocracies that in the last twenty years, the first 87 cases of refugee crises and flows occurred.
- The highest average self-reported happiness in a nation has been reported from liberal democracies.
- The level of corruption in a state is strongly determined by the existence of political institutions in it. This argument is supported by the World Bank research. Where countries have democracy, parliamentary systems, political stability and freedom of the press, the instances of corruption are lesser. Accountability and transparency is ensured through the freedom of information laws. For instance, the Right to Information Act in India "has already engendered mass movements in the country that is bringing the lethargic, often corrupt bureaucracy to its knees and changing power equations completely".
- With the exception of East Asia, in the last 45 years even poor liberal democracies have had good economic growth, at an average of 50 per cent more speed than non-democracies. For instance, poor democracies such as the Baltic countries, Botswana, Costa Rica, Ghana, and Senegal have registered more swift economic growth than non-democracies such as Angola, Syria, Uzbekistan and Zimbabwe.
- Nations with intermediate political freedom have had more instances of terrorism, as found by research. Democratic nations have much less terrorism and are more equipped to deal with it. Only five of the 80 worst worst financial catastrophes occurred in democracies in the last four decades. It has also been found that poor democracies are half likely as compared to non-democracies to experience a 10 per cent decline in GDP per capita over the course of one year.

One finds that authoritarian powers are unlimited in their scope. It can be all embracing. As compared to authoritarian systems, power is distributed in plurality among different groups in a democracy. Moreover, democracies provide space for professional associations, trade unions, business organizations and religious institutions like churches, mosques and political parties to exist and function normally. Such institutions protect political freedom by keeping each others' working in check. In contrast, authoritarian states are a kind of fusion of the state and society; they form a social system wherein it is the politics that deeply influences the entire range of human associations and activities. Therefore, an authoritarian state can use any kind of power methods to keep its interests and meet its ends. It can put people in exile, in labour or prison camps or execute them altogether without any restraint.

NOTES

One finds no plurality in authoritarian systems. As mentioned above, only one political party exists in such systems and it plays a significant role in strengthening the powers of its top leaders. It is also the only party that provides a platform for training for future leaders and administrators. The state, on the other hand, uses its influence to create an army of volunteers who watch over the population and in turn report to the state any activities of dissent. Therefore, under such societies, power rests in the hands of the few, leading to centralization of power. The government also takes over communication and technological set ups in authoritarian states; means of communication like television, radio, cinema and publication of books and magazines are all under the watch of the state. Naturally, there are no protests when the media is stifled. The government strategically filters out every opposition that can create uncomfortable position for itself or challenge its power.

Authoritarian systems give no freedoms or rights to its people; the citizens thus have no freedom of speech, press, and religion. Even minority rights are not protected by the government, which is usually led by the majority community. The political leaders usually belong to one small group, like aristocratic families or are comprised of top military officials. Such regimes are said to be existent in countries like China, Myanmar, Cuba and Iran. Political power is vested in one ruler or a small group of leaders in an authoritarian political system. Such a government may hold elections and establish regular contact with their citizens but it is a watershed. In practice, citizens have no right to chose their leader or decide how they may be ruled. Free choice is not given to the subjects by their leaders. It is this group of leaders or a leader which decides what people can have or cannot have. Citizens, on the other hand, must obey their masters and not participate or not criticize political decisions. Rulers of authoritarian governments can be kings, military leaders, emperors, a small group of aristocrats, dictators, and even presidents or prime ministers. What type of government a system has is not indicated by the leader's title.

In conclusion, it can be said that the principle of authoritarianism is based on blind submission to authority as compared with the individual freedom of thought and action enshrined in democracies. As a system of governance, authoritarianism refers to such political system where power is concentrated in the hands of one leader or a small group of elites who have not been mandated by the constitution of the said state to rule over the people. Power is often exercised arbitrarily under authoritarianism and no regard is given to the established bodies of law. Such governments cannot be replaced by citizens through elections or free choice between various political parties because there are none. Under authoritarianism, there is hardly any freedom to create diverse political parties or provide alternative political groupings to people. There are many characteristics to authoritarian governments and no nation can fall entirely into either category. As political scientists, one should be careful to not categorize a nation in any category in the moment during which they are being examined. Each political system changes over time, whether democratic and authoritarian. This has made the global mosaic of political systems uncertain and complex.

Check Your Progress

7. Fill in the blanks.
   (a) Totalitarianism is a form of government which came into prominence after the _____.
   (b) _____ has a huge impact on technology and science.
8. State whether True or False.
   (a) The features of totalitarianism are found to be different from authoritarianism and dictatorship.
   (b) Totalitarianism does not restrict people from thinking.

ACTIVITY

Find out if there is any country which has a totalitarian political system. Write a short note on its current political situation.

NOTES

DID YOU KNOW

Hitler had four siblings who died in childhood.

3.6 SUMMARY

In this unit, you have learnt that:

- The term 'political system' consists of two words—political and system. The first word 'political' refers to subsistence and role of the state in empirical terms. The second word 'system' entails a set of parts in interdependence as well as in operation.
- There are various degrees of authoritarianism; even very democratic and liberal states will show authoritarianism to some extent, for example in areas of national security.
- There are many critics of authoritarianism, most of which at the same time support democracy.
- In government, authoritarianism denotes any political system that concentrates power in the hands of a leader or small elite that is not constitutionally responsible to the body of people.
- Democracy means the power or rule of the people.
- Democracy is of two types, viz., direct democracy and indirect democracy or representative democracy.
- Democracy has certain characteristics. R. M. MacIver says that democracy is not a way of governing, whether, by majority or otherwise, but primarily, a way of determining who shall govern and broadly to what ends.
- Democracy is a very old form of government and so its theory dates back to the days of the Greeks who identified it with 'people's power' (Pericles), or a system in which 'rulers are accountable to the people for what they do therein' (Herodotus).
- Certain conditions are necessary for democracy to be successful. Aristotle pointed out to the economic basis of politics. Politics cannot succeed unless people are economically sound and there is no great gulf between the rich and poor.
- Totalitarianism is a form of government which came into prominence after the First World War. After the war, countries tried to set up democratic governments such as the Weimar republic.
- Unlike democratic rule, under totalitarianism, people have no right to speak, to form political parties, or even choose their religion.
- Totalitarianism has a huge impact on technology and science. Scientists in a totalitarian country have restrictions as to what to invent.

3.7 KEY TERMS

- **Authoritarian:** In an authoritarian form of government, people are subject to state power in many facets of their lives.

NOTES

- **Direct democracy:** In direct democracy, people directly participated in the affairs of the government.
- **Rule of law:** It means the supremacy of law as against that of man. It also stands for equality of law.
- **Recall:** It means withdrawing the representatives from the Assembly or legislature if they do not work for the betterment of the people.
- **Political democracy:** In the political sphere, it stands for liberty, freedom of speech and expression, majority rule and tolerance of the views of the minorities.
- **Totalitarianism:** This form of political system wants to have 'total' control over their people. Totalitarianism restricts people from thinking.

3.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. (a) government (b) political and system
2. (a) True (b) True
3. (a) authority (b) freedom
4. (a) True (b) False
5. (a) sovereignty (b) Direct
6. (a) True (b) False
7. (a) First World War (b) Totalitarianism
8. (a) True (b) False

3.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define authoritarian form of government.
2. State one merit and one demerit of direct democracy.
3. State one merit and one demerit of indirect democracy.
4. Define the elitist view of democracy.
5. Briefly discuss the pluralist view of democracy.
6. What is the participatory theory of democracy?
7. What are the features of a totalitarian form of government?

Long-Answer Questions

1. Critically analyse the authoritarian form of government.
2. What are the features of democratic government, democratic state and democratic society?
3. Explain in detail the meaning of normative concepts.
4. What are the characteristics of liberal democracy?
5. Discuss the concepts of social, political and economic democracies.
6. Discuss the relevance of the classical theory of democracy in the present context.
7. Explain the theories of democracy—elitist, pluralist and participatory democracies.

NOTES

3.10 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

UNIT 4 GOVERNMENT AND POLITICAL STRUCTURES

Structure

4.0 Introduction
4.1 Unit Objectives
4.2 Parliamentary Government
4.3 Presidential Government
  4.3.1 Powers and Functions of the US President
  4.3.2 Comparison between the US President and the British King and Prime Minister
  4.3.3 Comparison of the Presidential Powers in America and Britain
  4.3.4 Election of the US Vice-President
  4.3.5 Cabinet in USA
  4.3.6 Composition and Powers of the American House of Representatives
  4.3.7 Powers and Functions of the US Senate
  4.3.8 Procedure in the American Congress
4.4 Unitary Form of Government
  4.4.1 Salient Features of Unitary Government
4.5 Federal Government
4.6 Summary
4.7 Key Terms
4.8 Answers to 'Check Your Progress'
4.9 Questions and Exercises
4.10 Further Reading

4.0 INTRODUCTION

In the previous unit, you studied about the major political systems namely, democratic, totalitarian and authoritarian systems.

The government and the political systems in the world basically takes either of the two forms parliamentary or presidential. Furthermore, the political structure could be unitary or federal. For instance, India has adopted the parliamentary system of government. The president in India is only a symbolic head as the president has no function to discharge authority.

On the other hand, the American president is the real head of the executive who is elected by the people for a fixed term. Parliamentary system in the UK is the oldest system of democratic government in modern times. Parliament in the UK is the most powerful political institution. The British Parliament consists of two Houses—the House of Lords (Upper House) and the House of Commons (Lower House); the former being essentially hereditary and the latter being the representative of the people.

The president of the United States of America is one of the greatest political offices of the world. The president is the chief executive head of the state as well as the head of the administration.

In this unit, you will study about the parliamentary and presidential, and the unitary and federal forms of government.

NOTES

4.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the parliamentary and presidential forms of government
- State the powers and functions of the US president
- Compare the power of the US president and the British prime minister
- Compare the functioning of the American cabinet and the British cabinet
- List the powers and functions of the US Senate
- Describe the unitary and federal forms of government

4.2 PARLIAMENTARY GOVERNMENT

In a parliamentary form of government, the tenure of office of the virtual executive is dependent on the will of the legislature; in a presidential form of government the tenure of office of the executive is independent of the will of the legislature (Leacock). Thus, in the presidential form, of which the model is the United States, the President is the real head of the executive who is elected by the people for a fixed term. The president is independent of the legislature as regards his tenure and is not responsible to the legislature for his/her acts. He, of course, acts with the advice of ministers, but they are appointed by him as his counsellors and are responsible to him and not to the legislature for his/her acts. Under the parliamentary system represented by England, on the other hand, the head of the executive (the crown) is a mere titular head, and the virtual executive power is wielded by the cabinet, a body formed of the members of the legislature, which is responsible to the Popular House of the Legislature for its office and actions.

Being a republic, India could not have a hereditary monarch. So, an elected president is at the head of the executive power in India. The tenure of his office is for a fixed term of years as of the American president. He also resembles the American president in as much as he is removable by the legislature under the special quasi-judicial procedure of impeachment.

But, on the other hand, he is more akin to the English king than the American president in so far as he has no 'functions' to discharge, on his own authority. All the powers and 'functions' [Article 74 (1)] that are vested by the constitution in the president are to be exercised on the advice of the ministers responsible to the legislature as in England. While the so-called cabinet of the American president is responsible to himself and not to the Congress, the council of ministers of the Indian president is responsible to the Parliament.

The reason why the framers of the constitution discarded the American model after providing for the election of the president of the republic by an electoral college formed of members of the legislatures, not only of the Union but also of the states, has thus been explained. In combining stability with responsibility, they gave more importance to the latter and preferred the system of 'daily assessment of responsibility' to the theory of 'periodic assessment' upon which the American system is founded. Under the American system, conflicts are bound to occur between the executive, the legislature and the judiciary. On the other hand, according to many modern American writers, the absence of coordination between the legislature and the executive is a source of weakness of the American political system.

What was wanted in India on her attaining freedom from one and a half century of bondage is a smooth form of government which would be conducive to the manifold development of the country without the least friction. To this end, the cabinet or parliamentary system of government was considered to be more suitable than the presidential.

A more debatable question that has been raised is whether the constitution obliges the president to act only on the advice of the council of ministers, on every matter. The controversy, on this question, was raised by a speech delivered by the President Dr. Rajendra Prasad at a ceremony of the Indian Law Institute (28 November 1960) where he urged for a study of the relationship between the president and the council of ministers. He observed that, 'there is no provision in the constitution which in so many words lay down that the president shall be bound to act in accordance with the advice of his council of ministers.'

The above observation came in contrast with the words of Dr Rajendra Prasad himself with which he, as the president of the Constituent Assembly, summed up the relevant provision of the Draft Constitution:

> 'Although there is no specific provision in the Constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England the King always acted on the advice of his ministers would be established in this country also and the president would become a constitutional president in all matters.'

Politicians and scholars, naturally, took sides on this issue, advancing different provisions of the constitution to demonstrate that the 'president under our constitution is not a figure-head' (Munshi) or that he was a mere constitutional head similar to the English Crown.

4.3 PRESIDENTIAL GOVERNMENT

The president of the United States of America is decidedly the most powerful elected executive in the world. The constitution had declared that, 'the executive power shall be vested in a president of the United States of America.' The framers of the constitution intended to make the president constitution ruler. But, in due course of time, the office has gathered around itself such a plentitude of powers that the American president has become 'the greatest ruler of the world'. He has vast powers. According to Munro, he exercises 'the largest amount of authority ever wielded by any man in a democracy.' It is difficult to believe that the modern presidency was deliberately created by the founding fathers in their form. They did not want to do anything that would directly or indirectly lead to concentration...rather than separation of powers. Their main decision was to have a single executive head.... a part of honour and leadership rather than that of 'commanding authority'. But the modern presidency is the product of practical political experience. Three powers of the president have been supplemented not only by amendments including twenty-second amendment, twenty-third amendment and twenty-fifth amendment; but also by customs, usages, judicial interpretations and enlargement of authority by various president's themselves.

Process of Elections

The presidency of the United States of America is one of the greatest political offices of the world. He is the chief executive head of the state as well as the head of the

NOTES

Check Your Progress

1. Fill in the blanks.
   (a) An _____ president is at the head of the executive power in India.
   (b) The framers of the _____ Constitution discarded the American model for they believed that in the American model conflicts are bound to appear in between the executive, legislature and judiciary.
2. State whether True or False.
   (a) In a parliamentary form of government, the tenure of office of the virtual executive is independent of the will of the legislature.
   (b) Being a Republic, India could not have a hereditary monarch.

NOTES

administration. The makers of the constitution were very much agitated over the nature of the executive. In their anxiety to establish a free, yet limited government they devised a system of government which came to be known as the presidential system; their original contribution to constitutional law. All executive authority is, therefore, vested in the president.

The constitution provides that a candidate for the office of the president must be:

(i) A natural born citizen of USA

(ii) Not less than thirty-five years in age

(iii) A resident of the United States for at least fourteen years

The president is elected for four years. Originally the constitution was silent about presidential re-election. US President George Washington, refused a third term on the ground that this would make the United States too much of a monarchial rule. So, a convention grew that a president should not seek election for the third time. The convention was followed till 1940, when Roosevelt offered himself for the third term election and he succeeded. He was elected even for the fourth time.

In 1951, the US constitution was amended. According to this amendment of the constitution, the tenure of the office of the president was fixed for two terms. Thus, Franklin D. Roosevelt continues to remain the only president to be elected for more than twice in American history.

Further the constitution provides that in case a vice-president assures the presidency consequent upon death, resignation, etc., of the president, he will be allowed to seek only one election provided that he has held the office for more than two years of a term to which some other person was elected. If someone has held office to which someone else had been elected, for less than two years, he can be elected for two full terms by his own right.

The constitution provides for removal of the president earlier than the completion of his term of four years. He may be removed by impeachment. He can be impeached for treason, bribery or other high crimes. The impeachment proceedings against a president may be initiated by the House of Representatives only. The changes are framed by representatives by a simple majority. The changes thus prepared are submitted to the senate, and a copy of the chargesheet is sent to the president. Now the senate sits as a court and the chief-justice of the Supreme Court presides over its sittings. The president may either appear personally or engage councils for his defence. After the arguments of both the sides are over, the senate may decide by two-third majority to impeach the president.

Election of the President

One of the most difficult problems faced by the framers at Philadelphia was that of choosing the president. Having decided that the head of the state must be elected, the problem before them was to decide how he would be elected. Ultimately, it was decided that the president would be indirectly elected by the people. But the growth of political parties and political practices has set up the method of presidential election. First we shall see the constitutional provisions and then examine how the election is actually held.

The plan of election as provided in the constitution is rather simple. The president is elected by an electoral college consisting of the representatives of the states. The people of each state elect presidential electors (members of electoral college) equal to

NOTES

the number of representative the state has in Congress. No member of the Congress is allowed to be a presidential elector. The presidential electors meet in each state on fixed dates and vote for the president. All the votes are sealed and sent to the capital of USA. The president of the senate counts the votes in the presence of members of both the Houses of Congress. The candidate who secures majority of the electoral votes cast for the president is declared elected. If no candidate receives a clear majority of the electoral for the president, the members of the House of Representatives choose a president from among the three candidates who have received the highest number of electoral votes and the new president assumes office on the 20 January.

Election in Practice

According to the constitution, the American president is elected indirectly; but in practice his election has become direct. Although the language of the constitution of presidential election remains unchanged, whether that be the party system or the means of communication and transportation, all make his election direct. The developments have reduced the importance of the electoral college. The following are various stages of his election.

(i) **National convention:** The first step in the election of the president is taken by the political parties who proceed to nominate their candidates early in the year in which the election is due to take place. Both the major political parties convene a 'national convention'. The convention may be held sometime in June or July. Delegates to the national convention are chosen according to certain rules framed by the parties. About a thousand delegates take part in the Convention, and all of them are leading and active party workers in their states. The convention selects the presidential nominee and issues a manifesto which in the US is known as the 'platform'.

(ii) **The campaign:** The campaign generally begins in the month of July and continues till the Election Day in November. The parties have their campaign managers and a very effective machinery to conduct the nationwide propaganda. The presidential candidate visits all the states and addresses as many meetings as he can, deliver a number of nationally televised speeches. His supporters use various media of mass contact.

(iii) **Election of the electoral college:** The election of the members of the Electoral College is held in November. Technically voters go to polls to elect members of the Electoral College; but as we have seen above, this in practice means direct vote for a particular candidate. Due to the rise of party system, the electors are to vote for their party nominee for the presidential office.

They do not have a free hand in the choice of the president. They are rubber stamps. As it is known before hand for which candidate each elector will vote, the result of the presidential election is known when the results of the election of the presidential electors are announced.

Thus, the election of the president has become direct. It is no longer indirect. The American voters personally participate in the election of the president. Now the president election in the month of December merely becomes a formality. Thus theoretically, the president is elected indirectly, but in practice he is elected directly.

NOTES

4.3.1 Powers and Functions of the US President

The US president is not only the head of the state but also the head of the administration. The constitution clearly lays down that all executive authority belongs to him. The constitution enumerates the powers of the president. In fact, they are much beyond those contained in the constitution. Many factors are responsible for the growth of the presidential powers and today many view the extent of these powers as a dangerous trend. In addition, lot of powers enumerated in the constitution, the president has acquired a list of authority by statues.

'Congress has lifted the president to a status again to that of constitutional dictator'. The decisions of the Supreme Court usages have also considerably strengthened the position of presidency. The powers of the president may be studied under the following heads:

1. Executive powers

The executive powers of the American president include the following:

(i) He is the chief executive and it is his duty to see that the laws and treaties are enforced throughout the country.

(ii) He has the power to make all important appointments but all such appointments are to be approved by the senate. As a matter of usage, the senate does not interfere in the appointments of the secretaries, ambassadors and other diplomats. Appointment of the judges of the Supreme Court is scrutinized thoroughly by the senate. In the appointment of federal officers in various state of USA, the convention 'senatorial courtesy' has come into existence. The constitution says that the federal are to be made by the president and approved by the senate. The president has the power to remove any person appointed by him. The senate has no share in the removal of officers appointed with its own consent. Thus, the president has almost unrestricted power for removing the federal officers.

(iii) The president has control of foreign relations which he conducts with the assistance of the secretary of state. He appoints all ambassadors, consultants and other diplomatic representatives in foreign countries, with the approval of the senate. Besides he may send 'special', 'secret' or 'personal' agents, without the senatorial approval, who take orders directly from him. The president receives all foreign ambassadors and other diplomatic agents accredited to the United States. He can if circumstances require, send them home and even break of relation with a certain country. He negotiates treaties with foreign powers. But such treaties must be rectified by a two-third majority of the senate. The senate can block a treaty that president has negotiated but it cannot make treaty or force the president to make one. Though his treaty making power is subject to rectification by the senate, he is free to enter into 'executive agreements' without the consent of the senate.

(iv) He has the sole power to recognize or refuse to recognize new states. In fact, he is the chief spokesman of the US in international affairs and is directly for the foreign policy of his country and its results.

(v) The president is the commander-in-chief of all the three forces. He is responsible for the defence of the country. He appoints officers of the army, navy and air force with the consent of the senate and anybody's approval, during a war. He cannot, however, declare war. This power has been entrusted to the Congress but as supreme commander of the defence war. He is regulator of foreign relations and can handle the situation in such a way as to make war; the president may also govern the conquered territory. He can appoint officers there, make laws and ordinances.

NOTES

2. Legislative powers

The US Constitution is based on the theory of separation of powers. The executive and legislative organs of the government are made independent of each other. So in strict language, Congress legislates and the president executives.

But, in practice president has become a very important legislator. His legislative powers are as follows:

(i) The president is required by the constitution to send messages to Congress giving it information regarding the state of the Union. It is a duty rather than the power of the president. The time, place and manner of sending the message to the Congress depend upon the discretion of the president. Formerly, the president used to deliver his messages permanently to the Congress, the Senate and the House of Representatives meeting in a joint session for the purpose. Later on, the practice was given up and messages were sent to be read to the Congress on his behalf. A custom has been developed which requires that the president must send a comprehensive message to the Congress at the beginning of every session. This is a regular feature. Besides these regular messages, the president may send many more special messages every year. Sometimes, these messages contain concrete proposals for legislation. Today, the 'message' is not merely an address to the Congress; it is used as an address to the people of the country and to the world at large. In recent years, the drafts prepared by the president are introduced by some members of the Congress belonging to the president's party, in their own name. The messages exercise very great influence on the legislation by the Congress, particularly when a majority of the legislature is composed of the party to which the president belongs.

(ii) In the USA, the president is not authorized to summon or progue the Congress or to dissolve the House of Representatives. However, the president can call special sessions of both Houses of the Congress, or any one of them, on extraordinary occasions. These extra sessions are convened, the agenda is also fixed by the president and the Congress does not transact any other business during that session only of the senate. Thus, very often the president is introduced by some members of the Congress belonging to the senate. This may be done to secure rectification of an urgent treaty.

Again the president may insist upon disposal of certain business before adjournment of a regular session of the Congress, by threatening to convene an extraordinary session soon after the regular session prorogues. Thus, normally the president has no power of convening the sessions of Congress, but to deal with extraordinary situation, he has got this power also.

(iii) The president can also issue certain executive orders having the force of law. This is known as the 'ordinance power' of the president. Some of the ordinances are issued in pursuance of authority conferred upon him by the Congress; others are issued to fill the details of laws passed by the Congress. The number of such executive orders is very large. As a result of this, the president has been able to increase his legislative influence tremendously.

(iv) In recent times, the presidents of America have used the device of taking the Congressional leaders into confidence by holding personal conferences with them. By this that president is able to secure their support for his legislative measures.

(v) If president's party is in majority in the Congress, then he does not face much difficulty in getting certain laws of his choice passed.

(vi) President can appeal to people at large. It means, the president can win public opinion for his policies and measures. He tries to win public opinion through speeches on the radio, television, weekly press conferences that in practice the election of President is direct; therefore, it is easier for the president to gather opinion on his side. When Congress knows that the public is with the president, it has to pass the laws wanted by him.

(vii) We have seen the president's position in law making which is equally important and his influence is exercised by him through his veto power. Veto power means the authority of the president to refuse his signature on a bill or resolution passed by the Congress. All bills passed by the Congress are presented to the president for his assent. The president may refuse to sign a bill and send it back to the House in which it originated within ten days of the receipt of the bill. While returning a bill, that the president has voted, he is required to assign reasons for his disapproval the Congress can override a veto by passing the bill again. The only condition is that the Bill must be passed by a two-third majority in each House of the Congress. So the Veto of the president is only a suspensive one. But sometimes, it becomes difficult to secure a two-third majority in each House. In that case, the suspensive veto becomes an absolute one.

If a bill is sent to the president and he neither signs the bill nor returns it back to the Congress, the bill becomes the law within 10 days even without his signature. The only condition is that Congress must be in session. If the Congress adjourns in the meantime, the bill is automatically killed. This is called 'Pocket Veto' of the president. This means that the president can simply ignore a bill (pocket a bill and forget about it), if it is passed by the Congress on a date less than 10 days before it adjourns. Many bills passed towards the close of the session of the Congress are killed in this way. The pocket veto is absolute and cannot be overridden by the Congress. Thus, the president can recommend persuading the Congress to pass legislation which he approves and can prevent too hasty or inadvisable legislation by using the weapon of veto. But it has been said 'he can persuade or guide, but rarely threaten'.

3. Financial powers

In theory, it, is the Congress which controls the public purse in practice, the budget is prepared under the guidance and supervision of the president. Of course, Congress is at liberty to change the budget proposals, but it seldom makes any changes.

4. Judicial powers

The president has the power to grant pardon and reprieve to all offenders against federal laws, except those who have impeached or those who have offended against the state. He also appoints (with the consent of the senate) judges of the Supreme Court which is the highest practical organ in the US.

Leader of the party

The makers of the US constitution had rejected the parliamentary system of government because it could not function without parties and political parties according to them were not the need of the time. It means they were against the political parties. However, today organized political parties, and the president is the leader of his party. The moment a party selects its presidential candidate, he becomes its national leader and if he succeeds in the election then he becomes the president, he also becomes the leader of his party for the next four years. He as leader of the party has a decisive voice in the selection of party candidates for numerous elective offices. He can exert great influence in decisions such as the distribution of party funds. As chief campaigner of his party, he may be more enthusiastic in support of some of the candidates, and less in case of others. It is all the important to note that the role of the president as party leader is entirely extra–constitutional.

Position

The powers of the presidency in practice have varied from time-to-time with the men occupying the office and the circumstances under which they came to occupy it. Whenever there has been an emergency or crisis or whenever, foreign affairs have overshadowed domestic affairs, one finds strong presidents coming to power and completely dominating the Congress which recedes and becomes a body for the purpose of voting supplies as and when demanded by the president, but in times of tranquility, when domestic affairs have been to the force, we find presidents of weaker timber in saddle, lacking personal force magnetism and initiative, the Congress which recedes and becomes powerful and exercises the chief choice of policy. At any given moment, therefore, the circumstances in existence and the personality of the president, each acting and reacting upon the other, have been responsible for establishing the powers of the presidency.

We can say that the president enjoys enormous powers. He combines in himself the office of the head of state and of the head of the government and this makes the office of the American president the most powerful political office in the world and his decision can sway the destinies of the world. In the range of his powers, in the immensity of his influence and in his special situation as at once the great head of a great state and his own prime minister, his position is unique. All this does not mean that he is a dictator. The American presidency is a constitutional office. Its powers are huge, but they have to be exercised within constitutional office. Its powers are huge, but they have to be exercised within constitutional limits.

4.3.2 Comparison between the US President and the British King and Prime Minister

The American presidency is considered the most powerful executive office in the world. E.S. Griffith has described it as the 'most dramatic of all the institution of the American Government.'

According to Munro, the American president exercises the largest amount of authority ever wielded by any man in a democracy!' Due to his increasing powers and importance he has become 'the focus of federal authority and the symbol of national unity.' Prof. Laski has very correctly said that the American president is both more or less than a King; he is also both more or less than a prime minister. In a sense, he is a king, who is his own prime minister.

NOTES

The US president is both head of the state and head of the government. Both the queen of Great Britain and the president of the US are heads of state and mighty figures in their respective countries. Both have supreme command of defence forces in their hands.

Being heads of the state, they receive foreign chief executives. They receive diplomats accredited to them and appoint foreign ambassadors for foreign countries. This similarity is superficial. The British king is the constitutional head of the state and as such he has practically no hand in the administration of the country. The British king reigns but does not govern, while the American president governs but does not reign. The British sovereign being nothing more than a constitutional or titular head of the state, and government, the ceremonial functions are merely the decorative penumbra of office and forms a very small part of this work.

American president is more than a British king

The US president has vast powers. Article II of the constitution reads, 'The executive power shall be vested in the president of the United States of America.' He is the head of the state and government and runs the whole administration but the British monarch is only the head of the state and not of the government. In all his official functions, he acts on the advice of his ministers. It means the king has to do what ministers tell him to do. He is held, no doubt, in great esteem and still exercises in Bagehot's wordings the right 'to be informed, to encourage and to warn the ministers.'

Position of the US president in relation to the cabinet

The position of the US president is superior to the British king in relation to his cabinet. In USA, there is a cabinet; but its members are not equal to the president, they are not his colleagues.

In fact, ministers are his subordinates. He is their boss. They are nominees of the president and they work during his pleasure. He is not bound to act according to their advice or even to consult them. On the other hand, the British king is bound to act according to the advice of his ministers, who form *de facto* executive. There was a time when ministers used to advice and king used to decide but now the case is just the reverse. He has no hand in the selection of his ministers. Nor can he dismiss them. He can advice them but cannot override the decisions of the cabinet. The king is outside the cabinet and cannot participate in its proceedings. It is the prime minister who leads the cabinet.

Executive powers

The US president exercises vast executive powers. He has the power of appointing a large number of officers with the consent of the senate but he enjoys absolute power in the removal of the officers. But the British king has to exercise all his executive powers with the advice and consent of his ministers.

Legislative powers

The US president has an important role to play in the field of legislation. He can send messages to either house or both, in extraordinary session. He has suspensory and pocket veto powers. On the other hand, the British king has no legislative powers. In reality, it is the cabinet which exercises his power to summon, prorogue and adjourn the legislature. His speech is prepared by the cabinet. As a convention, his absolute veto power has not been used since the time of Queen Anne.

NOTES

Judicial powers

The US president exercises judicial powers given to him by the constitution. He has an important role to play in the appointment of judges. While the British king exercises his judicial powers on the advice of his ministries.

Foreign affairs

The US president plays a leading role in the formation of his country's foreign policy by virtue of his being the commander-in-chief and the chief manager of his country' relation.

American president is also less than the British king

It is also true that the president is less than the king in certain respects.

1. Appointments

The American president is elected directly by the people. He is eligible for re-election for only one extra term. The British king, on the other hand, is a hereditary monarch born and brought up in the royal family.

2. Term of office

The American president is elected for a term of four years. He is eligible for re-election for only one extra term. As a president, he can remain in office for 10 years at the most. On the other hand, once the British king or queen becomes a monarch, he or she remains on the throne for the rest of his/her life.

3. Party relations

The British monarch has no party affiliation and renders significant impartial advice to his ministers. He can view problems from a national angle, much above the narrow partisan viewpoint. He gains experience, while acting as an umpire in the game of politics being played by leaders of the ruling party and the opposition party. As for the American president, he is elected on party lines. He does not reign, though he has been called 'the crowned king for four years.' He occupies the White House for a short duration and after his term of tenure, he becomes an ordinary citizen. The monarch is head of the church as he is regarded as the 'Defender of Faith' and commands respect of all the subjects, but it is not so in the case of the President.

4. Impeachment

Lastly, the president of America can be impeached by the Congress on the ground of 'Violation of the Constitution' and can be removed even before the expiry of his term. But the British monarch is immune from such sort of impeachment.

From the above points of comparison it can be concluded that there is truth in Laski's saying that 'the president of America is both more or less than the British king.' He rules but does not reign and the American president combines in his person the office of the king and prime minister. But on the whole, he enjoys vast and real powers than the British king.

NOTES

4.3.3 Comparison of Presidential Powers in America and Britain

It is worthwhile comparing the office of the president of USA with that of the prime minister of the UK. There are significant and marked differences between the two. Both the offices occupy top most position in the government structure of their respective countries, following large democracies. It is rather difficult to point out as to whose position is superior to the other one. Both are the choice of the people. They are the representatives of the people, and are popularly elected but in an indirect way. Both the offices wield enormous power in peace time as well as in time of war. The relative strength of the two most powerful executive officers in the world depends upon the form of government prevailing in their respective countries.

If the president of the United States is the 'uncrowned king', he is at the same time his own prime minister. He is the head of the state as well as of the government. Administration is carried out not only in his name, but by him, and under his direct supervision by his subordinate officers. But he is not a dictator as certain limitations are imposed upon him. He combines in him the offices of the head of the state as well as head of the government. On the other hand, the British prime minister is only head of the government. He is a *de facto* executive. It is he, who carries on the administration, in realty, but in the name of the president, who is a *de jure* executive. Dr. Jennings, while talking about the Atlantic Charter, once said, 'the president pledged the United States, while the war cabinet, not the prime minister, pledged the United Kingdom.'

Appointment

Strictly speaking, the American president is indirectly elected by an electoral college, but in reality, his election has almost become direct in actual practice due to strict party discipline. The British prime minister is appointed by the king. Normally, he has no choice as he 'has to call the leader of the majority party in the House of Commons'.

Term

In the parliamentary government of Great Britain, the prime minister and other ministers are collectively responsible to the House of Commons. They continue in office as long as they enjoy the confidence of the House. They have no fixed term of office. The House of Commons can dismiss them of any moment, if they lose confidence 'of the House, that is, if they lose their majority in it.' On the other hand, in the presidential form of government in the USA, the president enjoys a fixed tenure of four years. He stands outside the Congress. He is neither a member of either house of Congress nor is he responsible to it. Of course, he can be impeached by the Congress on ground of 'Violation of constitution', and can be thus removed. This has happened, so far, only once in the American history in the dismissal of President Johnson.

The president is then in a position to pursue his policies persistently and with firmness, while the prime minister has to submit the political pressures in the parliament. Therefore, administration in England lacks promptness and firmness.

Administrative Powers

Apparently, the American president is more powerful than the British prime minister. He is the *de jure* as well as *de facto* head of the executive. He is commander-in-chief of the armed forces. He conducts foreign relations on behalf of the country. He concludes treaties and makes high appointments though, of course, with the consent of the senate. He wields a vast patronage.

NOTES

The British prime minister and his cabinet colleagues work under constant responsibility to the parliament. They have to answer a volley of questions regarding their omission and commissions. But the British prime minister with a strong and reliable majority behind him in the House of Commons, can do almost everything that the American president can. He can conclude treaties and offer patronage without seeking the approval of the parliament.

Their relation to their respective cabinets

The relationship of the president of America with his cabinet is markedly different from that of the prime minister of England with his cabinet colleagues. The president is the master or boss of his cabinet and completely dominates its members. They are his subordinates or servants. They are his nominees and hold office during his pleasure. It is purely a body of advisors to the president known as his 'kitchen cabinet', 'family cabinet.' They have been rightly described by President Grant as 'Lieutenants to the President'.

In the words of Laski, 'It is not a council of colleagues with whom he has to work and upon whose approval he depends.' President Roosevelt turned to his personal friends more than to his cabinet for advice. On the other hand, the prime minister's relations with members of the cabinet are more or less like a chairman of the Board of Directors of a government enterprise. They are his trusted colleagues, not his subordinate. They are public men and have the support of the people. The British prime minister is the recognized leader of his cabinet, but he is neither its master nor a boss but only a captain of his team. The phrase, 'first among equals', does less than justice to his position of supremacy but it does indicate that he has to carry his colleagues with him; he cannot drive them out. He runs a great risk, if he provokes the antagonism of any of his eminent and powerful ministers.

In relation to Legislation

The American president is often spoken as the chief legislator, in the United States but, in fact, he has no direct legislative power. Thus, he cannot get legislation of his choice enacted by the legislature. Though, of course he can apply brake in the enactment of a law by exercising his veto power. But that is only his limited power. He can only request the Congress to make a law but cannot force or compel it. Prof. Laski has said, 'he can argue, bully, persuade, cajole, but he is always outside the Congress and subject to a will he cannot dominate.' He is neither a member of the Congress nor has any intimate relation with it.

Hence neither he nor his ministers can participate in the proceedings of the legislature. He can only pressurize the legislature through his power of sending messages and convening special sessions. He can issue ordinance and executive orders.

On the other hand, the prime minister is a member of the legislature along with his colleagues. They are rather important members of the parliament and participate actively in its proceedings, prime minister enjoys vast legislative powers. He prepares the ordinary bills and monthly bills with the help of his cabinet and being a leader of the majority in the house, can easily get those enacted. The king cannot exercise his veto power over such law as according to convention this power has become obsolete. Hence, no bill can become an Act without his consent. But the president can issue ordinance and executive orders; the prime ministers cannot do so.

The US president is the Supreme commander of the American armed forces and can order general mobilization. But this power is enjoyed by the king in England and not by the prime minister.

NOTES

The prime minister wields enormous powers which the American President does not. As far as the American president is concerned, he is a constitutional dictator during emergencies; obviously the powers of the president and the Prime Minister are greater and less than those of the other at different Points. Much depends on the personality of the occupant of the office.

From the above discussion it can be summed up that the American president is both more or less than a king; he is also more or less than a Prime Minister. Brogan has also rightly stated that the American president combines in his person the choice of the king and the prime minister.

4.3.4 Election of the US Vice-President

The framers of the constitution have provided for a vice-president of the limited states. Many of the delegates at the Philadelphia convention, which framed the American Constitution, expressed the view that the office was unnecessary. One of the delegates said that the vice-president might aptly be called 'His superfluous Highness'. Ultimately the office of the vice-president was created with qualifications similar to those laid down for President.

He must be a natural born citizen of America. He must have attained the age of 35 years and must have been a resident of the United States for at least 14 years. The original constitution did not provide for separate election to the office of vice-president. The presidential candidate obtaining the second highest vote electors were declared as elected vice-president. This arrangement was changed by the 12th Amendment to the Constitution, which provided form, separate nominations for the offices and separate ballot papers. The candidate for vice-presidency, who polls as absolute majority of the votes of 'Presidential electors', is elected vice-president. If no candidate receives an absolute majority, the senate makes the choice between the two obtaining the largest number of votes. The vice-president of the US receives a salary of 62,500 dollars per year.

The constitution assigns two functions to 'the vice-president, one potential and the other actual. Vice-president is the presiding officer of the senate. He is not a member of the Upper House, but presides over it. He has no vote except in case of a tie, when he can exercise a casting vote. As the presiding officer of the Senate, vice-president performs normal duties of a chairman. Roosevelt, when he presided over the Senate referred to it as 'an office unique in its functions of rather in its lack of functions.'

Succession to the Presidency

The potential function of the vice-president is to fill the office of the president 'in case of the removal of the president from office, or his death or inability to discharge the powers and duties of the said office'. Thus, the vice-president does not get or officiate as the president for a short period. But the moment the office of the president falls vacant, the duties of the chief executive shall devolve upon the vice-president'. He assumes the presidency and remains in office till the next election of the president. The Constitution has authorized the Congress to decide by law, who will succeed, in case of death, resignation, removal or disability both of the president and vice-president.

The office of the vice-president has developed along a line different from that expected from the constitutional makers of the US. According to Munro, the founding fathers intended the office to be 'a dignified one and a sort of preparatory school for the

NOTES

chief executive position'. Actually, the vice-president has been 'forgotten men in American history'.

The vice-president of the United States is generally regarded as an object of pity. In this connection Prof. Laski says, 'the vice-president has been little more than a faint wrath on the American Political horizon.' Much, however, depends upon the personal relationship between the President and his number two. Mr. Johnson was sent out by President Kennedy as his envoy to renew contacts with foreign governments. Nixon was also sent to various foreign countries as special envoy of the president to iron out differences with those governments or to improve relations with them. However, the fact remains that most presidents have not availed themselves of the limited assistance the vice-president may render.

4.3.5 Cabinet in USA

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

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

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

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

NOTES

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

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

The only vote that matters is that of the President. In fact when the President consults the cabinet, he does so more with a view to collecting the opinions of its members to clarify his own mind than to reaching a collective decision. In short, the members of his cabinet are his subordinates or mere advisors while the President is their boss. The Cabinet is what the president wants it to be. It is by no means unusual for a cabinet ministry to get his first information of an important policy decision, taken by the president through the newspapers.

Thus, the cabinet has no independent existence, power or prestige.

Comparison between the American and the British Cabinet

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

(i) **Difference regarding constitutional status:** The contrast is because of the different constitutional systems in which the two cabinets function. The British Parliamentary government is based on the close relationship between the executive and the legislative branches of government. So, all the members of the British Cabinet are members of the Parliament. They are prominent leaders of the party. They present legislative measures to the Parliament, participate in debates and are entitled to vote.

On the other hand, the American constitutional system is presidential, which is based upon the principle of separation of powers. So, the members of the cabinet cannot be the members of the Congress like the president himself. They may 'appear before Congressional committees, but they cannot move legislative measures or speak on the floor of either House of Congress.'

(ii) **Membership of legislature:** In the presidential system like USA, in case a member of either House of Congress joins the presidential cabinet, he must resign his seat in the House.

Whereas in Britain, if a member of the cabinet is chosen from outside the parliament, he must seek membership of the parliament within a period of six months; otherwise, it will not be possible for him to continue as minister.

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

NOTES

(iv) **Ministerial responsibility:** The British cabinet holds office so long as it enjoys the confidence of the House of Commons, which is the Lower House of the British Parliament.

But in USA, the ministers act according to the wishes of the president and they are responsible to him alone.

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

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

(vii) **Position of their heads:** Members of the American cabinet stand on a completely different footing in their relations with the president from that of the members of the British cabinet in their relations with the prime minister. The prime minister is the leader of his cabinet team. His position with his colleagues is that of a primus-inter-pares or first among equals. He is by no means their boss or master. He hazards his head when he dispenses with a powerful colleague. In other words, he cannot disregard a powerful colleague without endangering his own position.

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

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

The Congress

The legislative branch of the American federal government is known as the Congress. Congress consists of two Houses–the House of Representatives and the Senate. The organization of the Congress on the bicameral pattern was the result of a compromise between the claims of more populous states who wanted representation, in the new legislature, and the smaller states that were keen on equal representation to ensure equality of status in the new set-up. In accordance with the formula devised, aspirations

NOTES

of bigger and smallest states were fulfilled. Each state irrespective of its population, sends two members to the senate and representation of the States in the House is in proportion to their population.

Each state, however, has at least one member in the House of Representatives. The founding fathers had intended the Senate to act as an advisory council to the President, but their intention, however, did not materialize.

4.3.6 Composition and Powers of the American House of Representatives

The House of Representatives is the Lower House of the American Congress and represents the whole nation. The House was initially known as the popular branch of government, as this was the only branch of federal government which was directly elected by the people.

At present, the total strength of the House is 435. Every state is given representation in the House on the basis of population. According to a law of 1929, seats safe to be reapportioned among the states after each decennial census. Each state, irrespective of its population, is given at least one seat. Since the membership of the House is linked with the population of the states, the number of its members from each state is not fixed by the constitution. The number of representatives from different states is determine by the Congress. Generally one representative represents about 350,000 people.

The qualifications requisite for a person to be a representative are that, he shall be a citizen of the United States:

(i) He must be 25 years of age.

(ii) He should have lived in the United States, (as a citizen) for at least seven years;

(iii) He should be a citizen of the state from which he is seeking elections and;

(iv) He should not hold any office under the authority of the United States.

Although he is usually a resident of the district in the state which he represents, it is not mandatory under the law. Members of the House of Representatives are elected for two years. The House cannot be dissolved earlier than two years. Its tenure cannot be extended beyond two years period. The idea of two-year term is to keep the members closely in touch with the people. Members of the House of Representatives are elected by the single-member constituencies. The constituency is known as the electoral district. Each representative gets an annual salary of $3,000 besides many other allowances and facilities. It has been rightly said that the House of Representatives is the most expensive law-making institution of the world.

The House has full control over its method of procedure. It publishes a journal of its proceedings. It meets for every annual session on the first Monday in December and elects its own speaker and another officer. Speaker is a party man and while discharging his function as a Speaker, he favours members of his own party. The House is elected in November but the members occupy their seats on 3rd January following the actual date from which the life of every house is counted.

Powers and functions

The House of Representatives can be discussed under the following heads:

(i) Legislative powers: To legislate is the primary duty of the House of Representatives.

NOTES

The house has coordinate rights with the senate in ordinary legislation. Ordinary bills can originate in the House also. Differences between the two chambers over a bill are referred to a conference committee made up of selected members from the House and the Senate. If it fails to arrive at an agreement, the bill is killed.

(ii) Financial powers: The House of Representatives have the sole right to introduce money Bills. Money Bills cannot originate in the senate. But the senate has the authority to amend a money bill in any way it likes. Thus, in this field also both the chambers are equally powerful.

(iii) Executive powers: The American executive is of the presidential type. So the executive is not responsible to the House of Representatives. The House can, however, control indirectly the executive by its control over public money. Moreover, it shares with the Senate the power to declare war.

(iv) Judicial powers: The Congress has been given the important judicial power of impeachment. The president, vice-president, judges of the federal courts and other high public official cannot be removed except through impeachment. The House of Representatives has the exclusive right to initiate impeachment, proceedings by preparing charges against the official concerned.

(v) Miscellaneous powers

(a) The House of Representatives has the sole right to elect the President of USA from among first three candidates if none of them is able to secure an absolute majority of votes in the Presidential election.

(b) The House of Representatives shares with the Senate the power to propose amendments to the constitution.

(vi) Position: A student of comparative governments will feel a little bewildered when trying to understand the powers and practical working of the House of Representatives. In all, the democratic countries of the world, the lower chambers enjoy greater power than the upper ones. But in America, the House of Representatives is less influential and powerful than the Senate, though the intention of the, constitution makers was to make it more powerful than the upper chamber. The House of Representatives is much less respected and powerful than the House of Commons of England which controls the government itself. The reasons for its weakness can be summed up as:

(a) House of Representatives is elected for a period of two years. Therefore, the members of the House are always worried about their re-election. The result is that they cannot discharge their duties seriously.

(b) The constitution has confessed certain executive powers on the Senate and the House of Representatives have been deprived of those powers. So the men of ability and experience try to become members of the Senate.

(c) The small membership of the Senate makes its discussion more effectively and vigorous than those of the House of Representatives.

(d) House has placed restrictions on its discussions. The result is that the members do not have opportunity of taking part in detailed discussions and debates.

(e) The Senate is also a directly elected chamber. This fact has enhanced the importance of the Senate at the cost of the House of Representatives.

NOTES

Speaker

The speaker is the presiding officer of the House of Representatives. He is elected by the members from among themselves. He is elected on party basis and remains a party man throughout. His election is always contested. He is elected for the duration of the House of Representatives. When the next election for the House takes place he must seek election from his district. Even if he is re-elected to the House, his re-election as the speaker depends upon the party position. If his party is again in, he is sure to be elected as the speaker.

The framers of the US Constitution did not define his powers. They left it to develop its own traditions. The earlier speakers had little to do except keeping order and signing the bills passed by the House. He gradually assumed the importance and role entirely different from that of the British speaker. He acts as the party leader and uses the power of his office to promote the ends of his party. His position and powers were at one time next only to the president's and he called the dictator of the lower chamber. It was he who decided the composition of the various which really govern the House. He was himself, normally the chairman of the most important of those committees, namely, the Committee on Rules. Being essentially a party man he can neither be impartial not judicious and he has a right to vote and participate in discussion. Under the rules now the speaker is not allowed to Vote except in case of a tie or when the voting is by secret ballot. Today speaker's powers have been curtailed to a large extent.

He still decides all points of order which arise in the House but no longer wields the controlling power of appointing members to the House committees. Perhaps the most important power of the speaker today is to allow members to take the floor. When two or more members rise to speak he may see anyone of them and recognize him. He has to maintain proper decorum and order in the House. As has been said, 'He has to protect the House itself'. In the line of succession to the presidency, in case of death of the president in office, he comes next only after the vice-president.

The dignity and prestige of the chair in the US has depended on the incumbent himself and the circumstances in his party, in the Congress and in the country. Great speakers like Reed, Cannon and Longworth built up the authority and prestige of the House to an amazing degree, lesser occupants were content to play the humble role of a mere presiding officer. In the end we can say, the speaker is not a dictator now; but still is a partisan, powerful and influential presiding officer of the House of Representatives.

Comparison between the British Speaker and the American Speaker

The framers of the US Constitution adopted the designation of their presiding officer of the House of Representatives from Britain. In Britain, the presiding officer of the House of Commons is known as the 'Speaker'. Apart from the similarity in name, both the speakers are elected by the House from amongst its members. There is some similarity in the functions of both the speakers. Like his counterpart in England, the American speaker presides over the meetings of the House, maintains order, decides disputes, points and 'recognizes' members on the floor of the House when they stand to speak.

But the similarity between the two ends here. They play different roles. There is a marked difference between the two. In this connection, the following points may be noted:

(i) The American speaker is strictly a party man and he safe-guards the interest of his party jealously. He shows every favour to his party and supports party measures.

NOTES

He retains partisan character and acts as the leader of his party. On the other hand, the speaker of the British House of Commons resigns from his party immediately after his election as speaker and assumes non-partisan character. On his appointment as speaker, he has to lay aside his political affiliations and party connections. He must become a non-party man and in all his functions acts most impartially. The speaker of the British House of Commons must accept with his office a sentence of exile from politics.

(ii) As the American speaker continues to remain an active member of his party, this office is keenly contested in every new House of Representatives. He can be re-elected only when he is returned by his constituency and the same party is able to control the House. In this way his election is always contested, it is never unanimous. When the next election for the House takes place, he must seek election from his district. On the other hand, the British speaker, because of his neutrality in politics is always re-elected even if a different party comes into power. It is very common in the House of Commons to find a Conservative serving as speaker under a Labour government and vice versa. He is even returned unopposed by his constituency.

Thus, there is practice of once a speaker always a speaker. The American speaker is always a prominent member of his party and after his election becomes its leader. Although the speaker is formally elected by the House, in practice he is chosen by the census of the majority party. On the other hand the British speaker is a back-bencher. He is formally selected by the prime minister in consultation with the leaders of the opposition parties.

(iii) The American speaker exercises a right to vote in case of tie or when the vote is taken by ballot or when his vote is needed to make up the two-third majority. He must exercise this right in favour of his party.

On the other hand, the British Speaker votes only in case of a tie, and he gives his casting vote in accordance with well established tradition and not according to his own political convictions. He casts vote in such a way as to maintain the status quo.

(iv) The Speaker of the British House of Commons enjoys, under the Parliamentary Act of 1911, the power to decide whether a particular bill is a money bill or not. On the other hand, power is exercised by the American Speaker.

(v) The American speaker once appointed the House of Committees and nominated their chairman. The committees control the legislative business of the House. So the speaker was able to dominate legislation. In 1911, this power was taken away from him. But even now, he has a powerful position in the House of Representatives.

On the other hand, in England, the legislative leadership is in the hands of the cabinet. No bill can be passed without the support of the cabinet.

In the end we can say that the American speaker is a prominent party leader and tries to influence the course of legislative business.

Unlike his American counterpart, the British speaker is a non-party man. He refrains from any display of personal sympathies or partisan leanings. He never publicly discusses or voices an opinion on party issues. He is famous throughout the world for his political neutrality.

NOTES

4.3.7 Powers and Functions of the US Senate

The US Federal Legislature is, the Congress which is bicameral. Senate is its Upper or Second Chamber. It was created to protect the interests of small states and to check the radical tendency of the Lower House, the House of Representatives. Thus, the senate is indispensable and the most important branch of the American Government. 'The Senate was looked upon by the framers of the constitution as the backbone of the whole federal system'. They wanted to give the Senate a dominating share in the government of the United States. In this connection Munro says: 'It was by no mere slip of the pen that the article of the Constitution is establishing a Congress if the chambers, gives the Senate priority of mention. The men who framed this document–most of them-looked upon the Senate as the backbone of the whole federal system.' As Washington said: 'The Senate is the saucer in which the boiling tea of the House is cooled.' 'The Senate of the United States has long excited the admiration and the wonder of foreign observer', Brogan in 'American System,' and added, '...what conservates in other lands have deemed of is here achieved. Presidents come and go, every two years a House of Representatives vanishes into the dark backward of time but the Senate remains. It is the only branch of American government that never dies'.

The Senate has one hundred members, each state being represented by two members. Article V of the constitution safeguards this principle of equality between the federating units by providing that no state shall be deprived of its equal suffrage in the senate without its consent. It means irrespective of their population strength all the states are equally represented in the Senate.

The constitution had originally provided for indirect election of the Senate's. They were chosen by' the legislatures of the state concerned. This practice was followed up to 1913. This system now has been changed. The seventeenth amendment has provided for direct elections or the senators by the same voters who vote in the election of the House of Representatives. Thus now senate has become as much a popular chamber as the House of Representatives. The senate is a permanent body. It is never dissolved. The term or office of a senator is six years, one-third of the senators returning every two years. In case of a casual vacancy the governor of a state may appoint a senator till a regular member is duly elected. To be eligible to be a member of the senate:

(i) He must be a citizen of the United States;

(ii) He must have resided in the country for at least nine years;

(iii) He must not be less than thirty years of age; and

(iv) He must be an inhabitant of the State he wishes to represent.

Salary and allowances of the Senators, fixed by the Congress, are practically the same as far as the representatives. They are allowed the same privileges and immunities as the representatives do. Like the Lower House again the quorums of the Senate is the majority of the total membership. The Senate like the House of Representatives is the sole judge of the qualifications of its members.

The vice-president of the United States is the ex-office presiding officer of the senate. He is not a member of the senate and has no vote except in case of a tie. This casting vote has proved decisive on some occasions. In his absence the senate elects a President pro tempore and being a member of the senate he votes on all issues. Sessions of both the Houses of Congress commence simultaneously and are adjourned at the same time.

NOTES

Powers and Functions

The American Senate is now the most powerful second chamber in the world. In all other democratic states the powers of second chambers have waned. But the authority of the US Senate has waxed. In the words of Munro: 'The fathers of the constitution intended it to be a body which would give the states as states, a dominating share in the government of the nation. They had on mind something that would be more than a second chamber or a co-equal branch of the Congress. To that end they gave the Senate some very important special powers such as the approval of treaties, the confirmation of Presidential appointments and the trying of impeachments-powers in which the House of Representatives was given no share'. Its powers and functions can be discussed under the following heads:

Legislative Powers

In the legislative field, it is a co-ordinate chamber of the Congress and shares the function of law making with the House of Representatives. There is one exception to this equality. 'All measures for the raising of revenue must originate in the House of Representatives'. Similarly, usage requires that all appropriation bill, must originate in the House of Representatives. This limitation has proved to be of little importance. The Senate can virtually initiate new financial proposals under the guise of amendments. The Senate can therefore, originate financial legislation in fact if not in form. If the two chambers do not agree on a Bill the disputed points are placed before the conference committee made up of selected members from both chambers of the senate and the House of Representatives. The conference committee tries to arrive at a compromise. If it fails to do so the bill is regarded as rejected. Thus, no bill can become law without the concurrent of the Senate.

The position of the senate in the legislative sphere is much better than that of any other second chamber in democratic countries. The House of Lords is now a shadow of its former self. It is now only a delaying chamber. The Indian Rajya Sabha has very little control over financial matters. It is now only the American senate which stands on a level with the House of Representatives in legislation and finance.

Executive Powers

The US constitution allows the senate to perform the following executive functions:

(i) The investigating powers of the senate deserve not merely mention but attention. The senate has a right to demand information about any administrative matter. It establishes administrative committee for this purpose. The senate committee may sit at Washington or it may go about the country hearing testimony. These committees have the power to summon witness, compel the production of papers, and take evidence on oath, and in general exercise the authority of a court. They do their job very thoroughly and expose the weakness of the administration. Recent investigations have covered crimes, un-American activities and juvenile delinquency.

(ii) As the US constitution embodies the theory of checks and balances, and as the President has been given powers in respect of the appointment of federal officers, it was felt desirable that the legislature should exercise some control over the executive department in this matter. Also it was felt that the States ought to have some control over federal appointments. Thus, it was provided that the

NOTES

president's power regarding federal appointments should be shared by the senate as representing both the legislature and the states.

The power of ratifying the president's nominees for federal posts is conferred by the constitution on the Senate. In this sphere one convention—Senatorial Courtesy—plays a very important role. It means that if the President nominates a local officer with the approval of the senators from the state concerned then the senate will by convention approve the nomination. These senators must, of course belong to the same political party as the President otherwise the rule does not apply. The approval of the senate is however not necessary when the President removes some officers.

(iii) Likewise the constitution makers deemed it imprudent that the President should have absolute control over foreign affairs. The President was therefore given the power 'with the advice of the senate to make treaties, provided two-thirds of the senators present concur.' Thus the treaties concluded by the President do not become effective without the approval of the Senate.' There is a long record of treaties killed by the Senate. A wise President always keeps himself in touch with the leaders of the Senate, especially with the Committee on Foreign Relations.

(iv) Moreover, the Senate shares with the House of Representatives the power to declare war.

Judicial Powers

In case of impeachment the Senate sits as the chief court of justice. Impeachments are preferred by the House of representatives and the trial take place in the Senate. The President, the vice-president and all civil officers can be impeached before the Senate. A two third majority of the Senate is required for conviction.

Miscellaneous Functions

(i) If in the election of the vice-president of the USA, no candidate secures a clear majority of electoral votes, the Senators voting as individuals elect one from the first two candidates.

(ii) As far as amendments to the constitution are concerned, Senate has coordinate powers with the House of Representatives in the matter of proposing amendments.

(iii) The Senate has coordinate power with the House of Representatives in the matter of admitting new States to the Union.

The Position and Prestige of the Senate

It is difficult to form a just estimate of the Senate. Both lavish praise and censure have been heaped upon it due to over emphasis on one aspect or the other. It is a complex, many-sided body not capable of being described by facile generalization, yet hardly one can deny that the Senate is probably the most powerful second chamber in the world and is certainly the dominating partner in the US Congress.

It is a well-known fact that most leading figures in public life in USA are to be found in the Senate and not in the House of representatives. He comes into business with a greater variety of public business. He has confidential relations with the President and greater contact with federal outlets as all federal appoints are subject to his approval. He is normally in close touch with foreign affairs as a wise President takes the 'Senate

NOTES

in his confidence on this matters. The senate is also regarded as the guardian of State rights and every Senator is a champion of his State.

Senate in the most powerful Second Chamber in the World

The Senate is decidedly an indispensable institution in the political system of the United States. A comparative Study of the Senate and the Upper House in other parliaments of the world, show that Senate is the most powerful second chamber in the world.

The British House of Lord was once a very powerful chamber, but today it is the shadow of its former self. Now it is only a second but a secondary chamber. Probably it is the weakest chamber in the world. In Russia, the two Houses of Supreme Soviet are equally powerful. The Upper House, the Soviet of Nationalities is in no respect superior or more powerful than the Lower House—the Soviet of the Union. Likewise in India, Rajya Sabha is weaker than the Lok Sabha.

This comparative study shows that in some countries the two Houses are equally powerful and in some other countries the Upper House is weaker than the Lower House. But Senate is the only upper chamber in the world which, in comparison to its lower chamber is more powerful. It is due mainly to the following factors:

(i) Senate is a very small body. Its total strength is only 100, whereas the strength of the House of Representatives is 435. The small size of the Senate makes possible effective discussions. To quote Prof Laski: 'Discussion in the House of Representatives is formal and static; discussion in the Senate are living and dynamic.'

(ii) The constitution itself has given vast powers to the Senate. The Senate not only enjoys co-equal power with the House of Representatives, it also enjoys important executive and judicial powers which the House does not enjoy. Treaties and all important appointments made by the President must be submitted to the Senate for its approval. The Senate has also the power of trying impeachments. Such powers are, normally, not enjoyed by the Second Chamber of any democratic country of the world.

(iii) Senate is a permanent chamber. After every two years one-third of its members retire and are re-elected. In this way, the life of one Senator is six years. The House of Representatives is elected only for two years. Therefore, the members of the House are always worried about their re-election. They cannot, therefore take much interest in their work. On the other hand, the long term of the Senators enables them to learn thoroughly their legislative work.

(iv) We know that the Senate is directly elected. This direct election has added greatly to their power and prestige. The Senate can speak for the nation with the same authority as the House of Representatives.

(v) There is almost a complete absence of restrictions on the debates of the Senate. So senators get ample time to express their views.

(vi) Seasoned politicians and legislators try to secure seats in the Senate because its membership is associated with vast powers. Most members, of the House of Representatives like to become Senators. When they manage to enter the senate, their places in the House are filled by comparatively junior politicians. As a result of this, the Senate contains a large number of experienced politicians well versed in the art of law-making.

The fathers of the US Constitution thought that the House of Representatives would be more powerful and influential than the Senate. They created the Senate to act only as a check upon the radical tendencies of the popular chamber. 'In its origin, it was a product of distrust of democracy. But now it can certainly be a brake on democracy'.

4.3.8 Procedure in the American Congress

The principal function of the Congress is to make laws. We know that the American Constitution is based on the principle of separation of powers. It means the government does not take part in the legislative process. The government can introduce the bills in the Congress. So that in America, there is no difference between the government's bills and the private member's bills. All bills are private member's bills. However, there is a difference' between public bills and private bills. Public bills are those bills which concern the entire country or an unascertained people and the private bills are of special character and they apply only to particular persons, places or corporations. Further a distinction can be made between money bills and non-money bills. Money bills for raising revenue, are required to be introduced only in the House of Representatives.

Both the Houses of American Congress are equally powerful in the field of legislation. The ordinary or non-money bill can be introduced in either House of the Congress. Once a 'bill is introduced in the Congress it remains alive throughout the duration of the existing Congress, unless it is disposed of earlier. All the bills depending, in either House, at the time of dissolution of the House lapse, and the succeeding Congress can consider them only if they are introduced afresh.

Bills are introduced by the members of the Congress, but they are not always the authors of these bills. Many bills originate in the office of the president, executive departments and administrative agencies. These bills are introduced in the Congress by the Congressmen belonging to the president's party. We have also seen somewhere else that the president may initiate bill through one of his messages to the Congress.

The legislative procedure in the American Congress is in some respect the same as that followed in Britain. Every bill is introduced and is given the usual three readings. Here let us assume that an ordinary bill is introduced first in the House of Representative.

Introduction of a bill is a simple affair. A member of House of Representatives may write his name on the bill and drop it in the box known as the 'hopper' lying on the clerk's table. Thus, the bill has been introduced without any permission sought to introduce it and without any speech having been made. This completes the first reading of the bill.

Then the title of the bill is printed in the *Journal of the House*, and simultaneously it is sent to one of the standing committees which studies it clause by clause. In most of the cases there is no difficulty in deciding the committee to which a bill is to be sent. The US committees have clear cut jurisdiction and the title of the bill itself may indicate which committee will receive it. Very often many bills may be introduced by different members on the same matter. The committee may decide to consider only one of them and reject the rest. Thus a very large number of bills are killed every year by the committees because there are many bills on the same matter.

If the committee likes, it can ask executive official and other interested persons to appear before it to express their views. The committee hears all those who wish to be heard for or against the measure. Paid lawyers may appear before the committees to argue for or against a proposal. Pressure groups exert influence through their agents. The committee may (a) report the bill in its original form; or (b) it may suggest amendments

;or (c) it may be re-draft the bill; or (d) it may not report at all and thus 'Pigeonhole' and kill it.

Many bills are killed in this way. It may be mentioned here that the House has the power to compel the committee to give its report on Bill. But this power is rarely exercised. It is, therefore, true that the committees have virtual power of life or death over every bill. A bill, which is favourably reported by one of the standing committees of the House of Representatives, is sent to the clerk of the House. The clerk places the bill depending on its nature upon one of the three lists, known as the 'Calendars'.

The stage when a bill is called up from the calendar and taken up for consideration by the House is called second reading. At this stage; it is discussed in detail by the whole House.

The bill is read line by line, amendments are moved, discussed and disposed of and members get an opportunity to express their views on the bills as a whole or a part thereof. After the debate and adoption of amendments, if any, moved by the members the House is called upon to vote the measure. If majority of the members vote in favour of the bill, it is then ready for the third reading.

The third reading is formal like the first reading. It merely means reading the title of the bill, and ordinarily no debate takes place. But sometimes in case of a controversial bill a few members may demand that it may be read in full. In that case the bill may be discussed, again new amendments may be proposed. After the discussion a vote is taken on the bill. If the vote is favourable after the third reading, the bill is signed by the speaker and sent to the Senate for its consideration.

In the Senate, the bill meets almost the same treatment. If the senate passes the bill without any change, then it is sent to the president for his assent. In case the Senate has made some changes, the measure is sent back to the House of Representatives for reconsideration.

The House may accept the changes suggested by the Senate, and transmit the bill to the President. In case the Senate does not agree with the changes suggested by the Senate, the bill is referred to the conference committee. If the conference committee fails to resolve the differences, the bill is killed.

When a bill is passed by both chambers it is sent to the President who may either give his assent to it or veto it by returning the same within a period of ten days. If each House passes the bill again by a two/third majority it becomes law even without the approval of the President. If the Congress remains in session and the President takes no action for 10 days, it becomes law. He may however 'Pocket Veto' a bill if the Congress is adjourned within 10 days.

Difference of Procedure in England and USA

(i) In England, there is a difference between public bills and private member bills. There is little difference in the process of becoming law. But in the US there is no difference between these two types of bills. There all the bills are private member bills.

(ii) In England, most of the bills are introduced, defended and guided by ministers. The bill can reach at the final stage without the support of the minister. In America, there is separation of powers and bills are introduced by private members and the 'legislative leadership is in the hands of the chairman of appropriate committees. Bills are even named after the chairman of the committees.

NOTES

(iii) In England, the committee stage follows the second reading i.e., a bill is referred to a committee when the general principles underlying the bill have been discussed and approved by the House. In this way, the House decides beforehand whether it wants a law on a particular subject or not. In the USA committee stage precedes the second reading, i.e., before the House has approved the principle, of the bill and has decided whether or not it wants a law on a particular topic. The result of this is that sometimes the House rejects a bill on the ground which are not acceptable. In this way the whole work of a committee is undone.

(iv) The American second chamber i.e. the Senate possesses greater powers than the House of Lords to amend reject bills. The British House of Lords cannot touch a money bill sent up by the House of Commons. It can delay an ordinary bill at the most for one year under the provisions of the parliamentary Act of 1949. But in America, no bill or either money bill or ordinary bill can become law without the consent of the Senate.

(v) In England, the committees are not much powerful. Neither they can reject a bill nor can they bring such amendments in the bill which amount to amend the principles of the bill. On the other hand, in America the committees are very much powerful. Committees decide the fate of the bill, they can even reject a bill altogether.

(vi) In Britain, the king does not send a bill back if once it is passed by Parliament. In United States the President can veto a bill, but Presidential veto can be overridden if Congress passes the bill again by a two-third majority of each House. The suspense veto of the President can sometimes become an absolute veto.

Check Your Progress

3. Fill in the blanks.
   (a) The American Senate is now the most powerful _____ chamber in the world.
   (b) The position of the US President is _____ to the British King in relation to his Cabinet.
4. State whether True or False.
   (a) The US President is not only the Head of the State but also the head of the administration.
   (b) The US constitution provides for removal of the president earlier than the completion of his term of four years.

4.4 UNITARY FORM OF GOVERNMENT

As the name suggests, a unitary form of government is a single unit state where the central government is supreme. All the power rests with the central government and any divisions in governance, for instance, in the form of administrative or sub-national units, have only those powers that the central government gives them. While democratic systems have become popular over the world, a number of states still have a unitary system of government among several other archetypes that are found in different countries. Some of the examples of a unitary form of government are dictatorships, monarchies and parliamentary governments. Some countries that follow the unitary system of government are France, Italy, Japan and the United Kingdom.

Since the power is vested in the Centre, a unitary system of government is based on the principles of centralization of power. Within such a system, a fair amount of hegemony is found between different regions in a same country. Thus, local governments follow instructions of the Centre and have only those powers which are delegated by the central government.

Yet, there are no fixed rules to this system and not all countries use the same principles of centralization and decentralization of powers. One of the major advantages of such a system is the fact that the government at the centre can make quick decision since it has all the powers of rule-making. A significant disadvantage is that there are no ways to keep a check on the activities of the central government. Moreover, most unitary governments have large bureaucracies where the members are not appointed on the basis of popular voting.

NOTES

The opposite of unitary government will be a federal government where governance powers are not centralized or where central government is a weak one. Political powers are actively decentralized and individual states have more sovereignty compared to those in a unitary state. Principally, a federal government holds some middle ground between the unitary and the federal system because powers are distributed between the central and local governments. The political system of the United States of America is an example of a federal system. One needs to also explore the nature of the state when the analysis of the form of government is being made. For instance, not every state will encourage social and political integration and some will monopolize force in their hands, thus encouraging one form of governance compared to the other.

Nonetheless, monopolization of power is also a central idea to a unitary government. Popularly in such a system, local governments will exist but they will not be independent of the central government. They are subordinate to the central government in all respects and often act as mere agents of such a government. Thus, the whole state is governed with full might of the central government. Such a system is useful in those states which do not have strong nationalities, are at risk of outside forces or are very small states.

4.4.1 Salient Features of Unitary Government

As stated above, a unitary system of government widely differs from one that is federal in its organization. Federal governments, by their very nature, constitutionally divide powers between the centre and the state. No such power division occurs in a unitary system even though the central government, by its own accord, delegate some superficial powers to various states. Moreover, in a federal system, the constitution is supreme and determines the powers between the centre and the states. Both exist as equal before a federal constitution. In contrast, centre is supreme authority in a unitary government. States function independent of the centre in a federal system whereas in the unitary system, states are subordinate to the centre. In short, Unitarianism can be referred to as: "The concentration of the strength of the state in the hands of one visible sovereign power, be that power parliament are czar." Federalism, on the other hand, is distribution of force. As has been cited: "The sovereign in a federal state is not like the English parliament an ever wakeful legislator, but like a monarch who slumbers and sleeps. And a monarch who slumbers for years is like a monarch who does not exist."

A unitary government can have an unwritten yet flexible constitution but federal government cannot go about its daily chores unless it has in its possession a written constitution. Judiciary also plays a very important role in a federal government and also decides on disputes that may crop up among the central and state governments or between other units. These are some of the key differences between federal and state governments. This brings us to the characteristics and features of unitary form of government:

- **Centralization of power:** The centre is the reservoir of all powers in unitary system. There exist no province or provincial governments in such a system and the central government has the constitutional powers to legislate, execute and adjudicate with full might. There is no other institution with this kind of state to share the powers of the central government. Thus, it rules with no external pressure and runs the state and administration free of any checks and balances. Their power is absolute. What powers are to be centralized and decentralized are also decided by the central government. Local governments exist but it is the centre which decides what powers will be given to them. Even these are carried out with central control or supervision.

NOTES

- **Single and simple government:** The unitary system of government is a simple system. There exist no provincial assemblies, executives or upper chambers in the Centre. One exception to this is Britain. Yet, most unitary systems are defined by single central government where the popular voting is held for unicameral legislature. It is the central legislature that legislates and executes. The expenses of such a system are minor and a unified command is adopted in running the state. Democratic systems can be expensive; upper chambers demand finances and weak states cannot afford them. Thus, unitary system is simple and understandable. Its structures and powers also understood easily by the citizens.
- **Uniformity of laws:** Laws in unitary system are uniform laws unlike the ones in the federal state. This is one crucial characteristic of a unitary government. Laws are made and executed by the central government for the entire state. They are enforced without any distinction being made for any state. In contrast, in a federal system, the nature of a law can vary from state to state. But in the unitary system, the laws are made uniform on the principles of justice and nature of human beings. In a federation however, laws of similar nature can have sharp contrasts, thus complicating their understanding.
- **No distribution of powers:** As stated, within a federation powers are distributed among the federal and the state. In contrast, in the unitary system, no such distribution of powers is made. All powers rest with the centre. One of the advantages of this lack of distribution of power is that the government does not have to bother about delegating powers and instead concentrate on more welfare issues and development of the state and citizens.
- **Flexible Constitutions:** Flexibility is what defines the constitutions of unitary states. It is within federal systems that a rigid constitution is required so as to clearly define and maintain the relationship between the centre and the state. One of the advantages of a flexible constitution is that it can be altered as be the needs of the state amid the continuously changing circumstances. As said, a constitution is a document which is necessary to run a state according to the changing orientations. A flexible constitution ensures that the desires and changing demands of people are included in it accordingly and from time to time. It is crucial to the idea of progressiveness. Thus, constitutions in unitary systems are evolutionary and are strong to respond to contingency situations.
- **Despotism attributes a Unitary State:** A unitary state can turn totalitarian or despotic when its rulers do not follow rules or move away from the path of patriotism. Since powers are with the Centre and there is no check on the activities of the government, there are higher chances of misuse. Such a government can become absolute and abuse its powers mainly due to the absence of an internal check system.
- **Responsibility:** In contrast to a federation, a unitary system is more responsible. Certain defined institutions have fixed responsibility and this is a significant characteristic of a unitary system. The central government is responsible for legislation, executive for implementation and judiciary for adjudication. Thus, it is these institutions that are responsible for their activities and therefore they try to operate within the law of the land.
- **Local government institutions:** Usually in a unitary form of government, the powers lie in the hands of urban bureaucracy. Such a government has also been found to be limited in the city areas and have no influence in remote towns and villages. Therefore, to maintain its influence in rural areas, the central governments manipulate their affairs through municipalities and other such local institutions. In one way or other, local governments also become important and effective in unitary systems. Such examples are found in states like China and Great Britain where local governments are very powerful. The central government maintains its influence through local governments and also gives them financial support to run their daily affairs. In fact, local representatives are elected for these institutions on the guidelines of the central government.

NOTES

Advantages of Unitary Form of Government

Some advantages of unitary system include:

(i) Throughout the state, uniform policies, laws, political, enforcement, administration system is maintained.

(ii) There are fewer issues of contention between national and local governments and less duplication of services.

(iii) Unitary systems have greater unity and stability.

Disadvantages of Unitary Form of Government

Disadvantages of such a form of government include:

(i) Local concerns are usually not the prerogative of the central government.

(ii) Thus, the centre is often at a lax in responding to local problems.

(iii) In case the centre gets involved in local problems, it can easily miss out on the needs of a large section of other people.

4.5 FEDERAL GOVERNMENT

A federal government is the national government of a federation. It is defined by different structures of power; in a federal government, there may exist various departments or levels of government which are delegated to them by its member states. However, the structures of federal governments differ. Going by a broad definition of basic federalism, it comprises at least two or more levels of government within a given territory. All of them govern through some common institutions and their powers often overlap and are even shared between them. All this is defined in the constitution of the said state.

Therefore, simply put, a federal government is one wherein the powers are delegated between the centre and many other local governments. An authority which is superior to both the central and the state governments can divide these powers on geographical basis, and it cannot be altered by either of the government levels by themselves. Thus a federation, also called a federal state, is characterized by self-governing states which are in turn united by a central government. At the same time, both the tiers of government rule on the basis of their own laws, officials and other such institutions. Within a federal state, the federal departments can be the various government ministries and such agencies where ministers of the government are assigned. For instance, in the US, the national government has some powers which are different from those of other 50 states which are part of the country. This division of powers has been elaborated in the constitution of the US.

Thus, a federal government works at the level of a sovereign state. At this level, the government is concerned with maintaining national security and exercising international diplomacy, including the right to sign binding treaties. Therefore, as per the guidelines of the constitution, the federal government has the power to make laws for the entire country and not the state governments. For instance, the US Constitution initially was did not empower the federal government to exercise undue powers over the states but with time, certain amendments were introduced to give it some substantial authority over states. The states that are part of a federation have, in some sense, sovereignty because certain powers are reserved for them that cannot be exercised by the central government. But this does not mean that a federation is a loose alliance of independent states. Most likely, the states that are part of a federation have no powers to make, for instance, foreign policy; thus, under international law they have no independent status. It is the constitutional structure in the federation that is referred to as federalism. This is in contrast to the unitary government. With 16 *Länder* , Germany is an example of a federation while its neighbor Austria was a former unitary state that later became a federation. France, in contrast, has always had a unitary system of government. As mentioned earlier, federation set-ups are different in different countries. For instance, the German *Lander* have some independent powers which they have started to exercise on the European level.

While this is not the case with all federations, such a system is usually multi-cultural and multi-ethnic and covers a large area of territory. An example is India. Due to large geographical differences, agreements are drawn initially when a federation is being made. This reduces the chances of conflict, differences between the disparate territories, and gives a common binding to all. The Forum of Federations is an international council for federal countries which is based in Ottawa, Ontario. This council brings together different federal countries and gives them a platform to share their practices. At present, it includes nine countries as partner governments.

Where states have more autonomy than others, such federations are called asymmetric. Malaysia is an example of one such federation wherein states of Sarawak and Sabah joined the federation on their own terms and conditions. Thus, a federation often appears after states reach an agreement about it. There can be many factors that could bring in states together. For instance, they might want to solve mutual problems, provide for mutual defense or to create a nation state for an ethnicity spread over several states. The former happened in the case of the United States and Switzerland and the latter with Germany. Just like the fact that the history of different countries may vary, similarly their federal system can also differ on several counts. One unique system is that of Australia's where it came into being after citizens of different states voted in the affirmative to a referendum to adopt the Australian Constitution. Brazil has experienced with both federal and unitary system in the past. Till date, some of the states in Brazil maintain the borders they had during Portuguese colonization. Its newest state, Tocantins, was created mainly for administrative reasons in the 1988 Constitution.

History of Federalism

In the New World order, several colonies and dominions joined as autonomous provinces but later transformed into federal states after independence (see Spanish American wars of independence for reference). The United States of America is the oldest federation and has served as a role model for many federations that followed. While some federations in the New World order failed, even the former Federal Republic of Central America split into several independent states 20 years after it was formed. States like Argentina and Mexico have in fact shifted from being federal, confederal, and unitary systems before finally settling with being federalists. Germany is another example of the same shifting since its foundation in 1815. After its monarchy fell, Brazil became a federation and it was after the Federal War that Venezuela followed suit. Many ancient chiefdoms and kingdoms can be described as federations or confederations, like the 4th century BC League of Corinth, Noricum in Central Europe, and the Iroquois in pre-Columbian North America. An early example of formal non-unitary statehood is found in the Old Swiss Confederacy. Many colonies of the British that became independent after the Second World War also adopted federalism; these include Nigeria, Pakistan, India and Malaysia.

Many states can be federalists yet unitary. For instance, the Soviet Union, which was formed in 1922, was formally a federation of Soviet Republics or autonomous republics of the Soviet Union and other federal subjects but in practice remained highly centralized under the government of the Soviet Union. Therefore, the Russian Federation has inherited its present system. Australia and Canada are independent federations, yet Commonwealth realms. In present times, many federations have been made to handle internal ethnic conflict; examples are Bosnia and Herzegovina, and Iraq since 2005.

Advantages of Federal Form of Government

Some advantages of a federal form of government are:

(i) There is a larger federal unity though local governments may handle their own problems.

(ii) The government at the Centre is more committed towards national and international issues.

(iii) It is a participatory system and there are more opportunities to make decisions. For instance, what goes into school curriculums and ways in which highways and other projects are to be carried out, can be decided through participation of local populace.

(iv) Local government/officials are more responsive towards people who elect them.

Disadvantages of Federal Form of Government

Disadvantages of federal form of government include:

(i) Since laws are different in different states, people living in one country can be treated differently. This can happen not only in spending that each state makes of welfare programmes but even in legal systems, where different punishment can be meted out in similar offences or right laws are differentially enforced.

(ii) Duplication of services.

(iii) States can pass laws that counter national policy and this can influence international relations.

(iv) Conflict can arise over power/national supremacy vs. state's rights.

ACTIVITY

1. Find out about the Call Attention Motion practised in the Indian Parliament with reference to a couple of incidences.
2. Research on the Internet and write a short note on Indian government structure (unitary or federal).

Check Your Progress

5. What is a unitary form of government?
6. What is meant by federalism?

NOTES

DID YOU KNOW

The library of the Indian Parliament is the second largest in India.

4.6 SUMMARY

In this unit, you have learnt that:

- In a Parliamentary form of government, the tenure of office of the virtual executive is dependent on the will of the Legislature; in a Presidential government the tenure of office of the executive is independent of the will of the Legislature (Leacock).
- Being a Republic, India could not have a hereditary monarch. So, an elected President is at the head of the executive power in India.
- The presidency of the United States of America is one of the greatest political offices of the world. He is the chief executive head of the state as well as the head of the administration.
- The US President is not only the Head of the State but also the head of the administration. The Constitution clearly lays down that all executive authority belongs to him.
- Prof. Laski opines that the American President is also more or less than the British Prime Minister. It is worth while comparing the office of the President of the USA with that of the Prime Minister of the UK.
- The President's cabinet is not known to the law of the country. It has grown by conventions during the last 200 years. The founding fathers did not regard it as an essential institution.
- If a bill is sent to the President and he neither signs the bill nor returns it back to the Congress, the bill becomes the law within 10 days even without his signature. The only condition is that Congress must be in session. If the Congress adjourns in the meantime, the bill is automatically killed. This is called 'Pocket Veto' of the President. This means that the president can simply ignore a bill (pocket a bill and forget about it), if it is passed by the Congress on a date less than 10 days before it adjourns.
- The major drawback to the unitary system is that there are little or no checks and balances of power. In addition, unitary governments typically employ large bureaucracies which do not appoint members on the grounds of voting.
- A unitary government may have unwritten but flexible constitution, but a federal government cannot work successfully unless it possesses a written constitution. In a federal government, generally the judiciary plays a vital part in administration. It decides the disputes that may crop up between the central and provincial governments or between one unit and the other.
- Unitary form of government is very simple system. With the exception of Britain, there are neither provincial assemblies and executives nor the upper chambers at the Centre. There is a single Central Government at the Centre. There is unicameral legislature popularly elected. Central legislature is to legislate, executive to execute and judiciary to adjudicate without any share.

NOTES

- The federal government is the mutual or national government of a federation. A federal government may have different powers at various levels authorized or delegated to it by its member states. The structures of federal governments differ. Based on a broad definition of a basic federalism, there are two or more levels of government that exist within an established territory and govern through common institutions with overlapping or shared powers as prescribed by a constitution.

4.7 KEY TERMS

- **Congress in USA:** The legislative branch of the federal government; consists of two Houses—the House of Representatives and the Senate.
- **Federal government:** One in which the powers of government are divided between a central government and several local governments.
- **Ordinance power:** The US president can issue certain executive orders having the force of law.
- **Parliamentary form of government:** The tenure of office of the virtual executive is dependent on the will of the legislature.
- **Platform:** The US National Convention selects presidential nominee and issues the so-called manifesto.
- **Presidential form of government:** The president is the head of the states.
- **Unitary government:** A state governed as one single unit in which the central government is supreme and any administrative divisions (sub-national units) exercise only powers that their Central government chooses to delegate.

4.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. (a) Elected (b) Indian
2. (a) False (b) True
3. (a) Second (b) Superior
4. (a) True (b) True
5. A unitary government may be defined as on in which the powers are concentrated in the hands of a Central Government. There may be local governments, but they are not free from the control of the Central Government. They derive their power from the Central Government and as such are subordinate to the same in all respects. They are the mere agents of the Central Government. The best examples of the unitary government are that of Great Britain and France.
6. The governmental or constitutional structure found in a federation is known as 'federalism'. It can be considered the opposite of another system, the unitary state. Germany with sixteen *Länder* is an example of a federation, whereas neighbouring Austria and its *Bundesländer* was a unitary state with administrative divisions that became federated, and neighbouring France by contrast has always been unitary.

NOTES

4.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the powers and functions of the President of USA.
2. What is the procedure of election of the President of USA?
3. Write a short note on the status of the Cabinet in USA.
4. What is the difference of procedure in England and USA?
5. What are the basic characteristics of a unitary form of government?
6. What are the advantages and disadvantages of federal form of government?

Long-Answer Questions

1. Compare the parliamentary and presidential form of government.
2. Draw a comparison between the American and British Cabinet.
3. Describe the powers and functions of the US Senate.
4. Differentiate between unitary and federal forms of government in detail.
5. Give a detailed account on the functioning of a unitary government.

4.10 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

NOTES

UNIT 5 RULE MAKING

Structure

5.0 Introduction
5.1 Unit Objectives
5.2 Structure, Function and Process of Law-making in the UK
  5.2.1 The House of Lords
  5.2.2 House of Commons
5.3 Structure, Function and Process of Law-Making in the USA
  5.3.1 The Senate
  5.3.2 House of Representatives
5.4 Structure, Function and Process of Law-Making in Switzerland
  5.4.1 Composition of the National Council
  5.4.2 Council of States
  5.4.3 Legislative Procedure
  5.4.4 Powers of the Federal Assembly
5.5 Structure, Function and Process of Law-Making in China
5.6 Summary
5.7 Key Terms
5.8 Answers to 'Check Your Progress'
5.9 Questions and Exercises
5.10 Further Reading

5.0 INTRODUCTION

In the previous unit, you studied about the various structures namely, parliamentary, presidential, unitary and federal.

In this unit, you will study about the legislative bodies of the UK, USA, Switzerland and China.

America is a big superpower. In America, the legislative powers vest with the US Congress. The long history of Britain has been interspersed with many ups and downs. China is often referred to as the sleeping dragon. It is a mystical land with the most astounding history of culture and traditions. But, China has come a long way in the last twenty year and is an emerging superpower. Switzerland is one of the oldest Republics of Europe. In Switzerland, the law-making function is performed by the federal legislature which consists of the National Council and Council of State.

5.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the origin of the British parliament
- Identify the procedure and practice of the senate
- Describe the functioning of the House of Representatives
- Identify the legislative procedure in Switzerland
- Describe the functioning and powers of the National People's Congress of China
- List the responsibilities of the State Council in China

NOTES

5.2 STRUCTURE, FUNCTION AND PROCESS OF LAW-MAKING IN THE UK

In the beginning, the British parliament was an aristocratic and feudal assembly of the king's tenants-in-chief. It met at intervals of perhaps two or three times a year, to advice, sometimes to control or pressurize the king on important matters. Its work was not primarily legislative, still sometimes an ordinance or statute did emerge. Business might include matters of state-war and peace, administration, assessment and completion of feudal obligations, arguments over fiefs, points of feudal law and the trial of one of its own members who were accused of treason or felony. In contrast to such a large council, there was a small council, a group of household servants and public officials, ever present with the king to assist the actual day-to-day business of government. The evolution of the parliament involved two great processes, both of which began in the 13th century but belong more particularly to the 14th century. There was gradual but fundamental change in the personnel of the great council from that of feudal tenants-in-chief to a select group of hereditary peers. When the change was completed, the body had become the House of Lords. At the same time certain new representative elements were being added, which were finally to constitute the House of Commons.

In modern times, it is hard to realize that the term parliament did not always indicate the August assembly at Westminster or other assemblies later devised in its image. The word derived *parler* (to speak or parely) and the more impressive Latin *parliamentum,* was used loosely to indicate a conversation, a parley or an interview. The 13th century French writer, De Joinville, uses it in three ways: an informal gathering of barons; a judicial session of the king's court and a tryst between the young king and his Queen Marguerite.

In England, *Parliamentum* creeps into official records as an offensive subject for colloquium that appeared on the Close Roll in 1242 and on the Memoranda Rolls, of the Exchequer in 1248. Quite naturally it was used in domestic parleys, such as those between Alexander II of Scotland and Richard, Earl of Cornwall, in 1244, and the meeting of the kings of France and Castile. Thus a parliament, quoted by Maitland 'is rather an act than a body of persons. One cannot present a petition to colloquy, to a debate. It is only slowly that this word is appropriated to colloquies of a particular kind, namely those which the king has with the estates of his realm, and still more slowly that it is transferred from the colloquy to the body of men whom the king has summoned....the personification of the Parliament which enables us to say that laws are made, and not merely in parliament, is a slow and subtle process.'

It was the noted English chronicler Matthew Paris of St. Albans, who first applied the term to a great council of prelates, earls and barons in 1239 and again in 1246. From this time on it was used gradually though not exclusively for such an assembly. The term did not necessarily signify the presence of the Commons. Due to the writings of some historians, we are led to believe that any great council, without the Commons is not a council at all. Professor Plucknett has convincingly demonstrated that this theory is unsustainable: he asserts that 'there was a verbal dissimilarity, but no actual difference: and this objection seems fatal.' In writing the history of parliament as an institution, all the assemblies which contained the later parliamentary elements must evidently be considered.'

NOTES

It is helpful to be reminded that the 'number of people interested in politics and the size of the "political nation" has varied from time to time. This has increased with the growth of population, the progress of education and in general with the expansion of democratic sentiment.' Historians have elected to call Edward I's assembly of 1295, the model parliament because of its complete embodiment of all elements of parliament. These elements were bishops and abbots, earls and barons, invited individually; elected representatives; knights and burgesses, summoned through the sheriff and even representatives of the lower clergy.

5.2.1 The House of Lords

The House of Lords emerged as a result of the feudal system, which was not fully developed in England, until after the Norman Conquest. But even though 'the conqueror' remodelled the English government on the foreign pattern, he was cautious enough to do so with a distinction. In making grants of lands to his victorious followers, he created several small baronies in favour of each grantee. These baronies were distant from one another, instead of one large fief. He also exacted the oath of allegiance to the crown from all free holders, whether holding directly from the crown or from the tenant-in-chief. These measures prevented the tenants-in-chief from developing into petty sovereigns, practically independent and owning only a titular commitment to the king.

These tenants-in-chief of the king were entitled to be summoned by writ to the king's council, which is the origin of the modern British parliament. It was the virtue of the duties forced upon them by the feudal system of government that they obtained this right. They were responsible as far as their own fiefs were concerned, for the military defense of the realm; through them the exchequer was replenished. From them evolved the maintenance of order and the administration of the law in their several baronies.

The interests of their feudatories were their interests, the prosperity of their feudatories were their prosperity. The idea of a 'Lord of Parliament' would have appeared bizarre to those old barons as it is beginning to appear presently. By reason of this identity of interest between the barons and their feudatories, the former were always forward in resisting the encroachments of the crown on the freedom of the people. One can say that they were the radical reformers of their time. The Magna Carta, concerning which Bishop Stubbs remarks that 'the whole Constitutional history of England is a commentary on this Charter' and the subsequent confirmations of the rights thereby secured, were wrung by the great Peers from unwilling monarchs by force, or threats of force. The policy which the conqueror pursued towards his tenants-in-chief had this salutary effect. It forced them into the position of defenders of the liberties of a great nation.

Such being the relation between the nobles, it followed almost inescapably that the chief personal right was the right to a writ of summons to the king's council. This was originally, no doubt a matter of discretion for the king. The tenants who held small fiefs of the crown were willing to ignore summons and in time ceased to receive it. This gave rise to the distinction between the greater and the lesser barons. The crown, in its struggle with the Peers, was tempted to refuse the summons to those who opposed its wishes. Hence one of the rights established by the Magna Carta was the right of the greater barons to be summoned by writ, personally. The lesser barons were to be summoned by a writ addressed to the sheriff of the county.

NOTES

The greater barons became the nucleus of the House of Peers, the lesser barons being ultimately represented in the Commons by the Knights of the Shires. In course of time the crown exercised the right of summoning other persons to the council. These were not necessarily barons by tenure. These persons were not considered hereditary peers in the first instance, nor did a summon even confer a right to attend the council for life. The records show that many persons were summoned once only, others more frequently. But in process of time the right to a writ became hereditary. Since the 5th year of Richard II, a writ of summons, coupled with proof that the person summoned actually sat in the House of Lords, conferred a hereditary peerage. In this respect a peerage by wit, differs from a peerage created by patent. There was another method of creating peers which is of significant interest because it shows an inclination to admit the influence of a popular voice in the selection of peers. The creation of peerages by statute was at once confined to the granting of steps in the peerage. But the patent which was created by Sir John Cornwall Lord Fanhope in 1432 states that the grant was made by the consent of the lords in the presence of the three estates of the parliament. In many patents, the assent of the parliament is more clearly expressed and in some cases it is stated on the roll of Parliament.

It must be remembered that the creation of the first peerage in 1382, when Richard II, raised Sir John Holt to the House of Lords by the title of Lord Beauchamp of Kidderminster, was looked upon as an unconstitutional and arbitrary act and Sir John Holt was consequently impeached as a commoner. But no such statement occurs in any patent after the accession of Henry VII. The strengthening of the royal authority, during the early Tudor period enabled the sovereign to do away with even the formality of consulting the parliament for creation of the peers.

Another class of men nearly established a right to sit in the House of Lords by virtue of their office. In early times the judges were summoned to the House by writ as advisors or assistants, but without the right of voting. Their functions were merely consultative. If the bench had possessed such overwhelming influence as was at the command of the church, it was probable that the judges would have succeeded in sitting in the house as life peers. But it was not the case. The judges of those days were men of little personal influence. They had no security of tenure in their offices: they could be removed at the sole will of the crown. The subordinate position which they achieved is still in some sort recognized by the constitution. The House of Lords has the right to consult the judicial bench, which it exercises on rare occasions and the judges go to the house in full robes to deliver their opinion.

The following statements may be accepted as fairly representing the formative processes for moulding the constitution of the House of Lords:

1. The feudal baron by tenure was summoned to the king's council in virtue of his responsibility for the good government of a portion of the kingdom.
2. The progress of the nation and the growing complexity of the questions presented before the house made it necessary to summon capable persons to its councils; even although they were not supportive to the Crown. These persons originally attended only the parliament to which they were summoned and there was no intention on the part of the crown to confer either a hereditary dignity or a hereditary right to legislate; but a comparatively modern doctrine, attributable to legal astuteness, had declared that obedience to the writ conferred a hereditary dignity in the family of any person so summoned.

Check Your Progress

1. Fill in the blanks.
   (a) Each ____ of the parliament stands for a single constituency.
   (b) In modern times, the _____ is always a member of the House of Commons and not of the House of Lords.
   (c) Originally the _____ was composed of a majority of life members.
   (d) The history of the _____ is in fact the history of England, during the last 600 years.

NOTES

3. The modern method of creating a peerage by patent, which undoubtedly conferred a hereditary right, was in its inception an act of arbitrary power. For a long period this usurped right was observed by the parliament who later found it necessary to be declared by the consent of the parliament. This custom was rendered useless after the Tudor dynasty gained access to the throne.
4. Originally the House of Lords was composed of a majority of life members. It is clear therefore, that the conception of a peer of parliament, with a hereditary right to legislate without any corresponding hereditary duties to perform, is not based upon ancient constitutional doctrine; that the tendency to recruit the Upper House by life members, or members for a given parliament, was first checked by civil commotion and that the modern method of creating peers had its origin in an arbitrary act of the crown.
5. The history of the House of Lords has revealed facts which are important in dealing with this subject. History shows that there has been a constant numeric increase in the membership of that house until it has become the most cumbersome upper chamber in the civilized world. As Lord Roseberry said in 1888, 'Hardly a squadron or a regiment of peers would redress the balance in certain contingencies.' It also shows that since 1832 that unrelenting numerical increase has been accompanied by a persistent decline of influence. This decline has been due to the steady establishment of the House of Commons on an ever-extending democratic basis.

Current Composition

Table 5.1 The House of Lords, as on 1 November 2010

Affiliation	Life peers	Hereditary peers	Lords spiritual	Total
Labour	230	4	-	234
Conservative	145	48	-	193
Liberal Democrats	74	5	-	79
DUP	4	0	-	4
UKIP	1	1	-	2
Crossbenchers	149	32	-	181
Lords Spiritual	-	-	25	25
Other	16	1	-	17
Total	**619**	**91**	**25**	**735**

5.2.2 House of Commons

The history of the House of Commons is in fact the history of England, during the last 600 years. The journal of its deeds fills 120 folio volumes. No writer on the historic course of action of the House of Commons can fail to point out its most prominent feature - the great antiquity of forms and rules on which it is based. Sir Reginald Palgrave, in his preface to the tenth edition of Sir Thomas Erskine May's classical treatise on 'Parliamentary Practice', introduces his retrospect of the half century since the first appearance of the book with the words, 'The parliamentary procedure of 1844 was essentially the procedure on which the House of Commons conducted business during the Long Parliament.' The most recent historian of parliament, Mr. Edward Porritt, takes his readers even further back than Sir Reginald Palgrave. In his most informative work, he says: 'the most remarkable fact with regard to the procedure of the house is the small change which has taken place since, in the reign of Henry VII, enactment by

Check Your Progress

2. State whether True or False.
   (a) The House of Lords emerged as a result of the feudal system, which was not fully developed in England.
   (b) The parties in the House of Commons elect the prime minister.
   (c) In the beginning, the parliament was an aristocratic and feudal assembly of the king's tenants-in-chief.
   (d) The parties in the House of Commons do not elect the prime minister but still their position is of dominant importance.

NOTES

bill superseded enactment by petition. Following in its main lines the procedure which the Journals show to have been in use when in 1547, the House migrated from the Chapter House of Westminster Abbey to the famous Chapel which Edward VI then assigned to the Commons for their meeting place.'

The beginning of the order of business in the House of Commons is traced back to yet another century. This step was the adoption of the bill as the exclusive technical form for the exercise of the great functions of parliament and procedure by bill. To this day, it is the characteristic mark of the English parliamentary system and all its descendants. From the point of view of procedure, this change may well be called the boundary between two great eras in parliamentary history. With the advent of bill the individuality of the English parliament as a constitutional and political creation became complete. However many favoured its application and however extensive the orb of its undertakings, the development of the procedure moved on within the fixed form given to it by the bill.

Three periods can be distinguished in the growth of the historic order of business in the House of Commons, which, speaking approximately, are successive, but which cannot be sharply divided from each other.

(i) The first period is that of the estates. It begins with the meetings under Henry III and Edward I and continues until the beginning of the journals of the house and the first contemporary reports of the debates and proceedings, i.e., till the middle of the 16th century. In this period again, we have to distinguish between two parts: the period in which petition is the sole form of parliamentary activity and the period, from the first quarter of the 15th century in which bill becomes its normal form.

(ii) In the second, the parliament regularly meets the order of business and the procedure as a whole appears on its permanent fundamental lines. It covers the reign of Queen Elizabeth and the first four sovereigns of the house. The framing of the whole historic order of business, by the practice of the House of Commons, was carried out in this period. The only essential qualification is that there can be no doubt that most of the fundamental elements of procedure date back much further than our knowledge of the proceedings of the house. In other words, their inception and earliest development belongs to our first period.

(iii) The opening of the third period is marked by the great political landmark in the constitutional history of England - the Revolution. This ushers the age of conservative parliamentary rule, which the governing classes strove to retain and develop, for the maintenance of their own supremacy in the state. The period closes with the carrying of the first extension of the franchise in 1832. With the meeting of the reformed House of Commons, begins another era in the development of the order of business and procedure of the house. This is connected with the political transformation of parliament.

House of Commons—Relationship with the Prime Minister

The parties in the House of Commons do not elect the prime minister but still their position is of dominant importance. The prime minister must maintain a good relationship and should support and be answerable to the members of the House of

NOTES

Table 5.2 Summary of the May 2010 House of Commons of the United Kingdom Election Results

Political Party	Candidates	Elected	Seats Gained	Seats Lost	Net Change in seats	% of Seats	% of Votes	Number of Votes	Change in % of vote
Conservative	631	306	100	3	+97	47.1	36.1	10,703,754	+3.7
Labour	631	258	3	94	-91	39.7	29.0	8,609,527	-6.2
Liberal Democrat	631	57	8	13	-5	8.8	23.0	6,836,824	+1.0
UKIP	572	0	0	0	0	0	3.1	920,334	+0.9
BNP	338	0	0	0	0	0	1.9	563,743	+1.2
SNP	59	6	0	0	0	0.9	1.7	491,386	+0.1
Green	310	1	1	0	+1	0.2	1.0	285,616	-0.1
Sinn Féin	17	5	0	0	0	0.8	0.6	171,942	-0.1
Democratic Unionist	16	8	0	1	-1	1.2	0.6	168,216	-0.3
Plaid Cymru	40	3	1	0	+1	0.5	0.6	165,394	-0.1
SDLP	18	3	0	0	0	0.5	0.4	110,970	-0.1
Conservatives and Unionists	17	0	0	1	-1	0	0.3	102,361	-0.1
English Democrats	107	0	0	0	0	0	0.2	64,826	0.2
Alliance	18	1	1	0	+1	0.2	0.1	42,762	0.0
Respect	10	0	0	1	-1	0	0.1	33,251	-0.1
Traditional Unionist Voice	10	0	0	0	0	0	0.1	26,300	*N/A*

Contd...

NOTES

Speaker	1	1	0	0	0	0.2	0.1	22,860	0.0
Independent - Rodney Connor	1	0	0	0	0	0	0.0	21,300	*N/A'*
Independent - Sylvia Hermon	1	1	1	0	+1	0.2	0.1	21,181	*N/A*
Christian	71	0	0	0	0	0	0.1	18,623	+0.1
Scottish Green	20	0	0	0	0	0	0.1	16,827	0.0
Health Concern	1	0	0	1	-1	0	0.1	16,150	0.0
Trade Unionist & Socialist	41	0	0	0	0	0	0.0	12,275	*N/A*
Independent - Bob Spink	1	0	0	1	-1	0	0.0	12,174	*N/A*
National Front	17	0	0	0	0	0	0.0	10,784	0.0
Buckinghamshire Campaign for Democracy	1	0	0	0	0	0	0.0	10,331	*N/A*
Monster Raving Loony	27	0	0	0	0	0	0.0	7,510	0.0
Socialist Labour	24	0	0	0	0	0	0.0	7,219	-0.1
Liberal	5	0	0	0	0	0	0.0	6,781	-0.1
Blaenau Gwent People's Voice	1	0	0	1	-1	0	0.0	6,458	-0.1
Christian Peoples	11	0	0	0	0	0	0.0	6,276	0.0
Mebyon Kernow	6	0	0	0	0	0	0.0	5,379	0.0
Lincolnshire Independents	3	0	0	0	0	0	0.0	5,311	*N/A*
Mansfield Independent Forum	1	0	0	0	0	0	0.0	4,339	*N/A*

Contd...

Contd...

Green (NI)	4	0	0	0	0	0	0.0	3,542	0.0
Socialist Alternative	3	0	0	0	0	0	0.0	3,298	0.0
Trust	2	0	0	0	0	0	0.0	3,233	*N/A*
Scottish Socialist	10	0	0	0	0	0	0.0	3,157	-0.1
People Before Profit	1	0	0	0	0	0	0.0	2,936	*N/A*
Local Liberals People Before Politics	1	0	0	0	0	0	0.0	1,964	*N/A*
Independent - Esther Rantzen	1	0	0	0	0	0	0.0	1,872	*N/A'*
Alliance for Green Socialism	6	0	0	0	0	0	0.0	1,581	0.0
Social Democrat	2	0	0	0	0	0	0.0	1,551	*N/A*
Pirate	9	0	0	0	0	0	0.0	1,340	*N/A*
Communist	6	0	0	0	0	0	0.0	947	0.0
Democratic Nationalists	2	0	0	0	0	0	0.0	753	*N/A*
Workers' Revolutionary	7	0	0	0	0	0	0.0	738	0.0
Peace	3	0	0	0	0	0	0.0	737	0.0
New Millennium Bean Party	1	0	0	0	0	0	0.0	558	0.0
Total	-	**650**	-	-	-	**Turnout**	**65.1**	**29,691,780**	-

NOTES

Commons. Ironically, in modern times, the prime minister is always a member of the House of Commons and not of the House of Lords.

Members and Election

Each member of the parliament stands for a single constituency. There always remains a procedural difference between county constituencies and borough constituencies, which lies in the difference of the amount of money, the candidates are allowed to spend during their election campaign. As mentioned earlier, the timing of the election is in the hands of the prime minister. Thus, the parliament is dissolved by the sovereign and the timing is chosen by the prime minister. Traditionally, all elections in United Kingdom are held on Thursdays. A nomination paper must be signed by ten registered voters of a constituency for a member to stand up for elections. Though there are many qualifications that apply to the members of the parliament, the most important one is that the individual must be 18 years old and must be a citizen of the United Kingdom.

Current composition

Table 5.3 MPs Elected in the UK General Election, 2010

Affiliation	Members
Conservative	305
Labour	253
Liberal Democrat	57
Democratic Unionist	8
SNP	6
Sinn Féin	5
Plaid Cymru	3
SDLP	3
Alliance	1
Green	1
Independent	3
Speakers and Deputy Speakers	4
Vacant	1
Total	**650**
Actual government majority	**83**

Source: *BBC News*

5.3 STRUCTURE, FUNCTION AND PROCESS OF LAW-MAKING IN THE USA

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

Constitutions are never written in vacuity. They reflect the beliefs, goals and aspirations of their authors and in many cases, the values of society. In this way, the

NOTES

American constitution is no exception. To be able to understand the principles on which the US Congress was established, one must first understand the politics which surrounded the formation of the United States of America.

The founding of British colonies in what was known as the 'new world' is only one part of the history of America, but it is fundamental to the history of the United States. It was from the British colonies that, in 1776, a new nation was born. The first British colonists landed in 1585, in what is now Virginia. Life was difficult in the new world and many of the early colonies surrendered to disease, famine and attack by native 'Indian' tribes. The first colony to conquer these difficulties and endure was established in Jamestown, Virginia, in 1607. Their success was due to two reasons: surviving the first winter with the aid of friendly native Americans and an ability to grow tobacco. The colonists had discovered a mix of Caribbean and mainland American tobacco leaves which was appealing to the European taste and trade with the 'old world' had become both, possible and lucrative. By 1732, thirteen colonies had been established up and down the eastern seaboard of North America. These colonies began to thrive through trade and soon found a degree of autonomy from the British government. Colonial assemblies were established in America and these began to check the power of resident royal governors, often taking control of characteristics of taxation and expenditure. Steadily, the principles of self-government were becoming ascertained in the minds of the colonists.

As the 18th century progressed, the British crown and parliament once again began to look to the west. The colonies had proved to be a success and Britain wanted to expand their control in the west. Their efforts directed at west-ward expansion, however, meant clash with French forces who had established a powerful position in North America. The 'French Indian War' lasted from 1754 – 1763, until the French forces were defeated. This left the British in control of a large area. At present, this large area is Canada and the US. The cost of the war and the resources needed to control their recently expanded western empire put a strain on British finances and led the parliament to look for new ways to raise revenue. Having decided that the colonies should pay more for their own defense, the British parliament passed a series of acts which levied taxes on colonial trade. The British actions had endangered the ability of the colonies to trade freely and given the historical importance of trade of colonies' existence, caused a great deal of bitterness. Over the next ten years, protest over British taxation and oppression grew, occasionally breaking into violence. Matters came to a head in Lexington, Massachusetts in 1775 when a raid by British troops on colonial militias led to full-scale fighting. This marked the beginning of the American Revolution.

A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule. Behind the declaration, were the ideas of the 18th century philosophers and writers such as, Thomas Paine and John Locke. These ideas were widespread among the aristocracy of that time. These ideas would go on to play a large part in writing the constitution.

The war of independence formally ended in 1783 with the signing of the treaty of Paris, in which the British crown recognized the independence, freedom and sovereignty of thirteen former colonies. With victory certain, the thirteen states were faced with the task of devising a system of government. Having just conquered what they viewed as tyrannical power, the leaders of the new states had no intention of replacing the British

NOTES

crown with their own monarch, or creating a central government. However, it was recognized that some form of central administration was inevitable for a newly founded independent nation.

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

As the failure of the articles of confederation showed, there were certain jobs, necessary for the success of the new nation that could not be carried out by the state governments alone. On the other hand, under the new constitution, the state governments intended to be the primary level of government, with responsibility for their own affairs and those of their citizens. The federal government was to be restricted to those areas which fell outside the individual state: regulating trade between states, establishing a national currency, conducting foreign affairs and controlling the national military forces. This ideal, where each level of government had its own separate areas of influence, was known as dual federalism. Such a pure form of federalism was going to be short lived, but for the early years of the US it was the state governments which seized power.

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

5.3.1 The Senate

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

First, the senate is mainly a legislative body. It has the power to pass legislations that may become law or to prevent legislations from becoming law. Moreover, it is responsible to approve or deny consent to ratify treaties, to approve and advice on presidential nominees and to try impeachments. Till date, it is more powerful and significant than any upper chamber across the world. Those who framed the constitution wanted the senate to be an incomparable legislative body, such that it should be both, unique in its structure and superior as an institution. They believed this was essential for the republic to endure. So the framers provided for the following, among other things, in the senate: equal representation of every state; terms extending six years, beyond those of the house and the president; elections in which only one third of members would stand before the people every two years; and a minimum age requirement to attract 'enlightened citizens' to serve the body. These characteristics lent an exclusive character to the senate; a small, stable, stately, thoughtful, independent, experienced, and a deliberative body. With equal legislative authority for the House of Representatives, the framers expected that the senate would remain steady in a representative democracy. This, along with its duties specified in the constitution, was the framers' design for the senate. However, the senate required a structure to

NOTES

operate. And that structure has for more than two hundred years taken the form of senate procedure: standing rules, rule making statutes and precedents.

In 1789, the first senate assumed twenty standing rules. Surprisingly, sixteen of those rules still form the core of the senate procedure today. Since 1939, the senate has assumed twenty-five rule-making statutes. The presiding officer has established a quantity of precedents over the course of the senate's history to fill nearly 1600 pages in the seminal reference work, known as the 'Riddick's Senate Procedure'.

The senate's rules and the precedents are nothing less than the institution's genetic material: they have evolved over a period of time; they are entwined and complex. Those who unlock and understand and apply the senate's procedure have an edge over their colleagues and the course of the senate's negotiations. But most of all, together, the senate faithfully reflects the framers' design and ambition for the body. The senate has two paramount values: unlimited debate and minority rights.

Procedure and Practice of the Senate

Great scholars have anticipated that to understand the senate procedure, is to understand the greatness of America in many respects. The senate procedure rests on three pillars:

(i) The standing rules of the senate, which have adopted pursuant to the senate's right under Article 1, Section 5, of the constitution to make rules governing its own proceedings.

(ii) Special procedures found in rule-making statutes, also written under the senate's rule-making power.

(iii) Precedents that interpret the standing rules, interpret provisions in rule-making statutes and interpret other precedents.

Distinguishing Characteristics of the US Senate

Senate procedure also embraces two features that differentiate the senate from other parliamentary bodies of the world:

(i) Debate rules are fundamentally unrestricted.

(ii) Amendment opportunities are fundamentally unrestricted.

As mentioned earlier, the US senate is the most powerful upper chamber on earth. Unlike many upper chambers that have limited authority, the senate has equal legislative jurisdiction with the house and is authorized to address two areas which the house does not possess: nomination and treaties. The senate's authority is grounded in the constitution and is improved by the rules and precedents, through which the body elects to govern itself.

The Text of the Standing Rules

There are forty-three standing rules of the senate, ten of which are code of ethics. The origin of certain rules can be found in the twenty rules of the first senate in 1789, sixteen of which have considerably carried over until till date. The rules and their history reflect the solidity and uniqueness of the senate. They represent strong fibres in the fabric that binds the institution together.

Senate rules grant considerable power to individual members, minority coalitions and the minority party. Individuals with knowledge of procedure and willingness to employ it can exert influence far beyond their single vote. A disciplined and organized

NOTES

minority can sometimes be disrupted by a filibuster, a measure or matter favoured by the majority of senators. An individual senator can ruin many situations in which unanimous consent is a practical precondition for action. Unlike the House of Representatives, which adopts new rules at the beginning of each Congress; the rules of the senate continue from one Congress to its successor and remain in force until amended. The standing rules provide that 'the rule of the senate shall continue from one Congress to the next, unless they are changed as provided in these rules.'

Changes to the standing rules can me made but they have not been recurrent. Before changes can be proposed, Rule V requires a one day notice in writing. Amendments to the text of the standing rules are adopted customarily by simple majority passage of a senate resolution. However, such a measure is debatable and subject to a special cloture requirement. Normally, a vote of three-fifths of all senators who are duly chosen and sworn, or sixty senators, is sufficient to invoke cloture. To end a debate on a rules change resolution requires an affirmative vote of two-thirds of all senators who are present. This rule has remained unchanged since the crude amendment of 1959.

Recodification of rules has happened only seven times in the history of the senate, the first being in 1806 and the most recent occurring in 1979, under the leadership of senator Robert Byrd. After Senator Byrd proposed the 1979 adjustments, the rules have not been recodified since 1884. Execution of the rules is often restricted by unanimous consent orders. Under consent orders, senators voluntarily agree to forgo or adjust some aspect of their rights. A single objection bars agreement and forces reliance on senate rules and precedents.

The Senate Parliamentarian

The senate parliamentarian is procedural counselor to the presiding officer. Since it has become the practice to rotate the chair hourly among majority party senators, the parliamentarian's authority becomes central. Few senators have the knowledge or experience to manage the procedure of the senate, so they often rely heavily on the advice of the parliamentarian.

It is often wrongly stated that the parliamentarians make rules. The presiding officer rules after having received the parliamentarian's counsel. Even though the presiding officer has the power to take no notice of the parliamentarian's advice and simply rule on his own, it would be extraordinary for him to do so. If the senate wishes to break new ground, divergent to the parliamentarian's outlook, it will vote for against an appeal to overturn the presiding officer's ruling. The presiding officer's is not frequently upturned.

Senator

The constitution states that a senator must be a citizen of the US for at least nine years, be at least 30 years old and be a resident of the state that he or she represents. For more than a century, senators were selected by their state legislatures, not directly by the voters. Mutually, in law and practice, this excluded many groups, some of whom were African–Americans.

The election of the senators by the people was not necessary until the seventeenth amendment to the constitution was ratified in 1913, one year before the election year of 1914. Until the middle of the 19th century, the system in which the state legislatures selected senators worked proficiently, even though it may have benefited special-interest

NOTES

groups in the state. By 1870, the US Senate had its first African American senator, republican Hiram Rhoades Revels of Mississippi. The first woman senator, Rebecca Latimer Felton of Georgia, was appointed to fill up the term of her husband, who died in office. She was sworn in on 21 November 1922.

Senate Officers

The constitution states that the president of the senate shall be the vice-president of the US, who supervises over the sessions but votes only in case of a tie. For many years, that remained the vice-president's chief responsibility and his offices were in the US capital. On the other hand, stipulations had to be made for an officer who could take the chair in the vice-president's absence thus the constitution provided a second presiding officer, the president pro tempore, also known as the president pro tem.

Party secretaries, elected both by the majority and the minority parties, are employees who are seated at either side of the senate chamber. Their everyday responsibilities include making sure that the pages are in place, scheduling legislation and keeping senators informed about pending business in the session.

Current Compositions

Table 5.4 The Party Composition of the Senate after 3 January 2011

Affiliation	*Members*
Democratic Party	51
Republican Party	46
Independent	3
Total	100

5.3.2 House of Representatives

The legislative processes on the floor of the House of Representatives are governed by numerous rules, practices as well as precedents that are also complex in nature. The House rules mentioned in an official manual run into more than a thousand pages. Additionally, there exist more than 25 volumes of precedents that complement the official rules. Yet, compared to the Senate, the House applies its rules in a more moderately conventional fashion. The rules in themselves are multi-faceted; some are naturally complex and thus difficult to interpret. Therefore, the House does tend to follow parallel procedures under somewhat similar circumstances. Even in cases where, for instance, the House can follow similar pattern of rules tend to differentiate with each other and have limited number of recognizable patterns.

Yet, the fundamental importance of the rules the representatives of the House follow, including its many procedures, cannot be undermined. With time, majority of members are able to use their will on the floor of the House. As per the rules of the House, the minority members cannot intentionally delay voting in the House, for instance by making long speeches or using such devices, to prevent the majority from making the decisions.

NOTES

Modes of Procedure

While dealing with a Bill or passing a resolution, the House does not restrict itself to following a single course of action. Different Bills or sets of Bills require usage of certain kinds of House rules and they need to be considered in a particular manner. It is the members who decide which rule will fit the discussion of a particular Bill. This depends on factors like the imminence and estimated cost of the Bill and the contention and arguments over its merits and provisions. The difference between these choice of rules depends on the many factors, like the time members had to debate over the Bill, the amendments proposed and how promptly the House is able to act on these matters.

Legislative Procedures and Comparisons with the Senate

The constitution has imposed restrictions on national legislature and on the Congress's legislative agenda. The Congress has the authority to create laws that provide it with the power that is required for carrying out its numerous functions, apart from the authority that is allocated by the constitution to the federal government.

In constitutional powers, the two houses of Congress are almost equal; each has unique privileges. Both houses must agree on a bill before it becomes a law. Neither house consistently dominates the other; nor is there any authority other than an electorate, to which both are accountable. Each chamber has the constitutional power to select its own officers, devise its own rules and by implication, set its own agenda. There are no Congressional leaders; there are only house leaders and senate leaders, with no formal mechanisms for coordination between them. For many functional reasons, each house is autonomous. The house and the senate classically refer to each other as 'the other body', reflecting a sense of separateness between the two. When representatives and senators meet in a conference committee to decide specific legislative differences between them, their discussions can take a characteristic of bilateral treaty negotiations.

A typical Congressional agenda does not exist. Both the houses are authorized to set priorities for matters, which they need to decide upon. The freedom of action is restricted to a certain extent. Certain laws must be passed each year; the activities of the federal government must be funded before the new fiscal year begins. The presidential influence, popular sentiment and national and international emergencies can incite the house and the senate, to give priority to the same matters. In such cases, however, the two houses respond independently to the same requirements, pressures and developments. Neither house has the constitutional power to force the other to act. There is no Congressional agenda; there is a house agenda and a senate agenda, both of which do not always coincide.

Table 5.5 2013 Election Results and Current Party Standings

Affiliation	Members	Delegates/Resident Commissioner (non-voting)	Number of state majorities
Republican Party	234	0	30
Democratic Party	201	6	17
Total	**435**	**6**	

Check Your Progress

3. Fill in the blanks.
   (a) The_____ parliamentarian is procedural counselor to the presiding officer.
   (b) The constitution states that the _____ of the senate shall be the vice-president of the US, who supervises over the sessions but votes only in case of a tie.
   (c) The first _____ senator, Rebecca Latimer Felton of Georgia, was appointed to fill out the term of her husband, who died in office.
   (d) ____ are never written in vacuity.

NOTES

5.4 STRUCTURE, FUNCTION AND PROCESS OF LAW-MAKING IN SWITZERLAND

The Federal Legislature of Switzerland is called the Federal Assembly. It is a bicameral legislature consisting of two Houses - the National Council and Council of State. Article 71 of the Constitution vests supreme power of the Constitution with the Federal Assembly, though subject to the rights of the people and of the Cantons. In fact, the laws passed by the Assembly can neither be vetoed by the President of the Swiss Confederation, nor can be declared unconstitutional by the Swiss Federal Tribunal. They can, however, be rejected by the people or the Cantons at the polls. Rappard has very correctly said that the Federal Assembly enjoys supremacy, 'as long as it retains the confidence and performs the will of the electorate.' The supremacy of the Federal Assembly is further established by the fact that the other branches of the Swiss Government do not coordinate and are independent and subordinate to the Assembly subject to the provisions of the Constitution.

5.4.1 Composition of the National Council

The National Council is the Lower House of the Legislature. The total strength of the House is not fixed by the Constitution and varies from time to time according to the growth in the population of Switzerland. In the initial stages, one representative used to be elected from 20,000 people but that figure was later on raised to 22,000. In actual practice, after every ten years, there is a census and on the basis of that census the number of representatives to be returned by any Canton is fixed according to the population of the Canton. It has, however, been made specifically clear that every Canton or half Canton must be represented by at least one representative in the National Council. This is done in order to safeguard the interests of the people of every Canton. Before 1930, it consisted of 198 members, one member representing approximately 20,000 people. Since later on, the basis of representation was changed to one member for every 22 thousand people; the number of members of the House was reduced to 194 from 1947. Since 1963, the House has fixed membership of 200 members. Twenty-four thousand people constitute an Electoral Constituency and fractions greater than 12,000 are counted as 24,000. Every Swiss citizen who is 20 years or above of age, not otherwise disqualified, has a right to vote. Prior to 1971, women were not given the right to vote. Only male citizen used to exercise the right to vote. It was a stigma on Swiss Democracy. However, since 1971, women have been enjoying parity with men in this respect. The members of the National Council are elected by secret ballot and since 1910 by the Proportional Representation. Qualifications for the members are to be the same as that of the voters. Clergies, executives and principal administrative servants of confederation, Federal Councillors and members of the Council of States are not eligible for election.

Tenure and Sessions

The House is elected for a period of four years. It is not subject to dissolution except for total revision of the Constitution when the Houses do not agree with each other. Elections to the House are held after every four years on the last Sunday in October. Generally, the elections take place in the churches. The House meets regularly four times a year in the months of March, June, September and December. Special sessions also may be convened by the Federal Council, if emergency arises. Sessions are generally short,

Check Your Progress

4. State whether True or False.
   (a) In 1789, the first senate assumed twenty standing rules.
   (b) A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives.
   (c) The constitution has imposed restrictions on the national legislature and on the legislative agenda of the Congress.
   (d) There are forty-nine standing rules of the senate, ten of which are code of ethics.

NOTES

lasting for about three weeks at a time. The House meets at 8 a.m. in summer and 9 a.m. in winter. The members very punctually attend the meetings of the House.

Debates in the House

The Swiss Assembly is a business-like body doing its work very quietly. The Debates are orderly. Rhetoric is unknown. Neither the loud applause, nor the cries of shame, approval or dissent are heard. Division on the bills are very rare. In the words of Andrae Siegfried, 'The sessions of the National Council are more like meetings of an administrative body affecting only indirectly those who are not immediately concerned-but what an efficient administration!' A Swiss Deputy is not at all prone to emotions. He is known for shrewdness and practical sagacity. He adopts a middle path and does not take sides. Hence, Debates in the House hardly attract much attention of the nation. There are no official stenographers in the House. The Debates are scantily reported in the leading newspapers. The Deputies are allowed to speak in any of the prevalent languages. Every public document is published in German, French and Italian. All decisions are made by majority of those voting, quorum being 101 in case of the National Council. However, in the case of urgent matters, majority of all the members is required.

President of the Council

The National Council elects its own President and Vice-President for one year. They are not eligible for the same office in the next consecutive year. Generally, the Vice-President succeeds the outgoing President. The President performs the functions, which a Chairman is expected to perform in the House. He regulates the business of the House, maintains decorum and protects the privileges and dignity of the members of the House. He possesses a casting vote in case of a lie. He votes like any other ordinary member when the House elects various committees and bureaus. He is not paid any salary. He is not spectacular either, unlike that of the Speaker of the House of Commons in the UK who is known as an impartial dignitary. He does not even command influence, which is usually associated with the Speaker of the House of Representatives in the USA.

No Official Opposition

Unlike that of Great Britain, where opposition is recognized as 'Her Majesty's opposition' and the leader of the opposition gets a cabinet minister's salary and status, Switzerland has not given recognition to the opposition. In fact, the role of political parties in Swiss legislature is hardly of any significance, firstly, because the National Council is not vested with the power of ousting the Federal executive by a vote of no-confidence; secondly, because the Federal Assembly does not possess the supreme legislative power, as the people can negate its decisions at Referendum. The Federal Councillors cease to be members of the Federal Assembly on their election. They do, however, appear on the floor of the Legislature, though they do not have the right to vote. The Councillors are assigned seats on a dais right and left of the Chairman of the House. Since they are no longer the members of the House, they are not the leaders of the parliamentary majority, no matter howsoever great influences they may otherwise command. In the absence of any ministerial party, opposition is out of question. The deputies usually sit in the House by Cantons, irrespective of their party labels. In the words of Bryce, 'There is no bench for a Ministry or for an opposition, since neither exists. The executive officials... have

NOTES

seats on a dais right and left of the President but not being members they are not party leaders.'

5.4.2 Council of States

The Council of States happens to be the Upper Chamber of the Swiss Legislature. It stands for the concept of Cantonal sovereignty and personality. As such like that of American Senate, it gives equal representation to all the units irrespective of their size and population. Every Canton sends two representatives and every half-Canton only one representative to the Council of States. Its total membership is 46 representing 23 cantons, three divided into half cantons. Unlike that of the USA, the mode of election and the tenure of these members of the Swiss Council of States is not uniform. Each Canton, by its own laws, determines the method of election of the deputies and their tenure. In some of the Cantons, the deputies of the Council of States are elected by the Cantonal Legislatures. The tenure of these members varies from one to four years. Three years is, however, the most common tenure. In two of the Cantons, recall of these members before expiration of their tenure is allowed. The deputies vote without instructions from their Cantons. In other words, the members of the Council of States do not represent separate Cantonal interests. As such, they are not briefed by their respective cantons to vote for or against particular issues. The members vote according to their conscience and not any instructions from the Cantonal party head.

The deputies of the Council of States are paid salaries and allowances, etc., by their respective Cantons, according to their own means.

Sessions

It meets once a year in an ordinary session on a day fixed by standing orders. Special sessions of the Council can also be convened either by the Federal Council or on the request of the deputies or of five Cantons.

Chairman

It elects its own Chairman and a Vice-Chairman for each ordinary and extraordinary session. Article 82, however, specifics that the Chairman and the Vice-Chairman may neither be chosen from the deputies of the same Canton, nor any of these officers be elected from among the representatives of the same Canton for two consecutive sessions. Conventionally, however, the Vice-President of the year is promoted to the office of the President the next year. The President presides over the meetings of the House and determines the order of business to be transacted everyday. He possesses a Casting Vote in case of a tie.

Functioning of the House

The business of the House is transacted by an absolute majority of the total number of members of the House. The deputies do not dance to the tune of their Cantons, as is generally the case in federations. It implies that the deputies hailing from the various Cantons do not represent the Cantonal interests. They do not vote as directed by the Cantons. In the words of Christopher Hughes, 'The programme which the Article implies is that members should vote according to their conscience and not as per the instructions.'

NOTES

The Council of States, though a weaker Chamber, is not subservient to the National Council. The Swiss Constitution keeps these two Chambers at par with each other as regards their powers. In the words of C. F. Strong, 'The Swiss legislature like the Swiss executive is unique; it is the only legislature in the world, the powers of whose upper House are in no way different from those of the lower House.' The legislative measures must be passed by both the Houses. In case of a disagreement between the two Houses over a Bill, if the Committee fails to reach an agreement, the Bill is dropped. Both enjoy parity even in financial matters. The fathers of the Swiss Constitution were keen to make the Council of States analogous to the American Senate and enable it to enjoy the position of precedence over the National Council. However, with the passage of years, the Council of States appeared in the true colours. It failed to come up to the expectations of its authors. Due to the non-uniformity of tenure and practice of recall in some of the Cantons, the men of energy and ambition are not attracted towards it. It is devoid of any special executive and judicial power unlike that of the American Senate, which is equipped with important executive and judicial powers. Moreover, the Constitution vests co-equal and coordinate authority with both the Chambers. Naturally, outstanding statesmen will like to become the members of the National Council, which apart from sharing powers equally with the Council of States is more representative in character.

The Council of States, though is not as powerful as the American Senate, is not as weak as the House of Lords in England or the Senate in Canada. It does not command a subservient position like the Upper Chambers in the Parliamentary Governments. It is not a submissive body either. It often disagrees with the Lower Chamber on the measures passed by the latter. On rare occasions, it has not only insisted on the disagreement with the Lower Chamber, but has also persistently adhered to it. Such a dogged persistence has eventually led to the dropping of the Bill. Moreover, parity of powers between the two Houses in legislative, constitutional and financial matters has saved it from getting reduced to a subservient position like that of the British House of Lords and the Canadian Senate. Annual business as Budget is initiated one year in the Lower Chamber and the next year in the Upper Chamber. Thus, the Council of States has been able to preserve its distinctive entity.

Its small membership, which enables it to finish its work very promptly, has, however, earned it the reputation of being an idle Chamber, which in fact, it is not.

Joint sessions of the Houses

Though normally speaking, both the Houses meet separately to transact their daily business, there is a provision for their joint session for certain definite purposes mentioned below:

(a) For the election of the Federal Council and its President the judges of the Federal Tribunal, the Chancellor of the Confederation and of the General-in-chief of the Federal Army;

(b) For resolving a conflict of jurisdiction between federal authorities, i.e., the conflicts between the Federal Council and the Federal Tribunal or Insurance Tribunal or between the latter two;

(c) For granting pardons (It may, however interest the reader that while pardon is to be granted, both the Houses meet in a joint session. In case of granting amnesty both the Houses meet separately);

NOTES

In case of joint sessions, the Chairman of the National Council presides and the decisions are arrived at by a majority vote. Here too, the superiority of the numerically stronger Chamber stands out.

5.4.3 Legislative Procedure

The process of 'law-making' in Switzerland is of a peculiar type. Neither of the two Houses have any special rights of priority. Unlike that of the other democracies of the world, every bill including the money bills is initiated in both the Houses simultaneously, which ensures independent and separate consideration of the bill by both the Chambers. The most important bills are introduced by the Federal Councillors though other members can also initiate the bills. At the commencement of every session, the Federal Council presents a list of Bills to the President of both the Houses of the Swiss Legislature. The President thereafter mutually agree to assign each proposed measure to one or the other House. Introduction of a Bill or a measure in one House is taken for an automatic introduction of the same Bill in the other House as well.

In both these Chambers, the measures are referred to the Committees, which consist of representatives of parties in proportion to their strength in the House. The Presidents of the two Chambers and the 'Scrutaleurs' nominate these members unless they are elected by the House itself. Generally, these Committees unanimously agree on a decision, which is communicated to the House through an elected reporter. In case, the members of the Committees have divergent opinion on a Bill, they may communicate the same to the House through two or more elected reporters.

Relation between the two Houses

Complete equality of status is the most remarkable feature of the Swiss Legislature. The Chambers of the Swiss Legislature possess co-equal and coordinate authority in every respect. As already said, bills can be initiated in either of them. This is unlike that of India and the UK, where money bill must be initiated in the Lower Houses.

Even the Federal Councillors are accountable to both the Houses. They have to answer the questions in both the Houses. For electing the members of the Federal Council, the judges of the Federal Tribunal, the Chancellor and the Commander-in-Chief, of both the Houses hold a joint session. For granting of pardons and resolving of disputes amongst the federal authorities, both the Houses sit together. Hence, as already said, Dr. C. F. Strong views Swiss Legislature as the only Legislature in the world in which the functioning of the upper house is similar to the lower house.

Addressing the conflicts between the Houses

In fact, the Swiss Constitution does not make any provision for resolving conflicts, if at all they occur between the two Houses. This is a lacuna in the Swiss Constitution. Though it appears to be a serious drawback in the Constitution, in actual practice, it is not a serious handicap. Deadlocks between the two Houses are very rare. Even if they sometimes occur, they 'have not been pushed to a point of a constitutional crisis.' It is due to the following three reasons:

(a) The control of legislation in Switzerland ultimately lies with the people.

(b) The Swiss Council of State is no more conservative than the National Council.

(c) Neither of the two Houses is prepared to adopt an uncompromising attitude.

NOTES

However, there exists an elaborate procedure for sorting out differences of opinion between the Councils. If the procedure for resolving differences fails, the whole project is dropped. If it is reintroduced, it is to be started afresh. If it is essential to arrive at a decision, the two Chambers meet in a joint session and decide by a vote. In such a case, the will of the Lower House, which is much bigger in size than the Upper Chamber, is apt to prevail.

5.4.4 Powers of the Federal Assembly

In the words of Zurcher, 'There are few Parliaments which exercise more miscellaneous duties.' In fact, the Federal Assembly has been vested with all kinds of functions—the Legislative, the Executive, the Judicial and the Constitution-amending.

Legislative powers

The supreme authority of the Confederation is vested with the Federal Assembly. According to Article 84, the Federal Assembly is competent 'to deliberate on all matters which this Constitution places within the competence of the Confederation and which are not assigned to any other federal authority.' Following are its legislative and financial powers:

(a) It passes all federal laws and legislative ordinances;

(b) It passes the annual budget, appropriates the State accounts and authorizes public loans floated by the federal government;

(c) It determines and enacts necessary measures to ensure the due observance of the Federal Constitution, the guarantee of the Cantonal Constitution and the fulfilment of federal obligation;

(d) It enacts measures ensuring the external safety of the country, its independence and neutrality;

(e) It adopts measures ensuring the territorial integrity of the Cantons and their Constitutions, the internal safety of Switzerland and the maintenance of peace. It may, however, be said that all laws whether urgent or not, passed by the Assembly are subject to the ratification of the people, if 30,000 Swiss citizens or 8 Cantons so demand it. The urgent bills become inoperative one year after their adoption by the Assembly, if they are not approved by the people within this period.

Executive powers

The Executive powers are as follows:

(a) Both the Houses in a joint session elect the Federal Councillors, the judges of the Federal Tribunal, the Chancellor, the members of the Insurance Tribunal and the Commander-in-Chief.

(b) The right of election or confirmation, as regards other officers, may be vested with the Assembly by the Federal Council.

(c) It supervises the activities of the Civil Service.

(d) It decides administrative disputes and conflicts of jurisdiction between federal officials.

(e) It determines salaries and allowances of members of federal departments and of federal Chancellery and the establishment of permanent federal offices and their salaries.

NOTES

(f) It controls the federal army.

(g) It declares war and concludes peace.

(h) It ratifies alliances and treaties. The treaties concluded by the Cantons between themselves or with the foreign States are to be ratified by the Federal Assembly provided that such Cantonal treaties are referred to the Federal Assembly either on the appeal by the Federal Council or another Canton.

(i) It supervises even the Federal Tribunal.

Judicial powers

Though the judicial powers of the Federal Assembly were considerably curtailed by the Constitutional Revision of 1874, they are not less significant:

(a) The judges of the Federal Tribunal are elected by the Federal Assembly.

(b) It also hears appeals against the Federal Council's decisions on administrative disputes.

(c) It deals with conflicts of jurisdiction between different federal authorities.

(d) It exercises prerogative of pardon and amnesty. Pardon is granted in the joint session of the two Houses; whereas, amnesty is granted by the two Chambers meeting separately.

Amending powers

As already discussed, both the Chambers of the Federal Assembly participate in the amendment of the Swiss Constitution. If both the Houses agree to amend the Constitution, either wholly or partially, the proposed revision is submitted to the people for their acceptance or rejection. In case the Houses disagree with each other, the matter is referred to the vote of the people for their decision whether they need such a revision or not. If the majority of the Swiss people vote for revision, new elections to the Federal Assembly take place. The newly constituted Houses pass the requisite amendment, which is finally placed before the people and the Cantons for their Approval.

The amendment is effected through initiatives too. Here too, the Assembly plays a conspicuous role.

General Supervision over Federal Administration

The Federal Assembly exercises general supervision over the federal administration. It issues instructions to the Federal Council in the form of postulates. The members of the Assembly can elicit information from the Executive through 'Interpellations'. Besides, the members of the National Council can also ask 'minor questions' from the Federal Councillors who are supposed to give written answers.

Keeping in view these multifarious powers of the Federal Assembly, Zurcher remarked, 'The makers of the Swiss Constitution conferred upon the Federal Assembly all kinds of authority, legislative, executive and even judicial'. However, a critical analysis of these powers reveals that the Legislature controls neither the legislation, nor the purse. It does not have a hold on the executive. Thus, the powers conferred upon the Assembly are more nominal than real. Codding correctly remarks, 'The Federal Assembly has been reduced to a certain extent to the position of an advisory body with the electorate exercising the real decision-making power. However, the

NOTES

legislative, executive, judicial and constitution-amending functions of the Swiss Legislature make it crystal clear that the principle of Separation of Powers is not embodied in the Swiss Constitution. Secondly, the Assembly apparently seems to be a powerful body, which in fact it is not. The adoption of devices like Referendum and Initiative has enabled the people to exercise final power of accepting or rejecting a Bill. They can even ask the Assembly to pass a bill, which it has ignored. Thirdly, the Assembly cannot oust the Councillors by a vote of no-confidence. Still its miscellaneous powers appear to be impressive.'

Check Your Progress

5. Fill in the blanks.
   (a) The Federal Legislature of Switzerland is called the ____.
   (b) The ____ is the Lower House of the Legislature.
   (c) The ____ elects its own President and Vice-President for one year.
   (d) Even the Federal Councillors are accountable to_____ the Houses.
6. State whether True or False.
   (a) The Council of States happens to be the Lower Chamber of the Swiss Legislature.
   (b) Complete equality of status is the most remarkable feature of the Swiss Legislature.
   (c) The Swiss Assembly is a business-like body doing its work very quietly.
   (d) The Council of States, though a weaker Chamber, is subservient to the National Council.

5.5 STRUCTURE, FUNCTION AND PROCESS OF LAW-MAKING IN CHINA

The National People's Congress (NCP) is an essential part of the central government system of the People's Republic of China. Due to its exclusive nature and importance, it is treated as one of the organs of the Central People's Government. The constitution of 1954 places the National People's Congress as the highest wing of the state authority and the only legislative authority of China. The deputies to the Congress, from provinces, autonomous regions, municipalities directly under the central authority, the armed forces and overseas Chinese are prescribed by the Electoral Law of China for the National People's Congress and Local People's Congresses, at all Levels. This was propagated on 1 March 1953.

The term of office of the deputies is four years, which may be extended in case the election of deputies to a new Congress is not completed. When a deputy is incapable to perform his duties, his electoral unit will hold a by-election to fill the vacancy. The new deputy so elected is to serve the remainder of the unexpired term. The deputies are not arrested or put on trial without the approval of the Congress or else its standing committee, when the Congress is in recess. Moreover, they are supervised by the units which they represent and may be replaced in harmony with law. The deputies may attend the meetings of the people's Congresses or of their local units.

The National People's Congress has a standing committee as well as other committees. The annual session of the Congress is to be convened by the standing committee, which may also call for special sessions of deputies. The meetings of the Congress are controlled by an executive chairman of the presidium, who is elected by the deputies at the beginning of the session. For each session, the Congress sets up a secretariat, under the direction of a secretary general. He conducts the routine business of the Congress.

Functions of the National People's Congress

The National People's Congress has the following authorities and responsibilities:

1. To administer the enforcement of the constitution and amend it.
2. To enact laws.
3. To elect the chairman and vice-chairman of the People's Republic of China, the president of the Supreme People's Court and the procurator general.
4. To decide on the choice of the premier of the state council, vice-chairman and members of the council of national defense, on recommendation of the chairman of the People's Republic of China.

NOTES

5. To decide upon the members of the state council, on recommendation by the premier.
6. To remove the officials who are elected or appointed by the Congress, from the office.
7. To examine and approve the state budget and the financial report.
8. To suspend the responsible officials of the state council or of its ministries and commissions.
9. To decide on national economic plans, general amnesties and questions of war and peace.
10. To ratify the status and boundaries of provinces, autonomous regions and municipalities which are directly under the central authority.
11. To exercise other functions and powers that the Congress may consider necessary.

As the highest state authority, the power of the National People's Congress would be almost unlimited; yet, in fact, it is dominated by the Communist Party which actually exerts the ultimate authority of the state.

The Standing Committee of the National People's Congress

The standing committee is a permanent body of the National People's Congress to which it is responsible and answerable. It is composed of a chairman and a number of vice-chairmen and members, as well as a secretary general. They are elected by the Congress to perform its functions. The Chairman supervises over the meetings of the standing committee. Resolutions may be adopted by a vote of simple majority. The standing committee, elected by the First National People's Congress on 27 September 1954, comprised a chairman, 13 vice-chairmen and 65 members. Liu Shao-chi was elected as its chairman. Political leaders of different parties and groups were represented at the Committee.

The standing committee exercises the following authority and responsibilities:

1. To elect deputies to the National People's Congress.
2. To convene the next National People's Congress.
3. To construe laws and issue decrees.
4. To administer the work of the state council, the Supreme People's Court and the Supreme People Procuratorate.
5. To annul decisions and orders of the state council, which are in conflict with the constitution, laws or decrees.
6. To amend inappropriate annual decisions of the government authorities of provinces, autonomous regions and municipalities which fall directly under the central authority.
7. To decide on the appointment or elimination of the vice-premiers, ministers, heads of commissions or secretary general of the state council, when the Congress is not in session.
8. To appoint or remove vice-presidents, judges, deputy procurators general, procurators and other members of the judicial committee of the Supreme People's Court and the procuratorial committee of the Supreme People's Procuratorate.

NOTES

9. To make a decision on the appointment or to recall diplomatic representatives to foreign states.
10. To introduce military, diplomatic and other special titles and ranks.
11. To institute and decide on the award of state orders, medals and titles of honour.
12. To make a decision on the granting of pardons.
13. To make decisions on behalf of and when the National People's Congress is in recess.
14. To decide on the proclamation of a state of war in the event of foreign invasion or due to treaty obligations for collective defense.
15. To decide on general or partial mobilization or enforcement of martial law.
16. To exercise such other functions and powers which are authorized by the National People's Congress.

Other Committees and Commissions of Inquiry

Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees. Commissions of inquiry for the investigation of specific matters may be instituted by the National People's Congress, or if not in session, by the standing committee. All state organs, people's organizations and citizens concerned are needed to supply necessary information to these commissions, if requested. When the National People' Congress is not in session, the nationalities committee and the bills committee are under the direction of the standing committee. Each committee is composed of a chairman and a certain number of vice-chairmen and other concerned members. Whereas the nature of the committees on bills, budgets and credentials are self-explanatory, the work of the nationalities committee requires additional embellishment; two of the functions of the committees are as follows:

(i) To examine provisions of the bills that concern the affairs of nationalities, which are referred to it by the Congress or its standing committee.

(ii) To examine laws and regulations concerning the exercise of autonomy, submitted by different autonomous units for approval by the standing committee.

The State Council

The state council is the chief administrative authority of the People's Republic of China. Despite the fact that the general organization of the state council is similar to that of the government administrative council, there are certain differences between the two organs. The intermediary committees between the premier and ministers were abolished. Also, their was no provision for council members without portfolio. Differences can also be found in the number of vice-premiers, ministries and commissions. The state council resembles the Soviet council of the people's commissars in some respects, but the Chinese communist government chooses to retain the traditional pattern of ministries and commissions.

Even though the premier directs the work of the state council, any resolution has to be deliberated and adopted at the Council's plenary or executive meetings. Plenary meetings are usually held once a month. They are attended by the premier, vice-premiers, the secretary general, ministers and heads of commissions. The members who attend the executive meetings are limited to the premier, vice-premiers and the secretary general, who constitute a so-called 'inner cabinet.'

Authority and Responsibilities of the State Council

The authority and responsibilities of the state council are as follows:

1. To adopt measures pertaining to administration and to issue and implement decisions and orders.
2. To submit bills to the National People's Congress or its standing committee.
3. To organize and direct the work of the ministries and commissions under the council as well as that of local bodies of administration, all over the country.
4. To amend or cancel improper directives and instructions issued by ministries, commissions, as well as local administrative organs.
5. To implement the national economic plans and provisions of the state budget.
6. To direct the external affairs as well as international and national trade.
7. To direct cultural, educational and public health work, as well as the affairs concerning national minorities and overseas Chinese.
8. To protect the interests of the state, ensure law and order and protect the rights of the citizens.
9. To strengthen the national defense forces.
10. To sanction the stages and limits of autonomous prefectures, districts, autonomous districts and municipalities.
11. To hire or eliminate administrative staff according to the provisions of law.
12. To execute other authority and responsibilities that are vested in the state council by the National People's Congress or its standing committee.
13. According to the Organic Law of State Council of 1954, the state council has the power to appoint and remove the administrative personnel under the following groupings:
    (a) Deputy secretaries general of the state council, vice-ministers and assistants to the ministers, deputy heads and members and commissions, heads and deputy heads of departments and directors and deputy directors of bureaus under ministries and commissions.
    (b) Heads and deputy heads of boards, directors and deputy directors of bureaus under the people's councils of provinces and municipalities directly subject to the central authority.
    (c) Commissioners and special administrative offices.
    (d) Officials in autonomous regions with the rank corresponding to those listed under categories a and b.
    (e) Counsellors of diplomatic missions and consul generals.
    (f) Presidents and vice-presidents of national universities and colleges.
    (g) Other officials corresponding to the above ranks.

Even though the state council has the vast power of appointment and removal of officials, those on local levels are practically decided upon by the local government councils, which submit them to the state council for verification as a matter of procedural requirement.

NOTES

Check Your Progress

7. Fill in the blanks.
   (a) The standing committee is a _____ body of the National People's Congress to which it is responsible and answerable.
   (b) The _____ is the chief administrative authority of the People's Republic of China.
   (c) The constitution of 1954 places the National People's Congress as the _____ wing of the state authority and the only legislative authority of China.
   (d) The National People's Congress is dominated by the _____ which actually exerts the ultimate authority of the state.

NOTES

Table 5.6 Membership of previous National People's Congresses

Congress	Year	Total Deputies	Female Deputies	Female %	Minority Deputies	Minority %
First	1954	1226	147	12	178	14.5
Second	1959	1226	150	12.2	179	14.6
Third	1964	3040	542	17.8	372	12.2
Fourth	1975	2885	653	22.6	270	9.4
Fifth	1978	3497	742	21.2	381	10.9
Sixth	1983	2978	632	21.2	403	13.5
Seventh	1988	2978	634	21.3	445	14.9
Eighth	1993	2978	626	21	439	14.8
Ninth	1998	2979	650	21.8	428	14.4
Tenth	2002	2985	604	20.2	414	13.9

Check Your Progress

8. State whether True or False.
   (a) The state council is responsible for strengthening the national defense forces.
   (b) The National People's Congress (NCP) is an unnecessary part of the central government system of the People's Republic of China.
   (c) The Chairman supervises over the meetings of the standing committee.
   (d) The Standing Committee of the National People's Congress makes a decision on the granting of pardons.

ACTIVITY

Find out about the latest law passed by the UK and US government.

DID YOU KNOW

When the Queen leaves Buckingham Palace to attend the State Opening of Parliament every year, an MP is ceremonially 'held hostage' at the Palace to ensure that the monarch is not kidnapped or executed by any treasonous MP.

5.6 SUMMARY

In this unit, you have learnt that:

- In 1787, when the founding fathers of the US crafted the constitution (a constitution which still carries on today), they chose the US Congress for the very first article.
- As the 18th century progressed, the British crown and parliament once again began to look to the west.
- The senate of the US is generally known as the greatest deliberative body in the world for a number of reasons.
- The senate's rules and the precedents are nothing less than the institution's genetic material: they have evolved over a period of time; they are entwined and complex.
- Great scholars have anticipated that to understand the senate procedure, is to understand the greatness of America in many respects.
- There are forty-three standing rules of the senate, ten of which are code of ethics.
- The senate parliamentarian is procedural counselor to the presiding officer.
- The constitution states that the president of the senate shall be the vice-president of the US, who supervises over the sessions but votes only in case of a tie.
- A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives.
- The constitution has imposed restrictions on national legislature and on the legislative agenda of the Congress.
- In the beginning, the parliament was an aristocratic and feudal assembly of the king's tenants-in-chief. It met at intervals of perhaps two or three times a year, to advice, sometimes to control or pressurize the king on important matters.
- The parties in the House of Commons do not elect the prime minister but still their position is of dominant importance. The prime minister must maintain a good relationship and should support and be answerable to the members of the House of Commons.
- The Federal Legislature of Switzerland is called the Federal Assembly. It is a bicameral legislature consisting of two Houses - the National Council and Council of State.
- The Swiss Assembly is a business-like body doing its work very quietly. The Debates are orderly. Rhetoric is unknown.
- The National Council elects its own President and Vice-President for one year. They are not eligible for the same office in the next consecutive year.
- The Council of States happens to be the Upper Chamber of the Swiss Legislature. It stands for the concept of Cantonal sovereignty and personality.
- The process of 'law-making' in Switzerland is of a peculiar type. Neither of the two Houses has any special rights of priority.
- The National People's Congress (NCP) is an essential part of the central government system of the People's Republic of China.
- The National People's Congress has a standing committee as well as other committees. The annual session of the Congress is to be convened by the standing committee, which may also call for special sessions of deputies.
- The standing committee is a permanent body of the National People's Congress to which it is responsible and answerable.
- The state council is the chief administrative authority of the People's Republic of China.

5.7 KEY TERMS

- **House of Commons:** The part of parliament whose members are elected by the people of the country (in Britain).
- **House of Lords:** The part of parliament whose members are not elected by the people of the country (in Britain).
- **House of Representatives:** The largest part of Congress in the US, whose members are elected by the people of the country.

NOTES

NOTES

- **Republican Party:** One of the two main political parties in the US, usually considered to support conservative views and desires limit the power of central government.
- **Cabinet:** A group of chosen members of a government, which is responsible for advising and deciding on government policies.
- **Council of States:** The Council of States happens to be the Upper Chamber of the Swiss Legislature. It stands for the concept of Cantonal sovereignty and personality.
- **State Council:** The state council is the chief administrative authority of the People's Republic of China.

5.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. (a) Member (b) Prime minister (c) House of Lords (d) House of Commons
2. (a) True (b) False (c) True (d) True
3. (a) Senate (b) President (c) Woman (d) Constitutions
4. (a) True (b) True (c) True (d) False
5. (a) Federal Assembly (b) National Council (c) National Council (d) Both
6. (a) False (b) True (c) True (d) False
7. (a) Permanent (b) State council (c) Highest (d) Communist Party
8. (a) True (b) False (c) True (d) True

5.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the mode of procedure of the House of Representatives.
2. Write a short note on the organization and functions of the National People's Congress of China.
3. Describe the composition of the National Council in the Federal Legislature of Switzerland.
4. What are the powers of the Federal Assembly of Switzerland?

Long-Answer Questions

1. Explain the working of the Senate in US.
2. Give a brief overview of the origin and development of the House of Lords and the House of Commons.
3. Discuss the authority and responsibilities of the state council in China.

NOTES

5.10 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

NOTES

UNIT 6 RULE APPLICATION

Structure

6.0 Introduction
6.1 Unit Objectives
6.2 The Cabinet System of United Kingdom
  6.2.1 The Executive
  6.2.2 The Cabinet
  6.2.3 The Prime Minister
6.3 The US President
  6.3.1 Powers and Functions of the President
  6.3.2 The Presidential Cabinet
6.4 Executive Body in Japan
  6.4.1 Local Government
6.5 Summary
6.6 Key Terms
6.7 Answers to 'Check Your Progress'
6.8 Questions and Exercises
6.9 Further Reading

6.0 INTRODUCTION

In the previous unit, you studied about the legislative bodies of countries namely, United Kingdom, United States of America, Switzerland and China. In England, the prime minister is the head of the government. In United States of America, the real executive power lies in the hands of the president. However, in Japan, the chief of the executive branch, the prime minister, is appointed by the Emperor.

In this unit, you will learn about the executive bodies of countries namely, the United Kingdom, United States of America and Japan.

6.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Analyse the cabinet system of the United Kingdom
- Interpret the functioning of the Prime Minister in United Kingdom
- Explain the powers and functions of the American president
- Recognize the organize of the presidential cabinet
- Identify the structure of the local government in Japan

6.2 THE CABINET SYSTEM OF UNITED KINGDOM

The British governmental system is being acknowledged as a parliamentary monarchy which means that the country is ruled by a monarch whose powers are governed by constitutional law. The monarch is a powerless symbolic figurehead of the country but in reality, the country is governed by its legislature. Thus, it can be said that the monarch is the head of the state while the prime minister is the head of the government.

NOTES

England has an unwritten constitution consisting of historic documents such as the Magna Carta, the Petition of Right, and the Bill of Rights (1689); statutes; judicial precedents (common law); and customs. The constitutional monarch, Queen Elizabeth II, is the head of the state. The British constitution is not defined in a single written document, unlike those, as we can see in most countries of the world. Instead it is made up of a combination of laws and practices which are not legally enforceable, but are regarded as imperative to the working of the government. The constitution is flexible and may be changed by an Act of Parliament.

The British Constitution, the oldest of all the constitutions in the world, is considered as 'the mother of all parliaments'. Unwritten in character, the British Constitution, has grown with time. Although it is partly grounded in law, it is largely based on conventions. The salient features of the British Constitution could be summarized as below:

1. An unwritten constitution – partly written and mostly unwritten
2. An evolved constitution
3. The gap between theory and practice of its curious divergence between constitutional form and the actualities of government
4. Flexible constitution, i.e., there is no distinction between ordinary law and constitutional law
5. Parliamentary sovereignty
6. Parliamentary form of government
7. A unitary form of government, i.e., no distribution of governmental powers
8. Bi-party system
9. The Rule of Law

6.2.1 The Executive

Executive power in the United Kingdom is exercised by the Sovereign, Queen Elizabeth II, via Her Majesty's Government and the devolved national authorities which consist of the following:

(i) The Scottish Government

(ii) The Welsh Assembly Government

(iii) The Northern Ireland Executive

Parliamentary form of government: A responsible executive

Great Britain is the classic home of parliamentary form of government. The most characteristic feature of the parliamentary form of government is the responsibility of the executive to the legislature. The cabinet as the head of the executive is answerable to the parliament for its acts of omissions and commissions. The Monarch is the nominal head of the State. He acts on the advice of the ministers, who are responsible to the parliament. The Prime Minister, as the head of the Cabinet, is the most powerful ruler in a parliamentary system of government.

The cabinet remains in power as long as it enjoys the confidence of the House of Commons. Whenever the Cabinet loses the support of the majority members, it resigns or advises the King to dissolve the House of Commons in order to have a fresh election. In the new election, if the Cabinet gets the majority it continues in office; otherwise it resigns in favour of a new government. The cabinet dominates in this system. In the

NOTES

words of British political analysist Bagehot, the Cabinet is like a 'hyphen that joins the buckle that binds the executive and legislative departments together'. Due to the cabinet's dominant role in the parliamentary form of government, it is also described as a cabinet form of government. Collective responsibility and political homogeneity are also essential features of the Cabinet system. All the ministers are collectively responsible to the House of Commons. They swim, or sink together. The ministers are also preferably from a homogeneous political party, or a combination of political parties having identical views and policies. The latter course is known as coalition, but it is very rare in the British political history.

Absence of strict separation of powers is another important feature of the parliamentary form of government. There is harmonious cooperation between the executive and the legislature and both work hand-in-hand. British historian Ramsay Muir has rightly observed, 'that separation of powers is the essential principle of the American constitution, concentration of responsibility is the essential principle of the British Constitution'. Parliamentary forms of governments are not based on strict separation of powers. The theory has been accepted in principle in Great Britain, but in practice the Cabinet being omnipotent and all powerful in executive as well as legislative arena, denies the theory in principle. The cabinets in England and America play different roles. In the US, the role of the cabinet is not as dominating as that in England. While the American cabinet is dependent on the legislature, the British cabinet dominates both in the executive and legislative fields. Concentration of authority therefore, is a cardinal principle of the British constitutional system. It has led critics to allege that there is cabinet dictatorship in a parliamentary system. As the prime minister dominates on the plank of the cabinet dictatorship, it is often said to be a prime ministerial form of government.

Unitary form of Government

On the basis of concentration of distribution of powers, the form of government may be classified as unitary or federal. A government is said to be unitary, when there is concentration of power in one and only one centre. British constitutional theorists A. V. Dicey defines unitary government as one, where there is the habitual exercise of the supreme legislative authority by one central power. According to Finer, unitary government is one in which all the authority and power are lodged in a single centre whose will and agents are legally omnipotent over the whole area. England is again a classic example of unitary form of government. In a federal form of government where there is distribution of powers, a written constitution is absolutely necessary. As England has an unwritten constitution, the unitary form of government is considered to be more congenial and conducive to the British soil.

There are no independent units or states in England. All governmental authority is concentrated in the national government situated in London. Of course, for administrative convenience, regional units like counties and boroughs exist. But they do not enjoy any original or independent power. On the contrary, they are subordinate to the central government, and they enjoy only delegated and derivative powers. The local governments in England are the only agents of the national government and work completely under the guidance and the control of the national government.

Bi-party System: An Effective Opposition

Party system in all democratic constitutions of the world is an extra constitutional growth. In Great Britain which has an unwritten constitution, party system is not only an extra-

NOTES

constitutional growth; it also provides a key to the understanding of some of the prominent features of the British constitutional system. Parliamentary government means party government and no democracy can work without parties.

The chief characteristic of the British party system is the existence of two well-organized and more or less equally balanced parties which dominate the political arena. The bi-party system has been deeply rooted in the British political system. Disraeli once remarked, 'England does not love coalition'. The essence of this statement is that the British people prefer two well-organized parties like the Conservative Party and the Labour Party as they are existing today. Minor parties may exist, but they do not do well in the elections. Bi-party system provides stability in government. It also ensures strong opposition and enables the electorate to express their views in clear terms. The opposition in Great Britain is strong enough to take up administration at any time, when the ruling party fails. A responsible government with a responsible opposition is the fundamental basis of the British constitutional system. L. A. S. Amery has rightly observed, 'The combination of responsible leadership by government with responsible criticism in parliament is the essence of our constitution'.

6.2.2 The Cabinet

The cabinet is 'the core of the British constitutional system.' It is the most important single piece of mechanism in the structure of the British government. It is the supreme directing authority of the government and the real ruler of Great Britain. It has been described as the central fact and the chief glory of the constitution.

The entire cabinet system is a product of convention. Great Britain is also known as a classic home of the cabinet system. Like its constitution, the cabinet has grown into its present form over the past three centuries or so and is largely a child of chance rather than that of wisdom. No one meticulously planned its development and yet it has grown and without it the British constitutional system is incomplete, today.

Evolution of the Cabinet

The British cabinet is not recognized by law. It is a product of conventions and it has a long historical growth. The system of cabinet government is said to have emerged when the King was excluded from the meetings of the cabinet. This happened by accident in 1714, when George I ascended the throne. George I and George II did not know English language and therefore, were not much interested in the English affairs. Hence, George I ceased to attend the meetings of the cabinet and nominated Sir Robert Walpole to preside in his place. The cabinet discontinued the practice of meeting at the Buckingham Palace. It met at the House of the First Lord of the Treasury and the First Lord became the Chairman of the Cabinet. As chairman of the Cabinet, Walpole presided over the cabinet meetings, directed its deliberations and reported the decisions arrived at the cabinet meetings to the sovereign. He was not only a link between the cabinet and the sovereign, as a member of the Parliament, but he was also a link between the cabinet and the parliament. This new position and responsibility of Walpole, in effect, resulted in the origin of the office of the prime minister, though he himself hesitated to accept such a title. Simultaneously this had given rise to collective responsibility of the cabinet. Differences among the members of the Cabinet were resolved inside the cabinet and unanimous decisions were conveyed to the Sovereign. For twenty years, Walpole headed the government and his administration gave birth to all the essential characteristics of the present day cabinet system. It was Walpole who first administered the Government

NOTES

in accordance with his own views of political requirements. It was Walpole who first conducted the business of the country in the House of Commons. It was Walpole who in the conduct of that business first insisted upon the support for his measures of all servants of the Crown who had seats in the parliament. It was under Walpole that the House of Commons became the dominant power in the State, and rose in ability and influence as well as in actual power above the House of Lords. And it was Walpole who set the example of quitting his office while he still retained the undiminished affection of his King for the avowed reason that he had ceased to possess the confidence of the House of Commons. It was again Walpole who used No. 10, Downing Street as his official residence and it continues till today as the official residence of the British Prime Ministers.

George II followed the footstep of his predecessor. George III (1760-1820) made a frantic attempt to revive the glory of the monarchy. Although he was partially successful in the initial stage of his reign, people strongly resisted his attempt. His insanity towards the last part of his reign, made his attempt futile and the Cabinet acquired its supremacy once and for all. In that century, the Cabinet system became well-established and crystallized. Collective responsibility, political homogeneity and accountability to the House of Commons have developed as major features of the Cabinet system during the 19th century. The 20th century has marked a climax of this system. It has developed the convention of appointing the Prime Minister from House of Commons since 1923. The Ministers of Crown Act of 1931 legally recognized the institution of the Cabinet. It is today an omnipotent body-an institution of expanding powers.

The cabinet and the ministry

Sometimes a distinction is made between the cabinet and the ministry. To an ordinary man both the terms are synonymous, but these two terms denote two distinct parts of the government. Both are different from each other in their composition and functions. The cabinet is only an inner circle of the ministry. A ministry is a large body consisting of all categories of the ministers who have seats in the parliament and are responsible to the parliament. The cabinet, on the other hand, is a small body consisting of the most important ministers. In other words, all the members of the ministry are not the members of the Cabinet.

There are ministers of different ranks. They vary in nomenclature and in importance. First, there are some sixteen to twenty of the most important ministers, who are known as the cabinet ministers. They stand at the head of the executive and decide policies and issues of the government. Second, there are certain ministers who are designated as the ministers of cabinet rank. These ministers are not the members of the Cabinet, yet they are given the status of the Cabinet ministers. They are the heads of administrative departments and are invited to attend cabinet meetings when affairs of their respective departments are under consideration. The number of this category of ministers varies from government to government and it is left to the prime minister's discretion to decide.

Third, there are ministers of states who act like deputy ministers and they may be appointed in those departments where the work is particularly heavy and involves frequent visits abroad. These ministers usually work under the cabinet ministers.

Lastly, there are parliamentary secretaries or junior ministers that are appointed almost in every department. Technically they are not the ministers of the crown because constitutionally they do not enjoy powers. Their sole function is to help and relieve their senior ministers of some of their burdens by taking part in the parliamentary debates and

NOTES

answering parliamentary questions. They also assist their senior members in their departmental works. They are also known as 'parliamentary under secretaries' who are different from permanent under secretaries. A permanent under secretary is a senior member of the civil service in the government and he is non-political, permanent and paid.

All the above categories of ministers constitute the ministry and they are members of parliament and preferably belong to the majority party in the House of Commons.

They are individually as well as collectively responsible to the House of Commons and continue in office as long as they enjoy its confidence. The ministry may consist of about sixty to seventy members. It does not meet as a body for the transaction of business. It does not deliberate on matters of policy. The duties of a minister unless he is a cabinet minister, are departmental and individual confined to the respective departments. Policy formulation is the business of the cabinet. The cabinet meets in a body but the ministry never meets so.

The cabinet is said to be the 'wheel within the wheel.' It consists of only a small number of senior ministers who, in addition to being incharge of important departments of the state, formulate the policy of the government and co-ordinate the working of all departments. The ministry is always a larger body, whereas the Cabinet is only a smaller one. The latter is an inner circle within the bigger circle of the former. The Cabinet officer deliberates and advises; the privy councillor decrees; and the minister executes. The three activities are easily capable of being distinguished, even though it frequently happens that the cabinet officer, privy councillor, and minister are one and the same person'.

Organization of the Cabinet

Laski, British political theoristist, observes, 'The key-stone of the cabinet arch is the prime minister. He is central to its formation, central to its life and central to its death'. The first step in the formation of the Cabinet is, therefore, the selection of the prime minister. It is now a well-established convention that the prime minister must be the leader of the majority party in the parliament.

As there is bi-party system, the choice of the prime minister is practically made by the electorate. From the legal point of view, the monarch has to select the leader of the majority party in the House of Commons as the prime minister. In earlier days, the monarch was likely to have real choice in the matter but with the development of the bi-party system his choice became practically limited and he has no alternative but to invite the leader of the majority party in the House of Commons to be the Prime Minister. Once the Prime Minister is appointed, all other ministers are appointed by the Monarch on the advice of the Prime Minister. The Prime Minister has a free hand to form the ministry. Neither the Monarch nor the parliament can influence him in the choice of his colleagues. Legally he may not consult anyone except himself. Practically, he consults some of his leading party colleagues and followers. He should include the senior members of his party in the Cabinet. He must see that various age groups and interests are represented.

Further, the members of the Cabinet as well as the ministry must be taken from both the Houses of Parliament. According to Amery, 'No dictator, indeed, enjoys such a measure of autocratic power as is enjoyed by the British prime minister in the process of making up his cabinet'.

It may be pointed here that the prime minister is legally under no obligation to include any particular person in his cabinet. But in practice, some members of his party

NOTES

have such status and prestige that their inclusion in the Cabinet is most automatic. In 1929, James Ramsay McDonald did not want Arthur Henderson to be the Secretary for Foreign Affairs but when Henderson refused to accept any other office, McDonald had to yield. Another difficult task that the Prime Minister faces is the allocation of portfolios among his colleagues. There may be more than one claimants for the same post. The Prime Minister has to satisfy all shades of opinion in his party. He has a right to reshuffle his cabinet, when he likes.

In case of conflict between the prime minister and any of his colleagues, the latter has to yield before the former. There are no fixed rules regarding the size of the Cabinet. No two cabinets either have the same size or consist of exactly the same ministers. As a general rule, the ministers in charge of important departments, such as the Chancellor of Exchequer, Lord Chancellor, the Secretary of State for Foreign affairs, the President of the Board of Trade the ministers of defence, labour and agriculture, are invariably included in the Cabinet.

In addition to these, a number of other ministers are also included in the Cabinet. The strength of the Cabinet varies, usually, from fifteen to twenty. It is alleged that a twenty-member cabinet is too large a body to make prompt and quick decisions. The idea of the war-cabinets during the last two world wars has substantiated the above argument. In both the World Wars, the Prime Ministers, Lloyd George and Winston Churchill created the war-cabinet consisting of five ministers. The five-member war-cabinet was not merely, a Committee of the Cabinet but the final authority regarding the prosecution of the Wars. Churchill said that 'all the responsibility was laid upon the five-war cabinet ministers. They were the only ones who had the right to have their heads *cut* off on Tower Hill, if we did not win. The rest could suffer for departmental shortcomings but not on account or the policy of the State'.

The idea of an inner-cabinet as a prototype of the war-cabinet was first proposed in the report of the Haldane Committee on the machinery of government. It would consist of a few members, four or five, and act like central nucleus within the Cabinet structure. In practice often the Prime Minister consults a few important members of the Cabinet, instead of all the members in all important matters. This type of inner cabinet is a mere informal body. It is different from the 'war-cabinet'. The latter had official recognition and it was responsible for the conduct of war. The inner cabinet is only an informal institution. It neither supersedes the war-cabinet nor is responsible for any policy.

It is based more on expediency than on law. It is more an advisory body than a policy-making organ. Some of the recent writers, like L. A. S. Amery, have suggested to reduce the size of the Cabinet to half a dozen members or nearly so. These members will constitute a smaller cabinet consisting of important members of important departments. It will work more efficiently and quickly than a bigger body. This suggestion, however, has not found favour with others. There is apprehension that it may be a 'Super cabinet' and its members may be described as 'Over-Lords'. Herbert Morrison strongly repudiated the idea and concluded that 'a cabinet of a moderate size, say, sixteen to eighteen, which contains a limited number of non-departmental ministers and the rest departmental ministers, is probably the best'. A cabinet cannot discharge its function well without departmental ministers.

Features of the Cabinet system

The cabinet system, as it is found in Great Britain, is based on certain recognized principles. The principles have been developed in course of time and these are based more on

NOTES

conventions than on law. The British cabinet is rightly described as 'one of the parts of the governmental machinery least governed by law'. However, the Cabinet occupies the most important place in the British constitutional system. The essential features of the Cabinet system are discussed below.

1. Exclusion of the monarch from the Cabinet

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

2. Combination of the executive and legislative functions

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

3. Collective responsibility

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

4. Ministerial responsibility

In the fourth place, the British cabinet system is also based on the principle of the 'ministerial responsibility'. L. A. S. Amery writes, 'The collective responsibility of ministers in no way derogates from their individual responsibility'. A minister is responsible to the House of Commons for his acts of omission and commission. Every act of the Crown is countersigned by at least one minister, who can be held responsible in a court of law, if the act done is illegal. The cabinet as a whole may not resign on the mistake of an individual minister. There are many instances when individual ministers have resigned for their personal errors. In the Attlee Government in 1947, Hugh Dalton, the then Chancellor of Exchequer, resigned because of his indiscreet revelation of some facts of the budget to a journalist.

NOTES

5. Political homogeneity

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

6. Leadership of the prime minister

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

7. Secrecy of cabinet meetings

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

The establishment of a permanent cabinet Secretariat by Lloyd George III in 1917 has helped to write down the minutes of the proceedings and maintain secrecy. The secrecy of the proceedings of the Cabinet meeting helps to maintain collective responsibility and cabinet solidarity. Further, in order to strengthen the solidarity of the Cabinet its decisions are not arrived at by voting for or against a proposal. The Prime

NOTES

Minister tries to know the views of the members and uses his influence to reach a common decision. The members of the Cabinet are free to express their views, but once a decision is taken, they solidly stand behind it. Thus, secrecy and party solidarity may be considered to be the last but not the least essential feature of the British cabinet system.

Functions of the cabinet

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

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

(ii) **It is the principal custodian of executive powers:** The cabinet not only formulates and defines policies, it also executes them. It exercises the national executive power subject to the approval of the parliament. The fundamental requirement of a good administration is that a policy should be clearly formulated and efficiently executed. The cabinet formulates policy as well as sees its execution. All the ministers, whether they are members of the Cabinet or not, have to execute the policies formulated by the Cabinet and implement laws enacted by the parliament. It is the duty of a minister to see that his department works well. He supervises the work of senior civil servants working under him and guides them in the implementation of government policies.

The cabinet is also responsible for the appointment of high officers of the State. The King is a mere nominal executive head, whereas the ministers are the real executive heads. Thus, the Cabinet is held responsible for every detail of the administrative work.

(iii) **It controls and guides the legislative work:** Absence of strict separation of powers is a fundamental principle of the British Constitution. The members of the Cabinet are responsible to the House of Commons. The Prime Minister is the leader of the Cabinet as well as the leader of the House of Commons. The cabinet guides and largely controls the functions of the parliament. The ministers prepare, introduce and pilot legislative measures in the parliament. They also explain and urge the members to pass the bills introduced by them. Practically, most of the time of the parliament is spent in consideration of the legislative proposals made by the Cabinet. All bills introduced by the Cabinet are generally passed due to the support of the majority party in the parliament. If a government bill is rejected, the entire cabinet resigns or seeks dissolution of the House of Commons. A bill opposed by the Cabinet, has no chance of becoming an Act. In

NOTES

fact, the Cabinet has become a miniature legislature and it is said that, today it is the Cabinet that legislates with the advice and consent of the parliament.

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

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

6.2.3 The Prime Minister

According to John Morley, the Prime Minister is the keystone of the Cabinet-arch. He holds one of the most powerful political offices in the world. His leadership, as stated earlier, is one of the essential features of the Cabinet form of government. Sir Ivor Jennings went a step further to describe the Prime Minister as the 'keystone of the constitution'. According to him, all roads in the constitution lead to the Prime Minister, from the Prime Minister to the queen, parliament, the ministers, the other members of the commonwealth, even the Church of England and the courts of law. The Prime Minister is by far the most important man in the country. He is also described as the master of the government. It is the peculiarity of the British Constitution that the man who holds such a high office has, strictly speaking, no legal sanction. The English law is very much silent with regard to the office of the Prime Minister.

Origin of the Office

The office of the Prime Minister, as stated earlier, is the result of a mere accident. Sir Robert Walpole was the first Prime Minister of England. As George I did not know English language, and was not interested very much in British politics, he asked Walpole to preside over the Cabinet meetings. His successor, George II also followed the same precedent. The man who presided over the Cabinet meetings came to be known as the 'Prime Minister'. Of course, Walpole refused to accept the term 'Prime Minister' as he considered it as a derogatory one. It was only in 1878, for the first time, the term Prime Minister, was mentioned in the Treaty of Berlin, where Lord Beaconsfield was described as the *First Lord Of* Her *Majesty's Treasury, Prime Minister of England.* This was the first public document which contained the term.

NOTES

It was only in the parliamentary Act of 1906, the term Prime Minister was officially mentioned. This Act gave a definite rank to the Prime Minister by fixing the order of precedence in the State functions and made him the fourth subject of the realm. The Ministers of the Crown Act, 1937, gave a formal recognition to his office and allowed him to draw a salary of £10,000 per annum as the first Lord of the Treasury. Even today, the Prime Minister draws the salary as the first Lord of Treasury— a position without any function. The power and authority of the Prime Minister, therefore, much depends on constitutional conventions. The office has little legal status. It has more extra-legal sanction behind it. What Gladstone pronounced is true to a great extent that, nowhere in the wide world does so great a substance, cast so small a shadow; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative'.

Selection of the Prime Minister

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

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

Further, the prime minister is responsible for the party organization and in the ultimate analysis; he is responsible to the electorate. Party activities are seen only in the House of Commons but not in the House of Lords. The precedent that the Prime Minister should belong to the House of Commons seems to be a sound one. It has become a well established convention in England in the twentieth century.



Fig. 6.1 *David Cameron- Prime Minister of UK*

NOTES

Functions of the Prime Minister

The whole position of the Prime Minister, as stated above is based, not on law but on convention. The constitution is silent with regards to the office of the Prime Minister. His functions are many and varied. He has immense powers and considerable amount of prestige, which can, be seen from the following description of his functions.

(i) Formation of the ministry

The Prime Minister forms the ministry. With the appointment of the Prime Minister, the essential function of the Monarch is over, for it is left to the 'Prime Minister to select his ministers and present the list to the Monarch. The Monarch has no other alternative but to appoint the ministers as recommended by the Prime Minister. Laski has rightly observed, 'He is central to its formation, central to its life, and central to its death'. The Prime Minister also has to select his cabinet colleagues. If the Prime Minister resigns or dies, it means the resignation or death of the whole ministry. The Prime Minister can change the members of the ministry at any time.

Although the Prime Minister has the sole authority to select any person as a minister, he may be influenced practically by many considerations. He has to accommodate the claims of the influential members of his party and include them in the Cabinet. He can request any of his colleagues to resign if he thinks that his presence in the ministry is prejudicial to either efficiency or stability of the government. He can also advise the King to dismiss a minister. Thus, the Prime Minister is the keystone of the Cabinet–arch and can make or unmake the Cabinet in any way he likes.

(ii) Distribution of portfolios

Distribution of portfolios is another important task of the Prime Minister. He has a free hand in allocating various departments to his colleagues. It is for him to decide the size of the Cabinet and the ministry. He has to select the ministers who are to be included in the Cabinet. Rarely his final selection is rejected. Of course, while distributing portfolios, he has to see that important members of the party do get important portfolios. He has to see that persons from different age groups are included. He has to satisfy the aspirants for the important portfolios. He has to look to amity and party solidarity in the formation of the ministry and in the distribution of portfolios. On the whole, his task is a real difficult one. As Lowell points out that, 'his work is like that of constructing a figure out of blocks which are too numerous for the purpose and which are not of shapes fit perfectly together'.

(iii) The chairman of the Cabinet committee

The Prime Minister is the Chairman of the Cabinet Committee. He convenes the meetings of the Cabinet and presides over them. He is to fix the agenda of the meetings and it is for him to accept or reject proposals put by its members for discussion in such meetings. The ministers are individually responsible to him for good administration of their respective departments. He may advise, warn or encourage them in discharging their functions. He is the head of the Cabinet. 'He acts as the Chairman of various standing and *ad hoc* Committees of the Cabinet. In short, he acts as the chief guide to the Cabinet.

(iv) Leader of the House of Commons

It is now an established convention that the Prime Minister should belong to the House of Commons. He represents the Cabinet as a whole and acts as the leader of the House. He announces the important policies of government and speaks on most important bills

NOTES

in the House of Commons. He is responsible for the arrangement of business of the House through the usual channels. He may delegate this power to anyone of his colleagues and in that case, the concerned member acts as the Leader of the House. It is often done in order to relieve him of much of his burden. But this delegation does not deprive the Prime Minister of his function as the Leader of the Government. The members of the House look to him as the fountain of every policy.

(v) Chief coordinator of policies

The Prime Minister is the chief coordinator of the policies of several ministries and departments. He has to see that the government works as an organic whole and activities of various departments do not overlap or conflict with one another. He has to keep an eye over all the departments. The functions of the government have expanded so widely and its activities have become so complex that this work of coordination has become a very difficult task for the Prime Minister. Unless he has sharp intelligence and great perseverance, he cannot exercise the function of coordination as well as supervision effectively. In the case of conflict between two or more departments, he acts as the mediator. He irons out conflicts among various ministries and various departments. Thus, he plays a major role in coordinating the policies of the government.

(vi) Sole advisor to the Monarch

The Prime Minister is the sole adviser to the Monarch. The Prime Minister communicates decisions of the government to the monarch. He is the only channel of communication between the Monarch and the Cabinet. If the Monarch does not accept the advice of the Prime Minister, the Prime Minister may resign. As long as the Prime Minister enjoys the confidence of the majority of House of Commons, it is not possible for the Monarch to dismiss him. On certain occasions, he may act as a personal advisor to the Sovereign. He also carries the opinion of the King to his colleagues and thus acts as a link between the Sovereign and the Cabinet. He advises the Sovereign in matters of appointment and in other matters of national importance. He recommends the names of persons on whom the honours can be conferred. He is also responsible for a wide variety of appointments and exercises considerable patronage. He also has the power to advice the King to create peers. Thus, he has a legal right to access the Sovereign which other members of the Cabinet ordinarily do not possess. For this reason, he frequently visits the Buckingham Palace to meet the Monarch. He acts as the sole link between the Cabinet and the Sovereign.

(vii) Leader of the nation

The Prime Minister is not only the leader of the majority party but also the leader of the nation. A general election in England is in reality an election of the Prime Minister. He should feel the pulse of the people and try to know the genuine public opinion on matters which confront the nation. He is the chief spokesman of the government policies in the House of Commons. He is the recognized leader of the nation and his appeal to the people in critical times saves the nation. Sometimes in emergencies, he may take action without consulting the Cabinet. To cite an example, the Disraeli Government purchased the Suez Canal shares and consulted the Cabinet later. People look at 10, Downing Street, the official residence of the Prime Minister, with great expectations particularly in critical periods.

NOTES

(viii) Power of dissolution

The Prime Minister possesses the supreme power of dissolution and it is his sole right to advise the Monarch to dissolve the House of Commons. In other words, the members of the House of Commons hold their seats at the mercy of the Prime Minister. No member likes to take the risk of elections and the threat of dissolution rather compels the members to be subservient to the Prime Minister. The controversy whether the Monarch can refuse a dissolution has already been referred to. It is difficult to imagine a situation in which the monarch can refuse dissolution to a prime minister. During the last one hundred years, there has been no instance of a refusal of the dissolution by the Monarch when advised by the Prime Minister. Laski is of the opinion that this royal prerogative is as absolute as the royal veto power. Of course, the Prime Minister should consult the Cabinet before advising for dissolution.

(ix) Other powers

The Prime Minister possesses wide powers of patronage, including the appointment and dismissal of ministers. A large number of important political, diplomatic, administrative, ecclesiastical and university appointments are made by the Monarch, on his recommendations. He may occasionally attend international conferences. He meets the Commonwealth Prime Minister in regular conferences. He may meet the Heads of other Governments at the summit talks and discuss the international problems. The Prime Minister often discharges these functions without consulting the cabinet. To give an example, during the Second World War, Winston Churchill made a speech in 1941 offering assistance to the Soviet Union without consulting the Cabinet and he pleaded that consultation with the Cabinet was not necessary. When the Prime Minister acts as such, the Cabinet finds it difficult either to accept or to reject the policy announced by the Prime Minister. If the cabinet rejects, there is risk of losing its leader and the final risk of having a general election. The practice of non-consultation with the Cabinet in announcing an important issue by the Prime Minister is against the principle of collective responsibility and solidarity of the Cabinet. Both the extremes should be avoided. The above example is a rare phenomenon in the British cabinet system. The solidarity of the Cabinet and the prestige of the Prime Minister should be always reconciled.

Position of the Prime Minister

The Prime Minister holds a key position in the British Constitutional system. The description of the above functions and powers makes it crystal clear that the Prime Minister is 'the pivot of the whole system of the government'. The general accepted theory as Lord Morley observed, is that, the Prime Minister is just like *'primus inter pares'* or 'first among equals'. He writes, 'Although in cabinet all its members stand on an equal footing, speak with one voice, and on the rare occasions when a division is taken, are counted on the fraternal principle of one man and one vote, yet the head of the Cabinet is *primus inter pares* and occupies a position which so long as it lasts is one of the exceptional and peculiar authority'.

Lord Morely also describes him as 'the key-stone of the Cabinet–arch'. Both these descriptions of Lord Morley seem to be inadequate. Ramsay Muir considers the first description as nonsense, when 'applied *to* a potentate who appoints and can dismiss his colleagues. He is, in fact, though not in law, the working head of the State induced with a plentitude of powers as no other constitutional ruler in the world

NOTES

possesses, not even the President of the United States'. The phrase *primus inter pares* is too modest to describe such a powerful office.

In relation to other members of the Cabinet, the Prime Minister occupies a superior position, a position of an undisputed leader. Even the description of the Prime Minister as 'the key stone of the Cabinet–arch' is considered inadequate by Sir Ivor Jennings. He rather regarded the office as 'the key-stone of the constitution'. Sir William Harcourt used the Latin phrase when he described the Prime Minister as *luna inter stellas minores,* i.e., 'moon among lesser stars'. Although this description explains the position of pre-eminence of the Prime Minister of England, Sir Ivor Jennings goes a step further and describes him as 'a Sun around which other planets revolve'.

In fact, the prime minister is like the sun around which other planets revolve, and without him the ministers have no existence. He is considered to be the most important person in the government and nothing can take place without his knowledge. Nothing can also happen against his will. His personality is felt in every department of the government. Very few persons in the world can carry with them greater powers than the British Prime Minister. The Prime Minister is considered to be an acknowledged and undisputed leader of the nation. His office gives him a national standing which none of his colleagues assume.

As Laski has observed, 'A general election is nothing so much as plebiscite between two alternative Prime Ministers.' In fact, elections in England have become an issue of personalities and voters are asked to choose the Prime Minister of the nation. The result of this type of elections has added strength and vitality to the office of the Prime Minister. There is a tendency for the increase of the powers of the Prime Minister. The root cause of this can be traced back to the Reform Act of 1867, which had democratized the House of Commons and put emphasis on election.

With the growth of the party system and rigidity in party discipline, the Prime Minister has become both the leader of the nation and the leader of the party. He appeals to the electorate not as an individual but as a leader of the party. No minister or no member of the party can take the risk of challenging the authority of the prime minister as it may be suicidal to the political ambitions of the former. This has enabled the Prime Minister to dictate his policy within reasonable limits.

Recent developments in the field of science and international relations have also increased the importance of the Prime Minister. Radio and television focus maximum attention on the Prime Minister than any other politician. In the international field, the Prime Minister attends various summits and conferences and has a very significant position in the implementation of policies. Ultimately, when the Cabinet office and cabinet committees were created, they helped to increase the powers of the Prime Minister. Most of the important administrative work is carried out through the cabinet office. As the Chairman of various cabinet committees, the Prime Minister is in a position to know various problems.

On the whole, he is now in a greater position to supervise and to control the administrative machinery of the country. Considering all these facts, Sir Ivor Jenning observes, 'A Prime Minister wields an authority that a Roman Emperor might envy or a modern dictator strives in vain to emulate'. Undoubtedly, the Prime Minister holds a position of an undisputed supremacy. But it is said by Lord Oxford and Asquith in 1921, 'The office of the Prime Minister is what its holder chooses to make it'. Defined powers legally conferred do not always determine the position of an officer. The personality of the incumbent of the office is more important. If the Prime Minister is dynamic, efficient,

NOTES

capable, strong and possesses exceptional qualities, it is difficult for his colleagues to oppose him. He may exercise immense powers by virtue of his dynamic personality. When asked what are the qualities required for a good Prime Minister, Pitt, the Younger (a former British Prime Minister) replied, 'Eloquence first, then knowledge, thirdly toil and lastly patience'.

With similar views, Laski suggested 'dexterity and the power to rule men' are the additional qualities needed for an efficient Prime Minister. Further, he should have a dynamic personality to appeal to the people. Jenning rightly observes, 'Since his personality and prestige play a considerable part in moulding public opinion, he ought to have something of the popular appeal of a film actor and he must take some care over his makeup like Mr Gladston with his collars, Mr. Lloyd George with his hair, Mr Baldwin with pipes, and Mr Churchill with his cigars. Unlike a film actor, however, he ought to be a good inventor of speeches as well as a good orator. Even more important perhaps is his microphone manner, for few attend meetings but millions look to broadcast'. The actual position of the Prime Minister varies according to his personality and the extent to which he is supported by his colleagues.

The office of the Prime Minister, to quote Jennings again, is necessarily 'what the holder chooses to make it and what other ministers allow him to make it'. As he is not a Caesar or a God whose authority cannot be challenged. He is just like the captain of the Cabinet team. Just like a game cannot be played by the captain alone, likewise the game of politics cannot be played by the Prime Minister alone. He has to work with the cabinet. Palmerstone once said that 'the Premier's practical power and importance in his government inevitably tend to be diminished when the principal offices are filled by conspicuously energetic and able men'. There have been Prime Ministers like Pitts, Peel, Disraeli, Gladstone, Lloyd George and Churchill who had possessed dynamic personalities and exercised tremendous influence in administration. On the other hand, there have been mediocre Prime Ministers like New Castle, Liver Pool, Campbell, Banner Man and Attie. These Prime Ministers had little influence in administration. Thus, the office is actually what the holder makes it.

Often a question is raised, 'Can the Prime Minister be a dictator'? As he possess a vast ·amount of powers in his hand his position can be compared to that of a dictator. He effectively controls not only the Cabinet but also the House of Commons. In a bi-party system when the Prime Minister is assured of a stable majority in the House of Commons, he can easily get his legislative and administrative measures approved in the parliament. In war and emergencies, he arrogates himself many special powers which may not be inferior to that of a dictator. It may be contended that he forms a temporary dictatorship after getting the mandate from the people. The above contention, though seems logical, is not possible in a classic well-established democratic system like Great Britain. The House of Commons has been a citadel of British liberty. Public opinion is very strong in England. The activities of the Prime Minister are subject to serious criticism both inside and outside the parliament. Her Majesty's Opposition acts as an effective force to check the dictatorial ambition of the Prime Minister. Outside the parliament, the Prime Minister's activities are also subject to serious criticism from free press and free people. Finally, the election acts as a deterrent on the dictatorial path of the Prime Minister. But in view of the tremendous powers enjoyed by the Prime Minister, he may be described as a constitutional dictator or a dictator by consent. To conclude with Finer, the Prime Minister, 'is not a Caesar, he is not an unchallengeable oracle, his views are not dooms, he is always on sufferance and its terms are whether he can render undoubtedly useful services. At any time a rival may supplant him'.

NOTES

Prime-ministerial government

In view of the vast powers exercised by the Prime Minister, some critics observed that there is Prime Ministerial form of Government in England. R. H. S. Crossman writes, 'The post-war epoch has seen the final transformation of the cabinet government into Prime Ministerial Government. Under this system the "hyphen which joins, the buckle which fastens, the legislative part of the State to the executive part" becomes one single man. Even in Bagehot's time it was probably a misnomer to describe the Premier as Chairman, and *'primus inter pares'*.

His right to select and remove his own cabinet, his power to decide the agenda of the Cabinet, his right to announce the decisions of the Cabinet, his right to advice the Monarch for dissolution, his power to control the party members for the sake of discipline- all this has given him near presidential powers. Every cabinet minister has become, in fact, the Prime Minister's agent or his assistant. No minister can take an important move without consulting the Prime Minister. It may be said that the Cabinet has become a Board of Directors and the Prime Minister, a General Manager or a Managing Director. Important policy decisions are often taken by the Prime Minister alone or after consulting one or two cabinet ministers. The repeal of the Corn Law in 1846 was done by the personal initiative of Peel. The invasion of Suez in 1956 was decided by Eden in consultation with his few colleagues and the Cabinet was informed in the last moment before Israel attacked Egypt. Harold Wilson reached the final decision to dissolve the House of Commons in 1966 without consulting the Cabinet. Once the Prime Minister announces his policy or takes a step, his followers have little chance to oppose him, for it may endanger party solidarity and stability of the government. Herbert Morrison and some other critics refute the thesis of establishment of Prime Ministerial Government in England. They hold the view that 'the Cabinet is supreme' and the Prime Minister is not the master of the Cabinet. He cannot ride roughshod over the desire of the Cabinet. As the captain he must carry the whole team with him. A team is weak without a captain and there can be no captain without a team. Both should work in mutual cooperation and perfect harmony. Hence, the Prime Minister is like an executive chairman.

The above two views seem to be extreme and the real truth lies in between these two views-Prime Ministerial powers with political circumstances and with personalities of the persons concerned. The Prime Minister is, no doubt, more powerful than any cabinet minister. However, it cannot be said that he is more powerful than the whole cabinet. He has to carry the whole cabinet with him.

6.3 THE US PRESIDENT

The US constitution has bestowed all executive powers in the hands of the President. The President is the Chief Executive Head of the state in the US. His powers are so vast and supreme that he is often considered to be the most dominant ruler in the world. There are presidents in parliamentary democracies also, but those presidents are nominal executives. They have to work as per the advice of the cabinet and are answerable to the legislature. India is a great example of one such democratic nation. The president in the US is the real executive. He and his cabinet are not answerable to the legislature. He is the supreme authority in the executive vicinity. His cabinet is actually a personal team to advise him. This team is neither responsible to the legislature nor does it have any collective responsibility. The constitution has given powers to the President and made him the real executive.

NOTES

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

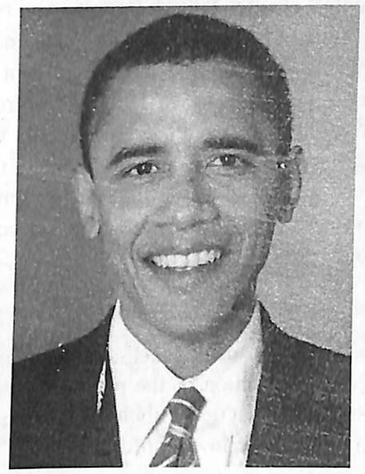


Fig. 6.2 Barack Obama - US President

Election Procedure

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

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

Qualification for US Presidency

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

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

Check Your Progress

1. Who is the head of state in Great Britain?
2. Who is the head of the government in Great Britain?
3. Which constitution in the world is known as the mother of all parliaments?
4. What is the first step in the formation of the Cabinet in UK?
5. In UK who is the sole advisor to the Monarch?

NOTES

Term

The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term. Earlier, George Washington, the first President of US was elected twice and the third time he refused to contest election though there was no restriction on re-election in the constitution at that time. After this incident, it became a convention but this convention was broken during World War II when President Roosevelt was elected four times. His fourth term was in 1944. In 1945 he expired. However, the 22nd amendment of the constitution (1952) fixed the total term for any president at ten years. Normally, a candidate cannot be re-elected for the third time. In case a candidate (vice-president) has succeeded a president after two or more than two years of his term, the vice-president succeeding him will have two chances to contest an election. In any case, the term should not exceed ten years.

The Succession

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

(i) The speaker of the House of Representatives.

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

(iii) The secretary of the state followed by other members of the cabinet.

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

Removal of the President

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

Immunities

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

6.3.1 Powers and Functions of the President

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

NOTES

(a) Executive Powers

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

1. **As chief administrator:** The President is the chief administrative head of the nation. All administrative functions are carried out in his name. He is responsible to implement the federal laws in the country. He is accountable to see that the laws of the constitution and the decisions of the courts are enforced and implemented. He must see to it that the constitution, life and property of the people of US are protected. He executes treaties with the consent of the senate and agreements with other countries and protects the country from foreign invasion.

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

2. **As commander-in-chief:** The president is the supreme commander-in-chief of the armed forces of the US. He is, as a result, accountable for the defense of the country. He appoints high officials of the army with the support of the senate and can also remove them at will. He cannot declare war because this power is in the hands of the Congress but he can create a situation with his administrative insight, where the declaration of war becomes inevitable.

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

(b) Delegated Legislation

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

(c) Financial Powers

The Congress is the custodian of the nation's finances. However, the President also plays a central role in the financial matters of the country. The budget is prepared under his supervision and directions by the bureau of budget. High level technicalities are applied by the bureau while preparing the budget. After, the budget is presented before the Congress, it has the power to amend the budget, but normally they avoid disturbing the budget with amendments because of the technicalities involved. Another reason for avoiding amendments is that the Congress does not have any skilled person to set right the disturbed budget; therefore the budget is passed as it is presented.

NOTES

(d) Power of Patronage

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

Limitations on the Powers of the President

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

Harmonious working is difficult

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

Difficulty in executing his policies due to dependence on the Congress

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

Senatorial approval

Senatorial approval is a big obstacle in the president's administration. The constitution has provided that all federal appointments made by him are to be ratified by the senate, before they come in to the forefront. Here also, the president does not have exclusive powers; he is under the check of the senatorial courtesy.

His veto can be nullified by the Congress

(i) The President can use his veto power against a bill that is sent by the Congress. He can veto a bill within 10 days and send it back to the Congress. However, if the vetoed bill is resent with 2/3rd majority, then the President has to approve it.

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

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

NOTES

Limitations of Holding an Elected Office

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

Limited Tenure

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

Constitutional Limitations

The President has to act within the structure of the constitution, which also puts limitations on his free exercise of powers.

6.3.2 The Presidential Cabinet

The American constitution does not make any provisions for the cabinet. The so called cabinet is the product of the customs and the laws that are passed by the Congress. The term 'cabinet' came into use during president George Washington's term, in 1793. He used to seek advice from his four secretaries, whom he called his confidential advisors and later this body came to be called the cabinet.

The American cabinet is totally different from the parliamentary cabinets in other countries. It is an extra constitutional and extra statutory body. It is an advisory body to aid and advice the president in the discharge of his duties. Eventually, separate departments of the administration were made under the charge of one advisor each. They are called secretaries and these secretaries are the heads of the departments and at the same time, the president's advisers. They are collectively known as the President's cabinet.

The secretaries are appointed by the President on the advice of the senate. Generally, the senate does not hinder the President's selection of secretaries. The President has exclusive authority to remove the secretary, if the former is not happy with his work. Initially the cabinet started with three departments. State, treasury and war departments; now, there are twelve such departments. All these departmental heads comprise the cabinet. Their appointment is made by the President. He does not have any restriction on the selection of secretaries. While selecting a secretary, he gives preference to experience, ability and geographical situations. He can even appoint people from opposition if he feels they can be the best advisors. George Washington tried it but failed because the advisors from the opposition created many hassles for him in his administration and finally he had to reject them and select people from his own party. Since then, it has become a convention that president selects advisors from his own party for political homogeneity.

Meetings

The cabinet ordinarily meets once a week. There are no formal rules for the meetings. The President only decides the matters to be discussed in the meetings. Meetings are held in his room in the White House. There are fair and frank discussions in the meetings but no official record of these meetings is maintained. The proceedings are kept confidential. The decisions of the cabinet are announced as the decisions of the President only.

NOTES

Responsibility of the cabinet

The cabinet in America is called the official family of the President. It does not have any independent powers or prestige. It is not a policy making body. The cabinet does not have individual or collective responsibility. The President cannot give any responsibility to the cabinet. He is the creator and destroyer of the cabinet. The cabinet does not have any legal sanction. It is dissolved with the departure of the President.

Responsibility of the Secretaries

As the heads of different departments, the secretaries are individually accountable to the President for their functioning in the departments. Consecutively, for efficient administration in their individual departments, they are assisted by junior secretaries.

Organization of the Department

Each department is divided into bureaus which are headed by a commissioner or a bureau chief. The bureau is further divided into divisions. It is the duty of the secretary of the department to see that his department works competently with full assistance and harmonization between bureaus and units of division. They are not accountable to the legislature for their actions. They are only answerable to the president. But, Congress can summon any secretary for explanation, when there is a need to do so, or when the Congress constitutes an investigation committee to investigate the complaints received against any department. The secretary is called to get information or clarification and not for accountability.

Position of the Cabinet

The position of the American cabinet is what the President makes it. It is formed only to assist and advice the President but it is up to the President to accept the advice or not.

ACTIVITY

Make a list of the individuals who have served as the President of America and find out which president has served the longest period of presidency in America.

Check Your Progress

6. Who is the chief executive head of the state in the US?
7. How is the US president elected?
8. Who is the custodian of the finances in the USA?
9. What is the tenure of the president of America?
10. How did the term 'Cabinet' come into existence in USA?

DID YOU KNOW

Barack Obama is the first African-American President of the USA.

6.4 EXECUTIVE BODY IN JAPAN

The legislative organ of Japan is the National Diet, which refers to a bicameral parliament. With 480 seats, the Diet comprises a House of Representatives which is elected by popular vote every four years or till it is dissolved. The House of Councillors, on the other hand, has 242 seats where the popularly elected members serve a six-year term. Secret ballot is held for all elective offices and the age of universal suffrage is 20 years.

While it is a constitutional monarchy, the power of the Emperor is limited to only ceremonial duties. The Constitution of Japan, which was adopted in 1947, defined the role of the Emperor as "the symbol of the state and of the unity of the people". The Japanese legal system is historically influenced by the Chinese law and was developed during the Edo Period through usage of texts like *KujikataOsadamegaki.* It was modified in the 19th century on the basis of civil law of Europe, mainly those of countries like France and Germany. In 1986, for instance, the government of Japan introduced a civil code influenced by Germany. It was modified after the World War II and remains into effect till present. The Diet makes statutory laws, which are also approved in form of rubber stamp by the Emperor. As per the Constitution, the Emperor is required to promulgate a legislation passed by the Diet but has no power to oppose such a legislation. The statutory law is comprised in a collection called the Six Codes. Judicially, the country's system is divided into four basic tiers headed by the Supreme Court and then the lower courts.

The head of the government is the prime minister who is appointed by the Emperor. The prime minister is chosen by the Diet from among its members and needs to enjoy the support of the House of Representatives to remain in office. The head of the Cabinet is also the PM; in fact, the title of the PM in Japanese can be translated as the 'Prime Minister of the Cabinet'. Thus, the PM appoints and even dismisses the ministers of the state, who are also the Diet members. At present, Shinzo Abe is the PM of Japan. It was in the year 2009 that the Social Liberal Democratic Party of Japan came to power after 54 years.

Sovereignty lies in the people of Japan while power is with the PM. The Emperor, on the other hand, acts as the head of the state in diplomatic matters as part of his ceremonial duties. The current Emperor of Japan is Akihito while Naruhito, who is the Crown Prince of Japan, stands next in line to the throne.

The Diet is in charge of the executive branch, whose chief is the prime minister. As mentioned earlier, the PM is appointed by the Diet on the directions of the Emperor. The PM is required to be both a civilian and a member of the Diet. Even the Cabinet organized by the PM has to be civilian. As per the Constitution, the majority of the Cabinet must comprise of members of both the Houses of the Diet, even though non-elected officials are appointed from time to time.

However, the judiciary of the country is independent of its executive or legislative branches and the judges are appointed by the Emperor on the directions of the Cabinet. The judiciary is headed by the Supreme Court and there on comprises several lower courts. As per the Bill of Rights drawn up on May 3, 1947, the Supreme Court was given the power of judicial review. This was on the lines of the similar Bill in the United States. There, however, exist no administrative courts or claims courts in Japan and the jury system has been recently introduced in the country. The decisions of the courts are final as based on the judicial system.

6.4.1 Local Government

While Japan has a unitary system of government, the local jurisdiction is dependent on the financial support of the national government. Like other ministries, the **Ministry of Internal Affairs and Communications** makes regular interventions in the working of the local governments. This intervention is mostly financial as local governments are

NOTES

NOTES

always in the need of financial backing of the national ministries. This system is also called the '**thirty-per cent autonomy'.**

This system gives different local jurisdictions high level of organizational and policy standardization, in turn allowing them to preserve the unique qualities of their prefecture, city, or town. In the past, collective jurisdictions like Tokyo and Kyoto have introduced independent policies in areas like social welfare which were later adopted by the national government.

Local authority

There exist 47 administrative divisions in Japan. These include the prefectures comprising one metropolitan district (Tokyo), two urban prefectures (Kyoto and Osaka), forty-three rural prefectures, and one 'district', Hokkaidô. Wards are names given to divisions within large cities; there are also further split into towns or precincts, or sub-prefecture and counties.

Cities in Japan are recognized as self-governing units and are independent of the larger jurisdictions within which they are located. A Jurisdiction needs to have at least 30,000 citizens to attain a city status. Of these, at least 60 per cent are required to be engaged in urban occupations. Outside of cities too, there exist self-governing towns and precincts of urban wards. These too have their own elected mayor and an assembly, just like a city. The smallest of all self-governing entities are villages in rural areas. These comprise numerous rural hamlets where several thousand people live and who are connected with each other through a formal village administration framework. Villages too have mayors and councils who are elected for a four-year term.

Structure of Local Authority

The prefectural and municipal governments in the country are organized under the Local Autonomy Law, which was introduced in the year 1947. As per this law, each jurisdiction has a chief executive, also known as a governor in prefectures and a mayor in municipalities. While most jurisdictions have a unicameral assembly, towns and villages can choose direct governance by citizens in the general assembly. Nonetheless, executive and assembly are elected every four years by popular vote.

A modified version of power separation rule is used by the local governments in contrast to that of the national government. As per these, an Assembly can pass a no-confidence vote in the executive, in the case of which the executive is required to either dissolve the assembly within ten days or lose their office automatically. The executive remains in office till the next poll and until the new assembly passes another no-confidence resolution.

Local governments make their laws primarily through local ordinance and local regulations. Ordinances are similar to statutes in the national system. The Assembly is required to pass them and it can impose certain penalties for violations like up to 2 years in prison and/or 1 million yen in fines. Regulations, on the other hand, are similar to cabinet orders in the national system. They are passed by the executive unilaterally and superseded by any conflicting ordinances. Through them, a fine of up to 50,000 yen can be imposed.

Multiple committees are also a feature of local governments. These include school boards, public safety committees (responsible for overseeing the police), personnel committees, election committees and auditing panels. As per law, they can be directly chosen, be elected by the Assembly or both. Prefectures are also required to have

NOTES

departments like the general affairs, finance, welfare, health and labour. Departments like agriculture, fisheries, forestry, commerce, and industry are created as per local needs. The governor is responsible for the activities of the departments which are in turn supported by local taxation or financed by the national government.

6.5 SUMMARY

In this unit, you have learnt that:

- The British governmental system is being acknowledged as a parliamentary monarchy which means that the country is ruled by a monarch whose powers are governed by constitutional law.
- The British Constitution, the oldest of all the constitutions of the world, is considered as 'the mother of all parliaments'.
- Great Britain is the classic home of parliamentary form of government. The most characteristic feature of the parliamentary form of government is the responsibility of the executive to the legislature.
- Absence of strict separation of powers is another important feature of parliamentary form of government.
- The chief characteristic of the British party system is the existence of two well-organized and more or less equally balanced parties which dominate the political arena.
- The cabinet is 'the core of the British constitutional system.' It is the most important single piece of mechanism in the structure of the British government.
- The British cabinet is not recognized by law. It is a product of conventions and it has a long historical growth.
- There are ministers of different ranks. They vary in nomenclature and in importance.
- It may be pointed here that the Prime Minister is legally under no obligation to include any particular person in his cabinet.
- The cabinet system, as it is found in Great Britain, is based on certain recognized principles. The principles have been developed in course of time and these are based more on conventions than on law.
- The cabinet occupies a unique position in the British constitutional system. Writers of the British Constitution have used colourful phrases to describe the position of the Cabinet in the political system of that country.
- According to John Morley, the Prime Minister is the key stone of the Cabinet arch. He holds one of the most powerful political offices in the world.
- The office of the Prime Minister, as stated earlier, is the result of a mere accident. Sir Robert Walpole was the first Prime Minister of England.
- The selection of the prime minister depends essentially on the Monarch. During the 18th century, the royal choice was playing an effective role in such election.
- The entire position of the Prime Minister, is based, not on law but on convention. The constitution is very much silent with regards to the office of the Prime Minister. His functions are many and varied.

Check Your Progress

11. Who appoints the Prime Minister of Japan?
12. Who does the executive branch report to?
13. Who appoints the judges in Japan?
14. What are prefectures?

NOTES

- The Prime Minister holds a key position in the British Constitutional system.
- In view of the vast powers exercised by the Prime Minister, some critics observed that there is Prime Ministerial form of Government in England.
- The US constitution has bestowed all executive powers in the hands of the President. The President is the Chief Executive Head of the state in the US.
- The President is indirectly elected by an electoral college of each state. Each state elects the electors who are equal to the number of senators and representatives in the Congress, from the state concerned.
- The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term.
- The President of the US is the most powerful authority. He commands high respect and backing in the country.
- The American constitution does not make any provisions for the cabinet. The so called cabinet is the product of the customs and the laws that are passed by the Congress.
- The position of the American cabinet is what the President makes it.
- Japan's legislative organ is the National Diet, a bicameral parliament. The Diet consists of a House of Representatives and a House of Councillors.
- The government of Japan is a constitutional monarchy where the power of the Emperor is limited, relegated primarily to ceremonial duties.
- The Prime Minister of Japan is the head of the government. The position is appointed by the Emperor of Japan after being designated by the Diet from among its members and must enjoy the confidence of the House of Representatives to remain in office.
- Japan has a unitary system of government in which local jurisdiction largely depends on the financial backing provided by the national government.
- Japan is divided into forty-seven administrative divisions, the prefectures: one metropolitan district (Tokyo), two urban prefectures (Kyoto and Osaka), forty-three rural prefectures, and one 'district', Hokkaidô.
- All prefectural and municipal governments in Japan are organized following the Local Autonomy Law, a statute applied nationwide in 1947.
- Local governments follow a modified version of the separation of powers used in the national government.
- The primary methods of local lawmaking are local ordinance and local regulations.
- All prefectures are required to maintain departments of general affairs, finance, welfare, health and labour.

6.6 KEY TERMS

- **Legislature:** A group of people who have the power to make and change laws.
- **Monarch:** A person who rules a country, for example a king or a queen.

NOTES

- **Constitution:** The system of laws and basic principles that a state, a country or an organization is governed by.
- **Cabinet:** A group of chosen members of a government, which is responsible for advising and deciding on the government policy.
- **Senate:** One of the two groups of elected politicians who make laws in countries like the US.
- **House of Representatives:** The largest part of Congress in the US, whose members are elected by the people of the country.
- **House of Commons:** Is the lower house of the Parliament of the United Kingdom.
- **National Diet:** It is the bicameral parliament of Japan.
- **Prefectures:** It is the name given to administrative divisions in Japan.

6.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. Monarch is the head of the state in Great Britain.
2. The Prime Minister is the head of the government in Great Britain.
3. The British Constitution is known as the mother of all parliaments.
4. The first step in the formation of the Cabinet in UK is the selection of the Prime Minister.
5. In UK the Prime Minister is the sole advisor to the Monarch.
6. The President is the Chief Executive Head of the state in the US.
7. The President is indirectly elected by an electoral college of each state.
8. The Congress is the custodian of the finances in USA.
9. The President is elected for a short term of four years or at the most for one more term.
10. The term 'cabinet' came into use during president George Washington's term, in 1793.
11. The Prime Minister is appointed by the Emperor of Japan after being designated by the Diet from among its members and must enjoy the confidence of the House of Representatives to remain in office.
12. The executive branch reports to Diet.
13. The judges are appointed by the Emperor as directed by the Cabinet.
14. A prefecture is an administrative jurisdiction or subdivision in a country. Japan is divided into forty-seven administrative divisions or prefectures.

6.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the salient features of the British constitution.
2. Write a short note on the parliamentary form of government that exists in Britain.
3. Analyse the importance of the Cabinet in the British constitutional system.

NOTES

4. What is the procedure for the selection of the Prime Minister in the British constitutional system?
5. What is the composition of the National Diet in Japan?
6. Write a short note on (a) judiciary (b) prefectures.
7. What is the role ofthe cabinet in the US government?

Long-Answer Questions

1. Explain the evolution of the Cabinet in Britain.
2. Explain the feature of the cabinet system in Britain.
3. What are the functions of the cabinet system in Britain?
4. Describe the functions of the Prime Minister of Britain.
5. Explain the formation of the local government in Japan.
6. Discuss the powers and functions of the American president.

6.9 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

NOTES

UNIT 7 ROLE OF JUDICIARY

Structure

7.0 Introduction
7.1 Unit Objectives
7.2 Judiciary in the United Kingdom
  7.2.1 Rule of Law: A Citadel of Liberty
7.3 Judiciary in the United States of America
  7.3.1 Judicial Review
7.4 Judiciary in China
  7.4.1 Committed Judiciary
  7.4.2 People's Courts
  7.4.3 The Supreme People's Court
  7.4.4 The Higher People's Courts
  7.4.5 The Intermediate People's Courts
  7.4.6 The Basic People's Courts
  7.4.7 The Special Courts
7.5 Summary
7.6 Key Terms
7.7 Answers to 'Check Your Progress'
7.8 Questions and Exercises
7.9 Further Reading

7.0 INTRODUCTION

In the previous unit, you studied about functioning of the executive bodies in the United Kingdom, the United States of America and Japan.

The judiciary administers justice according to law. For the judiciary to position itself properly in the fight against corruption, it must first purge itself of corruption. In the United Kingdom, judiciary performs an important function, that is, administering Rule of Law. In the USA, judicial review *constituents* an important function performed by the Supreme Court of America. In China, committed judiciary is the essence of what is required from the judiciary functioning in the country.

In this unit, you will study about the indispensable role played by the judiciary in the United Kingdom, the United States of America and China.

7.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Analyse the salient features of the British judicial system
- Interpret the judicial committee of the privy council
- Explain the rule of law
- Recognize the working of constitutional courts and legislative courts in the USA
- Evaluate the concept of judicial review
- Explain the working of the Supreme People's Court in China

NOTES

7.2 JUDICIARY IN THE UNITED KINGDOM

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

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

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

Salient features of the British judicial system

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

1. Impartiality and independence of the courts

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

2. Absence of judicial review

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

3. Absence of separate administrative court

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

NOTES

4. Absence of uniform judicial organization

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

5. Jury system

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

6. Integration of courts in England and Wales

The courts of England and Wales were different organizations having different conflicting procedures and jurisdiction. Now the entire judiciary has been reconstructed and brought under the control of the Lord Chancellor. Thus, there is integration of the judicial systems of England and Wales. The judicial system has been made simple and inexpensive as far as practicable.

7. Guardian of individual liberty

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

8. High quality of justice

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

Organization of the British judiciary

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

NOTES

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

1. Criminal court

(i) Justices of Peace

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

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

(ii) Court of quarter session

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

(iii) Court of assizes

The Courts of Assizes are held in county towns and some big cities thrice in a year. These courts are branches of High Court Justice. Each such court is presided by a judge or often two judges of the High Court of Justice who go around on circuits. The entire country has been divided into eight circuits. The Court of Assize functioning in London is called 'Central Criminal Court' and in popular language it is known as 'Old Bailey'. The jurisdiction of the Assizes includes all the grave offences like armed robbery, kidnapping, murder, etc. The Assize Court is assisted by a Jury of twelve countrymen and the Jury gives its verdict. Whether the accused is guilty or not if the jury finds the accused is not guilty, he is forthwith discharged. If he is, on the other hand, found guilty, the Judge decides the punishment.

The accused may appeal to the Court of Criminal Appeal against the judgment of Quarter Sessions or the Assizes. This Court was set up in 1907, and before that there was no provision of appeal in criminal cases. This court consists of Lord Chief Justice and not less than three judges of the Queen's Bench. The Court meets without a jury in London. If the Court finds that there has been a serious lapse of justice, it can modify the sentence or even quash the conviction altogether. The Judgment of the Court of the Criminal Appeal is final except in rare instances when an appeal can be made to the

NOTES

House of Lords upon a point of law and when the Attorney General gives a certificate that the case is set for appeal.

2. Civil court

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

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

(a) High court of justice

(b) Court of appeal

High court of justice

The high court of justice has three divisions

- The Queen's Bench Division
- The Chancery Division
- The Probate, Divorce and Admiralty Division or the Family Division as renamed in 1971

In each of these divisions, judgment is made by a bench, consisting of one or more than one judge. The Queen's Bench is presided over by the, *Lord Chief Justice* of England having twenty other judges. It hears majority of cases including the common law cases which are referred to the high court.

The Chancery Division is presided over by the Lord High Chancellor having five other judges. It hears the cases which formerly belonged to the Courts of Equity or it deals with such cases in which the remedy or law is inadequate.

The probate, divorce and admiralty division is presided over by a president with seven other judges. They hear particular type of cases involving above three subjects. This division is known as the family division since 1971.

Any of the judges mentioned above may sit in any, division and all may apply common law or equity with restriction to their sphere of duty.

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

NOTES

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

The Judicial Committee of the Privy Council

The discussion on the British judicial system would be incomplete without reference to the judicial committee of the privy council, which is the final court of appeal in cases which come from the courts of the colonies and from certain of the dominions, as well as from the ecclesiastical courts in England. The judicial committee of the privy council is not a court in the usual sense of the term but only an administrative body to advise the Crown on the use of its prerogative regarding appeals from the courts of the colonies and Commonwealth. It consists of the Lord Chancellor, former Lord Chancellors, nine Law Lords, the Lord President of the Privy Council, the Privy Councilors who hold or have held high judicial offices and other judicial persons connected with overseas higher courts. As it is a committee consisting of eminent persons, it is best competent to hear appeal on legal matters and advises the Crown on such matter. It consists of about twenty jurists but most of its work is done by the Law Lords of the House of Lords. The appeal goes straight forward to the judicial committee which advises the Crown to accept or reject it. There is no appeal against its decision. The committee has a special function. In time of war it acts as the highest court in naval prize cases.

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

7.2.1 Rule of Law: A Citadel of Liberty

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

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

British history is replete with tyranny and absolutism and, hence people and Parliament are always eager to preserve the liberty of the people through the rule of law. Though there are no written constitutions and bill of rights, the concept of the rule of law is carefully maintained and scrupulously adhered to by the people in Great Britain.

NOTES

Prima facie, the rule of law means that it is the law of England that rules and not the arbitrary will of the ruler. Lord Hewart defines the Rule of Law as 'the supremacy of predominance of law as distinguished from mere arbitrariness.' Towards the end of the 19th century, Prof. A. V. Dicey gave the famous exposition of the idea of the rule of law. He considered it to be the fundamental principle of British constitutional system and gave a lucid and vivid description of the concept rule of law.

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

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

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

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

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

In the ultimate analysis, rights and liberties of the people in Great Britain are protected not by law, but by the Rule of Law. The Rule of Law is based on long tradition and strongly supported by public opinion. It has been observed that although at first

NOTES

glance, civil liberties seem to enjoy no such sheltered position in Britain as in the United States and some other countries, they are both in law and practice, as secure as anywhere else in the world.

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

Criticisms of Dicey's exposition

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

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

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

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

NOTES

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

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

Great Britain is considered to be a classic home of the Rule of Law. In spite of the above limitations, the Rule of Law is considered to be a democratic embellishment. It is true that its content has undergone some transformation in recent times, yet it acts like a bulwark of the British liberty. Freedom is truly a part of the British way of life and nobody likes to part with it. What the Rule of Law implies today is that freedom of the individual should be restrained only under the authority of law. Justice should be available to all irrespective of any distinction. The Rule of Law is not dead today. It still remains as a principle of the British constitutional system and inspires not only the people of England but also the people of the world. According to a modern critic, it involves the absence of arbitrary power, effective control and proper publicity for delegated legislation, particularly when it imposes penalties, that when discretionary power is granted, the manner in which it is to be exercised should as far as practicable be defined, that everyman should be responsible to the ordinary law whether he be a private citizen or a public officer, that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land. No doubt, the Rule of Law is a prized concept in the British Constitution, and the British people are very proud of it as it acts like the citadel of their liberty. Of course, in the ultimate analysis, public opinion acts as the protector of liberty.

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

7.3 JUDICIARY IN THE UNITED STATES OF AMERICA

Judiciary is necessary to interpret laws and punish law breakers. The sound principle in politics is that laws and not whims and caprices of men, should govern. In federalism,

Check Your Progress

1. What is the basis of the British constitutional system?
2. What is the main provision of the Act of Settlement of 1701 in Great Britain?
3. Name one salient feature of the British judicial system.
4. Which is the oldest judicial system in the world?
5. Who is the presiding officer of the House of Lords?

NOTES

judiciary is necessary because there is distribution of power between the Centre and the States and there is also a written constitution which needs protection from the judiciary. The theory of checks and balances also admits the fact that the presence of judiciary is necessary to check the arbitrary power of the legislature and the monarchic ambition of the executive. Judiciary all over the world also possesses the power of interpretation of the constitution and ordinary law. 'Laws are not what the words meant and as Alexander Hamilton said that 'laws are a dead letter without courts to expound and define their true meaning and operation'. Thus, Article III of the American Constitution provides for the Supreme Court. It reads, 'The Judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time-to-time ordain and establish'.

There are two general types of courts in America, namely the constitutional courts and legislative courts.

Legislative courts

These courts are outside the purview of Article 111 of the Constitution. They do not exercise the judicial powers of the United States but are special courts created to aid the administration of laws enacted by the Congress in accordance with the powers delegated to it or implied in such powers. For example, Article I, Section 8, grants to the Congress power to impose and collect taxes, duties, imports and in order to decide disputes about the valuation of subject to import duties, Congress created the United Customs Court composed of nine judges. Legislatives are, therefore, created to carry into execution such powers as those of regulation of interstate commerce, spending funds, laying and collecting import duties and ruing territories. Judges in the Legislative Courts are selected by the President with the advice and consent of Senate but they can be removed by methods other than impeachment. Appeals may be made to the Federal Courts of appeal against the decisions of legislative courts.

Article 111 creates the Supreme Court and the other federal courts are created by the Congress. The districts are the lowest federal courts in America. There are as many as 89 District Courts in America. Each District court consists of at least one judge and the Districts where the workload is heavy; there may be more than one Judge subject to maximum 24 judges in a District Court as it is found at present. These courts have original jurisdiction in all cases involving federal laws. Appeal against the decision of a District Court can be made in the Circuit Court of Appeal, which is the next higher federal judiciary.

The Supreme Court

The Supreme Court stands at the apex of the federal judiciary. It occupies an important place in the American constitutional system. Munro writes, 'The development of the Supreme Court into a final arbiter of constitutional disputes is one of America's most important contributions to the science of government'. The Supreme Court of the USA was established by the Congress in 1789, as per the provision of the constitution. The Judiciary Act of 1789, which created the federal judiciary and which has been amended various times, constitutes the basis of the federal judiciary. Since 1930, the Supreme Court has been situated in the magnificent and imposing marble structure in the east of the national capital. The constitution has not fixed the number of judges and at first it [illegible]ted with one Chief Justice and five judges. Its strength was reduced to five in 1801 increased to seven in 1807; increased to nine in 1837 ten in 1863; reduced to seven in 1866; and in 1869 was fixed at nine, where it has remained till today. Now the

NOTES

Supreme Court consists of one Chief Justice and the associate Judges. The judges are appointed by the president of America with the consent and advice of the Senate. According to the protocol, the president first nominates and then appoints according to the approval of the Senate. The constitution, does state what qualifications are demanded from the judges of the Supreme Court in terms of age, citizenship and competence or as to political views and background. Criticism that judges are often political appointees cannot be denied. The judges hold office during good behaviour and can be removed through impeachment only. A judge can retire, if he wishes when he reaches the age of seventy at any time thereafter with full salary provided he has served on the Bench for ten years. A judge may retire at the age of sixty-five with fifteen years of service, and receives full pay.

Since the judges do not readily retire even when they reach the retirement age, there has been a criticism of appointments. It is felt that a court made up of life appointees is undemocratic. The Supreme Court holds one regular session at the beginning of every first Monday in October and ending in the following June. Special sessions may be summoned by the Chief Justice when the occasion is of unusual importance and urgency. Six Judges constitute the quorum. Chief Justice presides over all sessions and announces its orders, jurisdictions and powers of the Supreme Court.

Jurisdictions of the Supreme Court of America are both original and appellate. The original jurisdiction extends 'to two type of cases, namely, (i) Cases involving ambassadors, public ministers and consuls and (ii) Cases involving one or more than one States. In all other cases the Supreme Court has appellate jurisdiction. It has power to hear cases already decided in lower federal courts or in State courts. Normally, the Supreme Court has to deal with the federal cases. But the Fourteenth Amendment of the American Constitution which prohibits a State from depriving a person of life, liberty or property except 'due process of law', gives the Supreme Court a good deal of power over the state courts. It is the highest appellate authority of the state higher courts. The appellate jurisdiction of the Supreme Court of America is very wide and comprehensive. In practice, very few cases come to the Supreme Court in its original jurisdiction. Most of the cases which come to the Supreme Court are in the nature of appellate cases which have started somewhere else. It may be pointed out that the Supreme Court of America does not have advisory jurisdiction. It has always refused to advise either to the executive or to the legislator on legal or political matters. Further, it may be pointed out that the Supreme Court is the final authority to decide which cases are to come within its appellate Jurisdiction. In the exercise of original judicial powers granted by the constitution, the Supreme Court has the authority to issue writs of habeas corpus, mandamus, injunction and certiorari.

A mere description of the jurisdiction of the Supreme Court of America does not give a correct picture of the role it plays in the American constitutional system. According to Munro, 'Without the provision of the Supreme Court, the American constitutional system would have become a hydra headed monstrosity of forty-eight (now fifty) rival sovereign entities. It would have never gained that strengthened regularity of operation which it possesses today'. Today the Supreme Court has assumed more powers than contemplated by the founding fathers of the constitution. But, working out the doctrine of judicial review and the doctrine of 'implied powers', it has assumed tremendous powers and has become the most powerful judiciary in the world. Critics have observed that it is as difficult to think of American constitutional system without the Supreme

NOTES

Court as to think of solar system without the sun. This state indicates the pivotal role the Supreme Court plays in the Constitutional system. It has been described as the successful institution of the American constitutional system 'not surpassed by any other institution in its influence the life of the United States'. In the famous case of the Marburry vs. Madison, the Chief Justice Marshall upheld the theory of judicial supremacy and first developed the idea of judicial review. His theory of supremacy of the constitution law has still prevailed in the United States of America.

In playing the role of guardian of the constitution, the Supreme Court has greatly contributed to the development of the constitution. The credit goes to the Supreme Court in making the constitution of 1787 workable in the last part of the 20th century. The constitution that was framed in the days of 'horses and buggies' is still applicable and working well in the age of jet planes and spaceships. The necessary adoption has been secured not through mere constitutional amendment as the constitutional amendment procedure is too rigid, but through the logical interpretation given by the Supreme Court to the various provisions of the constitution. James M. Beck rightly observed, 'The Supreme Court is not only a court of justice but, in a qualified sense a continuous constitutional convention. It continues the work of the convention of 1787 by adopting through interpretation the greater charter of the government'. The Supreme Court has interpreted the constitution according to the needs of the time. In expanding federal government's domain of authority and altering a balance of power between the Centre and States in favour of the former, the credit goes to the Supreme Court which used the constitution 'as a point of departure for the construction of a supplementary body of constitutional law'. In increasing the powers of the central government the Supreme Court has taken the help of the doctrine of implied powers.

The Supreme Court is the protector of the rights of the citizens and has been empowered to issue writs like habeas corpus, mandamus, certiorari and injunction for the protection of the rights of the people. It has kept the various organs of the government within their defined powers and prevented encroachments on human rights. It has declared laws unconstitutional not only on the basis that they are beyond the jurisdiction of a particular organ but also on the ground that they are unreasonable or unjust. It has determined the constitutionality of laws on the basis of *'due process of laws'*. One of the Bill of Rights in the American constitution is that nobody should be deprived of his life, liberty and property except due process of law'. This right is responsible for the doctrine of judicial supremacy. Till 1930, the Supreme Court gave great protection to the right to property and declared governmental regulation of prices as taking away liberty and property without due process of law'. After 1930s the Court has expanded its interpretation of the due process clause for the protection of civil liberties and restricted the protection given to property.

The Supreme Court is the final court of appeal in America. It can hear appeal against the decisions of the state high courts and subordinate federal courts. Though all cases cannot be heard in the Supreme Court and its authority in this is limited, yet its opinion on a question of law is 'unlike acts of the Congress, it is immune from over vetoes and unlike presidential vetoes, it is immune from overriding by the Congress'. In other words, the Supreme Court is the most powerful political institution of America.

Professor Laski described the Supreme Court as a third chamber in the United States. It is not only a judicial body but also a political body as it works 'not in a judicial vacuum but in a whirling political climate. In examining the validity of laws judges may question, the policies framed by the Legislature. When the Supreme Court invalidates a

NOTES

law, it actually validates the policies and principles that are connected with the law. According to Potter, 'To strike down a constitutional law is to drop a pebble in the legislative pool creating disturbance that cut ripples from the point of contact across a considerable surface of potential legislation'. Thus, the Supreme Court acts like a 'super legislature'.

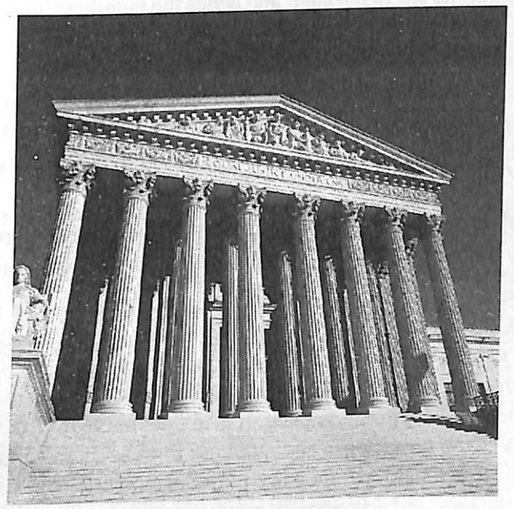


Fig. 7.1 *The Supreme Court of USA*

7.3.1 Judicial Review

The Supreme Court of America has the power of judicial review. By judicial review we mean the power of the Supreme Court to declare the laws passed by the legislature or decrees made by the executive as *ultra vires*, if they come in conflict with the latter and the spirit of the constitution. Whether there was a discussion on judicial review in the Philadelphia Convention, which framed the American Constitution, is a matter of controversy. Professor Beard made a careful study of the proceedings of the Conference and said that its majority of members had such an intention of having judicial review. Professor Crowing does not agree with Beard's thesis and concludes that 'the right of the judiciary to declare laws valid and thus to check the capacity of the Legislative Assemblies was in the opinion of many to be the chief corner stone of a governmental structure plan with particular reference to preserving property rights inviolate and assuming special sanction for individual members'. Federalism often breeds legalism and in written federal constitution there is distribution of powers between the centre and units; judicial review is implicit as the courts are the competent authority to say what is legal and what is not. Thus, Professor Crowing and some other constitutional experts do not agree with Professor Beard as regards the intention of the makers of the constitution for having judicial review. The constitution in its Article VI only upholds its supremacy. It reads, 'This Constitution and laws of the United States which shall be made in parlance thereof shall be the supreme law of the land and the judges in every State shall be bound thereby'. This article does not clearly state that the Supreme Court can invalidate laws passed by the Congress or the State Legislature. Thus, the power of judiciary to consider the validity law, as stated earlier, is technically known as the judicial review. If a law is repugnant to either letter of the spirit of the Constitution, the judiciary will declare it as ultra vires.

NOTES

As the American Constitution is the father of all written Constitutions, it is also the classic home of judicial review. It is wrong to enquire that judicial review is inevitable of a written constitution. France, Italy and Germany existed for many years with written constitutions and judicial review. Even today France, China, Russia and Australia have written constitutions but no judicial review. Article VI of the constitution says that 'the constitution is the supreme law of the land' and hence the guardianship of the constitution ought to be attributed to the judiciary. Since each man is fallible and apt to be erroneous, laws and not men should govern. Fourthly, it is required 'to settle disputes between different states and between citizens of different states'. It is therefore, proper on the part of the Supreme Court to determine whether the federal legislature has not exceeded its legitimate authority in enacting a particular law and the government in issuing an executive decree.

These are the reasons for which judicial review is necessary in America and in fact, the judiciary has got the power to declare a law of the legislature ultra vires.

It is further argued that the American Constitution is the shortest written constitution and is very elastic. It contains phrases which are very broad, comprehensive and elastic. They can be twisted to different circumstances and can be given different meanings. Interpretation of these phrases should be left to the judiciary. The judiciary should see whether they are properly used. It is not desirable to make the constitution a toy in the hands of the politicians. The judiciary represents the highest intellectuals of a particular age and therefore, they are in better position to consider the matters calmly without passions and emotions. Here the intention of the judiciary is not only legal but also political. In determining the constitutionality of a statute, the judges of the Supreme Court pass judgments on the political wisdom of the measure before them. What they really do to determine is not whether the measure is legally valid but whether or not it is wise according to their own conception of wisdom. As a continuous constitutional convention, the Supreme Court has been able not only to interpret, defend and protect the constitution but also to adopt and adjust the changing social and economic condition of the rapid developing country.

Judicial interpretation in America is one of the important ways in which the constitution has been developed. The words of the constitution are so unrestraint and broad that the judges should give 'judgment not from reading the constitution but from reading life'. The constitution is flexible enough to meet all the new needs of the society. That is why, Beck, a strong supporter of judicial review, says that the Supreme Court is not only a Court of justice but in a qualified sense a continuous constitutional convention that continues the work of the Philadelphia Convention of 1787.

There has been considerable excitement in the United States over this issue of judicial review. People have claimed that the balance of the constitution has disturbed and both the Congress and the President depend upon the goodwill of the Supreme Court for their successful functioning. The word, it is said, is dynamic and the legislature represents this dynamism. Philosophies of life are ever-changing and laws must correspond to them. The Supreme Court represents conservatism and not dynamism and the nine men sitting in the bench are not likely to be swayed always by modern philosophies. Again as the Supreme Court delivers judgment by simple majority, the result is that the marginal judge is the dictator in the United States. Let him change side, an invalid law becomes valid; and let him again change side, a valid law becomes invalid. This has been experienced in 1895 and 1938. It seems to be arbitrary and undemocratic. Nevertheless, the consequences of judicial review are often exaggerated and misunderstood. In America,

NOTES

judicial review operates in a sporadic rather than a continuous fashion. In America, it is said that the Supreme Court does not look at the constitution 'with the cold eye of the anatomist but as a living and breathing organism which contains within itself the seeds of future growth and development'. For the protection of the civil liberties of the Americans, the Court is playing a very crucial role. The number of cases before the Supreme Court concerning civil liberties has increased in recent times.

Unqualified judicial supremacy is bad. Hence, there is a talk of reforms of the American Supreme Court. The following are the some of the suggestions made to mitigate the pernicious effects of judicial review. The constitution should not be always legally binding upon the Congress. It is a product of 1787 and not of 1990s. What is wilted is that the Supreme Court should accept it merely as a point of reference.

Judgment of the Supreme Court should not be pronounced by simple majority. In reviewing the constitutional cases, at least there should be a prescribed majority, say 2/3 majority or 3/4 majority or the concurrence of 7 out of 9 judges.

Further, the laws declared *ultra vires* by the Supreme Court should not be altogether killed. The Congress should have the power to repass the condemned laws in which case they should again be valid. In other words, the Supreme Court should have suspensive judicial review.

This will rest the centre of gravity back to the Congress. The Congress should re-pass and override a law set aside by the Supreme Court as it may override a Presidential veto. This would of course, require a constitutional amendment. Lastly, judges should retire after a certain age limit. The age of superannuation should be fixed at 70 and an Act of 1938 has provided for judges above 70 to have the option to retire on full pension equal to their monthly salary. However, this is not binding and a judge can be a judge for life. The appointments of the judges of the Supreme Court are made on political grounds. A democratic president naturally appoints a democrat as a judge.

DID YOU KNOW

Each state in the USA has a court system of its own.

7.4 JUDICIARY IN CHINA

The judiciary of China has been massively reformed ever since the New China was founded in 1949 and more so after the reform and other opening up policies were introduced nearly three decades ago. Since then, the country has been making constructive attempts towards building its socialist judicial system but with distinct Chinese characteristics. The judiciary aims to safeguard social justice and make significant contributions to the rule of law of mankind. A major component of the political system is judiciary while its impartiality guarantees social justice. The country has been vigorously, steadily and pragmatically promoting reforms in its judiciary in recent years as well as its methods of working. As per the Constitution, the Chinese judiciary is aimed as "optimizing the allocation of judicial functions and power, enhancing protection of human rights, improving judicial capacity, and practicing the principle of judicature for the people". Having a strong and impartial judiciary with strict Chinese characteristics is believed to

Check Your Progress

6. Which courts are outside the purview of Article 111 of Constitution?
7. How are the judges of the Supreme Court appointed in the US?
8. Who plays the role of a guardian of the constitution in the USA?
9. What do you understand by judicial review?

NOTES

provide judicial guarantee for the country's economic development, social harmony and national stability.

The judicial system of China is at par with its basic national conditions at the primary stage of socialism, its state system of people's democratic dictatorship and its government system of the National People's Congress. However, as the country opens up to the world and continues to introduce a series of reforms related to the socialist market economy, the desire for comprehensive implementation of the fundamental principle of rule of law and clamour for justice among the public has increased. This means that the country's judicial system needs further reformation, improvement and development.

7.4.1 Committed Judiciary

The establishment of the People's Republic of China in 1949 ushered in a new era for the judicial system of the country. The cornerstone for the legal practices in the country were laid by the Common Program of the Chinese People's Political Consultative Conference, which functioned as a provisional Constitution until 1949 and the Organic Law of the Central People's Government of the People's Republic of China, which was promulgated in September 1949. The Constitution promulgated in 1954, the Organic Law of the People's Courts of China, and the Organic Law of the People's Procuratorates of China are among other kind of rules and regulations which defined the organic system and the basic functions of the people's courts and procuratorates. They also help to establish the systems of collegiate panels, defense, public trial, people's jurors, legal supervision, civil mediation and basically lay the framework of country's judicial system.

It was in the 1990s that the idea to bring the socialist country under the rule of the law and govern it as per the principles of the law took firm shape. The judiciary in the country continues to reformulate itself in the process of promotion of social progress, democracy and the rule of law. By the end of 1950s and especially after the culmination of the tumultuous 'cultural revolution' (1966-1976), the judiciary in the country suffered serious setbacks. In 1978 when reforms were introduced, China summed up its historical experience and in principle vowed to promote socialist democracy and improve socialist legal construction. Thus, the judiciary was restored and rebuilt and a number of fundamental laws were reformulated and amended.

Basic Characteristics of China's Judicial System

The basic judicial organ in China is the people's court. The Constitution also provides for the Supreme People's Court, local courts at different levels as well as special courts such as military courts. Herein, civil, criminal and administrative cases are tried as per the law. Law enforcement activities are also carried out by courts which include execution of civil and administrative cases and state compensation. While it is at the top of the judicial order, the Supreme People's Court are also responsible to supervise the workings of all other courts and special people's courts. Basically, those courts who are above others supervise the working of the one subordinate to it. For litigious activities, the country relies on the systems of public trial, collegiate panels, challenge, people's jurors, defense, and judgment of the second instance as final, among others. Since China is a socialist country and based on principles of people's democratic dictatorship led by the working class and an alliance between workers and peasants, the people's congress system is the most organic form of its state power. A socialist state believes that its judicial powers come from the people, belongs to the people and serves the people.

NOTES

Thus, people's courts and procuratorates have been created at various levels, which is responsible to them and is supervised by them.

People's procuratorate exercise their powers independently and impartially in accordance with the law. Their activities are supervised by the National People's Congress, the Chinese People' s Political Consultative Conference and the general public. The criminal cases are tried by the people's courts, the people's procuratorates and the organs of public security as per their respective functions. However, they are expected to collaborate with each other in order to ensure that laws are accurately and efficiently implemented. Investigation, detention, arrest and pretrial in criminal cases is in charge of the organs of public security. The people's procuratorates, on the other hand, are responsible for procuratorial work, approval of proposals for arrest, investigating cases that they accept directly and also to initiate public prosecution. The people's court only conducts trials.

As one of the three branches of the government, including the executive and the legislative, the judicial branch is about all activities of the people's court system. The Chinese court system is based on civil law modelled after the legal systems of Germany and France, but has its own distinct characteristics. Mainly, even thought the judiciary is independent and free of any interference or influence of other administrative branches or organizations and individuals, yet the Constitution provides for and even emphasizes on the leadership of the Communist Party. Former SPC President Xiao Yang stated in 2007, 'The power of the courts to adjudicate independently does not mean at all independence from the Party. It is the opposite, the embodiment of a high degree of responsibility vis-à-vis Party undertakings.'

With this, one can explore both the broad and narrow meanings of judiciary in China. Broadly, the judiciary refers to law-enforcement activities that are conducted by the judicial organs and organizations in handling prosecuted or non-prosecuted cases. Narrowly, it applies to law-enforcement activities conducted by the country's judicial organs in handling prosecuted cases. The term is thus used here in broader sense as judicial organs here refer to those public security organs that are responsible to investigate, prosecute, try and execute cases; it also includes the prosecutors, the trial institutions and the custodial system. The judicial organizations mean lawyers, public notaries and arbitration organizations. While they are not a part of the judicial apparatus, they remain an integral link to the overall judiciary system. In general thus, the judiciary system points to the nature, mission, organizational setup, principles and procedures of judicial organs and other judicial organizations. It is comprised of sub-systems that are used for investigation, prosecution, trial procedures, jails, judicial administration, arbitration, lawyers, public notaries and state compensation.

The administrative system has one in the form of the security organ. However, the other two are created by the people's congress and legally, they have the equal say as the administrative branch. The people's congresses selects and appoints the presidents of courts and the the procurator-generals of procuratorates on the same level. On the other hand, the judges and procurators are appointed by the standing committees of the respective people's congresses. Their respective courts and procuratorates appoint assistant judges and assistant procurators.

In more than one ways and strict terms, the judicial system of China only refers to the people's court system. The people's court, people's procuratorate and public security organ are required to perform their duties separately as per the Criminal Procedure Law of PRC. Literally taken, this means that people's procuratorate and public security organ

NOTES

are in charge of judicial power even though their judicial powers have a very narrow scope. The judicial system of China thus broadly comprises three parts: people's court system, the people's procuratorate system, the public security system. Therefore, the judiciary in China cannot be said to refer to only courts but it also includes the procuratorates and public security organs.

7.4.2 People's Courts

On behalf of the states, the people's courts are part of those judicial organs that exercise judicial powers. The state of China has a system of courts known as 'four levels and two instances of trials' as defined in the Constitution and the Organic Law of the People's Courts of 1979 which was amended in 1983. The judicial authority in the country is exercised by courts at many levels. These can be broadly categorized into: the Supreme People's Court; local people's courts at various levels; military courts and other special people's courts. The local people's courts can be further divided into higher people's courts, basic people's courts and intermediate people's courts.

As per an article of the Organic Law, the "people's courts at all levels can set up judicial committees" to bring all sort of judicial experience under one roof as well as create a platform to discuss important and difficult cases and even other legal matters. The presidents of different courts appoint members of judicial panels of local people's courts at various levels. They can be removed from their posts by members of the standing committee of the people's congress at the corresponding levels. The chiefs of the people's courts chair important judicial panel meetings at all levels. These can be attended by chief procurators of the people's procuratorates at the corresponding levels but without any voting rights.

To adjudicate matters, the people's courts have a system wherein a case is decided only after two trials. The two trials refer to: firstly, each judgment or order, in the first instance, should be sent from the local people's court and any person who is part of the case can appeal only once in the people's court at the higher level. Protest can be presented by the people's procuratorate in the people's court at the next higher level. At the second level, the judgment or orders of the first instance of the local people's courts at various levels become legally effective only if no party makes an appeal within the prescribed period. At the third level, these judgments or orders are considered as final decision of the case. However, the orders and judgments given by the Supreme People's Courts even in the first instance become legally effective immediately.

Each court has several divisions where specific cases are heard: these can be broadly categorized into civil, economic, criminal, administrative and enforcement divisions. Each such court has one president and many vice-presidents whereas each division has one chief and many associate chiefs. All courts also have judicial panels comprising presidents, division chiefs and experienced judges. The standing committee of courts at the corresponding level appoints the members of these panels. The judicial panel, which is responsible for discussing significant or difficult cases, give directions concerning other judicial matters and also reviewing and summing up judicial experiences, is the most authoritative body in a court. Judges and collegial panels are required to follow its directions. Where the opinions of the two differ, the view of the majority is adopted.

The basic units in each court are comprised of collegial panels. While not permanent bodies, these are created to adjudicate individual cases. Such panel comprises three to seven judges; the number must always be odd. The president of the court or the division chief appoints the president judge of the panel. An individual judge can try simple cases

NOTES

pertaining to civil, economic and minor criminal matters. However, the collegial panel of three to five judges hears cases of second trial. In case a president or a division chief participates in a trial, he/she shall be the presiding judge of the panel.

The judge is the most important person during the conduct of a trial and a trial itself is the significant part of adjudication. The process is highly influenced by the civil law jurisdiction. Efforts are being made to change the process and recently, the reform of adjudication format was introduced to bring adversarial pattern into the Chinese adjudication process. The Criminal Procedure Law which has been revised is also expected to further the reform. The people's assessors can be selected by the standing committee of the local people's congresses; they can then submit their preference to the courts at the corresponding level. On this basis, courts can choose people's assessors to join the trial of a case at the first instance. The collegial panels for the first trial can comprise of judges as well as people's assessors or exclusively of judges. In common law jurisdiction, the people's assessors system is unlike the jury system in the sense that people's assessors are not chosen on the basis of citizenship; they have the powers of judges and authority to decide both the issues of facts and law.

The president can seek upon the judicial panel to accept or reject an appeal after reviewing the complaint. A re-trial started by trial supervision procedure cannot lead to suspension of the enforcement of effective judgment that is challenged under any circumstances. Each case can have two trials as per law. This means that all litigants in a case as well as their legal representatives who challenge a judgment in the first instance in any local court can appeal in the next, higher court only once. The next higher court is required to try the case once an appeal has been filed. Its judgment, however, is final and cannot be re-appealed. The parties to litigation can, however, challenge the final judgment or the judgment that is effective through the trial supervision procedure. An appeal to the appellate or the higher court can be made.

However, such a practice can cause internal interference within the adjudication of collegial panels which are independent. In practice, they have no direct legal grounds except for the judicial panels. Final decisions in cases that are important or complex can be made by a judicial panel of a court rather than the designated collegial panel. Such a mechanism is believed to safeguard the correct and impartial exercise of judicial powers. However, it can also be misused by panel members to interfere with the functioning of the collegial panel and make favours to one party in a case.

The people's courts have been empowered by the Constitution and the Organic Law of Courts to exercise their powers independently and they are thus free of any intrusion by any organization or individual. The word 'court' is significant in the term; as per the authoritative explanation, it means that judicial power dies not rest in individual judges. It is the collegial panels that are the trial units and not the individual judges and thus, the judgments of the collegial panels are considered to be at par with the courts. Thus, it is not in the judges but in courts that the independence power of adjudication is vested. Taking cue from this argument, the presidents and division chiefs of the panels have the right to review and suggest changes in draft judgments prepared by collegial panels.

7.4.3 The Supreme People's Court

The highest judicial organ of the state of China is the Supreme People's Court. The NPC and its standing committee elect the president of the Supreme People's Court. The term of the president is five years and as per law, he/she cannot serve for more than two

NOTES

consecutive terms. The NPC standing panel is also empowered to appoint or dismiss vice-presidents, head and associate heads of divisions and judges.

The Supreme People's Court has many divisions vis-à-vis criminal division, a civil division, and an economic division. It can also have other divisions that it may deem necessary. In general, the Supreme Court has jurisdiction over these following cases:

1. Such cases of first instance that are assigned to it by law or other that the court feels should be tried by it;
2. Cases or orders of the higher people's courts and special people's courts that are appealed and protested against their judgments;
3. Protested cases filed by the Supreme People's Procuratorate.

Besides trying cases, the Supreme People's Court also watches over the working of other local people's courts at all levels and that of the special courts. As per the Constitution, the "Supreme People's court gives interpretation on questions concerning specific application of laws and decrees in judicial proceedings". In practice, however, interpretation of laws and decrees by the SPC has only grown in the last few years. This practice is now being referred to as 'judicial legislation' and was not defined earlier in the Constitutional Law. This legislation also needs guidance so that gaps can be duly filled and conflicts resolved. Guidance is also required to remove vagueness among different laws so that they can be duly enforced by the judicial branch.

Presidents and vice-presidents of the court

1949–1954

President: Shen Junru

1954–1959: 1st National People's Congress

President: Dong Biwu

Vice–presidents: Gao Kelin, Ma Xiwu, Zhang Zhirang

1959–1965: 2nd National People's Congress

President: Xie Juezai

Vice-presidents: Wu Defeng, Wang Weigang, Zhang Zhirang

1965–1975: 3rd National People's Congress

President: Yang Xiufeng

Vice-presidents: Tan Guansan, Wang Weigang, Zeng Hanzhou, He Lanjie, Xing Yimin, Wang Demao, Zhang Zhirang

1975–1978: 4th National People's Congress

President: Jiang Hua

Vice-presidents: Wang Weigang, Zeng Hanzhou, He Lanjie, Zheng Shaowen

1978–1983: 5th National People's Congress

President: Jiang Hua

Vice-presidents: Zeng Hanzhou, He Lanjie, Zheng Shaowen, Song Guang, Wang Huaian, Wang Zhanping

1983–1988: 6th National People's Congress

President: Zheng Tianxiang

NOTES

Vice-presidents: Ren Jianxin, Song Guang, Wang Huaian, Wang Zhanping, Lin Huai, Zhu Mingshan, Ma Yuan

1988–1993: 7th National People's Congress

President: Ren Jianxin

Vice-presidents: Hua Liankui, Lin Huai, Zhu Mingshan, Ma Yuan, Duan Muzheng

1993–1998: 8th National People's Congress

President: Ren Jianxin

Vice-presidents: Zhu Mingshan, Xie Anshan, Gao Changli, Tang Dehua, Liu Jiachen, Luo Haocai, Li Guoguang, Lin Huai, Hua Liankui, Duan Muzheng, Wang Jingrong, Ma Yuan

1998–2003: 9th National People's Congress

President: Xiao Yang

Vice-presidents: Zhu Mingshan, Li Guoguang, Jiang Xingchang, Shen Deyong, Wan Exiang, Cao Jianming, Zhang Jun, Huang Songyou, Jiang Bixin

2003–2007: 10th National People's Congress

President: Xiao Yang

Vice-presidents: Cao Jianming, Jiang Xingchang, Shen Deyong, Wan Exiang, Huang Songyou, Su Zelin, Xi Xiaoming, Zhang Jun, Xiong Xuanguo

2008–2013: 11th National People's Congress

President: Wang Shengjun

2013–present: 12th National People's Congress

President: Zhou Qiang

7.4.4 The Higher People's Courts

This court deals with cases that occur for first time and are assigned to it by laws and decrees, or are transferred to it from court at the level immediately lower to it; or cases of appeals and protests that come from the lower level court or protest cases lodged by people's procuratorates. These courts are directly under the central government and exist in provinces, autonomous regions and municipalities. As per the organic law, their internal structure is nearly similar to that of the Supreme People's Court.

7.4.5 The Intermediate People's Courts

These are courts which are set up in capitals or prefectures in the provincial level. Such courts have jurisdiction in cases that mostly happen for the first time and are assigned to these courts by laws and decrees, or are transferred to it by basic people's courts or those cases that are appealed and protested from the lower courts.

7.4.6 The Basic People's Courts

The basic people's court has been empowered through the Organic Law to decide upon all criminal and civil cases for the first time. Exception is made in cases where the law provides otherwise. The basic people's courts are also empowered to settle civil disputes, hear those minor criminal cases which do not require formal handling and also look over the day-to-day work of the people's mediation committees.

NOTES

Since they are at the bottom of the hierarchy of the judiciary, the basic courts are mostly located in the counties, municipal districts and autonomous counties. It can also set up as many people's tribunal as per the requirement of a locality, its people or the cases it deals with. Mostly, the tribunals are set up in big towns where there is a concentrated population. Even the tribunals are part of the basic people's court and thus all its judgments are considered to be to at par of basic people's court with the same legal effects.

7.4.7 The Special Courts

Military, railway and maritime courts are some of the special courts in the country. Set up within the PLA, the military court is in charge of deciding upon all criminal cases that involve servicemen. Thus, it is a kind of a closed system. Maritime courts were also setup by the Supreme Court in the port cities of Guangzhou, Shanghai, Qingdao, Tianjin and Dalian. Like military courts, these courts have the power to decide upon maritime cases and maritime trade cases, including those between Chinese and foreign nationals, between such organizations and enterprises. However, they have no jurisdiction over cases, whether criminal or civil, that are the prerogative of ordinary courts. But the higher courts located within the territory of a maritime court have the jurisdiction over appeals against the judgment and orders of the maritime court. Similarly, railway and transport courts deal with all cases and disputes related to railways and transportation.

ACTIVITY

What & how did China become a Republic?

7.5 SUMMARY

In this unit, you have learnt that:

- Judiciary occupies a place of pride in a democratic country. If a democratic government is to be effective, it is essential that laws passed by the legislator should be applied and upheld without fear or favour.
- In England there is no judicial review and as such the judiciary cannot declare any act of Parliament as *ultra vires*.
- The Courts in Great Britain are broadly divided into two categories-civil and criminal. This division is almost common in all judicial systems of the world.
- The judicial committee of the privy council is not a court in the usual sense of the term but only an administrative body to advise the Crown on the use of its prerogative regarding appeals from the courts of the colonies and the Commonwealth.
- One of the outstanding features of the British constitution is the concept of the Rule of Law.
- Habeas Corpus Act of 1679 guaranteed the citizens the right against unlawful arrest and detention.
- Judiciary is necessary to interpret laws and punish law breakers. The sound principle in politics is that laws and not whims and caprices of men, should govern.

Check Your Progress

10. Name the basic judicial organ in China.
11. What is the composition of China's judicial system?
12. What are Collegial panels?
13. Name the highest judicial organ of China.
14. What are Intermediate People's Courts?

NOTES

- There are two general types of courts in America, namely the constitutional courts and legislative courts.
- The Supreme Court of America has the power of judicial review. By judicial review we mean the power of the Supreme Court to declare the laws passed by the legislature or decrees made by the executive as *ultra vires*, if they conflict with the latter and spirit of the constitution.
- It is further argued that the American Constitution is the shortest written constitution and is very elastic.
- China's judicial system is generally consistent with its basic national conditions at the primary stage of socialism, its state system of people's democratic dictatorship, and its government system of the National People's Congress.
- The founding of the People's Republic of China in 1949 ushered in a new era for the building of China's judicial system.
- In the 1990s, China established the fundamental principle of governing the country in accordance with the law, and quickened the step to build China into a socialist country under the rule of law.
- The people's court is the basic judicial organ in China. The state has set up the Supreme People's Court, local people's courts at different levels and special people's courts such as military courts.
- The judicial branch is one of three branches of government in the People's Republic of China, along with the executive and legislative branches.
- The people's courts are judicial organs exercising judicial power on behalf of the states. According to the Constitution and the Organic Law of the People's Courts of 1979 as amended in 1983, China practices a system of courts characterized by 'four levels and two instance of trials'.
- The Constitution and the Organic Law of Courts allow the people's courts to exercise state judicial power independently, free from interference from any organization or individuals.
- The Supreme People's Court is the highest judicial organ of the State. The president of the Supreme People's Court is elected by the NPC and its standing committee. His term of office is five years and he may serve for no more than two consecutive terms.
- The special courts include military courts, railway courts and maritime courts. The military court that is established within the PLA is in charge of hearing criminal cases involving servicemen.

7.6 KEY TERMS

- **Judiciary:** Judges of a country or a state, when they are considered as a group.
- **Rule of law**: It is the basis of the British constitutional system. There are three kinds of law in England namely, common law, statute law and equity.
- **Privy councillor:** (in Britain) a group of people who advise the king or queen on political affairs.
- **Judicial review:** By judicial review we mean the power of the Supreme Court of America to declare the laws passed by the legislature or decrees made by the executive as ultra vires, if they conflict with the latter and spirit of the constitution.

NOTES

- **People's Courts:** They are judicial organs exercising judicial power on behalf of the states.
- **Supreme People's Court:** It is the highest judicial organ of the State.

7.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Rule of Law is the basis of the British constitutional system.
2. The Act of Settlement of 1701 provides that the judges in Great Britain hold office on account of good behaviour and not due to the pleasure of the executive.
3. The prevalence of jury system is a salient feature of the British judicial system.
4. The Anglo-Saxon Judicial System is the oldest in the world.
5. The Lord Chancellor is the presiding officer of the House of Lords.
6. Legislative courts are outside the purview of Article 111 of Constitution.
7. The judges are appointed by the President of America with the consent and advice of the Senate.
8. The Supreme Court plays the role of guardian of the constitution in USA.
9. By judicial review we mean the power of the Supreme Court to declare the laws passed by the legislature or decrees made by the executive as *ultra vires*, if they conflict with the latter and spirit of the constitution.
10. The people's court is the basic judicial organ in China.
11. China's judicial system institutionally comprises three parts: people's court system, the people's procuratorate system, the public security system.
12. Collegial panels are the basic units in each court. They are not permanent bodies but organized to adjudicate individual cases. A collegial panel is composed of three to seven judges, the number of which must be odd.
13. The Supreme People's Court is the highest judicial organ of the State.
14. The Intermediate People's Courts are the courts established in capitals or prefectures in the provincial level.

7.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the privy council.
2. What is the role played by judiciary in the USA?
3. What is the role played by legislative courts in the USA?
4. Write short notes on (a) the Higher People's Courts (b) the Intermediate People's Courts (c) the Basic People's Courts.
5. Which courts are special courts in China?

Long-Answer Questions

1. Describe the Rule of Law that exists in Britain.
2. Explain the Salient features of the British judicial system.

NOTES

3. Describe the organization of the British Judiciary.
4. Analyse the role played by the Supreme Court of America.
5. Describe the power of judicial review as exercised by the Supreme Court of America.
6. Explain the reform process initiated in the judicial system of China.
7. Describe the basic characteristics of China's judicial system.
8. Analyse the role played by the Supreme People's Court in China.

7.9 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

UNIT 8 PARTY SYSTEM

NOTES

Structure

8.0 Introduction
8.1 Unit Objectives
8.2 Concept of Party System
  8.2.1 Classification of Party Systems
  8.2.2 Origin of the Party System
8.3 Party System in the USA
  8.3.1 History of Party System in the USA
  8.3.2 American Ideology and Polarizing Issues
  8.3.3 Contemporary Party System in the USA
8.4 Party System in Japan
8.5 Party System in Switzerland
8.6 Party System in China
  8.6.1 Communist Party of China
  8.6.2 People's Liberation Army
8.7 Summary
8.8 Key Terms
8.9 Answers to 'Check Your Progress'
8.10 Questions and Exercises
8.11 Further Reading

8.0 INTRODUCTION

In the last unit, you were introduced to the significant role played by the judiciary across countries like the UK, USA, Switzerland and Canada. This unit will explain to you 'party system' in various countries.

The concept of party system emerges from comparative political science. It can be defined as a kind of patterned relationships and interactions between different political parties which vie for power in a given political system of a country. Generally speaking, all systems of a country have some common factors in their functioning like methods to control the government, the existing system of mass popular support as well as creation of mechanisms that control public funding, information and nominations.

This concept traces its roots to the works of European scholars like James Bryce and Moisey Ostrogorsky. Both examined political system in the United States and later used it to study other democracies. Giovanni Sartori's classification method for party systems is, however, most commonly used to study them. Sartori argued that party systems could be divided as per the number of political parties existing in a state and the degree of fragmentation in a state. Therefore, he added, that party systems should be studied as per the number of parties in the state.

8.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Identify the different kinds of parties that exist today
- Explain the origin of the party system

NOTES

- Discuss the history of the party system in the USA and its present status
- Paraphrase the party systems in Switzerland and Japan
- Explain the party system in China with a special reference to the Communist Party of China

8.2 CONCEPT OF PARTY SYSTEM

Finer has observed that a democracy rests, in its hopes and doubts, upon the party system. As a democracy propounds and supports opposing ideas and opinions and enables their free organization, political parties act as a major political vehicle of differing opinions and ideas; it is the *sine qua non of democracy.* The electorate would be highly diffused and atomized without the existence of political parties and opinions too would be diverse. Party system is what brings to focus public opinion and this encourages development of policies around popular verdict. For students of comparative politics, it is useful to understand the origin, meaning, merits and demerits of the party system.

8.2.1 Classification of Party Systems

Stability emerges at times in a country on the basis of the evolution of its political parties, especially when studied in respect to their numbers, their internal organization, ideology, alliances and also the relationship with opposition parties. This is what is described as a party system. Comparative study of these different systems helps us to delve into political systems of other countries. Many scholars have offered classification of party systems; they differ and are similar on various counts:

Almond's classification of party system is thus patterned:

- Authoritarian Parties: Also known as totalitarian parties or dictatorships
- Dominant non-authoritarian (democratic) parties
- Competitive two parties
- Competitive multi-parties

James Jupp accepted with Almond's classification but also reformulated it to give his own version:

- Indistinct (not very clear) bi-partisan system
- Distinct bi-partisan system
- Multi-party system
- Dominant (one party) party system
- Broad one party system
- Narrow one party system
- Totalitarian system

For Hitchner and Levine, modern party system can be classified as follows:

- Competitive two party systems
- Competitive multi-party systems
- Dominant non-authoritarian systems
- Authoritarian party systems
- States without party system.

NOTES

Duverger, on the other hand, broadly divided all the party systems into two:

(i) Pluralistic party systems

(ii) One party systems and dominant party systems.

In the first category, Duverger included:

- Multi-party systems
- Two party systems

In the second category, Duverger included:

- One party system
- Dominant party systems

For the sake of this unit, we shall divide the study of the party systems as follows: two-party systems; multi-party systems, and one-party system. Political parties serve as representatives of numerous opinions within a democracy, thus their variety is the characteristic of a democratic system. However, in practice, the number of parties existing in a state differs and exists as per its legal system and the circumstances within the state. For instance in Great Britain and the United States, a two-party system prevails. However, in most countries, like India and France for instance, multi-party system is popular. In authoritarian and Communist countries like China, on the other hand, one-party system operates. It is thus helpful to explore the merits and demerits of the different types of party systems.

1. One-party system

One-party or a single party system is based on the assumption that its leader and political elite are the sole representatives of the sovereign will of the state. It is based on the principles of authoritarianism too, which found expression in monarchies first, then in dictatorships and in the present times, even in some democracies. No political parties exist in this system as dictatorship requires a monopoly of power vested in one authority for its survival. Even under such a regime, polls are held but they serve as a façade of popular support; voters vote but their choice is limited to only one candidate. Not all one-party systems are common; their practice differs from country to country even though some features of dictatorial parties in these countries make them unique. These are:

- Such a party has the monopoly in the country and thus it is its official party. Persons who rule the country also lead it.
- To acquire at least important government jobs, membership of such a party is usually made an essential requirement.
- Such a party supervises the governmental efforts to ideologically indoctrinate people.
- Its elite personality is its essential characteristic.

It is understandable that the essential principle of one-party system is to ensure discipline and obedience among people than seek their opinions about governance or on politics. The organization of such a system is more like an army than a political party. Thus, it has the characteristics to become necessarily totalitarian. It extends authority in every matter of the country since it is the only operator of a political system. Its policy is dictated by a few and its words are final. It makes all laws, and no aspect of an individual and social life is immune from its potential control. Therefore, a single party system involves the abolition of freedom of speech and expression, press and association.

NOTES

Consequently under such a system, the distinction between society and the state is blurred and the latter is completely overshadowed by the former. This type of party system was found in Fascist Italy under Mussolini who assumed power in 1922. Mussolini systematically destroyed all parties except his own. Hitler is another example. In Germany in 1933, he finished all opposition. Arguing that they were resisting arrest, his party shot down some of the prominent members of other parties who dared to dissent in 1934. In former USSR, only the Communist Party ruled and this state too was witness to several purges between 1936 and 1938.

Afro-Asian states in the post-colonial era have also come under single party rule. These countries include Ghana, Kenya, Tanzania, Turkey and Mexico, etc. The People's Republican Party operated in Turkey between 1923 and 1946, but it did not kill democracy. Under Julius Nyerere, who also founded the African National Union, Tanzania remained a single party democracy. Here, while TANU (Tanganyika African National Union) was the only recognized party, voters were given a choice of candidates from within the party. In each constituency, more than one TANU candidate was allowed to contest. In Kenya, the only opposition party, the Kenya African People's Union was banned by the government in 1969, but its members were allowed to compete in elections.

One-party system can thus be divided into two sub-types:

(i) Authoritarian one-party system

(ii) Non-authoritarian one-party system

However, the larger emphasis of a one-party system is mainly on the side of authoritarianism. the ruling party propagates its own philosophy and a peculiar way of life to which the whole society is forced to conform. The monopolization of a single party, which believes itself to be the true custodian of people, is seen as a grave danger for civilization in modern times.

2. Two-party system

In this kind of system, despite existence of other parties, two parties have the support of the electorates. Under this system, the majority of the elected candidates at a given time belong to one of the two parties; this party eventually forms the government while the other remains in Opposition. Other parties exist but the transfer of power happens between the two main parties only. The United States and the United Kingdom provide good examples of two-party system. The UK political spectrum is dominated by the Labour Party and the Conservative Party, for instance. Things work differently in the US. Ideologically, the American parties are not very different but they cease to differ till the point where their political choices can differ. The British parties are also pragmatic but at the same time, ideologically distinct from each other. Thus, the two-party system can be divided into:

(i) Indistinct two-party system in the US

(ii) Distinct two-party system in Britain

3. Multi-party system

In a system where more than two parties exist, it is called a multi-party system. A number of parties struggle with each other under this system for power. However, it is difficult for only one party to secure absolute majority to rule. The system exists in countries like India and several countries of Europe, though its forms differ. From the viewpoint of stability of the government, one can discern two kinds of multi-party systems:

NOTES

(i) Unstable multi-party system

(ii) Working multiparty system

As the name indicates, unstable multi-party system does not ensure stability. One of the best examples of this is India, where due to the presence of a number of large and small parties has caused political instability at the Centre. France, under the Third and Fourth Republics, is another example of this kind of party system. Here, governments formed by coalition of parties rose and fell with dismaying regularity. Italy is yet another example, where hardly any party has been able to win a majority since the Second World War.

The working multi-party systems, on the other hand, are like two-party systems. Thus, they are often able to ensure stability to government even though they are comprised of more than two major political parties. Before the rise of the Social Democratic Party ruling party, former West Germany had the characteristics of a two-party system as two of the three major parties worked together to form government while Social Democrats remained in the Opposition. In Norway, Sweden, Belgium and Israel too, the existence of numerous parties at one go has not caused instability. Democracy has functioned as successfully in multi-party systems as in two-party systems.

Every system has, however, certain advantages and disadvantages. Supporters of multi-party system argue that:

- In a plural society, like India, such a system more effectively corresponds to the division of public opinion.
- It represents and satisfies the aspirations of diverse interest groups.
- Under this system, a voter can choose among more parties and candidates than available under the two-party system.
- It reduces the fear of authoritarianism and it is more flexible because groups can be freely organized under this system; they can unite and separate in accordance with the circumstances.

It is argued that a multi-party system has principally many factors in its favour that do not really work in practice. In India for instance, no single party has been able to command absolute majority in recent times and coalition governments have always been unstable and at risk of a fall. It creates other problems too. The Council of Ministers rarely work under the leadership of the prime minister and instead seek guidance from their party bosses. Withdraw of support of even a single member of the Parliament is a threat to the government. Such a government can barely focus on matters of governance or large-scale welfare as it remains in keeping its partners and allies in good humour. This happens even at the cost of national interest. The party who is in majority in the coalition is also forced to abandon its electoral pledges at time to remain in power. Consequently, the Cabinet often represents under such a system, not a cohesive body of different opinions but a patchwork of doctrines. This creates a gap between the electorate and the government. Despite all attempts to stick together, such a government often falls sooner than later as it is kept hostage by allied elements.

If their demands are not met, even small parties are quick to withdraw support. We have the examples from India in the form of withdrawal of support by the Congress party in 1997 and All India Anna Dravida Munnetra Kazhagam (AIADMK) in 1999. This forces unnecessary elections and causes great loss to the electorate. It is not false to say that multi-party systems and government instability go hand in hand. Since there are numerous parties vying with one another, it cannot be said which party will support

NOTES

in the wake of the fall of the predecessor. Thus, the complexity of choice is intensified in a multi-party system. But their existence can bewilder the general masses. Laski, therefore, concluded that a multi-party system 'is fatal to government as a practical art'.

On the other hand, supporters of two-party system argue that:

- People were able to choose their government directly as they were not confused between an array of candidates and instead choose simply between the available two.
- Since one party in power does not have to depend upon any other party for support, it keep the bond between them strong. This facilitates effectiveness of the government.
- Since each party is vying for the support of maximum number of people, they keep each other in check and prevent either from being too extreme.
- As democracy is to be guided by public opinion, the two-party system provides an ideal condition to debate issues between two opposite camps. Laski, therefore, observed that "a political system is more satisfactory, the more it is able to express itself through the antithesis of two great parties".

The two-party system has to, however, pay a price for the stability it promises. Naturally, this system indicates that only two schools of thoughts prevail in a country. In practice, however, there are always a variety of opinions and ideas that emerge and diffuse within a political system, political thoughts and discussions. The two-party system ceases to realize this. A sense of artificiality inevitably gets seeped into this system of political organization, in turn leading to the establishment of vested interests in public opinion. It is illustrated best by the American system. Moreover, this system leads to a decline of legislature and promotes cabinet dictatorship. The legislature gets underestimated when a party in power is backed by a solid majority inside the legislature.

In view of the above mentioned advantages and disadvantages of the multi-party and two-party systems, it is not prudent to lay down a general rule concerning the desirability of a particular type of party system in all countries. The merits and demerits of all party systems need to be studied in their context and also the social, economic and historical forces at work in a given country. There is no fixed pattern to any political system. Political culture also holds significance in this regard.

8.2.2 Origin of the Party System

Several theories have been put forward by political scientists to explain the origin of the party system. These explanations can be broadly clubbed under three categories as discussed below:

1. **Human Nature Theory:** Three explanations have been put forward to understand the Human Nature Theory. Scholars like Sir Henry Main have argued that parties rise when humans move towards combativeness. In other words, parties are formed by human beings to give organized expression to their combative instinct. The second category of explanation under this theory identifies the human temperament as the cause of the emergence of political parties. That is, it is argued that the diverse temperaments of individuals lead them to form different parties. For instance, while people who appreciate the established order join Right of the political divide, others opposing the existing order join the Left of the political spectrum. In other words, those who do not support change in the existing system form one party, and those who want reforms and changes get together in another party. The third explanation runs in terms of the charismatic traits of political leaders. Since the dormant masses need leadership to articulate their latent feelings, formation of a political party depends upon the availability of dynamic political leadership who can inspire masses to work towards achieving the goals of a particular party.

NOTES

2. **Environmental Explanation:** Besides the above mentioned explanations, considerable data is available that helps explain the role of socio-economic environment in the evolution of party system. For instance, research shows that the modern Democratic Party system was the result of at least two significant political developments — (i) the limitation of the authority of the absolute monarchy, and (ii) the extension of the suffrage to virtually all the adult population. The historic roots of the party system can thus be traced to the struggle of the legislature to limit the authority of the king and at the same time, the growth of the groups seeking recognition of their rights and interests and thus taking sides in a political battle. By 1680, the public policy of Britain had become the joint concern of both the King and Parliament, and the terms *Whig* and *Tory* were commonly applied to those who, respectively, attacked and supported the royal policy.
3. **Interest Theory:** While the above mentioned explanations may be true to some cases, none are complete in themselves. Human behavior is motivated by combativeness, but that's only a part of it. In a similar vein, age only partially reflects political attitude. Even the dynamism of a political leader is not permanent. The Interest Theory was forwarded in the wake of the inadequacies of the above-mentioned theories about the origin of the party system. The Interest theory propagates that parties are formed on the basis of their interests. An individual's nature, extent and degree are motivated by the range of interests he/she develops. These grow from his/her interaction with the cultural environment. Birth, education or a chance experience may, thus, determine an individual's interest which, in turn, may determine party affiliations. This theory further identifies a person's economic interests as influencing his/her decision to join a particular party. It also negates the Marxist assumption of economic determinism and its concomitant dichotomy of social classes. Interest theorists argue that people support party that promises to bring about economic change, and gives them hope of a better livelihood.

8.3 PARTY SYSTEM IN THE USA

The development of the US's two-party system has been divided into five eras by political scientists and historians. As mentioned earlier, this two-party system comprises the Democratic Party and the Republican Party. The two parties have won every presidential poll since 1852 and have controlled the United States Congress since 1856. Many smaller third parties also operate in the country, and their members are mostly elected for office at the local level. Since the 1980s, the largest third party in the US is the Libertarian Party.

But the American political system is a system of two-parties. The Constitution, however, does not give an insight into the issue. This could be because when the Constitution was being adopted in 1787, political parties did not exist in the US. Those were the days when nowhere in the world elections were fought on the basis of party system. The system was invented in the 1790s as the need to gain popular support in a

Check Your Progress

1. What are the sub-types of one-party system?
2. Name the sub-types of two-party system.
3. What are kinds of multi-party systems from the viewpoint of stability of government?
4. What is the drawback of Interest Theory related to the origin of the party system?

NOTES

republic grew. New campaign strategies were invented by the Americans that linked public opinion with public policy through the party.

The Democratic Party is the oldest and one of the major political forces in the US. Since its split from the Republican in the polls of 1912, the party has based itself as a labour party, fighting economic issues. The party is influenced majorly be the economic philosophy of Franklin D. Roosevelt and this has also shaped its agenda since 1932. His New Deal coalition in fact ruled the White House until 1968.

The Republican Party is the other dominating party of the country. It is famously known as the Grand Old Party or GOP within the media circles since the 1880s. The party was founded in 1854 by Northern anti-slavery activists and modernizers. With the election of president Abraham Lincoln in 1860, the Party rose to prominence. He even used the party machinery to support victory in the American Civil War. Republicans led the American politics during the Third Party System from 1854 to 1896 and the Fourth Party System from 1896 to 1932. In present times, it supports an American conservative platform, and also identifies itself economic liberalism, fiscal conservatism, and social conservatism.

The Democrats registered a decline in popularity as per the 2011 *USA Today* review of state voter rolls in 25 of 28 states. However, with more than 42 million voters, it remains the largest political party. The Republicans have 30 million voters while Independents are at 24 million. As per the review, the Democrats declined to 800,000 and they were down by 1.7 million, or 3.9 per cent, from 2008. In 2004, 72 million voters the 15th Democrat to hold the office. The Democratic Party is the majority party for the United States Senate since the 2006 mid-term polls.

As per the same review, the Republicans too registered a decline in 21 of 28 states. In 2011, its registration was down to 350,000. Independents, on the other hand, rose in 18 states that were reviewed. They increased by 325,000 in 2011 and their number was up more than 400,000 from 2008, or 1.7 per cent. The 19th Republican to hold the office of the president was George W. Bush. Mitt Romney, former Governor of Massachusetts, was their nominee for the 2012 polls. The Republicans have a majority in the House of Representatives since the 2010 mid-term polls.

Advantages and disadvantages of USA's two-party system

Some of the advantages of the two-party system in US are:

- **Stability:** Compared to multi-party systems, two-party systems are more stable.
- **Moderation:** Parties tend to be moderate under this system as the two must appeal to the middle to win polls.
- **Ease:** Voters have only to decide between the two parties.

Some of the disadvantages of this system are:

- **Lack of choice:** Voters' options are limited as both parties tend to be very similar.
- **Less democratic:** A percentage of people will always feel marginalized by the system.

Realignment

This term is used to refer to the political shifts within a country. To realign means to give a new direction to the party and to redefine what being a member of the said party means. Old parties realign when faced with new challenges and this often leads to a split in party leadership. Issues often cross-cut each other; for instance, many Democrats often find themselves agreeing with Republicans more than the members of their own party. Parties shift around the axis of the new issue when it becomes a matter of imminent concern and thus, a new system of parties emerges.

NOTES

Major third parties in the USA

In this sub-section, we will discuss the two major third parties in the US party system. These are (i) Constitution Party and (ii) Green Party.

(i) **Constitution Party:** This party is a conservative party of the US political system and was founded in 1992. Then, it was called the as the US Taxpayers Party. It is founded on the platform that reflects the original goals of the US Constitution, on the principles advocated in the US Declaration of Independence and the morals of the Bible. Its name was changed to its present name in 1999. Rick Jore of Montana city was the first candidate of the Constitution Party who was elected to a state-level office in 2006. This was despite the fact that shortly before the polls, the Constitution Party of Montana had disaffiliated itself from the national party.

(ii) **Green Party:** This party operates mostly at the local level in the US. Those who are referred to as Greens have mostly won public offices at the 'non-partisan ballot' polls. This incidcates towards those polls where candidates' party affiliations were not printed on the ballot. In the District of Columbia in 2005 and other states which allow party registeration, the party had 30,5000 registered members. In the polls of 2006, the party had ballot access in 31 states. The Green Party mostly operates as a third party in the US since 1980s. It was in 2000 during Ralph Nader's second presidential run that the party got widespread public attention. At present, the main Green Party is the Green Party of the United States, whose emergence has overshadowed the former Greens or the Green Party USA. The agenda of this party is environmentalism, non-hierarchical participatory democracy, social justice, respect for diversity, peace and non-violence.

8.3.1 History of Party System in the USA

The history of the party system in USA is best understood in the following divisions:

1. **First party system:** Factions in the George Washington administration are believed to have given way to the development of this system. George Washington, the first President of the United States, did not belong to any political party at the time of his election to the top post. In fact, throughout his tenure, he never belonged to any party. Fearing conflict and stagnation, he hoped that political parties would never be formed. Yet, the two-party system in the country was forwarded by two of his advisors — including Hamilton and Madison. The two factions constituted Alexander Hamilton and the Federalists, and Thomas Jefferson and the Democratic-Republican Party. It is pertinent to mention again that the US Constitution does not address the issue of political parties; its founding fathers did not intend for American politics to be partisan. Hamilton and Madison, in Federalist Papers 9 and 10 respectively, wrote about dangers of domestic political factions. Nonetheless, the two-party system saw the Federalists on one side, who argued for a strong federal government with a national bank and a strong economic and industry system. The Democratic–Republicans favoured a limited government

NOTES

and put strong emphasis on farmers and states' rights. The Democratic–Republicans rose to dominance after the Presidential polls held in the year 1800 and remained so for the next 20 years. The Federalists were slowly led to twilight.

2. **Second party system:** The inability of one-party system to contain some matters of imminent concern, like slavery, gave way to the development of this system. The Whig Party and Henry Clay's American System emerged out of the second party system. While the moneyed supported the Whigs, the poor supported the Democrats. The Whig Party collapsed during 1850s due to a weak leadership as well as factionalism with the party over slavery as a result of the Compromise of 1850. Fading away of previous economic issues also caused the split within the party. The Democratic–Republican Party also suffered a split in 1829. The faction formed Jacksonian Democrats, a modern Democratic Party led by Andrew Jackson and Whig Party leader Henry Clay. Among major issues of dissent were the Democrats' support to presidency over other forms of governance, its opposition to the Bank of the United States and modernizing programmes that they felt would create industry at the cost of the taxpayer. On the other hand, the Whigs supported the rule of the Congress over the executive as well as the modernization programmes. Issues over Bank and the Spoils System of Federal Patronage were central to this system, which lasted till 1860.
3. **Third party system:** Characterized by the rise of anti-slavery Republican Party, this system went on from 1854 to mid-1890s. The party took on some of the economic policies of the Whigs like those concerning national banks, railroads, high tariffs, homesteads and aid to land grant colleges. Starting from around the beginning of the Civil War, conflicts, differences and coalitions defined this system. The issues of Civil War as well as Reconstruction created fissures until the Compromise of 1877. Thereafter, both became broad-based voting coalitions. Geography defined the parties. Democrats dominated the South and were opposed to putting an end to slavery. Republicans took on the North, who supported an end to slavery. This issue also brought in the African Americans into the Republican Party while the white southerners or the Redeemers joined the Democratic Party. The Democrats also comprised some conservative pro-business Bourbon Democrats, traditional Democrats in the North, as well as Catholic immigrants. Businessmen, shop owners, skilled craftsmen, clerks and professionals were part of the Republicans, with the party's modern policies serving as main attraction. Widespread industrial and economic expansion marked this era, which lasted till 1896.
4. **Fourth party system:** Major shift in the issues of debate gave way to the Fourth Party System between 1896 and 1932, which nonetheless included the same primary parties as the Third Party System. Led by the Republican Party, this period corresponded to the Progressive Era. It started off after the Democrats were blamed by the Republicans for the Panic of 1893, resulting in the victory of William McKinley's over William Jennings Bryan in the 1896 presidential polls. Regulation of railroads and large businesses, protective tariff, role of labour unions, child labour, a new banking system, weeding out corruption, primary polls, direct election of senators, racial segregation, efficiency in government, women's suffrage, and control of immigration became some of the central issues of debate. The Republicans were supported by Northeastern business while the Democrats had the backing of the South and West. Both parties supported immigrant groups. The system ended around 1932.

NOTES

5. **Fifth party system:** This system emerged in 1933, beginning the New Deal coalition. As the Republicans lost support following the Great Depression, Democratic President Franklin D. Roosevelt introduced the New Deal policies. Primacy was given to American Liberalism, keeping the interests of the coalition liberal groups in mind, especially ethno-religious constituencies including the Catholics, Jews, African Americans, White Southerners, labour unions, urban machines, progressive intellectuals, and populist farm groups. On the other hand, the Republicans suffered a split. On one side was the conservative wing led by Ohio Senator Robert A. Taft and on the other was a more successful moderate wing which was propagated by Northeastern leaders such as Nelson Rockefeller, Jacob Javits, and Henry Cabot Lodge. But they too lost influence after 1964. This system worked till 1968.
6. **Sixth party system:** In its developing stage at present, this system is said to have been initiated with the Civil Rights Act of 1964. That was the time when the Democrats lost their dominance of the South, leading to the Republicans gaining influence as was evident by the election results.

8.3.2 American Ideology and Polarizing Issues

The dominant political ideology of America is Republicanism, as well a form of classical liberalism. Documents that speak of these ideologies are the Declaration of Independence (1776), the Constitution (1787), the *Federalist Papers* (1788), the Bill of Rights (1791), and Lincoln's 'Gettysburg Address' (1863), among others. Some of the core principles of these ideologies are as follows:

- *Civic duty:* American citizens have to understand and support the government, participate in poll process, duly pay their taxes and perform military service if required.
- No space for political corruption
- *Democracy:* Citizens are foremost and the government is responsible to them. Citizens also have the power to change their representatives through polls.
- *Equality before law:* Laws attach no special privilege to any citizen. Government officials are subject to the law just as others are.
- *Freedom of religion:* The government can neither support nor suppress religion.
- *Freedom of speech:* The government cannot restrict through law or action the personal, non-violent speech of a citizen; a marketplace of ideas.

When the foundation of the United States was laid, its economy was mainly agricultural and comprised of small private businesses. Welfare issues were left by the state to the prerogative of private or local initiatives. The ideology of *laissez-faire* was, however, abandoned during the Great Depression. The fiscal policy between 1930s and 1970s was characterized by the Keynesian consensus. This was the time when economic policy was dominated by modern American liberalism and remained unchallenged. The idea of *laissez-faire* once again came to dominate the American politics since the late 1970s and early 1980s. Ironically, America's GDP is at the low of 20 per cent since late 1970s even though the welfare state expanded more than threefold after the Second World War.

Yet, central issues have divided the voters since much of the American history. In its early decades, it was about the powers of the federal government. Present polarizing issues include abortion and gay marriages. Nonetheless, they have helped maintain a

NOTES

healthy democracy as well as the two-party system in the United States, with each party supporting one or the other issue.

The Early Republic: Federalists *versus* Anti-Federalists (1792–1800)

Ratification of the Constitution was the first serious political issue that divided the Americans. The Federalists sought the ratification of the Constitution so that a stronger national government could be created while the Anti-Federalists, fresh from the Revolutionary War, felt the Constitution would devoid the people of their hard-won liberties. While the Constitution was eventually ratified, the political division found its way into the first decades of the republic. The Federalists allied themselves with Alexander Hamilton and President John Adams, while Thomas Jefferson rallied with the Anti-Federalists, who started to call themselves Democratic Republicans. None of this faction was a political party in the modern sense of the word and also lacked strong cohesion.

The 'Era of Good Feeling' (1800–1824)

After Jefferson won the presidential polls of 1800, the Federalists were no longer perceived as a political threat. By the time James Monroe came to power, most Americans identified themselves with the ideology of the Democratic Republicans. Since there was no competition or opposition at all, this period is known in the American history as the 'Era of Good Feeling'. The public debate over political matters was common but it ceased to exist within political factions.

The Jacksonian Era: Democrats *versus* Whigs (1824–1850)

Jackson was replaced by Adams in 1828 as Democrats rebounded in four years. The Democratic Party also emerged as the first major grassroots party. Politicians who were opposed to Jackson's policies formed a temporary coalition called the Whig Party. However, after the highly contested presidential polls of 1824, the first modern party to emerge was the Democratic Party. In these polls, Jackson won the popular votes but could not get majority of electoral votes. Thus, John Quincy Adams was elected as the next president by the House of Representatives. The Democratic Party was thus created to oppose the Adams Administration.

The Antebellum Period: Democrats *versus* Republicans (1850–1860)

Slavery erupted as the next major issue over the next few decades. Those in favour of slavery fought intensely with the abolitionists but neither the Democrats nor the Whigs could muster a response on the emerging issue. Consequently, both parties saw internal divisions. Out of those in the favour of abolition, the Republican Party was formed in the late 1840s and early 1850s. The Democrats were left with mainly Southerners and rural Westerners. The Republicans nominated Abraham Lincoln in 1860. Stephen Douglas was nominated by Northern Democrats while John C. Breckenridge was chosen by their Southern counterparts. Lincoln won the polls closely and promised to keep the Union stable. However, with this election, South Carolina and several other Southern states seceded.

The Reconstruction Era (1868–1896)

The power battle continued between the Northern Republicans and Southern Democrats for many decades following the Civil War. Blacks, who were allowed to vote briefly after the War, mainly voted for the Republican, especially since they identified Democrats

NOTES

with slavery. Emancipation was considered the principle ideology of the Republicans. Blacks were further encouraged to vote for the Republicans since Democrats were making all efforts to dissuade them from voting.

Strong Parties and Patronage

Political parties became strong entities during the nineteenth century. So much so, that a chief of a political party had more influence and power than even the elected officials from within that party. An important source of this power was the power of the chiefs to choose the nominees. Until recently, the nominees were chosen by the party chiefs and the public had a little say. Party leaders met in caucus, or informal closed meetings, not only to choose nominees but also set party guidelines. Disobedient members had the risk of not being re-nominated; this also meant they would be out of job. Many a times, parties gave government jobs and contracts to allies for political favours. This process was called machines because parties sought to transform favours and patronage into votes.

The Gilded Age (1880–1896)

Industrialization, large-scale corporations amassing capital and dominating unregulated marketplace were the next issues of American concern as well as fissures between them. Poor farmers came together to form a powerful third party and challenge the big-business trusts. They were called the People's Party or Populists. However, they were co-opted by the Democratic Party in the polls of 1896, leading to the death of the Populists as an emerging third party. This was followed by defeat of the Democratic Populist led by William Jennings Bryan by Republican William McKinley. It gave birth to the new era of Republican dominance. Between 1896 and 1932, Republicans won every presidential poll, except the one in 1912.

Progressivism (1896–1932)

Progressivism, a social movement, swept the nation during the first two decades of the 1900s. Progressives, like the Populists, sought regulation of large-scale business enterprises and political power for the American citizens. The movement was bipartisan and Progressives were found both in the Republican Party and the Democratic Party. For instance, Republican Theodore Roosevelt and Democrat Woodrow Wilson were both Progressives. Later, the Repblican party split after an argument between the then President William Howard Taft who was a traditional conservative Republican and a Progressive Roosevelt. Roosevelt later founded the Progressive Party. In 1912, he won by a fleeting majority in a three-way polls. However, it only divided the Republicans, the use of which was made by the Democrats who then elected Woodrow Wilson. The death of the Progressive movement was called by Wilson's attempt to persuade the Senate to ratify the Treaty of Versailles to end the First World War. Till 1932, the electorate only voted for the conservative Republican presidents.

The Depression and the New Deal (1929–1941)

The domination of the Republicans ended with the Great Depression, which refers to the crash of the stock markets in 1929. The electorate turned to the Democrats in protest against the policies of the Republican president Herbert Hoover. Franklin Delano Roosevelt, who was the Democratic nominee in 1932, offered to energize the economy in the form of a relief and reform legislative package known as the New Deal. Roosevelt won convincingly and also put the country on recovery road.

NOTES

The New Deal Coalition (1936–1968)

The Democratic successes in the middle of the twentieth century were the courtesy of the New Deal coalition. This coalition comprised groups including workers, labour unions, Catholics, Jews and racial minorities. The Southern part of the US was mainly Democratic and was joined by the African American voters who majorly supported the Democrats after 1932. The Democratic Party was at the helm of the American political system for the next three decades.

With the changing world scenario, a panel of political scientists in the 1950s called upon 'responsible parties' to take upon the US politics. They referred to responsible parties as those who were strong to propose specific and substantive policies and also implement them effectively. They felt the US political parties were not 'responsible' for they failed to force their members to commit to the party platform. Since parties could not control their candidates even till today, as in other countries, the call for responsible parties seems faraway.

The Civil Rights Movement and Vietnam (1960s)

The civil rights movement by the African American community as well as US's involvement in Vietnam created fissures in the New Deal coalition in the 1960s. The Democratic Party was dominated by Whites, who inarguably felt that the Republicans had invaded their homeland during the Civil War. African-American were also leading towards Democrats by then. These issues led to the Southern Whites switch to the Republican Party and by 1980s, much of the South affirmed with the Republican politics.

The critical 1968 polls were a definite moment in the US politics. The Vietnam War and the civil rights movement deepened the divide. The Democratic governor of Alabama, George Wallace, split from the party and contested as a third-party candidate, which hit the chances of the Democrats. This was followed by a bitterly-fought election, led by Republican Richard Nixon. The chaos of these polls marked the decline of the American political parties.

Since then, the Democrats have been trying for an image makeover and changed the ways their party operated. The focus has been on the process of choosing the nominees. Party reform was ushered in the form of opening up of the leadership to new people. More women and minorities were included in the delegations. Primary elections were introduced to allow electorate to directly participate in the party nomination process. Since then, the Democrats use primary polls in order to take decision-making powers from the party chiefs and vest them in the electorate. Republicans followed suit shortly.

8.3.3 Contemporary Party System in the USA

The Republicans have been doing very well politically since the polls in 1968, especially in the presidential races. This is evident in the fact that since 1968, only two Democrats — Jimmy Carter in 1976 and Bill Clinton in 1992 and 1996 – were elected as presidents. In the opinion of some scholars, the Republicans dominate the political system after the breakdown of the New Deal coalition, producing a realignment. For others however, it was a sort of de-alignment, i.e. the loosening of the party ties. They cited that since 1970s, American citizens identify themselves as independents rather than with any party ideology. People also cross party lines and vote for different parties in different polls. Split-ticket voting has also become popular in the US, wherein citizens vote for both Republicans and Democrats for different offices in the same polls. This kind of system has led to formation of a number of divided governments wherein one party leads the presidency while the other has control over at least one house of Congress.

NOTES

The Reagan Democrats

In present times, political parties no longer are able to either dictate their nominees or control massive patronage. Candidates are said to function independently from the party leaders. They make their own strategies, often at the cost of the party. Such activities were synonymous for the Reagan Democrats in the 1980s. These comprised mainly blue-collar workers who conventionally voted for the Democrats. They were, however, to Reagan's social conservatism and toughness; in tune they helped him win two terms in presidents' office.

As parties took a back-turn, this gave rise to candidate-centred politics wherein people voted for the candidates instead of the parties they were representing. This was especially true to presidential polls. Parties provided services such as financing the campaigns, providing expertise, lists of donors, and name recognition to candidates and campaigns. While they may exactly tow the party line, candidates are often seen maintaining close contact with the party leadership to win favours and larger party support. In cases where voters know little about candidates, the elections are mostly party centric.

The political system of the United States can be differentiated with other developed democracies on some of these major counts. These include significant power in the Upper House of the Legislature, the influence and authority of the Supreme Court, clear division of powers between the legislature and the executive and the domination of two political parties. Smaller parties in the US have low influence in the politics than they do in others democracies of the develop countries.

One of the dominant features of the US governance system is the federal entity created by the Constitution. At the same time, people are also subjects of the state and also of their local governments. The local governments refer to the counties, municipalities and special districts. The American history is reflected in its multiplicity of jurisdiction. As mentioned, state facilitated the creation of the federal government while colonies were separately established and they governed themselves. The local governments, on the other hand, were created by the colonies to carry out their independent functions. More states joined the country as it expanded.

8.4 PARTY SYSTEM IN JAPAN

Japan's political framework can be identified as one of a parliamentary representative democratic monarchy. The prime minister of the country is the head of the government and also the Cabinet that directs the executive branch. The legislative power is the prerogative of the Diet. It comprises House of Representatives and the House of Councillors. The Supreme Court and lower courts hold the judiciary powers. Japan identifies itself with a multi-party system. However, in political science, you will often come across studies that will consider Japan a system of civil law, with constitutional monarchy.

The Emperor of Japan is defined by the Constitution as the "symbol of the state and of the unity of the people". However, his role is ceremonial; he participates in activities that have largely no real power. The Emperor has no emergency reserve powers either. The political power is in the hands of the PM and other members of the

Check Your Progress

5. What are the advantages of the American two-party system?
6. What was the 'New Deal coalition' in America?
7. How does the political system in the USA differ from that of other developed democracies?

NOTES

Diet. As per the law, the Imperial Throne is succeeded by a member of the Imperial House. The Emperor is also the head of the Japanese Imperial Family. The present emperor is Emperor Akihito. While his status the Emperor hold is disputed, occasionally, like on diplomatic events, the Emperor leads as the head of state, with widespread public support. The constitution vests sovereignty in the people of Japan.

The Emperor also appoints the prime minister, who is the chief of the executive branch, on the direction of the Diet. The PM is required to be a member of any House of the Diet, besides being a civilian. Other Cabinet members are nominated by the PM; they are also required to be civilians. Diet is an important body in the Japanese political system. The Cabinet, comprising the PM and MPs, are responsible to the Diet. On the other hand, it is the PM who can appoint and remove the ministers, even though majority of them are required to be Diet members. At time when the Liberal Democratic Party (LDP) has been in power, its president has automatically assumed the charge of the PM. The LDP, whose leanings are liberal conservative, in power from 1955 to 2009. In between, a short-term coalition had been formed by opposition parties in 1993. Social Liberal Democratic Party (SLDP) has been the largest opposition party of Japan since late 1990s and late 2000s.

Article VI of the Japanese constitution gives some nominal powers to the Emperor. These are:

- Appoint the Prime Minister as designated by the Diet.
- Appoint the Chief Justice of the Supreme Court, as designated by the Cabinet.
- On the advice and approval of the Cabinet, promulgate Constitution, laws, government orders and treaties.
- Convoke the Diet with the advice and approval of the Cabinet.
- Dissolve the House of Representatives, with the advice and approval of the Cabinet.
- Proclaim the general election of the Diet, with the advice and approval of the Cabinet.
- Attest Ministers of State, with the advice and approval of the Cabinet.
- Grant pardon, with the advice and approval of the Cabinet.
- Award honours, with the advice and approval of the Cabinet.
- Receive foreign ambassadors, with the advice and approval of the Cabinet.

As evident, the Emperor has very superficial powers. In the system, the House of Councillors is also called the Upper House of the Japanese Diet, comprising 242 members. Their term is for a period six years. Most power is the Lower House, also called the House of Representatives, with 480 members. Their term is for four years. The minimum age to be a member of the House of Councillors is 30 years while for the House of Representatives, it is 25 years. Japanese citizens above 20 years are allowed to exercise their right to franchise.

In November 1945, after the Second World War concluded, all significant pre-war conservative, moderate and progressive powers came together. This was followed by legitimating of the Japanese Communist Party (JCP). The new constitution was adopted on May 3, 1947 and with that, a cabinet under the parliamentary form of government was established. The '1955 System' or '1955 set-up' has played an important role in the development of the country. Under this system, the Japan Socialist Party (JSP) which had split in 1951 was reunified and the merger of two conservative parties – the Japan Democratic Party and Liberal Party – gave way to the formation of the Liberal Democratic Party (LDP) in November 1955. Two parties dominated the LDP, resulting in the creation of 'one-and-half party system' since the LDP had about two-times more seats than the JSP, which was the opposition party, in the Diet

Since the coming in of this system, the LDP remained the dominating party of Japan till 1993. This is despite the fact that between 1970 and 1983, the opposition parties polled more votes than the LDP in each election for the House of Representatives. While the opposition parties could have cashed in on the opportunity and formed a joint government, it failed to do so. In 1983, elections to the Upper House and Lower House were held twice in June and December. The LDP won the House of Councillors with 68 seats. The JSP could not garner much support and it came to the point where it could lose relevance as the main opposition party. The LDP, however, failed to gain support in the Upper House. Following this, the LDP allied with the New Liberal Club (NLC) and gained 267 seats. The JSP, on the other hand, had to do with 112 seats. This was the first time when the LDP formed a coalition government since 1955.

In August 1993, many scandals, delayed reform programmes as well as factionalism within the party eventually led to the downfall of the LDP since its rule in Japan for 38 years. This period is also referred to as the 'collapse of 1955 System or Set-up' in Japanese political history. Between 1993–1994, LDP was out of power. But in 1994–1996, it returned to the coalition government; it was led by a Socialist Prime Minister Tomiichi Murayama. It ruled again till 2009 and it was in this year that the LDP lost majority in the Lower House. It returned to power again in 2012 polls.

Political development since 1990

After the LDP failed to win majority in the Lower House in 1993, a coalition of new as well as opposition parties was formed to rule. The coalition prime minster was Morihiro Hosokawa and he took charge in August 1993. The government promised political reforms, comprising restrictions on political financing and changes in the electoral system. A landmark political reform legislation was successfully passed by the coalition government in January 1994.

Prime Minister Hosokawa gave up his post in April 1994. The next coalition was formed by Tsutomu Hata which was the country's first minority government in nearly 40 years. It was also the short lived one. Prime Minister Hata put in his paper in less than two months. This was followed by Tomiichi Murayama forming the government in June 1994. This coalition was made with the JSP, the LDP, and a small party called New Party Sakigake. A coalition comprising JSP and LDP sent shock waves across the country, as the two had always been fierce political rivals.

Between January 1996 and July 1998, Prime Minister Ryutaro Hashimoto was in power. He was the head of a loose coalition of three parties, including LDP. However, in the 1998 Upper House election, the other two parties separated from the LDP and Prime Minister Hashimoto resigned due to LDP's poor electoral performance. This led to LDP party president KeizoObuchi succeed him as PM. He took charge on July 30, 1998. In January 1999, the LDP made a coalition government with the Liberal Party but KeizoObuchi remained the prime minister. New Komeito Party became part of this coalition in October 1999.

NOTES

Political development since 2000

In 2000, Yoshiro Mori replaced Prime Minister Obuchi. The Liberal Party finally left the coalition in April 2000, following which a splinter group of the Liberal Party called the New Conservative Party joined the coalition. With the coming of this party, the gap left by the LDP was filled and the three coalition partners maintained the government till the 2000 Lower House elections.

Mori's year in office was, however, a turbulent one. His approval ratings fell to single digits, following which he decided to hold early polls for the presidency of the LDP to perk up the chances of his party in crucial July 2001 Upper House elections. However, the country was reverberating with desire for change and this was successfully tapped by maverick politician Junichiro Koizumi. He defeated former Prime Minister Hashimoto and his supporters on April 24, 2001, only on issues related to economic and political reform. Koizumi took charge as country's 87th Prime Minister on April 26, 2001. However, despite promises of stability, the Lower House was dissolved on October 11, 2003 and Prime Minister Koizumi was re-elected as LDP's president. LDP won the polls held later that year, even though opposition party like the liberals' and social-democratic Democratic Party of Japan did not support it.

Prime Minister Koizumi called for snap polls on August 8, 2005 in the Lower House after his leadership came under challenge from the LDP and the DPJ members of parliament, who rejected his proposal for a large-scale reform and privatization of Japan Post. Japan Post is state-owned postal monopoly and as per estimates, the largest financial institution in the world with over 331 trillion yen in assets. Polls were held on September 11, 2005, wherein the LDP registered a landslide victory under the leadership of Koizumi. By 2006, the LDP started losing its hold and no leader except Koizumi held any public support. On September 26, 2006, the then LDP chief Shinzo Abe was elected as PM. On September 12, 2007, Abe was replaced by veteran LDP leader Yasuo Fukuda.

In support of US-led operations in Afghanistan, PM Fukuda called a Bill on January 11, 2008, to allow ships to refuel in the Indian Ocean. PM Fukuda made use of the LDP's majority in the Lower House to ignore the 'no-vote' of the Opposition-controlled Upper House to the Bill. It was for first time in over 50 years of Japanese history that the opinion of the Upper House was ignored to pass a Bill. Under criticism, PM Fukuda resigned on September 1, 2008, soon after Cabinet reshuffling. To fill the leadership gap created by PM Fukuda resignation, polls were held within LDP and Taro Aso was elected as the party chief. He was made the PM the House of Representatives voted in his favour in the extraordinary session of Diet.

On July 21, 2009, Prime Minister Aso dissolved the Lower House and polls were held on August 30 the same year. This time, the DPJ-led opposition won the polls through a majority of 308 seats. Of these, 10 were won by its allies, the Social Democratic Party and the People's New Party. On September 16, 2009, DPJ chief Hatoyama was elected by the Lower House as the 93rd Prime Minister of Japan. However, he resigned in June 2010 due to non-fulfillment of his domestic and international policies. Within a week of his resignation, DPJ's president Naoto Kan was sowrn in as the PM. However, he lost the House of Councillors polls in 2010, following which DPJ's new chief and former finance minister in the Naoto Kan's cabinet, Yoshihiko Noda, was made Japan's 95th prime minister on August 30, 2011.

On November 16, 2012, Noda dissolved the Lower House after failing to receive support on various domestic issues like tax and nuclear energy. Polls were held on December 16, 2012 and the LDP was again voted to power. It won absolute majority under the leadership of former Prime Minister Shinzô Abe. He was appointed as Japan's 96th Prime Minister on December 26, 2012.

NOTES

8.5 PARTY SYSTEM IN SWITZERLAND

Switzerland's political system is embedded in the multi-party federal parliamentary democratic republic framework. The Federal Council of Switzerland is the centre of the government, which also exercises the executive power along with the federal administration. Thus, no power is concentrated in the hands of one person or level of the government. The legislative power too is the prerogative of the government and two chambers of the Federal Assembly. Judiciary, however, is independent of the executive and the legislature. To modify the constitution, it is mandatory to introduce a referendum. On the other hand, if change is sought in a law, then referendum has to be requested. In these ways, citizens can participate in matters of governance. Citizens can challenge any change sought by the parliament and can also seek amendments in the constitution. This makes Switzerland the most leading and closet example of a direct democracy in the world.

The country has a system of governance rarely seen across the world – direct representation — also called half-direct democracy at time. This can be argued because in theory than in practice, the Sovereign of Switzerland is actually its entire electorate. Nonetheless, referendums on significant laws are regularly used since the adoption of the Constitution in 1848. All amendments to the constitution or joining of international organizations or any change to the federal laws that have otherwise no basis in the constitution have to be approved by the majority of both the people and the cantons.

Citizens have been empowered by the constitution to challenge any law that the parliament approves. If a citizen can get 50,000 signatures against a law within 100 days, then the constitution provides for scheduling of a national vote wherein voters have to decide through a simple majority whether the law will remain in force or be rejected. Citizen can also seek others' opinion on an amendment they want to propose to the constitution. For this purpose, they have to gather 100,000 within 18 months. Since this become a wholesome popular initiative, it is prepared as a next text whose wordings cannot be altered wither by the government or parliament.

To counter this initiative, the federal council can make a counterproposal to the proposed amendment. It can be out up for vote on the same day as the original proposal. However, these initiatives on the part of the government are mainly a compromise between the *status quo* and some wordings of the initiative. Voters then decide through national polling whether the amendment will be accepted or no. In case both the original and the counter proposal are accepted, voters are required to hint at a preference. Those initiatives that are of the constitutional level need to be accepted by a double majority, i.e. of the voters as well of the cantons. Counter-proposals, on the other hand, can be of two legislative levels and thus require only a simple majority.

The Federal Council of the Swiss government is comprised of seven-member executive council which leads the federal administration. It operates as a joint entity of the cabinet and collective presidency. As per law, any eligible citizen of the country can become a member of the National Council; candidates in fact do not have to register for the polls or to be members of the Council. The Federal Assembly is elected by the Federal Council for a term of four years. The president of the Confederation and the vice-president of Federal Council have largely a ceremonial role to play. They are elected

NOTES

by the Federal Assembly from among the members of the Federal Council. Their terms run concurrently for one year.

Stability is the most important feature that defines and distinguishes the Swiss political landscape. It has never been renewed completely since 1848, thus giving a sense of long-term establishment. Between 1959 and 2003, the Council is comprised of a coalition of all parties in the fray and in the same ratio: two each from the Free Democratic Party (FDP), Social Democratic Party (SDP) and the Christian Democratic People's Party (CDPP) and one from the Swiss People's Party (SPP). The Council is rehauled only when one of the members puts in his/her papers. In the last over 150 years, only four incumbent members were voted out of the office. Even when shunted out, he/she is replaced by member from the same party and even the same linguistic group.

As mentioned, the government is a coalition of four major parties of the country. Each has the number of seats that reflects its share of voters and representation by members in Parliament. The classic distribution of 2 CVP/PDC, 2 SPS/PSS, 2 FDP/PRD and 1 SVP/UDC as it stood from 1959 to 2003 was known as the 'magic formula'. The country has a multi-party system and its four largest parties have formed a coalition government since 1959. This has been possible due to the 'magic formula'. As per this arithmetic formula, seven cabinet seats are divided between these representatives of the four largest parties.

This 'magic formula' has often come under severe criticism. In the 1960s, it was put under the banter for allegedly leaving out the Left-leaning opposition parties. In the 1980s, it was criticized for excluding the newly-surfacing Green Party. It was particularly criticized after the 1999 polls, which left the CDPP from being the fourth largest party on the National Council to being the largest. In the 2003 polls, the CDPP was voted a second seat in the Federal Council. This reduced its share to one seat.

Hearings in Swiss parliament are open to anyone, even foreigners. Switzerland has a bicameral parliament, also known as the Federal Assembly. It is made up of:

- Council of States (46 seats. Members serve a four-year term).
- National Council. Members are elected by popular vote on the basis of proportional representation to serve a four-year term.

Swiss politics is dominated by four parties which have been usually represented in the government:

- **Radical Party:** Traditionally, the Centre-Right Radical Party is thought of as being warmed to the interests of the business community. The founding fathers of modern Switzerland made the party in 1848. It recently merged with the Liberal party. It is the third largest group in the House of Representatives at present along with the Christian Democratic Party and is also the second largest group in the Senate.
- **Social Democratic Party:** This is also known as the Centre-Left party. Its influence seems to be waning in the recent years, yet it is the second largest group in parliament. Representatives of French-speaking Switzerland and trade unions make up its influential Left wing.
- **Christian Democrat Party: It is traditionally a conservative** Catholic party. For last few years, it has moved towards the Centre-Right of the political spectrum. The party has lost voters in recent times but still maintains its strength in parliament. The party members are also the biggest group in the Senate.

NOTES

- **Swiss People's Party:** This party has redefined the Swiss politics in many ways since the 1960s. This right-wing party has become the strongest political party in Switzerland.

The modern constitution of Switzerland can be traced to 1848 even though the country has a long republican tradition. The present constitution came into effect after the civil war of 1847. The constitution was revised in 1874 and amended as per the needs of the time regularly. It was revised completely in 1999 but it did not change the substance of the constitution, which is to give the constitution a modern and readable structure and language. There have also been other substantial changes made to the constitution in the form of small revisions but none changed the true meaning its holds for the Swiss community. The constitution defines the country as 'a federal state composed of 26 cantons with far reaching autonomy'. Of these, and emerging out of historical reasons, 6 of the 26 cantons are counted as half-cantons. Therefore, other sources that mention 23 cantons in Switzerland are also not wrong. These half cantons only vote arithmetics in referendums and in the small chamber of parliament. However, their status is similar to those of full cantons.

It is on these three levels that Switzerland's government, parliament and courts are organized:

(i) Federal

(ii) Cantonal (based on 26 cantonal constitutions)

(iii) Communal (in few small cantons and about 2,500 villages, citizens' meetings are held instead of cantonal and communal parliaments. Several communities have common local courts)

The confederation has been empowered by the Constitution to decide on matters related to foreign relations, the army, customs examinations and tariffs, value added taxes and the legislation on currency, measures and weights, railways and communications. Only some large cantons and some major cities have police forces of their own and hospitals and universities. Cantons decide on public schooling; this has resulted in 26 different kinds of education system within one country. However, it is the communes that actually run public schools, like many other public services, including water supply and garbage collection. To finance their activities, the confederation, cantons and communes collect their own income taxes.

The Swiss political system is definitely complex because of the details involved. In each state activity, the national legislature tried to establish an honoured balance between itself and the cantons and communes. This commitment is respected by the people too who regularly participate in accepting or rejecting proposal for central laws in the form of referendums.

The right to vote to women was given very late in the country, despite it being known as more participatory democracy than any other in the world as well as its people making the best use of their rights. It was only in 1959 that a canton introduced women's voting right within that canton. The proposal was rejected by 67 per cent of the male population. Then, it was in 1971 that women finally got the right to vote on the national level. The last canton which refused to do so was forced to introduce it by the federal court as late as 1990. The court had referred to the 1981 federal constitution amendment that granted equal voting rights to men and women.

Similar to that of the United States, even the Swiss Constitution does not define or mention political parties. It is said that in Switzerland political parties have extra-

NOTES

constitutional growth. It was with the adoption of the Constitution in 1848 that political parties came to life in the country. Till that time, all national affairs were the prerogative of politicians of two groups who got their support from the Protestant German Cantons and Protestant French Cantons. Both were later rechristened as Liberals and the Radicals respectively.

Older, experienced politicians were part of the Liberal ranks and they advocated that the party's political philosophy should be based on laissez-faire principles. The Radicals, on the other hands, were relatively younger and, with their progressive outlooks, advocated an advanced form of liberalism. Despite differences, however, the Liberals and the Radicals came together to frame the Federal Constitution of 1874, which had the opinions of both the groups. At the same time, the Catholic Conservative People's Party was not in favour of the either group as it comprised of members which had formed the Sonderbund, which was a League of seven Catholic Cantons formed in 1845. This group also initiated the War of Secession in 1848. By 1874, therefore, the country had three political parties but at present, besides these three, there are more parties that operate in the Swiss political system.

8.6 PARTY SYSTEM IN CHINA

The politics of the People's Republic of China (PRC) can be located within the single-party socialist republic system. The single party is called the Communist Party and its leadership is mentioned in the country's Constitution. The power of the government is exercised through the Communist Party within the country, and by the Central People's Government and their partners in the provinces and at the local level.

Under this kind of the dual system of leadership, every local office is jointly managed by the local leader as well as the leader of the corresponding office in the ministry, which exists at the higher level. The members of the People's Congress are elected by people at the county level. The People's Congress holds the responsibility of managing the local government and also chose members for the Provincial, or the municipal, People's Congress. In turn, the Provincial People's Congress is responsible for electing members of the National People's Congress. This body meets in the month of March every year in Beijing. However, it is the ruling Communist Party which plays the significant role in selecting the 'right' candidates for the polls at both the local and higher level congress'.

China is mainly a multi-party state but under the leadership of the Communist Party of China (CPC). Its system is very similar to some of the popular state systems of the former Communist-era Eastern European countries such as the National Front of Democratic Germany. Under the system of one country and two party, Hong Kong and Macau are categorized as Special Administrative Regions. Earlier, both were the colonies of the European powers. At present, they have a different political system as compared to China and both also run under the multi-party system.

In China, in practice, the Communist Party of China is the only party that holds formidable power the national level. It dominates all levels of governance to the core that China is often mistaken for being a one-party state. There are eight more, through small, parties that operate in China. But, they only have a limited power at the national level. In fact, they have to operate under the Communist Party of China and accept its leading role to be able to even exist. The Chinese system does allow few non-communist party members to participate in the system and also certain smaller parties within the National People's Congress but they are all vetted by the Communist Party of China.

NOTES

The Constitution of China also allows some Opposition to operate. But the Communist Party of China exercises its control over the political system. In this way, the opposition ceases to exist. For instance, people's congress is elected through popular vote. Any official body above that is appointed by the congress itself. This means that even though independent persons and members of opposition can sometime be elected to the lowest level of the Congress, they may hardly be able to come together or organize themselves to a point where they themselves can elect members to the higher level without the approval of members of the Communist Party. Since they do not really have an effective power, it only discourages outsiders from contesting polls for the people's congress even at the bottom level, which means that mainly the communist members dominate the body.

Also, despite the fact the China has no law that formally bans non-religious organizations, it also has no law which could grant non-communist parties the corporate status. Thus, any opposition party, if it does exist even hypothetically, would not have the legal backing to assemble funds or have any registered property in the name of the party.

Significantly, the Chinese Constitution offers a wide range of laws that have been used in the past against members of opposition parties which those of the Communist Party of China perceived as threatening. These include members of the China Democracy Party. Charges related to subversion, sedition, and releasing state secrets can be slapped on members of opposition parties and, since the Communist Party controls the legislative and the judicial processes, it means that communists can legitimately target any person or group.

8.6.1 Communist Party of China

The Communist Party of China (CPC) is the founding and ruling political party of the country. It is also known as the Chinese Communist Party (CCP). The party was founded in July 1921 in Shanghai. While on paper, the party works alongside the United Front which refers to the coalition of all political parties, it is in practice the only political party in China. The party maintains the government and keeps the state matters, the military and the media under it. The Constitution grants them legal power and since it seeks its roots to the Leninist ideology, it officially is even above the law. At present, the leader of the party is Xi Jinping who has the title of the General Secretary of the Central Committee.

The party is committed to the ideologies of communism and Marxism–Leninism. It also *de facto* unrecognized factions. On the one side are consumerist and neoliberal figures like businessmen who support the practice of capitalism while on the other are the members of the Left, who oppose the Right. There are other factions too. The Right-wing faction has come under many criticisms, including purges and repression in the cultural revolution and after the Tiananmen Square Protests in 1989.

After the civil war concluded in China, the CPC defeated Kuomintang (KMT) which was its prime rival party. Then, it assumed the control of the entire Chinese territory while Kuomintang party shifted base to the island of Taiwan where it remains till date. Even before and long after China was founded, the history of the communist party is riddled with power struggles and battles of ideology, including the much written about movement called the Cultural Revolution. In its earlier days, the CPC was only a conventional member of the communist movement running across the world. It was during the 1960s that CPC broke apart from its counterpart in the Soviet Union over ideological differences. The ideology of the communist party in China was redefined by

NOTES

Deng Xiaoping, who included principles of market economics and ushered in reforms that generated rapid and prolonged economic growth.

Today, the CPC is the largest political party in the world with an estimated 80 million members. This number comprises about 6.0 per cent of the total population of mainland China. A large number of military and civil officials of China are members of the CPC. The party has also been trying to institutionalize its power transitions and strengthen its internal structure since 1978. In present times, the party focuses on unity and avoiding public conflict and at the same time, practicing a pragmatic and open democratic centralism within the party structure.

With such huge membership, the party also dominates all matters of government. During liberalization period, the people's as well as groups' influence tends to increase, particularly in the economic matters. The principles of market economy have it that economic institutions can exist independent of a political party's influence. However, despite the principles, the communist party maintains its powers in all governmental institutions in China and plays the most important role in administration especially when it comes to issues of politics and other such matters.

The party control is most strong and effective in offices of the central government and in economic, industrial and cultural settings, especially in the urban areas. However, the party's influence seems to be waning over government and other establishments in the rural areas where majority of Mainland Chinese people live. The most important role that the CPC plays is in the selection and promotion of party personnel. It also has to ensure that its principles and guidelines are followed and organizations by outsiders that could challenge the party's authority are not created. Small groups of CPC which coordinate the activities of different agencies are also key to the party's functioning. While convention has it that government panels should have one non-party member at least, a party's membership helps while important policy meetings and usually the one outside member are non-existent.

As per the Constitution, the Party Congress is the highest body of the CPC and is expected to meet at least once in five years. These meetings were intermittent before the Cultural Revolution but are duly organized now. In the meeting, the party elects their central panel and all the main organs of power are formally parts of the central panel. The main organs of the CPC are:

- The general secretary, who is the highest-ranking official within the party and the Chinese Paramount leader.
- The Politburo. It comprises 22 members, including members of the Politburo Standing Committee.
- The Politburo Standing Committee. It comprises 7 members at present.
- The Secretariat, the principal administrative mechanism of the CPC, which is headed by the General Secretary.
- The Central Military Commission.
- The Central Discipline Inspection Commission, which is charged with discouraging corruption and malfeasance among party cadres.

8.6.2 People's Liberation Army

The People's Liberation Army (PLA) was created by the Communist Party of China and thus the party leads it. After China was founded in 1949, the PLA became the state military. Since it represents the state, it practices and upholds the communist party's absolute leadership over the military. The Central Military Commission, which has the task of supreme military leadership over the armed forces, was founded jointly by the party and the state.

The Constitution adopted in 1954 empowers the State chairman or the president to direct the armed forces; the state chairman also chairs the defence panel, which is only an advisory body. On September 28, 1954, the central panel of the CPC re-formed the Central Military Commission (CMC). Since then, the system of joint party and state military leadership was adopted where the central panel of the CPC leads in all matters of the armed forces. The state military forces are directed by the state chairman and the military forces development is managed by the state council.

The State Central Military Commission was given the charge of all the armed forces in December 1982, with the amendment in the Constitution during the 5th National People's Congress. Now, the chair of the State CMC is both elected and removed by the national people's congress. Nonetheless, the CMC of the communist party leads the military and all other armed forces of the country. It should be noted that in practice, the party CMC consults all democratic parties and then proposes the names of the state CMC members so that NPC members can elect the State Central Military Commission members. Therefore, it can be said that the CMC of the central panel and the CMC of the state are one organization. Organizationally viewed, the two CMCs are subordinate to two different systems — (i) the Party system and (ii) the State system. Thus, the PLA and other forces are under the absolute force of the communist party. Such a system is unique to China where joint leadership of the Communist Party and the state over the armed forces is ensured.

ACTIVITY

Research on the Internet and list the political parties (both regional and national) of India.

DID YOU KNOW

Judicial independence from the political branches was emphatically established as a fundamental principle of governance in Article 57 of the 1889 Constitution of Japan.

8.7 SUMMARY

In this unit, you have learnt that:

- We may broadly classify all the parties as—two-party systems, multi-party systems, and one-party systems.
- In Great Britain and the United States, for example, a two-party system prevails; but in majority of countries, including India and France, multi-party system has come into existence.
- The one-party or single party system is formed on the assumption that the sovereign will of the state reposes in the leader and the political elite. This authoritarian

Check Your Progress

8. According to Japan's 1947 Constitution, who is the Emperor of state?
9. What is the unique feature of the Swiss Constitution?
10. What ensures the joint leadership of the Communist Party on the armed forces of China?

NOTES

principle found expression first in monarchies, later in dictatorships and more recently in some democracies.

- A two-party system is one where only two parties, despite the presence of other parties, have substantial support of the electorate and expectation of forming the government. Under this system, the majority of the elected candidates at a given time belongs to any one of the two major parties which form the government, while the other party remains in the Opposition.
- A multi-party system is one in which more than two major parties exist. In this party system, the parties struggle with each other for power but no party can alone secure absolute majority to rule. In countries like India and several countries of Europe, such a system exists, though in a variety of forms.
- The modern Democratic Party system, for instance, is the result of at least two significant political developments—(i) the limitation of the authority of the absolute monarchy, and (ii) the extension of the suffrage to virtually all the adult population.
- While the Interest Theory recognizes the significance of economic interests in influencing an individual or group's decision to join a particular party or combination of parties, this theory does not agree with the Marxist assumption of economic determinism and its concomitant dichotomy of social classes.
- Throughout most of its history, American politics has been dominated by a two-party system.
- The Democratic Party is one of two major political parties in the US. It is the oldest political party in the world. Since the 1930s, the modern American political spectrum and the usage of Left–Right politics have basically differed from the rest of the world.
- Out of the Second Party System came the Whig Party and Henry Clay's American System. Wealthy people tended to support the Whigs, and the poor tended to support the Democrats.
- The Third Party System stretched from 1854 to the mid-1890s, and was characterized by the emergence of the anti-slavery Republican Party, which adopted many of the economic policies of the Whigs, such as national banks, railroads, high tariffs, homesteads and aid to land grant colleges.
- In the Fourth Party System, Northeastern business supported the Republicans while the South and West supported the Democrats.
- The Fifth Party System emerged with the New Deal Coalition beginning in 1933. The Republicans began losing support after the Great Depression, giving rise to Democratic President Franklin D. Roosevelt and the activist New Deal.
- The Sixth Party System appears to have begun with the Civil Rights Act of 1964; the Democrats subsequently losing their long dominance of the South in the late 1960s, leading to a Republican dominance.
- The New Deal coalition formed the backbone of Democratic success in the mid-twentieth century. This coalition consisted of groups who supported the New Deal, including workers, labour unions, Catholics, Jews, and racial minorities.
- The federal entity created by the US Constitution is the dominant feature of the American governmental system. However, most people are also subject to a state government, and all are subject to various units of local government. The latter include counties, municipalities, and special districts.

NOTES

- The politics of the People's Republic of China (PRC) take place in a framework of the single-party socialist republic. The leadership of the Communist Party is stated in the Constitution of the People's Republic of China.
- The People's Republic of China (PRC) is formally a multi-party state under the leadership of the Communist Party of China (CPC) in a United Front; similar to the popular fronts of former Communist-era Eastern European countries such as the National Front of Democratic Germany.
- The Communist Party of China created and leads the People's Liberation Army. After the PRC was established in 1949, the PLA also became a state military. The state military system inherited and upholds the principle of the Communist Party's absolute leadership over the people's armed forces.
- Switzerland features a system of government not seen in any other nation—direct representation, sometimes called half-direct democracy. Referendums on the most important laws have been used since the 1848 Constitution.
- The Swiss Federal Council is a seven-member executive council that heads the federal administration, operating as a combination of the cabinet and collective presidency. Any Swiss citizen eligible to be a member of the National Council can be elected—candidates do not have to register for the election, or to actually be members of the National Council.
- The politics of Japan is conducted in a framework of a parliamentary representative democratic monarchy where the Prime Minister of Japan is the head of the government and the head of the Cabinet that directs the executive branch.

8.8 KEY TERMS

- **Hung parliament:** Situation where no single political party has a majority in the parliament.
- **Non-partisan ballot elections:** Elections in which the candidates' party affiliations were not printed on the ballot.
- **Progressivism:** A social movement that swept USA in the first two decades of the 1900s; the Progressives fought for government regulation of big business and more political power for the average American.
- **Realignment:** A major shift in the political divisions within a country; marks a new change in direction for the party that redefines what it means to be a member of that party.
- **Referendum:** Via referenda, citizens may challenge any law voted by the federal parliament and through initiatives introduce amendments to the federal constitution.
- **Sonderbund:** A League of seven Catholic Cantons formed in 1845.
- **Split-ticket voting:** A ballot cast for candidates of two or more political parties.

8.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. One-party system can be divided into two sub-types: (i) Authoritarian one-party system, and (ii) Non-authoritarian one-party system.
2. The two-party system may be divided into: (i) Indistinct two-party system in the US, and (ii) Distinct two-party system in Britain.

NOTES

3. Two kinds of multi-party systems from the viewpoint of stability of government are: (i) unstable multi-party system, and (ii) working multiparty system.
4. While the Interest Theory recognizes the significance of economic interests in influencing an individual or group's decision to join a particular party or combination of parties, this theory does not agree with the Marxist assumption of economic determinism and its concomitant dichotomy of social classes. In fact, to reduce social tensions to two embattled groups of *haves* and *have-nots* all along the economic line is to over simplify a complex. One may, therefore, argue that the human beings tend to support and vote for the political party that holds the prospect of achieving their desired economic as well as socio-cultural objectives.
5. The advantages of the American two-party system include:
   - **Stability:** Two-party systems are more stable than multiparty systems.
   - **Moderation:** The two parties must appeal to the middle to win elections, so the parties tend to be moderate.
   - **Ease:** Voters have only to decide between the two parties.
6. Franklin Delano Roosevelt, proposed to revive the economy with a legislative package of relief and reform known as the New Deal. Roosevelt won and successfully put America on the road to recovery. The New Deal coalition formed the backbone of Democratic success in the mid-twentieth century. This coalition consisted of groups who supported the New Deal, including workers, labour unions, Catholics, Jews, and racial minorities. The South continued to be overwhelmingly Democratic, and after 1932, African American voters moved in large numbers to the Democratic Party.
7. There are major differences between the political system of the United States and that of the other democracies of the developed countries. These include greater power in the Upper House of the legislature, a wider scope of power held by the Supreme Court, the separation of powers between the legislature and the executive, and the dominance of only two main parties. Third parties have less political influence in the United States than in other democracies of the developed countries.
8. The Emperor of Japan is the ceremonial monarch in the Japanese constitutional monarchy, and is the head of the Japanese Imperial Family. According to the Japan's 1947 Constitution, which dissolved the Empire of Japan, he is 'the symbol of the state and of the unity of the people'.
9. The Swiss Constitution, like that of the United States, makes no mention of political parties. Political parties in Switzerland have extra-constitutional growth. The political parties came into existence in Switzerland with the adoption of the Constitution of 1848. At that time, federal affairs were dominated by two groups of politicians whose main support came from the Protestant German Cantons and from the Protestant French Cantons. These groups subsequently became known as the Liberals and the Radicals respectively.
10. The CMC of the Central Committee and the CMC of the State are one group and one organization. However, looking at it organizationally, these two CMCs are subordinate to two different systems—(i) the Party system and (ii) the State system. Therefore the armed forces are under the absolute leadership of the Communist Party and are also the armed forces of the state. This is a unique Chinese system that ensures the joint leadership of the Communist Party and the state over the armed forces.

NOTES

8.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the different classifications on the party systems?
2. Write a short note on different theories related to the origin of the party systems.
3. What are the advantages and disadvantages of two-party system in the USA?
4. Discuss the formation of the People's Liberation Army in China.
5. What are the benefits of democratic rule in Switzerland?
6. What kind of party system is prevalent in Japan?

Long-Answer Questions

1. Give a detailed account on the polarizing issues in the American political system.
2. 'Political scientists and historians have divided the development of America's two-party system into five eras.' Elaborate.
3. Write a short note on the Communist Party of China.
4. 'The Swiss executive is one of the most stable governments worldwide.' Discuss.
5. Give a detailed account on the party system of Japan.

8.11 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

UNIT 9 FEDERALISM

NOTES

Structure

9.0 Introduction
9.1 Unit Objectives
9.2 The US Federalism
  9.2.1 The Era of Marshall and Taney, and Dual Federalism
  9.2.2 Great Depression and Abrupt Change
9.3 Federalism in Switzerland
  9.3.1 Features of Switzerland's Political System
9.4 The Canadian Federal Structure
  9.4.1 Levels of Government in Canadian Federalism
  9.4.2 Confederation and the Division of Powers
9.5 Comparative Federalism
9.6 Summary
9.7 Key Terms
9.8 Answers to 'Check Your Progress'
9.9 Questions and Exercises
9.10 Further Reading

9.0 INTRODUCTION

The previous unit explained in detail the party systems in the United States, Japan and Switzerland. This unit deals with federalism.

Federalism can be referred to as a political order which integrates individual states or governments in an overarching political system even while allowing them to maintain their individual fundamental political uniqueness. Simply, federalism can be understood as a system of governance where power is divided between the central (or national/federal) government and the different state governments. Such a kind of federal system requires formulation of basic policies, which in turn are implemented through negotiation (in any form that a situation may call for), so that all members under the said system become partners in the making and execution of the decisions.

The principles on which federal systems are based emphasize on factors like bargaining and, through bargaining and negotiation, reach a level of coordination among several centres of power. To protect individual and local freedom, federal principles also underline and highlight the merits of dispersed power centres.

However, it should be kept in mind that not all federal system work in a similar manner and can differ on various counts. This is despite the fact that few characteristics and principles are common to system truly federal in nature. Therefore in this unit, a comparative study of federal systems in the US, Switzerland and Canada has been drawn.

9.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Explain the federal structure in the US
- Describe the federal system in Switzerland

NOTES

- Discuss the Canadian federal structure
- Evaluate the political systems of the three countries

9.2 THE US FEDERALISM

The United States of America is a federal constitutional republic where powers reserved for the national government are shared by the President, the Congress and the judiciary. Additionally, the federal government shares its sovereignty with the state governments. The President heads the Executive Branch and is not under the control of the legislature. The power of this legislature is divided into two chambers – the Senate and the House of Representatives.

The Judicial Branch is comprised of the Supreme Court and lower federal courts; it is from here that the judicial powers are exercised. Their functions also pertain to interpretation of the Constitution, federal laws and regulations. Disputes between the executive and the legislature are also resolved by them. The layout of the federal government is detailed in the US Constitution.

Though other parties also exist, the history of the US politics is the history of two political parties — the Democratic and the Republican — since the time of the American Civil War. The political system of the country can be differentiated with that of other developed democracies on various counts, such as:

- Separation of power between the Legislature and Executive
- Enormous power to the Upper House of the Legislature
- Wider scope of power with the Supreme Court
- Domination of the political ground by two parties

There are a few developed democracies across the world where a third political party makes such negligible political influence. The United States is one of them. The American Constitution has created a federal entity. And this is one of the dominant features of the government system of the US. This does not mean that the states can be ignored. In fact, the state governments cater to people in significant ways. Citizens are divided as subjects to a variety of units of the local government such as the counties, municipalities and special districts, all of which are the units of the local government. We know by now that the history and character of the nature of governance of a country is reflected in the multiplicity of its jurisdictions.

Uniquely, in the US, the federal government originated from the coming together of different states. The states that presently comprise the United States of America were originally established as separate colonies with own, independent governments. Thereafter, the said colonies created local government units for the smooth conduct of their various functions. Over time, new states were admitted and were managed on the principles of the existing ones as the country expanded.

Interestingly, while the word 'federalism' is never mentioned in the Constitution of the US, it is its most innovative principles of governance. The Constitution of the US divided powers between the federal and the state governments. This is because, in the US, different states struggled to come under an umbrella and form a central government. The struggle is apparent in the Constitution and debates around the role of national versus state government are common. John Marshall, the longest serving chief justice of the US Supreme Court, once famously observed that this tension between the national and the state "is perpetually arising and will probably continue to arise as long as our system shall exist".

The debate around federalism started in the 1770s, with the introduction of the Articles of Confederation. Discontent marked this Article and a political movement started to scrap it since it constrained the powers of the federal government. For instance, the Article gave power to the Congress to sign treaties at its whims or even declare war. In practice, however, this would not have been possible since such decisions also required a unanimous vote. Despite being contradictory to the principles of federalism, this Article paved the way for the beginning of the US federalism. By 18th century, the United States of America became the first modern national federation in the world.

Thus, as mentioned above, a federal system or federalism can be referred to as primarily a government where political power as well as governance responsibilities are divided or shared between the central and state units. Together, they are called federation. The US' political system can be understood keeping this in mind. Put simply, it can be understood as a dynamic and evolving relationship between the states and the central government of the country.

Going back to the 18th century and the development of federalism, the movement against the Articles of Confederation found strength in the Shays' Rebellion of 1786–1787. The Shays' Rebellion was an armed movement of Yeoman farmers in Western Massachusetts, who led the uprising against the federal government which had put the economy in danger after the costly American Revolution. The then federal government had failed poorly in raising an army to crush the rebellion, forcing the Massachusetts government to do so on its own.

A defining moment came in the form of The Federalist Papers, which comprised 85 anonymous essays defending the new Constitution. These were published from the New York City to persuade citizens to vote for ratification. Authored by Alexander Hamilton and James Madison, with contributions by John Jay, the articles explored the advantages of the new Constitution and provided a detailed analysis of the various Articles of the Constitution using political theories. Till date, The Federalist Papers are considered the most significant documents of the American political science.

In the essay titled *Federalist No 46*, Madison had argued that the states and national government "are, in fact, but different agents and trustees of the people, constituted with different powers". Hamilton, in *Federalist No 28*, had asserted that both the state and the national government would benefit the people, since "if their [the peoples'] rights are invaded by either, they can make use of the other as the instrument of redress". It was evident that both Hamilton and Madison, despite in favour of federalism, had different views on its work in practice. Along with 'federalists' including Washington, Adams, and Marshall, Hamilton wanted to put in place regressive national powers at the cost of those of the state. On the other hand, Madison, along with other advocates of states' rights like Thomas Jefferson, sought to empower the states.

However, the movement for federalism was reverberating in other states too by this time. In 1787, fifty-five delegates deliberated on bicameral legislature (United States Congress), balanced representation of small and large states (Great Compromise), and checks and balances, at a Constitutional convention in Philadelphia. In a memorandum to the delegates before the convention, James Madison argued that a strong central government was required since "one could hardly expect the state legislatures to take enlightened views on national affairs". In a historic development that followed, the delegates at the convention dropped their original objectives and began framing a new

NOTES

NOTES

constitution. It was released for the public following the conclusion of the convention and by then, the Federalist movement was the central objective to ratify the constitution.

The draft of the constitution was backed by none other than George Washington. This, along with the skillful crafting of its proponents, the constitution was finally ratified by all states. Under the Articles of Confederation, dates for fresh election were set. The outgoing Congress also set March 4, 1789, as the date for new government to take over the reins of the country. In 1789, the Congress put 12 Articles of the constitution under amendment. Of these, 10 Articles, drafted by James Madison, were passed on December 15, 1791, and are famously known as the Bill of Rights. In the final amendment, the guidelines for federalism in the US were laid down.

Interestingly, those against the new constitution were termed as 'anti-federalists'. Their opposition was influenced by local issues than material; they interests mainly laid in support of plantation and farm owners than commerce or finance. They believed that these interests could be saved by stronger state government. The criticism of the anti-federalist was focused on the absence of the Bill of Rights, which Federalists later promised to introduce.

The early days

As stated already, the federal system in the United States is a dynamic concept and has evolved ever since it found shape in the constitution. For this Unit, it would be impossible to provide in detail all factors of its political and constitutional legacy. Thus, the landmark events that led to its development and evolution since the 18th century are mentioned briefly below. As should be clear by now, it was the Articles of Confederation which lent the first spark amid states against the federal government. The focus was on limiting the powers of the federal government. By the 1790s, huge discount marked the discourse on federal government, especially after its failure to contain the farmers' rebellion in Massachusetts. After the Philadelphia conference, came the constitution in support of federalism and by 1791, federalism became a reality.

9.2.1 The Era of Marshall and Taney, and Dual Federalism

It was the then chief justice John Marshall who played the key role in deciding the sharing of power between the federal and the state government in the early 18th century. His role was important because by that time, there was no clear understanding of federalism. Hence, it came upon the Supreme Court to decide on the issues of both power and decision-making between the two entities. A few cases helped in specifically widening the scope of the power of the federal government. Marshall was succeeded by Roger B Taney, who passed many verdicts that favoured equally the federal and state governments. These judgments sowed the seeds of dual federalism in the country.

Dual federalism provides for the federal government to act within its boundaries, i.e. within powers given to it and not go beyond them. The rest of the powers were allotted to the state governments. However, the sixteenth and the seventeenth amendment gave unprecedented powers to the federal government. Despite these contentions, dual federalism was practiced for at least a century following the judgments of Marshall and Taney. Later, however, the demarcation between the states became sharper and local governments also started playing an important role in governance. This forced another division of power. Thus, the federal government was allotted responsibilities of subjects like national defense, foreign policy, copyrights and currency patents. The state governments, on the other hand, were to deal with issues pertaining to civil service laws, property law, labour and union laws. Furthermore, the local governments were demarcated issues related to assessable improvements and basic public services. This caused a major shift in federalism in the US.

Students can read through the Articles of Confederation and the framing of the US Constitution, along with debates around the two issues, for an in-depth understanding of federalism in the US.

9.2.2 Great Depression and Abrupt Change

By the late 19th and early 20th century, the US economy underwent major overhaul. As a result of the Great Depression in 1929, the federal government once against came to assume major responsibility of the government. President Franklin Roosevelt introduced the New Deal policies, catching the pulse of the citizens who increasingly wanted the federal government to cooperate with other levels of government before implementing policies that had potential to make national impact. This was referred to as Cooperative Federalism wherein funds of federal government were distributed as grants in aid or categorical grants. The government was thus better able to control the usage of money. This was called devolution evolution. In fact, all later presidents till the time Bill Clinton came to power, used this method with the objective of restoring the lost autonomy and power to the states which the New Deal policies had led to.

The late 20th and the 21st centuries gave way to what is known as new federalism, in the US. This refers to the shift of power to the states from the centre and this movement was led by President Ronald Reagan (1981-1989). Under this, the federal government determined the foreign policy and had the exclusive power to make treaties, declare war, and control imports and exports. It also has the only authority to print the national currency. Other governance responsibilities are, however, shared between the federal and the state governments, including matters related to taxation, business regulation, environmental protection and civil rights. The states clearly enjoy more powers than before – they have independent legislative, executive and judicial branches and have the power to pass, enforce, and interpret laws but within the realm of the Constitution.

We can see that federalism has evolved significantly since it was first introduced. Students will also know by now the two kinds of federalism that define US political theory — dual federalism and cooperative federalism. The first refers to a system where the state governments enjoy unprecedented powers and the federal government has only those powers which are given to it by the Constitution. That is, the federal government could only exercise those powers which were mentioned for it in the constitution. In cooperative federalism, the national, state, and local governments work together for the welfare of the people as the national government was considered supreme over the states.

Most developed nations across the world are experiencing struggles over the sharing of power between the central and the state governments. One can now see that in the US, the federal system is one where the central and state governments exercise powers within their own boundaries. Other countries with such systems include Canada and Germany. This can be contrasted with the unitary systems of government where national governments hold all power in comparison to the state or local governments. The example of such a system is France.

Notwithstanding the kind of federalism being practiced, the US Constitution lays down specific powers for the state and the federal governments. These are:

NOTES

NOTES

- Delegated powers – Delegated powers are specifically referred within the realm of the federal government. These pertain to the regulation of interstate and international trade, coinage and currency, war, maintenance of armed forces, postal system, enforcement of copyrights and power to enter into treaties.
- Reserved powers – As the name suggests, under this not all powers are delegated to the federal government but are also reserved or saved for the state governments. These powers include the authority to establish schools, establish local governments and police powers.
- Implied powers – These are those powers which are not clearly mentioned in the constitution but are understood to be necessary or allowed. The 'necessary and proper clause' of the constitution states that Congress has the power "to make all laws which shall be necessary and proper for executing the foregoing powers".
- Concurrent powers – The word concurrent is suggestive of "two things at the same time". Thus, these are those powers that both the federal and state governments share simultaneously. For instance, the power to tax, maintain courts and the ability to construct and maintain roads.

The US Constitution recognized the sovereignty of the state while at the same time promoting national powers in certain important spheres. In fact, the US Constitution has mentioned some key spheres of power for the states but at the same time sites many potential powers for the national government. These are also known as implied powers and are sited in, for instance, under Article I, Section 8 which empowers the Congress to implement laws "necessary and proper". They also designate the president as the 'commander in chief' of the country. This power has empowered presidents, including Abraham Lincoln, Franklin Roosevelt, and George Bush, to exercise powers in times of national emergencies.

Powers have also been granted to the Supreme Court. For instance, the apex court holds the power of judicial review, wherein it can reject those acts of the legislature and the executive, as well as those of the state, which it considers unconstitutional. Such powers of the judiciary were augmented during the hearing of the case of Marbury vs. Madison in 1802, when the then chief justice John Marshall had spoken in favour of the court's powers. The specific powers given to the national and state governments are called delegated powers. However, Article VI mentions that powers of the national government are 'the supreme law of the land' and the states must obey them.

The above review of federalism in the US reveals that the division of power between the national and the state governments are not distinct and, in practice, are in constant contradiction with the other. Students will also be able to understand now that federalism is continuously evolving in the US and throughout the American history, has been associated with several different terms. We shall mention them once again below:

- Dual federalism: Also called 'layer cake federalism' refers to the obvious demarcation of powers between the national and state governments, as well as sovereignty in equal spheres. This federalism was dominant between the 1790s to 1930.
- Cooperative federalism: Also known as 'marble cake federalism', it is a phase where the national and state governments share their functions and collaborate on major national priorities. This relationship predominated between 1930 and 1960.

NOTES

- Creative federalism: Also known as 'picket fence federalism' and was in practice during 1960 to 1980. It referred to increased cooperation and cross cutting regulations between the national and the state governments.
- New federalism: Also called 'on your own federalism,' it is characterized by empowering states as compared to the national governments and deregulation. It is in practice till date.

Many other concepts help in describing the complicated US federalism. For instance, judicial federalism refers to the tug of war between the national and state governments over constitutional powers. However, since the apex court holds the power of judicial review, only it can interpret answers to various questions, including federalism. In some cases, like the 1819 case of McCulloch v. Maryland, the Supreme Court had expanded the powers of the Congress. However, in a 1997 case of Printz vs. United States, the court held that the national government could not force its directives on the state as these were against the principles of dual fundamentalism. Another concept is that of fiscal federalism wherein the national government can offer money to the states in the form of grants to promote national welfare activities such as public welfare, environmental standards, and educational improvements. Until 1911, such grants were only granted for agricultural research and education.

Did You Know

The New Deal was introduced by the US president F. D. Roosevelt after the US stock market or the Wall Street crashed. This period is known as the Great Depression. In Roosevelt's first 100 days as the President, many Acts were introduced which formed the basis of the New Deal. The New Deal covered many issues, from the social, economic and financial. The first Roosevelt took was to declare a four-day bank holiday to stop people from withdrawing their money from inconsistent banks. On March 9, 1929, the Congress put a stamp on Roosevelt's Emergency Banking Act, which reorganized banks and closed the ones that were insolvent. Roosevelt later compelled upon the citizens to put their savings in banks and by the end of March 1929 re-opened three quarters of banks that had been closed.

E Pluribus Unum

E Pluribus Unum appears on the coins of the United States. The phrase refers to 'out of many states, one nation'. In 1779 when the 13 states that form the United States of America gained independence, they had many difference and could not agree on many issues. The states that are known as united now were besieged in their historical, geographical, economical and political issues. In fact, they also varied in their population. Therefore, each of them wanted to have the power to decide its internal matters, make its own policies and even have their own currencies. However, they had to give up on many of these demands to stand united and survive the other world powers.

Thus, they agreed to practice the Articles of Confederation, which is the first constitution of the United States. This decision created bonhomie between the states; the existing legislature was given minimum powers. The central government then was a weak entity; it had the power to declare war as well as negotiate peace but could not

NOTES

raise taxes required for either decision. It was the time when each state had one vote in the Congress's decision and even changes to the Articles required a unanimous consent.

After the war in 1783, the states came to blows once again; it was the time when the 'united' states were at the risk of breaking apart. The states could not reach a consent on major decisions, like modes of payment to the soldiers. Many of these soldiers returned home after serving their country to debts and taxes. The Shays' Rebellion mentioned above was another such issue of discontent. In fact, the states did not even have the prerogative to obey a peace treaty that the country had signed with the Great Britain. This led George Washington to observe in 1786: "If you tell the Legislatures they have violated the treaty of peace and invaded the prerogatives of the confederacy they will laugh at your face. What a triumph for the advocates of despotism to find that we are incapable of governing ourselves". It was only after the Philadelphia convention that the states decided to amend the Articles of Confederation and consider a new form of government, where powers were to be shared between the states and the centre. However, like George Washington said, even this Constitution was not perfect, and was, in the words of its Preamble, the next step in 'a more perfect union'. This is a union which stands dynamic in nature till now.

Advantages and Disadvantages of Federalism

The pros and cons of federalism have been the subject of debate since the creation of the American republic. We discuss them briefly:

The Advantages:

- Promotes state loyalties: It is said that with federalism and more authority to the states, Americans feel close to their home states.
- Encourages democracy: Under federalism, one state can experiment with policies and other states, as well as the federal government, can learn from its successes and failures.
- Promotes pragmatism: It becomes easier to run countries the size of the US if power is shared between states. In turn, as can be understood, the local persons in power are more aware of their state's demands and problems and thus know better what policies will help address them.
- Gives hope for political stability: By keeping the national government from issues of contention, federalism allowed the US government in the earlier days to achieve and maintain stability.
- Separation of powers prevents despotism: Federalism, by its very nature, has it that the state governments function independently even if one person or party takes control of the branches of the federal government. Therefore, federalism ensures liberty.
- Promotes pluralism: Federal systems allow citizens to connect with their leaders and even give them opportunities to be involved in the issues of governance.

Federalism's Disadvantages:

- No national policy: The United States has no one policy on many issues. Instead, it has fifty-one policies, which often leads to confusion.
- Lack of accountability: The overlap of boundaries among national and state governments and sharing of powers makes it difficult to hold one authority responsible for failures to make concrete policies.

Check Your Progress

1. The Articles of Confederation of 1770 made a mention of how the federal government was to operate, this makes the US federal government the oldest. (True/ False)
2. What is federalism?
3. When did the Shays' Rebellion take place?
4. Who were the anti-ferderalists?
5. What are the two types of federalism?

NOTES

9.3 FEDERALISM IN SWITZERLAND

Switzerland has a unique political system and even the world's most stable. It offers maximum participation to the citizens in matters of governance through decentralization of power and frequent referendums. This is called direct democracy. However, as good as it may sound, the direct democracy was a result of many political struggles over many centuries than being traditionally inherited. These struggles include the violence 1798 revolution, followed by decades of rioting which led to the violent overthrow of the government. The final culmination was in the form of a civil war in 1847.

The Swiss federal state

Following the civil war, Switzerland became a federal state. The power is shared between the central state which is known as Confederation; the states, which comprise 26 cantons and the 2,495 communes. All these three have been given legislative powers as well as the power the implement laws (i.e. executive powers). On the other hand, even the Confederation and the cantons have judiciary powers in order to ensure that laws are duly enforced.

Powers

As against the case of the US, the Confederation's authority in Switzerland is not dynamic but restricted to powers clearly mentioned in the Constitution. Other welfare activities, like matters related to education, health and protection of citizens, have to be dealt with by the cantons. Thus, the cantons have been given considerable autonomy in the Constitution. The communes, on the other hand, deal with those tasks which are given to them by the Confederation or the canton of which they are the part. However, communes can also make laws in case the law of the canton does not deal with matters of their concern.

Sound Features of Switzerland's Political System

The students should be aware of these distinctive features of the country:

- Switzerland comprises Confederation of 26 member states of the federation or the cantons. The cantons have autonomy given to them by the Constitution.
- The country has governments, parliaments and courts at the three levels — federal, cantonal and communal. Instead of parliaments, citizens meet in small villages. Local courts are also common to several communities.
- Since it is a direct democracy, the country ensures participation of ordinary citizens in two important ways:
  (i) All citizens have the right to propose changes to the constitution if they can gather support of 1,00,000 out of about 3,500,000 voters and smaller numbers on the level of cantons and communes.
  (ii) This is followed by the parliament discussing the proposal. It has the power to set up an alternative parliamentary proposal. Whether the citizens accept the original initiative, the alternate parliamentary proposal or to leave the constitution unchanged depends on their decision through a referendum.

NOTES

Common features shared with other democratic political systems

Democracies work democratically; the powers are separated between the legislative, the executive and the judiciary. Also, numerous political parties compete with each other to solve the country's problems. Students should know that in any democracy, a federal system is not mandatory as is found in countries like the USA, Germany and Austria. Therefore, while the political system of Switzerland may be unique, it comprises many normal features of a democracy.

9.3.1 Highlights of Switzerland's Political System

Parliamentarians meet several times during the year during annual sessions. Interestingly, however, the parliamentarians are also required to practice an ordinary profession and not remain a full-time political person. This ensures that they stay close to their people and understand their day-to-day problems better.

As mentioned above, the most interesting factor of Switzerland's political system is direct democracy, i.e. the trust and responsibility granted to ordinary citizens in matters of governance. This does not refer only to democratic systems like federalism and referendums being put into place but also them being used more frequently. Not only is this encouraged by the Constitution but is also practiced enthusiastically by the citizens. Even the critics believe that referendums keep the parliament, government, economy and society growing. However, there are many pros and cons to them, as we shall see below:

- It is said that referendums help opposition parties cooperate with each other and learn to accept each others' point of view. This may not be true in practice as the country deals with many non-mandatory referendums every year.
- Majority coalitions gain from referendums: It is said that sharing power encourages compromise. But it is also true that being excluded from power promotes unnecessary referendums.
- Referendums promote stability: As mentioned earlier, referendums have the power to keep a government stabilized. In face of despotism, it is the electorate who has the power to keep a government from passing extreme laws.
- 26 codes mark Switzerland's procedural law. Such a unique federalism has led many to poke fun at Switzerland's system, terming it as 'Kantönligeist', or little canton mentality. But federalism is sacred to the country and the cantons do not allow anything to limit their freedom.
- The federalism practices in Switzerland is opposite of a centralized state. One should remember that federalism comes from the Latin 'foedus', which is loosely referred to mean the state, alliance or treaty. There is no one definition of federalism. It is applied differently in different contexts. In Switzerland, it is practiced as an alternative to the centralized state. France, Italy and Sweden are examples of centralized states.
- The experience of civil war has meant that federalism gained much importance in the political system of Switzerland. As a rule of politics, federalism is the dominant principle enshrined in the Swiss constitution. Article 3 of the Constitution states that "the cantons are sovereign in so far as their sovereignty is not limited by the federal constitution; they shall exercise all rights which are not transferred to the confederation". It is interesting to note that federalism is not specially mentioned in the constitution. Federalism is a result of many conflicts of the Swiss political past before the state was founded in 1848.
- Shaky foundations: Federalism has no fixed meaning, as mentioned earlier. Some of its basic principles remain common to all democracies. However, in practice, it may differ state from state. In Switzerland, the governance responsibilities are divided into confederation and the cantons but this division regularly comes up for debates. Federalism itself is an issue of contention in the Swiss political circles. Historian Christian Sonderegger, in the publication series *AktuelleSchweiz*, alleged that since the new Swiss constitution was adopted in 1874, a "creeping loss of cantonal sovereignty" has been felt. It was argued that the cantons and their autonomy were under threat and they were at the risk of becoming only the administrative organs of the state. There was a proposal to unite the cantons of Geneva and Vaud, which was rejected. However, mergers are taking place and what impact it may have on the federal state remains to be seen.

9.4 THE CANADIAN FEDERAL STRUCTURE

The principle of federalism is central to the political system of Canada. Under this, the Canadian federal system is essentially divided into two constitutionally autonomous levels of government: the federal or central government, and the provincial governments. This basic division of power helps in maintaining public finances and deciding upon public policy. Discussed below is the basic framework and operation of Canadian federalism:

9.4.1 Levels of Government in Canadian Federalism

As mentioned above, the Canadian system is divided into the central and the provincial governments. It is further divided into two more forms of government — territorial and local. However, these are not recognized constitutionally. In the section below, we elaborate on each level of government and discuss its status within the Canadian federal framework.

• Federal level of government

The first level of the government which the Canadian constitution mandates is the federal or the national government. It is this government which both enacts and implements laws for the entire country. The federal government has been empowered to do so by the Constitution. In fact, the federal government can enact and exercise powers independent of the provincial level of government. The headquarters of the federal government are based in Ottawa, the nation's capital, where the Parliament is situated. It is the premier institution of the federal government and comprises of the monarchy and two legislative chambers, the House of Commons and the Senate. The monarchy is represented by his or her federal representative in the form of a governor general.

Despite being known as the head of the state, the role of the monarchy is primarily ceremonial in the day-to-day governance of Canada and its government. The majority of the powers are held with the head of the government and his executive council, who are officially known as the Prime Minister and his/her Cabinet members. Powers are also enshrined to the elected legislative chamber, i.e. the House of Commons. There is also a second federal legislature which is known as the Senate. It is an appointed body and has fewer powers as compared to the elected House of Commons.

Check Your Progress

6. Switzerland has been a federal state since 1884. (True/False)
7. In Switzerland, the _____ are responsible for tasks such as education, hospitals and policing.
8. Most aspects of Switzerland's political system are just normal features of a modern democracy. (True/False)
9. The term federalism has been derived from which word?

NOTES

The judiciary is another key federal institution in Canada. It is represented by the Supreme Court of Canada, which is the highest court in the country. However, the judges are appointed by the federal government. There are several sub judiciaries including the Federal Court of Appeal, the Federal Court, the Tax Court of Canada, the Court Martial Appeal Court, and the Courts Martial. As the name suggests, the latter two are military courts where matters pertaining to the militia are decided. It is pertinent here to mention another federal institution. In Canada, it is called as the national public service. This comprises all departments of the federal government and other such agencies which are responsible not only for helping the federal government but also implementing those policies which are under its jurisdiction.

Provincial level of government

The second level of government in the federal Canada is comprised of provincial governments. The provincial government is recognized by the Constitution. Since Canada has 10 provinces, all have their own government. These provinces are: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island.

The provincial governments have been empowered by the constitution to enact and implement laws within their own territory. They have, in fact, certain powers which are constitutionally recognized. The provincial governments can exercise these powers independent of the federal government and of other provincial governments. The monarchy, or the lieutenant-governor, who is the monarch's provincial representative, is the provincial head of the state. Like at the federal level, the role of the monarch is also ceremonial here. Each of these provincial governments has their own legislative assembly located in the capital of the province. This is the real seat of power. The provincial heads of the government operate from here, as do their executive councils (premiers and their cabinets), and the provincial elected legislature.

The constitution also provides for a provincial-level court system i.e. courts that are based in the provinces, where the appeal and trials are carried out. These courts have fewer powers as compared to the Supreme Court of Canada; thus the Supreme Court can overrule the decisions of these courts. These courts hear local criminal, constitutional, civil, family, traffic, and bylaw cases. Each province also has its own provincial public service, which are comprised of government departments and agencies which help their respective provincial government to form and implement policies within their jurisdiction.

Territorial Governments

Canada also has what are called territorial governments for its three territories — the Yukon, the Northwest Territories, and Nunavut. Each has their own government. Like provincial governments, the territorial governments regional governments which have the power to enact laws and implement them for their own drawn territorial area. However, unlike provinces, the territorial governments are not constitutionally recognized and do not enjoy their own their own autonomous powers and jurisdiction. They all fall under the legislative jurisdiction of the federal government; it is the federal government thus which creates the territories and decides how they shall work.

But in practice, the territories have many privileges that are enjoyed by provinces. For instance, territories have their own legislative assemblies which can make and implement laws. The head of a territory is a Territorial Commissioner who has a role somewhat similar to that of the provincial Lieutenant-Governor. Just like the federal and the provincial governments, the real power in a territory is in the hands of a territorial head and his executive council. This is comprised of the Premier and his/her Cabinet. These powers are shared with the elected legislative assembly. Territories also have a public service and court system, though they might have to share the same with a province.

Unlike provinces, the status of territories is somewhat inferior under Canadian federalism as they are not recognized by the Constitution. Therefore, territories have no say in matters related to constitutional amendments which pertain to separation of powers between the federal and provincial levels of government. Nonetheless, territorial governments are often included in the matters of inter-government and other decision-making processes.

Local governments

The last and final type of governance in Canada is of the local government. As in India, this local government comprises municipal, county/parish, and semi-regional councils, boards, and agencies. However, unlike the provinces, the local governments are not constitutionally recognized. They fall under the jurisdiction of their own provinces and territories, who in turn create governments for them. As can be ascertained, the local governments are mostly dominated by their respective provincial or territorial government members. Provincial or territorial governments have a huge say in the working of the local governments, for instance in matters related to the laws a local government may pass, money to be spent, and implementation of long-term development strategies. Local governments also do not make much of a difference in matters related to inter-governmental relations and decision-making.

9.4.2 Confederation and the Division of Powers

The foundation for federalism in Canada was first laid at the time of the introduction of the 1867 British North America Act. This Act was renamed as the Constitution Act, 1867 in 1982. It was this law that provided the framework for federal and provincial levels of government and defined their powers.

Section 92 of this Act also laid out powers for the 16 provinces of the country. These included the legislative powers like control over departments such as hospitals, asylums, charities, municipal institutions, prisons, and property and civil rights, among others. The provinces were also granted the power of jurisdiction over their areas in this Section. This meant that the provinces were independent to constitutionally legislate control over their areas, without any interference of the federal government.

Furthermore, Section 93 of the Act granted the provinces complete control over education. That is, the provincial governments are allowed to structure and manage their own education systems.

Besides granting the provinces sole jurisdiction, Section 95 of the Act also gave the provinces concurrent powers in the areas of agriculture and immigration. Concurrent here refers to the constitutionally granted joint power of the federal and provincial governments to legislate in these areas in the cases of agriculture and immigration. These are thus the shared areas where both the levels of the government can act.

However, the provinces have only been granted limited powers in the matters of finance and taxation. The Section 92 of the Act states that the provinces will only have power in areas pertaining to 'direct taxation' which allow them to raise money for provincial purposes only. What comprises 'direct taxation' under this Act has been an issue of

NOTES

NOTES

much contention and has come under the review of the Canadian judiciary numerous times. At present, 'direct taxation' is levied on income and corporate tax, a sales tax on the exchange of goods and services. Revenues are also raised through licensing and other fees.

It is in the Section 91 of this Act that the federal powers are mentioned. It is further divided into two parts. The first comprises the Peace Order and Good Government clause, commonly known as the 'POGG clause'. According to this, those powers that are not given to the provinces in Section 92 are the matter of the federal government. Therefore, in such matters, only the federal government and not the provincial can constitutionally legislate. Section 91 also provides a detailed account, in the form of 29 examples, of the federal powers. These include the regulation of trade and commerce, postal service, census and statistics, the military, navigation and shipping, sea coast and inland fisheries, and the criminal law, among others. The Section 132 of this Act also empowers the federal government to implement international treaties.

In the matters of finance, the federal government has been given wider taxing powers as compared to the provincial governments. Section 91 of the Act gives the federal government the power to raise revenues through any mode of taxation. This can include forms of direct taxation, such as income or corporate taxes, as well as indirect taxation, such as duties and fees.

Since this is the first level of government, this Act also provides the federal government with special powers to control provinces. Among this is the power of reservation which allows the Lieutenant Governor of a province, who is a federal appointee, to reserve provincial legislation for the consideration of the federal government. The federal government has the power to either accept or reject the legislation. In fact, it has been mentioned that even if the Lieutenant Governor gives his/her assent to the legislation, the federal government can still reject it through its power of disallowance. The federal government also has the power to declare any local work in a province, which it contends is in the general interest of the country, under its control. These powers were widely used by the federal governments of Canada until recent years. At present, they have been overtaken by an unwritten convention of the Constitution, clearly against the Constitution Act 1867, that these federal controls will not be exercised.

Constitutional Amendments and Division of Powers

Since the early times, the Constitution has been amended many times to decide on the division of powers between the federal and the provincial governments. Most of these amendments pertained to the control of the federal and provincial government over social benefits. However, these amendments resulted only in providing the federal government with expansive powers. For instance in 1941, the federal government was given the exclusive power over unemployment insurance under Section 91 of the Act. This was against the previous judgments of the courts which had held that such an insurance was a subject matter of the provinces. Similarly, old-age pension was the subject of only the provincial governments under Section 92 of the Act. In 1951, however, it was made a concurrent subject, i.e. both the levels of the government were permitted to make laws and implement them as far as this area was concerned.

An important area pertaining to changes in the constitution was the process of constitutional amendments itself. It was in the year 1949 that the Parliament was allowed to amend the Constitution but only in those areas which were purely on the matters of federal concern. It was the British Parliament which held this power earlier. This

Check Your Progress

10. What are the levels of government in the Canadian federal system?
11. The president is the head of the Canadian federal system. (True/False)
12. Name the provinces of Canada.
13. Local governments are constitutionally recognized entities with their own autonomous powers and jurisdictions. (True/False)
14. The provincial government in Canada has wide taxing powers. (True/False)

NOTES

amendment came into practice only in 1982 when all the governments adopted the new Constitutional Amending Formulas. These Formulas were important in matters related to federalism as they spoke of the rights of each government, whether federal or provincial, at the time of amendment to the Constitution. It stipulated that any change in the constitution which impacted one or more provinces had to have the consent of those provinces.

Besides adding the amending formulas, the areas of natural resources and regional disparities were also impacted by the reforms of 1982. The reforms increased the powers of the province over the management of their natural resources despite the fact that the federal government maintained its stronghold over the area. The Section 36 of the amended Constitution Act 1982 also included a commitment by both the federal and the provincial governments to cut economic disparities and unequal access to public services among people in different regions in the country. The federal government was given the additional responsibility of ensuring that the provincial governments have enough revenues to provide efficient public services. This was done by making equalization payments.

9.5 COMPARATIVE FEDERALISM

As the students will understand by now, federalism has different meanings under different political systems despite some of its essential principles remaining the same. For instance, in Europe, the term federalists is used to refer to those people who want a federal system of government with powers being divided at the regional, national and supranational levels. European federalists argue in the favour of such federalism continuing throughout the European Union. European federalism found its grounding in the post-war Europe, the Winston Churchill's speech in Zurich in 1946 being one of its major initiators.

In the United States, on the other hand, federalism was originally identified with the belief in having a stronger government at the centre. During the time of the drafting of the US Constitution, a debate raged between the federalist and anti-federalists, who wanted a strong central government and stronger state governments respectively. As you can note, this is in contrast to the modern usage of the term federalism in both the United States and Europe. One can see a distinction since the term federalism is located in the middle of a confederacy and a unitary state. As mentioned earlier, the present US Constitution was a reaction to the Articles of Confederation, which brought the states together but gave them a very weak central government. Thus the American political history is laced with struggles in the favour of federalism and keeping the states together, with a strong central government. On the other hand, federalism refers to opposition to sovereign movements in Canada.

But federalism is not always about the divisions between two or three levels of government. It can also have more than two internal divisions, as in the case of countries like Belgium or Bosnia and Herzegovina. Therefore, students should be able to differentiate between two types of federalism in general: on the one hand, the strong federal state with few powers assigned to local governments and on the other, the national government which may be a federal state for reference but a confederation in practice. Europe, therefore, has a wider history of unitary states. Thus we can say that European federalism argues for a weaker central government. In the present America, debates are raging on following the European model of federalism and contain the powers of the federal government, especially the judiciary, especially since its powers and influence have increased over the years.

Check Your Progress

15. How did federalism originate in Europe?
16. _____ may encompass as few as two or three internal divisions.

NOTES

ACTIVITY

After studying the federal structures of the US, Switzerland and Canada, give your view on whether India could take any cue from these countries to function more democratically.

9.6 SUMMARY

In this unit, you have learnt that:

- Federalism is a system of government in which power is divided between a national (federal) government and various state governments.
- A federal constitutional republic, United States is the country in which powers reserved the national government are shared by the US president, the congress and the judiciary.
- The power of the legislature is divided between the two chambers of congress—the Senate and the House of Representatives.
- Political system of the US is different from most of the developed democracies. Very few of the world's developed democracies are there where third parties have the least political influence.
- In the United States, the Constitution gives certain powers to the federal government, and other powers to the state governments.
- Federalism was the most influential political movement arising out of discontent with the Articles of Confederation, which focused on limiting the authority of the federal government.
- In 1787, fifty-five delegates met at a Constitutional convention in Philadelphia and generated ideas of a bicameral legislature (United States Congress), balanced representation of small and large states (Great Compromise), and checks and balances.
- The federal system in United States is constantly undergoing change and evolution since the time it was introduced in the constitution.
- The Articles of Confederation were responsible for that first spark of discontent among the states against the federal government.
- In the period of early 18th century, Chief Justice John Marshall had a major role to play for defining the power allotted for the federal government and the state governments.
- Dramatically enough, as a result of the Great Depression, the balance of power shifted to the federal government back again because of the downfall of US economy.
- The federal government determines the foreign policy, with exclusive power to make treaties, declare war, and control imports and exports.
- Federalism in the United States has evolved quite a bit since it was first implemented in 1787.

NOTES

- Fiscal federalism involves the offer of money from the national government to the states in the form of grants to promote national ends such as public welfare, environmental standards, and educational improvements.
- Switzerland has been a federal state since 1848. Authority is shared between the Confederation (central state), the 26 cantons (federal states) and the 2,495 communes (status as of January 2012).
- In Europe, 'Federalist' is sometimes used to describe those who favour a common federal government, with distributed power at the regional, national and supranational levels.
- The Confederation's authority is restricted to the powers clearly conferred on it by the Federal Constitution.
- All democratic political systems share the separation of powers (independence of government/administration, parliament (legislation) and courts of justice).
- Central to the organization of government in Canada is the principle of federalism.
- In Canada, the federal or national government is responsible for enacting and implementing laws for the whole country.
- Another key federal institution in Canada is the federal judiciary. This includes the Supreme Court of Canada, which is appointed by the federal government and is the highest court in the country.
- The final type of government in Canada is the local government, which includes municipal, county/parish, and semi-regional councils, boards and agencies.
- The fundamentals of Canadian federalism were first provided at the time of Confederation via the 1867 British North America Act (which, in 1982, was renamed the Constitution Act, 1867).
- In Canada, federalism typically implies opposition to sovereigntist movements (most commonly Quebec separatism).
- Federalism may encompass as few as two or three internal divisions, as is the case in Belgium or Bosnia and Herzegovina.

9.7 KEY TERMS

- **Articles of Confederation:** It was an agreement among the 13 founding states that established the United States of America as a confederation of sovereign states and served as its first constitution.
- **Shays' Rebellion:** It was an armed uprising of yeomen that took place in central and western Massachusetts in 1786 and 1787.
- **US Bill of Rights:** The Bill of Rights is the collective name for the first ten amendments to the United States Constitution.
- **Dual federalism:** It is a political arrangement in which power is divided between national and state governments in clearly defined terms, with state governments exercising those powers accorded to them without interference from the national government.
- **New Deal:** In the mid-1930s, Franklin D. Roosevelt launched a series of economic programmes designed to combat the effects of the Great Depression.

NOTES

9.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. True
2. Federalism or the federal system is a style of functioning of the government where the political power and the power of governance are shared between the political units and a central governing authority.
3. Shays' Rebellion took place from 1786 to 1787.
4. Those opposed to the new US Constitution were known as the 'anti-federalists'.
5. The two types of federalism are dual federalism, in which the federal and the state governments are co-equals, and cooperative federalism, under which the national, state, and local governments interact cooperatively and collectively to solve common problems.
6. False
7. Canton
8. True
9. The term federalism comes from the Latin 'foedus', which can be variously translated as state, alliance or treaty.
10. The Canadian federalism has two constitutionally recognized levels of government—federal and provincial. The country also has two further forms of government, territorial and local, which are not constitutionally recognized.
11. False
12. Canada has ten provinces, which are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island.
13. False
14. False
15. European federalism originated in post-war Europe. One of the more important initiatives was Winston Churchill's speech in Zurich in 1946.
16. Federalism

9.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on Constitutional Convention of Philadelphia.
2. Briefly explain dual federalism.
3. What are the basic features of the Swiss political system?
4. Briefly discuss the provincial level of government in Canada.

Long-Answer Questions

1. How did the US federal system of government shape up over the years? Also explain the distribution of power among the legislature, judiciary and the executive.
2. Under the US federal system, what powers are enjoyed by the central and state governments? Discuss.
3. How have US political thinkers influenced the federal political system?
4. Discuss the advantages and disadvantages of US federalism.
5. Do you think the Swiss federal structure is the best political system? Give reasons for your answer.
6. Discuss the jurisdictional powers of the federal and provincial levels of government in Canada as stated under the Confederation.

9.10 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.

NOTES

NOTES

UNIT 10 ELECTION AND REPRESENTATION

Structure

10.0 Introduction
10.1 Unit Objectives
10.2 Electoral Process in the UK
  10.2.1 Electoral Systems
10.3 Electoral Process in the United States
  10.3.1 Eligibility
  10.3.2 Presidential Election
  10.3.3 History
  10.3.4 Electoral College
  10.3.5 Presidential Nominating Convention
10.4 Electoral Process in Switzerland
  10.4.1 Voting Process
  10.4.2 Mail-in Ballots
  10.4.3 Council of States
  10.4.4 Cantonal Elections
  10.4.5 Referendums
  10.4.6 Municipal Voting
10.5 Summary
10.6 Key Terms
10.7 Answers to 'Check Your Progress'
10.8 Questions and Exercises
10.9 Further Reading

10.0 INTRODUCTION

The previous unit introduced you to the federal systems of the United States, Switzerland and Canada. The federal system is another way to explain the democratic system across the world. Nonetheless, democracy should the defined as a system of representation — of the people, for the people, by the people. This is a broad definition and has some more key principal issues attached to it. There are other certain institutional aspects to democracy which make politicians represent their electorate much effectively. Two factors that explain this representation are – mandate and accountability. A mandate is the will or the command or an authorization of the people, who are also called the political electorate, towards their representative. Accountability should be studied as a vertical accountability granted on the capacity of constituents to reward or authorize.

This unit will introduce you to the electoral process in the United Kingdom, the United States and Switzerland. Briefly, in the UK, the House of Commons delegates the assemblies and mayors who are elected using different types of voting systems. The House of Commons and the House of Lords also have their own variety of voting systems for internal polls. As you will now know, the United States has a federal government and the representatives are chosen for the federal (national), state and local levels through elections. On the federal level, the President, who is also the head of the state, is chosen through an electoral college, which is an indirect way of electing people.

NOTES

As mentioned in the previous unit, Switzerland has a unique political system. It is exclusive to modern democracies as the country had direct democracy, wherein every citizen has the right to question a law passed or supported by the government at any time. The citizens can even ask for adjusting the federal constitution. Also, in most constituencies, the ballots are made of paper and are counted manually.

10.1 UNIT OBJECTIVES

After going through this unit, you will be able to:

- Discuss the electoral process in the UK
- Explain the methods of casting vote in the UK
- Discuss people's participation in electing the president of the US
- Asses the voting process in Switzerland

10.2 ELECTORAL PROCESS IN THE UK

The parliamentary system of government is derived from the Great Britain where it developed gradually under what is known as a non-coded constitution. This constitution is made up of numerous laws, decisions of courts and many diverse as well as unwritten conventions. Presently, the leader of the party which has the majority in the House of Commons represents the government as the prime minister. Naturally, the members of the PM's Cabinet are drawn from the party in power. The prime minister is also the member of House of Commons and so are most members of the Cabinet. To stay in power, the government requires majority in the House of Commons. In case the government loses the vote of confidence in the House of Commons, it is required to put in its papers or seek the dissolution of the Parliament.

The Upper Chamber of the UK Parliament is represented by the House of Lords, which is composed of the Crown i.e. the Monarch. This House is appointive and the hereditary Upper Chamber as compared to the Lower Chamber or the House of Commons. However, it is the Lower Chamber that reigns over the Upper Chamber. In the past, the powers of the House of Lords were equivalent to those of the House of Commons but these were reduced considerably in 1911 and 1949 after the non-money (non-fiscal) bills were delayed. Since 1999, it was decided to exclude the country's hereditary peers from membership to the House of Lords. The Monarch was earlier a formidable part of the Parliament. However, since the year 1952, the Monarch plays an almost ceremonial role. The Crown is representative of the unity of the nation and above party politics. The Monarch also does not exercise any royal right of veto over legislation approved by Parliament.

For the purpose of general elections, the UK has 650 constituencies. Each constituency is represented by one Member of Parliament (MP) in the House of Commons. The term of an MP is for a maximum term of five years. Broadly, there are six kinds of elections in the UK:

- UK general elections
- Elections to devolve parliaments and assemblies
- Elections to the European Parliament

NOTES

- Local elections
- Mayoral elections
- Police and Crime Commissioner elections

Elections are held on the Election Day which is conventionally a Thursday. General elections are also held on fixed dates. It is a rule to call them within five years of the opening of Parliament, following the last polls. Other elections are also held on fixed dates. In the case of the devolved assemblies and parliaments, early elections can occur in certain situations.

10.2.1 Electoral Systems

Currently, six electoral systems are in place in the UK:

- The single member plurality system (First-Past-the-Post)
- The multi-member plurality system
- Party list
- The single transferable vote
- The Additional Member System
- The Supplementary Vote

First-past-the-post

This system is used in the election of the members of the House of Commons and during other local polls in England and Wales. Under this system, the country or local authorities are divided in a number of voting areas, also known as constituencies or wards. During the time of a general poll, voters mark a cross against the name of the candidate they prefer on the ballot paper. The papers are finally counted and candidates who receive maximum votes in this manner are selected to represent their constituency or ward.

Supplementary Vote (SV)

This system is used to elect the Mayor of London and others in England and Wales. The process of this system is similar to the alternative vote system. Under this, however, voters can only cast a first and second preference vote. Thus, a voter marks against one column for first preference and in the other, for second preference. The second preference is not compulsory.

During the counting, if a candidate receives more than 50 per cent of the first preference votes during the first count, then their selection is made. In case this mark is not reached, then those candidates who poll the highest number of votes are retained and the others are eliminated. Thereafter, from those candidates who are eliminated, the second preference is counted and those votes which are polled in the favour of the first two candidates are transferred in their names. The candidate who receives most votes in this process is declared the winner.

Alternative Vote (AV)

This system is used to choose the most of the committees in the House of Commons as well as for the election of the Lord Speaker and during the bypoll for hereditary peers. Under this system, voters 'poll' in the manner of ranking. Candidates are ranked in the form of 1, 2 or 3 and so on, on the ballot paper. A voter can rank as many candidates or just one that he/she wants. The final counting is made with the use of these preferences.

NOTES

In case a candidate is polled more than 50 per cent of first preference votes, he/she is elected.

In case no candidate makes it to this mark of 50 per cent, then those with least number of first preference votes are eliminated. Their votes are given to candidates next in the line, i.e. in the second preference. If a stage is reached where a candidate has more votes than all other put together, then he/she is elected. In case this is not reached, candidates are eliminated in the process and the reallocation of preference votes is repeated till the time one candidate who gets the highest number of votes is selected.

Single Transferable Vote (STV)

This system is used for the election of deputy speakers in the House of Commons. It is also practiced in local polls of Scotland and Northern Ireland; for electing the latter's assembly as well as for European Parliament polls in Northern Ireland. To be able to follow this system, multi-member constituencies are needed i.e. those constituencies which are large and elect several representatives. Under this system, the electors rank the candidates in the series of 1, 2, 3 and so on, on the ballot paper. A voter is empowered to rank as many candidates as he/she wants or rank just one. The candidates need minimum votes to be elected. Their numbers are computed according to the number of available seats and the votes polled. This is called a quota. Candidates are ranked according to preference marked by the voters and the candidate who gains this quota is declared elected.

If a candidate has been polled more votes than are required to make it to the quota, then his/her surplus votes are transferred to the other candidates. Thus, the winner's votes go to the person on the second of the preference list. In case the quota is not reached, then the candidate with minimum first preference votes is declared out of the race and the votes are transferred to other candidates. This process is repeated until all the seats are filled.

Additional Member System (AMS)

This kind of system is used for the election of the Scottish Parliament, the National Assembly for Wales and the London Assembly. Under this system, electors are given two votes: one is to be cast for an individual and another for a party contesting the polls. In the first category, candidates are selected for single-member constituencies and the method of first-past-the-post or the second ballot or alternative vote is used. In the party vote, additional members for larger region are chosen according to the proportion. In this category, the percentage of votes polled by each party is used to establish the total number of representatives in each region. This includes those members in single member constituencies for whom votes are case.

Closed Party List

Such a system is used to choose members of the European Parliament. Exception is made in the case of Northern Ireland where the system of Single Transferable Vote is used. According to this system, a voter is required to mark (in the form of a cross) against the party they choose to support on the ballot paper. After all papers have been counted, each party is given seats proportionate to the votes it receives in each constituency. For such a List, multi-member constituencies are needed. These are those constituencies which are large and elect several representatives.

NOTES

In such a system, polls are held locally. The polling procedure is looked after by the Returning Officer and the electoral register is made by the Electoral Registration Officer in all the lower-tier local authority. Exception is made in the case of Northern Ireland, where the electoral office of the country holds both the responsibilities. The election body sets principles and issues guidelines to the returning officers and all electoral registration officers even though it is in charge of the polling process in the entire country. The election commission, for instance, also registers political parties and administers the national referendums.

Entitlement to register

Any person who is above the age of 18 years and a national of the UK, the Republic of Ireland, a Commonwealth country (including Fiji, Zimbabwe and the *whole* of Cyprus) or a European Union member state, can seek to register their names at the Electoral Registration Officer at the district in the UK where they live. Such persons also need to site a 'considerable degree of permanence' in the area's electoral register. People can also register by providing their address even if they will be away at the time of the polls. This provision can be used in instances of being away for work, on a holiday, a person residing in student accommodation or admitted in hospital. A person with two homes, for instance, a student living in a hostel and having a permanent residential address, can register to vote in either of the booths under the address as long as they do not fall in the same area.

Additionally, to be able to appear on the electoral register, people who are also Commonwealth citizens, have to either enter or remain in the UK for the purpose. Applicants also cannot be registered as a convicted person in prison or a mental hospital or if found guilty of indulging in corrupt or illegal practices.

Electoral Register

An electoral register is maintained by each district council; it is a compilation of all registered voters. It comprises the names, address and the electoral number of every voter; voter registered under any special category, for instance service voters; as well as the electoral number of every anonymous elector. Voter who had not yet reached 18 years of age at the time of registration also has his/her date of birth on the electoral register. The electoral register of each district is further divided into separate registers for all polling districts.

Within individual voters, their franchise can differ. Thus against the electoral list, a number of markers are made next to a voter's name to identify in which elections he she can vote. For instance, citizens of European Union who are not Commonwealth or Irish citizens, have against their names marked either G, which means they are only entitled to vote in government polls, or K, which refers to their eligibility to vote European Parliamentary and local government elections. Voters who live overseas have against their names marked F, indicating their eligibility to cast ballot in European and UK Parliamentary elections. Those members of the House of Lords who live in the UK have their names prefixed with the letter L, indicating that they can only vote European Parliamentary and local government elections. Members who are overseas have their names marked against letter E, meaning that they can only cast ballot in the European Parliamentary polls.

The electoral register is printed each year on December 1, following the 'annual canvass' period. Exception is made in case a poll is being held between July 1 and

NOTES

December 1. In this case the register is published on February 1 the next year. In the year 2012, due to the scheduling of the Police and Crime Commissioner polls on November 15, the annual canvass in England and Wales was held between July and October and the electoral register was published on October 16. The registration periods are between January and September. Notice to alter names in the register is published on the first working day of each month wherein voters can add, remove or amend their names. Such a notice is also made five working days before an election any time of the year or just before a poll is being closed in order to correct any error or in case such an order has been made by the government. Except a person who has died and is automatically removed from the register, anyone who is added or removed from the register has to be notified by the main electoral registration officer.

Two versions of electoral register exist. One is the full register and the other is the edited register. The full register is required to be scrutinized under the supervision of an electoral registration officer. The Returning Officer of a district has to be supplied the register free of charge as well as to the British Library, the Electoral Commission, the Office for National Statistics (only English and Welsh Registers), the General Register Office for Scotland (only Scottish Registers), the National Library of Wales (only English and Welsh Registers), the National Library of Scotland (only English and Scottish Registers) and the relevant Boundary Commission.

The edited register, on the other hand, is available for sale at the electoral registration officers and can be used for personal purpose. People can also choose to have their names removed from this register after informing their local electoral registration officer.

Plurality Voting and Party Representation

A significant feature of the polling system in the UK is not the number of votes garnered by a political party but the numbers with which it beats other parties in the poll race. This is particularly true in marginal constituencies, where seats are held by majorities by less than 10 per cent of the vote. Ironically, the final result of the polls is dependent on these seats, and most parties focus on securing their own margins and then capturing those that are held by their opponents.

Methods of casting vote

The UK Constitution allows eligible voters to cast their ballot through these different methods:

In person

On the polling day, booths are open from 7 am to 10 pm. The returning officer of each local authority gives voters their poll card which contains details of polling places allocated to them. Voters are not required to flash their voter cards or any other identification document at the polling booth to be able to vote. In Northern Ireland, one identification document is required at the polling station which can either be an NI Electoral Identity Card, a photographic NI or GB driving licence, a UK or other EU passport, a Translink 60+ SmartPass, a Translink Senior SmartPass, a Translink Blind Person's SmartPass or a Translink War Disabled SmartPass.

On verified and marked on the voters' list, the presiding officer or poll clerk at each booth issues the ballot paper to each voter. The voter is given an elector number and polling district reference unless he/she is an anonymous elector. Ballot papers are marked with official mark, which can be a watermark or perforation, and also carry a unique identifying number. Papers issued without these two are declared invalid and not counted during the final calculation. There is also a separate list, called corresponding number list, where the officer presiding over the polls writes a voter's elector number next to the unique identifying number of the ballot paper. In order to maintain secrecy of the ballot, this paper is sealed and is only opened if the election result is challenged.

The ballot paper is marked in a private corner of the polling booth. In case the paper is spoiled, the official can issue a new one to the voter and cancel the old one. Before submitting the marked paper in the ballot box, a voter is required to show the official presiding the official mark or the unique identifying number given on the backside of the ballot paper. The law also has provision for tendered ballot. This service can be used, for instance, if a voter seeks a ballot paper even though his/her name has been marked on the voters' list. While this will mean that the voter has already cast his/her vote even though he/she may not have done so and been a victim of impersonation, he/she is allowed to cast a tendered ballot: This provision is also allowed in case a voter, having applied for postal ballot, turns up at the polling booth. In such cases, after having marked the ballot paper, the voter cannot put it inside the ballot box but is required to return it to the presiding official who marks it with the voters' name, elector number and polling district reference. It is then placed inside a special envelope. The voter's details are then noted in the 'List of Tendered Votes'. Tendered ballots are not counted in the final count of votes but they are part of the record that the voter tried and was unable to cast vote. It is also the evidence that the voter is concerned about the polls. In case a voter wants to complain, a tendered ballot needs to be marked first.

After the polling is concluded, the top of the ballot box is sealed by official presiding over the elections and are transported to the central counting location, where the final count is made.

By post

As per law, eligible persons can receive ballot by post either for one election or for all elections for life without citing any reason. In Northern Ireland, however, voters are expected to explain the reason for their absence to get this service. Applications for this service are required to made before 5 pm, 11 working days before the official polling day. This is also the time when the postal ballots can be dispatched. Such ballots can also be sent outside of the country. In case they are not to be sent to the address registered by the voter, a reason needs to be provided to the EC as to why they should be sent to the alternative address.

Voters are required to return their postal ballots after having filled all the necessary details, including their date of birth, and also put in their official signatures. Then, it is dispatched to the returning officer either by hand or by post on the polling day or at the booth situated within the constituency/ward. The address of the constituency/ward is printed on the return envelope sent to the voter. For the postal ballot to be counted as vote, it has to be received at the polling booth by the person in charge of such an exercise before the polling is wrapped, which is usually 10 pm of the day.

By proxy

A unique feature of UK voting pattern is proxy voting. This means that any person who is eligible to vote but cannot do so appoint anyone else to vote for him/her. However, to appoint a proxy, an application has to filled and dispatched to the local Electoral Registration Officer and it should be received by the EC six days before the polling is due. The proxy

NOTES

NOTES

person, on the other hand, can vote in person or apply for a postal proxy vote. The postal proxy vote application should be received by the EC 11 days before the polling is due. A voter who cannot vote, for instance, in case of an emergency, can file an emergency petition with the local EC body anytime before 5 pm on the voting day.

Except in case of a family member, a person is entitled to vote as a proxy for only two voters in each election in the said person's constituency. If a person applies for proxy for more than one election, he/she is required to attach an attested copy and justify his/her case on one of these basis: blindness, disability, employment, out of country on an education course, registered as a service, overseas or an anonymous elector. However, if proxy is being applied for only one poll, the person has to explain reason why he/she cannot appear in person. Attestation is not required in this case. In case the polling booth is approachable only by air or sea, an elector is also eligible to apply for permanent proxy without an attestation.

But this law differs for people in other regions. In Northern Ireland for instance, voters are required to explain their absence from the polling booth if they seek to appoint another person as a proxy.

Accessibility

As per law, all polling booths have to be made accessible to the physically disabled and equipped with PD-friendly devices. One large print display also needs to be kept for the visually impaired. It can be used for reference. Service to the PD and VI is also provided in the form of Presiding Officer to assist in voting or can even bring along a family member for help. If a person cannot enter a poll booth due to disability, the Presiding Officer is required to take out the ballot paper to the voter. Electoral registration forms are provided by the election commission in foreign languages but as per law, all voting material like ballot papers are only printed in English and in Welsh in Wales.

Post-election

Polling generally concludes at 10 pm. In most constituencies, votes are counted immediately. At the earliest, the results are declared by eve within an hour at 11 pm. Results have also been declared well into the night at 3 pr 4 am. Some constituencies declare it the next day. At the time when the declaration and one party achieves absolute majority in the House of Commons, a public statement is made by the outgoing prime minister. In case the majority is received by the same party who had been in power earlier, they continue to hold office without making a reconfirmation or reappointment. The start of their term is not marked. If a new party achieves majority, then the outgoing prime minister submits resignation to the Monarch. Then the Monarch calls upon the leader of the party that has achieved majority to form the government. The constitution gives prime minister the option to attempt to hold power even if his/her party's seats have been lost. This is followed by the *Queen's Speech* , wherein the details of the next legislative programme are presented. This process gives a chance to the House of Commons to give a confidence or a no-confidence motion by either accepting or rejecting the Queen's Speech.

The Queen has the power to dismiss the serving prime minister and seek a replacement since there are no constitutional guidelines on the matter, though precedents are available. The last such incident was the dismissal of Lord Melbourne in 1834. It can trigger a crisis as it did in 1975 and led to the Australian constitutional crisis. Recent prime ministers who chose to not resign despite not winning a majority are Edward

NOTES

Heath in 1974 and Gordon Brown in 2010. After negotiations with the Liberal Party failed to culminate into a deal in 1974, Heath put in his papers following which Queen II asked Labour leader Harold Wilson to form the government. Therefore, it is incumbent on the serving prime minster to react to the poll results, either by deciding to resign or to continue. The Monarch plays no role till this point. Only after the prime minister decides to resign, the Monarch asks the leader of the other party to form a government. For instance, despite being prime minister from 1979-1990, Margaret Thatcher was only asked once to form a government. Tony Blair too was asked to form a government once in 1997. While the prime minister can order the reshuffle of ministers anytime, after each election too, a prime minister can engage in a major or minor reshuffle of ministers.

After taking over the government, the largest party who could not achieve majority become the Opposition party. It is also known as *Her Majesty's Loyal Opposition.* All other small parties too who could not form government are known as just 'opposition'. Vacancies in the House created due to death, ennoblement, or resignations of members are filled through by-election. There is no fixed timeframe for by-election and they can be held months after the creation of the vacancy. They cannot be filled at all if the general elections are due in the near time. The dissolution of Parliament means that all seats are vacant and polls have to be held.

How often are general elections held?

As mentioned earlier, under this Act, polls are held on the first Thursday of the month of May every five years. Under the following two provisions, polls can be held on occasions other than the said five years:

- When a no confidence motion is passed in Her Majesty's government by a simple majority and 14 days elapse without the House having passed a confidence motion in any new government.
- When a motion for the general polls is agreed by two-third of the total number of seats in the House of Commons. This includes vacant seats, which stand at 434 out of 650 at present.

Before this Act was put into place, the Parliament was conceived for five years despite the fact that many were dissolved before the said period. This was always done at the request of the PM to the Monarch.

10.3 ELECTORAL PROCESS IN THE UNITED STATES

Two parties have dominated the US political scene for a long time – the Republican or Democrats. Since 1852, every president elected in the US has belonged to either of the two parties. As per the US system, a 'single-member district system' applies in the country. The candidate who is polled the highest number of votes in his/her state is elected as president. Thus, the voters poll for electors in their state. The leader of the country is thus indirectly elected. In total, there are 538 electors in the Electoral College. To win the presidential polls, it is important to win in most populated states. From all electoral votes cast nationwide, a candidate needs to earn an absolute majority at least 270 of the 538.

There exists a federal government in the US and members are elected at the national, state and local levels. At the federal or the national level, President is the head

Check Your Progress

1. Where did the parliamentary system of governance originate?
2. What is the composition of the UK Parliament?
3. Name the six types of elections held in the UK.

NOTES

of the start and, as mentioned above, is indirectly elected through an electoral college. In the present times, the citizens almost vote with the votes being case in their states. The federal legislature is also called the Congress and all its members are directly elected. At the state level, many elected offices exist and many states have an elective governor and legislature. Similarly at the local level and the counties, there are many elected offices. As per an estimate, nearly one million offices are filled in every electoral cycle in the US.

The elections are regulated through the state laws which often go beyond many constitutional definitions. The state laws decide on issues like the eligibility of the voters, ways in which each state's Electoral College is run and on the local and state elections. Articles I, II and the many amendments of the US Constitution pertain to the federal elections. On its part, the federal government has been trying to stimulate the voters' turnout through measures like the National Voter Registration Act, 1993.

Issues related to the financing of the elections have always been surrounded in controversy because of high amounts provided by the private sector especially towards the federal polls. Cap on public funding from volunteers towards candidates' campaign was introduced in the year 1974 for presidential primaries and elections. In 1975, a Federal Elections Commission was formed through an amendment to the Federal Election Campaign Act. This body has the responsibility to release all information about financing of campaigns so that legal provisions like the limits and prohibitions on contributions and public funding of the presidential elections are adhered to.

10.3.1 Eligibility

As mentioned above, the eligibility of a person to vote is mentioned in the Constitution and also decided by the states. As per the Constitution, the right to vote cannot be denied on the basis of sex, race or colour and everyone above 18 years of age can vote. Issues other than these are decided by state legislatures. States can prevent, for instance, convicted criminals, especially felons, from voting for a fixed period or forever. Some states also prevent 'insane' or 'idiot' persons from voting. These terms are generally considered derogatory and steps are on in the US to review these terms or remove them wherever they appear.

10.3.2 Presidential Election

The president and the vice-president of the US are indirectly elected; citizens cast their vote for a number of members to form the US Electoral College. The College then directly elects the president and the vice-president. Elections for the president are held quadrennial, starting from the year 1792. Votes are polled on the Election Day, which is traditionally a Tuesday between November 2 and 8. Polls are held simultaneously in various states and local counties. The last election was held in 2012 on November 6. The next polls are due on November 8, 2016.

The elections are regulated by both the federal and state laws. Each state is given a number of Electoral College electors equal to the number of senators and representatives it has in the US Congress. Washington D.C. is also provided electors equal to the numbers held by the smallest state. Electoral College has no representation from the US territories.

The US Constitution empowers each state to decide how it will choose its electors. Therefore, on the Election Day, the popular vote is held by various states and not the government at the centre. Electors can independently vote once they are chosen; there have been exceptions such as unpledged or faithless elector who vote for their own

NOTES

candidates. Their votes are confirmed by the Congress who is the final judge of electors, two months after the voting.

The process of nomination, including those for the federal elections, has not been specified in the Constitution and is developed by various states and political parties. This is also an indirect process and voters cast their ballot for a number of delegates who are chosen to represent their states at their party conventions. Delegates then cast their vote in favour of one candidate for the post of the president.

10.3.3 History

It is in Article II of the US Constitution that the method of presidential elections has been detailed. This includes selection of the Electoral College. Article II and its contents are the result of deliberations and compromises between one section of constitution of framers who wanted to rest the power with the Congress for choice of president even as the other section favoured national voting. Later, each state was given the number of electors equal to the size of its members in the two houses of Congress. The process to choose electors is decided by each state through its legislature. In 1789, when the first presidential elections were held, only six of the then existing 13 states chose electors through voting. Later, however, most states following the method of popular voting to choose their slate of electors. This resulted in a nationwide indirect polling system as it is today.

As established originally under Article II, electors were allowed two votes for two different presidential candidates. The candidate who polled the highest number of votes was elected the president and the second polled candidate was appointed the vice president. However, this system had its own problems. For instance, in the 1880 presidential elections, Aaron Burr was polled the equal number of votes as Thomas Jefferson. Jefferson was allegedly selected for the top post job under the influence of Alexander Hamilton in the House of Representatives. Burr challenged Jefferson's selection and this led to deep rivalry between the two, resulting in their famous duel in 1804.

The 12th amendment to the US Constitution was passed in response to the polls in 1800. It required voters to cast two distinct votes, one for the president and another for the vice president. The amendment also provided rules in case no candidate won a majority in the Electoral College. After the presidential election of 1824, Andrew Jackson registered plurality but not majority. Then, the House of Representatives was given charge of the polls and John Quincy Adams was elected as the president. Again, this led to deep rivalry between Jackson and the then speaker of the House, Henry Clay, who was one of the candidates in the polls.

10.3.4 Electoral College

As an institution, the US Electoral College is in charge of officially electing the president and vice president every four years. As mentioned earlier, people indirectly elect them through popular vote in each state. All states also have own electors which is equal to the number of members they have in the Congress. The 23rd amendment gave the district of Columbia three electors. At present, there are 538 electors in the US. Of these, 435 are representatives and 100 senators, including three electors from the District of Columbia.

Except the states of Maine and Nebraska, electors are chosen in all others on 'winner-take-all' basis. Electors who support the presidential candidate who is polled most votes become electors for him/her. The states of Maine and Nebraska use the

NOTES

'congressional district method' wherein one elector is chosen by popular vote and the remaining two are selected through nationwide voting. The federal law does not seek that an elector honours a pledge but there have been instance where electors voted against the pledge they had taken. As per the 12th amendment, each elector had to cast two votes, one for the president and another for the vice president. The candidate who receives most votes – the current majority is 270 — for both the offices of the president or the vice president is elected to that office.

The 12th amendment also specified on measure to be taken if the Electoral College failed to choose a president or vice president. In case no candidate receives majority for the post of the president, then the House of Representatives selects a candidate wherein each state has one vote each. In case no candidate receives majority for vice president, then the Senate selects him/her, with each senator having one vote.

Critics of the system contend that the system of Electoral College is inherently undemocratic and gives states undue influence in choosing the heads of the country. This is because the Electoral College provides for numerical majority in the presidential election to small states as minimum electors from such states are three. On the other hand, the winner-take-all method of voting favours the larger states. Many constitutional amendments have sought modifications to the Electoral College and its replacement with popular vote.

10.3.5 Presidential Nominating Convention

The country holds a presidential nominating convention every four years. It is held by parties who want to field their candidates in the presidential elections. The purpose of each such convention is to choose a party's nominee for the post of the president. It also seeks to adopt a statement of party principles and goals known as the *platform* and set rules for party's activities, including the process the choose the presidential nominee for the next polls. Owing to changes in the poll laws and the process of running campaigns, such conventions since the latter half of the 20th century have nearly renounced their original goals and are merely ceremonial affairs at present. Today, such conventions refer to the quadrennial events of two dominating parties, and are called the Democratic National Convention and the Republican National Convention. Other smaller parties also hold such conventions. Few examples are those of the Green Party, Socialist Party USA, Libertarian Party, Constitution Party and Reform Party USA.

Nominating process

The process of nominating a candidate in the present times is divided into two parts: state-wise presidential primary elections and caucuses and the nominating conventions held by each political party. This process finds no mention in the US Constitution and has evolved over the time by participating political parties.

T]he primary polls are held by the state and local government. Caucuses are held by political parties directly. While some state organize only primary polls, some hold caucuses while others hold both the processes. These processes are generally held between January and June before the federal elections are due. Traditionally, the states of Iowa and New Hampshire hold the state caucus and primary first.

Presidential caucuses or primaries are indirect elections like general polls. It is at their respective nominating conventions that major political parties vote for the presidential candidate. These are usually held in the summer before the federal elections are due. Each state or political party has a different rule wherein voters cast ballot to choose

NOTES

presidential caucus or primary. With such an exercise, the voters could be voting to award delegates who will in turn vote for a particular candidate at the presidential nominating conventions or voters could be only expressing their opinion which a party is not bound to follow at the national convention. Voters in territories are also empowered to choose delegates to the national conventions.

Along with these, political parties also include 'unpledged' delegates who can vote for whoever they want. For the Republicans, top party officials comprise this list while for the Democrats, these are usually the party leaders and elected officials. The presidential candidate for each party also chooses a vice-presidential candidate who runs with him/her on the same ticket. Their choice is always approved by the convention.

10.4 ELECTORAL PROCESS IN SWITZERLAND

As mentioned above, Switzerland's political system is different from the rest. The country votes for a head of the state, also called the federal council, on the national level. A legislature is also elected. The federal assembly is represented by two chambers – the national council and the council of states. The national council is comprised of 200 members who are elected for a term of four years by proportional representation in multi-seat constituencies and cantons. On the other hand, the council of states has 46 members who are elected for a period of four years in 20 multi-seat and six single-seat constituencies. These are equivalent to 26 cantons and half-cantons. As per the rules, a member of the federal council holds the title of the President of the Confederation for one year.

Like several other countries, Switzerland too has a multi-party system but its unique feature is that members of main parties are members of the Executive, from the federal to the municipal level. It is plural in the true sense. The citizens vote to elect their officials and take own decisions about governance. Traditionally, voting is held over the weekend and efforts are made to hold it on a Sunday. The process is called *abstimmungssonntag* in German. By noon, the voting is concluded.

As mentioned in the Introduction, any citizen or groups can call for changes in the Constitution. Nearly four times every year, voting is held over many different issues. The issues include Referendums, where people directly vote and cast their opinions over new policies. Issues for all federal, cantonal and municipalities are also polled and most of the citizens cast their votes through mail. Elections are also held where citizens elect their representatives.

Despite being a participatory democracy, voter turnout in the elections has been continuously declining since the 1970s. It touched an all-time low at 42.2 per cent in 1995. The turnout has improved in the last few years and was recorded at 48.5 per cent in 2011. For Referendums, the average turnout was 49.2 per cent in 2011. The participation is often issue based. For instance, those matters which have a little public appeal have recorded participation of even less that 30 per cent of the total electorate. However, current and controversial issues like the proposed abolition of the Swiss Army or the accession of Switzerland into the European Union have even recorded participation of over 60 per cent.

10.4.1 Voting Process

Unlike other countries, Switzerland offers voting choices to citizens in the form of hand counts, mail-in ballots, at the polling booths. More recently, internet votes were also

Check Your Progress

4. How many electors are there in the electoral college of the US?
5. What type of a government does the United States have?
6. Which Article of the United States Constitution originally established the method of presidential elections?

NOTES

allowed. Cantons imposed a fine equivalent to $3 until several years ago on citizens who did not vote. Voting is still compulsory in a canton called Schaffhausen. That is why this canton always has the turnout higher than the rest of the country.

No voting machines exist in Switzerland as votes are counted by hand. Citizens are recruited randomly by each municipality and given the duty to count the votes. Earlier, there were penalties imposed for not doing this duty but they have ceased now. After the ballots are sorted, the total number of approvals and disapprovals are counted. This is either done manually or, in large cities, done through automatic counters. Automatic counters are similar to the ones used by banks to count notes. Ballots are also sometime weighed by a precision balance. The counting of the votes normally concludes in about six hours but those of larger cities like Zurich or Geneva takes much longer.

10.4.2 Mail-in Ballots

As per Swiss rules, voters need not register themselves before polls. Every person living in the country – this rule applies for both Swiss nationals and foreigners – is required to register with the municipality of their area within two weeks of moving in to a new place. Thus the municipalities keep track of all citizens. About two weeks before polls, the municipalities send their citizens a letter titled 'Ballots'. It comprises an envelope, the ballot for each family member eligible for voting and an information booklet to make citizens aware of the changes proposed in the law. When polls are taking place for Referendums, the booklets include texts by both the federal council and their standing on the Referendums to let the citizens know their opinion.

After the voter fills his/her ballot, it is put into an anonymous return envelope that is provided in the package by the municipality. This envelope, which also includes a signed transmission card, is the identification of the voter. All are sent back to the municipality, either by being posted directly into the municipality mailbox or are returned by post. Once received by the municipality, the voter is identified through the transmission card. The anonymous return envelope is put into the polling booth. Switzerland primarily holds three types of elections. These include the parliamentary elections and executive elections wherein the citizens elect their representatives. The parliamentary elections sees contest between multiple parties to form government while the executive elections are direct elections held for individuals. The third kind of elections is Referendums, which concern policy issues.

10.4.3 Council of States

For the elections of the members of Council of States, different systems are adopted by different cantons as this body represents the cantons, i.e. the member states, itself. But on the election day, a uniform method is followed for the National Council polls. This is called the plurality voting system or Majorzwahl in German. According to this system, elections take place before the other cantons in the canton of Zug and *AppenzellInnerrhoden*. The canton of Jura is an exception to the system of Majorzwahl. Here, the members of the council are elected through *Proporzwahl*.

10.4.4 Cantonal Elections

Citizens are also empowered to vote for each cantonal government. The voters are also given the power to nominate a candidate – on the ballot, a line where the voters can write the name of any person who they think is fit for the job. He/she is called a write-in candidate. No party votes are held here but only candidate votes; therefore the

NOTES

procedure is called Majorzwahl. Under this, a candidate with maximum votes wins. In other countries like the US, this kind of win is called a win by simple majority. Cantons mostly have a single-chamber parliament which is elected by a proportional representation. They also have many electoral districts of different sizes and varieties so that the seats are calculated in a proper manner.

10.4.5 Referendums

Swiss citizens are also empowered to call for constitutional and legislative referendums. *Legislative* referendums refer to those referendums which are possible on the laws that are passed by the legislature. People cannot move legislations designed by them. *Constitutional* referendums are those which the electorate has the right to initiate. These are introduced on popular initiative and for each proposal, a voter has to just vote in favor of a referendum or against it. The voters are also given a choice in case the number of for and against votes are equal. In the form of a question, the voters are asked: If both proposals are adopted by the people, which proposal do you favour? This is called a subsidiary question, which was introduced in 1987.

Constitutional Referendums

However, changes to the constitution are not only based on referendums. They require a majority of both the votes of the people and of the states. The double majority is also required on the part of the cantons as each canton has one vote. The votes of the canton are decided through the votes of its people: if majority of the people of a particular canton vote in favor of a referendum, then a canton is automatically assumed to support the change in the constitution. The government seeks these votes when changes or modifications to an Article in the constitution are proposed or when citizens seek a constitutional change through a popular initiative which has received over 100,000 signatures.

10.4.6 Municipal Voting

As per the Swiss law, every city, town and even village in the country has a deliberative assembly. Villages, for instance, hold meetings where eligible voters cast their franchise by raising their hands. Citizens can also present proposals, oral or written, on which voting is held in the next meeting. In larger towns, meetings are held. The members for the meeting are elected by proportional representation of one or more districts. Municipal governments are chosen only by the citizens mostly through majority voting. The municipal councils usually comprise five to nine members. Thus, in a small town, less number of party members are represented. The leader of this council is also elected through majority vote. Municipal assemblies can vote for modifications to 'town statutes', which concern issues like water problems, use of public spaces, finance matters between the executive and the legislature and on naturalizations.

ACTIVITY

Make a list of the decisions taken by the US Parliament that have been historical.

Check Your Progress

7. How many chambers does the Swiss Federal Assembly have?
8. What is the number of members in the Swiss National Council?
9. Why is the Swiss voting system unique among modern democratic nations?

NOTES

DID YOU KNOW

A new president of Switzerland is elected every year.

10.5 SUMMARY

In this unit, you have learnt that:

- The United States is a republic. This indicates that the people have the entitlement and they elect representatives of their choice.
- US also a federal nation, which means that power is shared between the central government and the individual states.
- Federal power is shared by three different branches of government - the president and his cabinet (the Executive), the two chambers of the US Congress (the Legislature) and the courts (Judiciary).
- There are two main types of electoral systems in the UK:
  - First Past the Post (FPTP)
  - Proportional Representation (PR)
- FPTP is an electoral system used for electing MPs to 'seats' in the UK Parliament. It is a procedure in which the 'winner gets everything' and generally gives an absolute majority at both, constituency and national levels.
- In PR systems there are no exhausted votes in elections. Consequently, there is a much higher degree of proportionality; the number of seats more precisely mirrors the number of votes won by each party.
- The voting system of Switzerland allows voters to take time to select individual candidate, while those keen on simply voting for a party, can do so.

10.6 KEY TERMS

- **Mandate:** A command or an approval given by a political electorate to its representative.
- **House of Commons:** The lower house of the British parliament.
- **House of Lords:** The upper house of the British parliament.
- **Electoral College:** A body of electors chosen or appointed by a larger group.
- **Cabinet:** A body of advisers to the President, composed of the heads of the executive departments of the government.
- **Supplementary vote:** An electoral system used to elect a single winner, in which the voter ranks the candidates in order of preference.
- **Alternative vote:** A voting system designed to elect one winner.
- **Single transferable vote:** A voting system based on proportional representation and preferential voting.

NOTES

- **Additional member system:** A branch of voting systems in which some representatives are elected from geographic constituencies and others are elected under proportional representation from a wider area, usually by party lists.
- **Electoral register:** A listing of all those registered to vote in a particular area
- **Plurality voting:** A vote of one or more than the number received by any other candidate or issue in a group of three or more.
- **Democrat:** A member of the Democratic Party.

10.7 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The parliamentary system of government originated in Great Britain, where it has gradually developed under a non coded constitution defined by a vast body of laws, court decisions and diverse unwritten conventions.
2. The UK Parliament is composed of the Crown that is the monarch, the House of Lords, an appointive and hereditary upper chamber and the popularly elected lower chamber, the House of Commons.
3. There are six types of elections held in UK. These are:
   - UK general elections
   - Elections to devolved parliaments and assemblies
   - Elections to the European Parliament
   - Local elections
   - Mayoral elections and
   - Police and Crime Commissioner elections
4. All together there are 538 electors in the Electoral College of the US.
5. The United States has a federal government, with elected officials at the federal (national), state and local levels.
6. Article Two of the United States Constitution originally established the method of presidential elections, including the Electoral College.
7. The Swiss Federal Assembly has two chambers.
8. The Swiss National Council has 200 members.
9. Switzerland's voting system is unique among modern democratic nations in that Switzerland practices direct democracy (also called half-direct democracy), in which any citizen may challenge any law approved by the parliament or, at any time, propose a modification of the federal Constitution.

10.8 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is the role of the Queen in the British Parliament?
2. State the functioning of the six electoral systems used in the UK.
3. What is an electoral college?
4. What is the voting process in Switzerland?
5. What is a referendum?

NOTES

Long-Answer Questions

1. Give a detailed account of the electoral process in the UK.
2. Write a note on the various types of voting systems used in the UK.
3. Discuss the process of presidential elections in the US.
4. Explain the electoral process in Switzerland in detail.

10.9 FURTHER READING

Hall, Stuart H.; *Britain Against Itself: The Political Contradictions of Collectivism*, New York: 1982.

Lipset, S.; *The First New Nation*. New York, 1979.

Madywick, P.J.; *Introduction to British Politics*, Hutchinson, 1971.

Polsby, N.; *Consequences of Party Reforms*, New York, 1983.

Riddle, P.; *The Thatcher Decade*. Oxford, 1989.

Wolfinger, R.; *Who Votes?* New Haven, 1980.