SECTION - B

1. **APPROACHES TO STUDY OF GOVT**: Comparative historical, legal institutional, political economy and political sociology approaches.
2. **CLASSIFICATION OF POLITICAL SYSTEMS**: Democratic and authoritarian, characteristics of political systems in third world.
3. **TYPOLOGIES OF CONSTITUTIONS**: Basic features of these constitutions and governments of USA, UK, Germany, France, china and South Africa.

1.Approaches to Comparative Government and Politics

In the last chapter we saw that comparative politics is concerned with the study, analysis and explanations of significant regularities, similarities and differences in the working of political institutions, political processes and in political behaviour. It has also been mentioned that during the course of its history the comparative method has gone through various developments and changes both in the scope of its areas of study as well as approaches and tools used. Since Aristotle began the study of comparative politics, countless students have analysed the nature and quality of political regimes. They have looked at the way in which the functions of government are performed and relationships between rulers and ruled. They have also posed questions about the kind of rules that exist and actions that are taken. In recent years two major additions have been made in the study of comparative politics. One the students are also interested in the politics of the newer nation states in which an increasing part of the worlds population lives and try to include these states within the scope of generalisation about comparative politics. Second, students are not content merely with descriptions of political institutions and constitutional arrangements, more attention is now paid to non governmental and social organisations and to the political behaviour of individuals and groups.1 In this context the student today has many approaches to choose from. At the same time the various approaches and techniques have different implications for the process of theory building. Broadly the approaches are categorised into two: Traditional and Modern.

Traditional Approaches

Among the Traditional Approaches we can include:

a) The Historical Approach

b) The Formal-legal Approach

c) The Configurative Approach

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d) The Problem Approach

e) The Area Approach

f)The Institutional Approach

Of these approaches the most important and still considered relevant is the Institutional approach. However, for information sake we may make a mention of each of the above.

The historical approach uses the knowledge of history and applies it to understand the political life. It is chronological and descriptive and seeks to explain linkages of political life with the changing situation. Thus on the basis of historical analysis new principles of political importance are developed. Aristotle, Montesgue, Hegal, Karl Marx, Henry Maine, Maclver, etc., in one way or the other relied substantially on history in their analysis.

The historical approach has various limitations. To begin with the events of various ages have been entered in history by different authors in different ways. Also, laws formulated in experiences of the past are not necessarily applicable to situations at present or in future which are different and are likely to change. It is only partly correct that history repeats itself. Identical situations might not recur. Political life in our own times has special characteristics, identity, features, problems and issues. There is also the danger that in our efforts to understand the historical context of political life and learn from it, we might be carried away by our own preferences and biases. Yet historical approach is important in the sense that the past serves as a window to the long process of evolution. Therefore inspite of its limitations it has not been complete discarded even now.

The other traditional approaches in one way or the other one to an extent reflect or the other form of Institutional Approach, some times giving importance to legal aspects and some times to functional.

The Institutional Approach

The institutional approach is one of the oldest methods of analysing politics. Comparative politics for long has been dominated by this approach. In this approach the formal institutions of government like legislature, executive and judiciary provide the subject matter of comparison in terms of their constitution, powers, functions, role and mutual relations. Less official organisations, like pressure groups, are given little attention. Institutional comparison involves a relatively

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detailed description of the institution under analysis followed by an attempt to clarify which details are similar or different. There are several ways of comparing political institutions. We can compare the institutions of a particular political system with each other at a given time. Different aspects of these institutions can also be compared. Painting on a broader canvas, we can compare the political institutions of one country with those of another, comparing them as sets or even systems of institutions.2

It should come as no great surprise that the detailed examination of the institutional ramifications of government was characteristic of the early efforts of political scientists. The approach had utility because it both permitted the study of easily observable and recordable phenomenon and precluded the use of subjectively derived data. However, the style was descriptive rather than analytical. The constitutions and formal organisations of government were examined in legal and historical terms, while informal relationships were unstudied. Earlier, the institutional approach was also strongly culture-bound, confined largely to the study of governments in the USA and Europe.3 Therefore, in Post-World War Second years it started being criticised. The main criticisms of traditional approaches including that of Institutional approach can be described as under:

a) Essentially Non-Comparative

In the traditional approaches the study of comparative government generally deals either with one country or with parallel descriptions of the institutions of a number of countries. The student is told of the constitutional foundations, the organisation of political power, and a description of ways in which such powers are exercised. In each case problem areas are discussed with reference to the country's institutional structure. The interest of the student is concentrated primarily on an analysis of the structure of the state, the location of sovereignty, the electoral provisions and the distribution of electorate into political parties.4 These studies thus are generally studies of foreign governments, or parallel descriptions of institutions or constitutions not exactly the comparative studies.

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b) Essentially Descriptive

While description of the formal political institutions is vital for the understanding of the political process this does not lead to solution of problems through comparison. For instance the historical approach centres on the study of origins and growth of certain institutions. It is assumed that parallel historical accounts of the evolution of similar institutions will indicate similarities and differences. The approach followed is almost identical with that used by the historian. There is no effort to evolve an analytical scheme within which an antecedent factor is related in terms other than chronological to a particular event or development.

In the legalistic approach the student is exposed primarily to the study of the "powers" of the various branches of government and legal prescriptions. This is almost exclusively the study of what can be done or what cannot be done by various governmental agencies with reference to

legal and constitutional provisions. It does not seek the forces that shape the legal forms, nor does it attempt to establish the casual relationships that account for another or from one period to another. These approaches are not sensitive to non-political determinants of political behaviour and the informal bases of government institutions. Description without systematic orientation becomes an obstacle in the discovery of hypothesis regarding the uniformities in political behaviour and prevent formulation of theory about change, revolution, conditions of stability, etc., on comparative basis. The description, thus, is without the use of any explicit conceptual framework.

c) Primarily Western-Oriented

The traditional approaches address primarily to Western Political systems. Accessibility of the countries studied, relative case of overcoming language barriers and the availability of official documents and other source material, as well as cultural affinities accounted for this fact. Within western culture configuration, comparative study dealt mainly with representative democracies treating non-democratic systems as aberrations. This prevented the students from dealing systematically not only with non-democratic western political systems, but also with colonial systems, underdeveloped areas and culturally distinct societies which exhibit superficially the characteristics of the representative process, for example, India, Japan, etc.

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d) Non-Scientific

The traditional approach was not systematic or scientific. No effort was made to relate the contextual elements of any system with political process. The tendency was to subordinate empirical investigations of political forms and processes to normative standards. It failed to provide for policy solution in the manner that indicated the nature of comparative study involved. The studies made were a dissection of the distribution of powers in terms of their legal setting and left out of the picture altogether the problem of change and the study of those factors - political or other that account for change. Models or theory thus do not exist.

The above mentioned criticisms of traditional approaches, were made primarily in view of the emergence of new nations as a result of the process of decolonisation that started in the 1940s, a desire by many social scientists to make social sciences really scientific and to provide solutions to the problems by studying them in an inter-disciplinary and comparative manner. Some observers also see in this criticism attempts to make political science ideology free so that students were not attracted to ideologies other than liberal democratic which had been consolidated in Western Europe and North America. The criticism, however, could not reject the traditional approaches as irrelevant or completely inappropriate. The traditional approaches particularly the Institutional approach are still used either independently or in association with the modern approaches. Political scientists, still, in spite of recent developments, concentrate on examining the major political institutions of the state such as the executive, legislature, the civil service, the judiciary and local government, and from these examinations valuable insights as to their organisation can be drawn, proposals for reform discussed, and general conclusions

offered.5 Because political behaviour invariably occurs in institutional settings, the student of comparative politics cannot afford to ignore these primary units of analysis. A great deal of political behaviour can be accounted for by viewing it as a result of institutional factors within the political structure. Institutions are the apparatus through which the power process functions in society organised as a state. It is not the institutional approach, per se which leads to mere gathering and filing of formal empirical data. Rather it is the too narrow application of that approach which has led to

its rejection by many political scientists. The institutional approach can be and is now being supplemented by other tools and concepts. It is now being realised that institutions cannot exist physically apart from the persons who operate (hem. Through this the approach is being turned away from a formal, legalistic approach to a consideration of political dynamics and the deeper meaning of the political process. The institutional approach, in spite of being traditional, thus can be fruitfully blended with other approaches to provide a rounded analysis of political phenomena.

Modern Approaches

It has been pointed out above that comparative politics was for long dominated by the institutional approach. The formal institutions of the government - legislature, executive and judiciary - provided the subject matter with little attention given to less official organisations such as the pressure groups or mass media, or to the wider social content within which government operates. The style was descriptive rather than analytical. The Constitutions and formal organisations of government were examined in legal and historical terms, while informal relationships went unstudied. The institutional approach was also strongly culture-bound, confined largely to the study of governments in the USA and Europe. The focus and emphasis of the approach was, however, slightly altered beginning in the 1930s. The idealism that characterised earlier writings was rudely shattered by the war, the Great Depression, and the rise of totalitarianism in Europe.

The developments in the world during and after the World War II further awakened political scientists to the limitations of their parochial and ethno-centric approaches. Apart from the emergence of new states in Latin America, Asia and Africa, the states were now operating within an environment that contained such previously unknowns as the atom bomb, the cold war, NATO, National Liberation movements and the like. These were all variables that comparative politics now needed to take into account. The growing importance of the Third World in international politics accentuated the need for alternative frameworks. The emphasis of comparative politics thus turned towards the examination of more concrete phenomena and towards inductive empiricism. The discipline became both more scientific and more comparative. What resulted was a behavioural

revolution within comparative politics, in turn resulting in the development of new approach. The new approach had three broad characteristics.

1. Most noticeably, it focused on dynamic and on-going processes and called for the rediscovery of the impact of policy decisions.

2. It drew itself closer to other social sciences, sociology and social psychology in particular, in order to account for the various multi dimensional phenomena linked to politics.

3. It embodied and in turn led to a theoretical reorientation of the whole field.

Overall, the focus shifted away from the state and to society. No longer was mere notice of state institutions and their legal obligations sufficient. The study of politics became the study of system. The political system as a whole needed to be considered, its processes, its policies and its environments - in other words, its functions as well as its structures - all needed to be taken into account.6 The new approach thus claimed to be analytical and empirical, concerned with understanding the infra-structure, covering study of the developing studies, adopting interdisciplinary approach and attempting to be value free. However, it is important to note that while the so-called traditional mode has been considered inadequate since the late 1950s, there exists no single paradigm or approach that has replaced it. The important approaches are: (1) The System Analysis Approach, (2) The Structural Functional Approach (3) The Political Economy Approach.

System Analysis Approach (Input-Output Model)

As has been mentioned earlier, the behavioural approach emerged in the 1950s and 1960s (particularly in USA) as a reaction against the institutional tradition. The central assumption of the behaviourists was in Eulau's word that, "the root is man." Institutions, the behaviouralists felt, provide no more than the framework within which political actors play the political game. Hence, the behavioural approach represented a shift in the unit of political analysis from institutions to individuals from structures to process, from government to politics.7 Much of the groundwork for this new approach was laid by Ervin Laszlo and David Easton. More specific in his utilisation of the systems approach was Easton. In perspective terms the systems approach was launched in Easton's books A Framework for Political

Analysis and A System Analysis of Political Life. Firstly, Easton provided a new coherent perspective for comparative politics - the framework of the political system as an input output system. Secondly, he suggested a special theory about the conditions for the persistence of political systems.

A system is a pattern of related elements that are interdependent. Political system, according to Easton, is that system of interactions in any society through which binding or authoritative allocations are made. Here politics is defined as the authoritative allocation of values. The political system, then, is a wide concept, embracing all the factors which affect political

decisions, not just the formal institutions of government. A political system is (1) distinguishable from the environment in which it exists and open to influence from it; (2) its internal structures and processes are determined by the nature of its interaction with its surrounding environment, and (3) its ability to persist is dependent upon the flow and availability of feedback from the environment back to decision makers and other political actors. Thus, what is important is the degree and nature of social interaction between individuals and groups. Political structures and their exact characteristics are only of secondary importance. According to Easton, there are "certain basic activities and processes characteristic of all political systems even though the structural forms through which they manifest themselves may and do vary considerably in each place and each age.8 These activities are Input and Output functions.

The political system takes inputs from society, consisting of demands for particular policies and expressions of support for the regime, and converts them into outputs - authoritative policies and decisions. These outputs then feedback to society so as to affect the next cycle of inputs. The flow of inputs to the political system is regulated by 'gatekeepers' such as interest groups and parties, which collectively bias the system in favour of certain demands and against others. But the system also needs supports in the form of taxes, participation and compliance if it is to endure. Beyond positive or negative feelings towards incumbent decision makers, the institutions of the system also need some level of diffuse support if they are to be effective. For this support to be sustained, outputs must bear some relationship to inputs.9 What is, therefore, to be compared is the

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essential variables of political systems which include nature of inputs; the variable conditions under which they will constitute stressful disturbance on the system; the environment and systematic conditions that generate such stressful conditions; the typical ways in which systems have sought to cope with stress; the role of information feedback; and the part that output plays in these conversions and coping processes.

The value of Easton's model lay in the contribution it made to moving political science away from an exclusive concern with government institutions and towards the relationship between government and society. However, the model is subject to several criticisms. In conceptual categories the system theory leads analysis to force all phenomena into the framework of a system. This approach can lead to a practice of featuring things into the boxes to which they do not belong. Second, systems analysis is not very useful in building up hypothesis and propositions. Whatever hypotheses and propositions are built up by this approach are abstract in nature and therefore, they are not subject to empirical verification. For instance Easton's definition of politics and political system are very broad. It is difficult to distinguish between the abstract and concrete systems. Further, the systems analysis provides too broad a framework to take note of the complete psychological aspects. In view of these reasons systems analysis by itself is not much popular now. An important off shoot from general

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systems theories, structural functional approach however remains popular.

Structural-Functional Analysis

The structural functional approach was probably the dominant trend within structural comparative analysis today. Functionalism grew out of anthropological as well as cultural studies, which broadened the study of politics to include so-called stateless societies. Functionalism as a general methodology is sociology was based on the hypothesis that the operation of a variety of behaviour structures led to or resulted in the same outcomes or functions. The scholar would first try to identify invariant functions, presumably present in all social systems. Second he/she should proceed to analyse how structures could very from one polity to another but result in the same omnipresent or invariant functions.

In political science, the approach was first developed by Gabriel Almond and G Bingham Powell Jr. They built on the general premises laid by Laszlo and Easton. They argued that all political systems exist in both a domestic and international environment. The system receives inputs of demands and supports from these environments, converts them and returns them back to the environment through its outputs. Political systems vary with regard to their internal functioning : conversion of processes which consist of the transformation of demands and support (inputs) into authoritative decisions to be implemented (outputs).

The structural functional approach is based on two key concepts - structures and functions. Structures refer to those arrangements within a given system which perform the functions. A single function may be performed by a combination of structures and similarly a structure may perform various functions. Functions deal with objective consequences. They may be perceived as objectives, processes or results from various points of view and for various purposes. The functional approach takes society for an on-going system having its structures performing definite functions. Political systems may vary in institutional arrangements, but to survive and operate effectively must perform some essential functions. According to Almond the input functions through which a system interacts with its environment include political socialisation and recruitment, interest articulation, interest aggregation and political communication. Output functions are made up of rule making, rule

application and rule adjudication.10 Within this framework, there are four characteristics that all political systems have in common and can thus be compared on:

1. All political systems, including the simplest ones, have political structures. They may thus be compared to one another according to the degree and form of structural specialisation.

2. The same functions are performed in all political systems, though these functions may be performed by different kinds of structures and with different frequencies. Systems may be compared on the basis of their functions, the frequency of such functions, and the kinds of structures performing them.

3. All political structures, no matter how specialised and regardless of whether found in primitive or modern societies, are multi functional. Political systems may be compared according to the specificity of function of structure.

4. All political systems are "mixed" in a cultural sense. There are no all-modern or all-primitive societies based on their respective degrees of rationality or traditionally. Comparison can be made by focusing on the dominance of one aspect over another.

Within this vein, the systems approach sought to develop a systematic theory through which the discrepancies between the developed and the developing countries could be explained. Consistent with the basic tenets, structural-functionalism pointed to the comparative lack of structural differentiation and the paucity of functional complexity on the part of some states vis-a-vis others. "Political development", "Modernisation," order and stability - these and the many other phenomena associated with the "new states" were all analysed and examined within the contents of structural functionalism11

Some political analysts pointing out the usefulness of structural-functional approach suggest that this approach can (1) make us sensitive to the complexity of interrelationships among social and political phenomena in our analysis; (2) draw attention to the whole social system as a setting for political phenomena; (3) forces consideration of the functions served by political groups, especially latent functions. Structural functional analysis also provides a number of frameworks for political inquiry which political scientists can employ in their empirical investigations.12

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Criticism

After gaining popularity in the 1960s and the 1970s Structural-Functional approach also has come under severe criticisms. There were two broad categories of problems with the Structural-Functional approach. To begin with, there were a number of significant ambiguities and shortcomings within the theoretical underpinnings of structural-functional itself. Specifically, the structural-functionalist approach was criticised on grounds of its inherent conservative bias, its conceptual of function, flows in its internal logic - particularly the tautological nature of its central premise - and its limited applicability. The approach's assumption of constant and regularised interaction between a political system and its environment overlooks (or at best minimise) the possibility of change and ignores the potential for societal or political conflict. In short, the approach assumes the maintenance of the status quo under most if not all circumstances. More importantly, the resort to jargon prompted a number of observers to question the approach on substantive grounds : "Old story in new terminology." One observer suggested, "What Almond has to say could have been said without using this system approach and it would have been said more clearly."

Lastly the structural-functionalist approach suffered from a not too subtle ethnocentrism. The paradigm's concern with a structurally differentiated and secular political system, with regular interaction between the political system and its environment and with a processual flow of input

and output make it far more readily applicable to the democratic systems of the West then to authoritarian and dictatorial ones.

Besides these internal shortcomings, structural functionalism began confronting challenges from another emerging (or rather, re emerging paradigm in the late 1970s and 1980s). Scholars began taking a second look at the state and its significance as a focus of study. In the Third World as well as in the West, it was increasingly thought, the nature of politics could be better conceptualised by refocusing on the state." Jean Blondel's "An Introduction to Comparative Government" made norms the crucial element, as they pattern how government behaves and what it accomplishes, comprising three crucial aspects: Participation, means of government and purpose of government. Of course neo-statists are also not without their critics. Nevertheless they are trying to establish that the state can advantageously be accorded analytical priority.

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Political Economy Approach (Marxist Approach)

It has already been explained that now there is general agreement that the political system functions within an ecology of other systems of human interaction namely-social, economic and religious. Therefore, mere study of Constitutions and institutions is considered inadequate to understand the nature of politics and state in terms of its functions and ability to perform desired goals. Marxists in particular believe that economics is the base of society and political system. According to them society is divided into classes and state is an instrument in the hands of dominating class to maintain and regulate social relations in such a manner that existing order remains undisturbed. Marxism's ultimate aim is to do away with the state and create a classless society. Till that is achieved state and politics is to be understood and analysed in terms of class relations, class domination and class struggle.

According to the Marxist approach, therefore, comparative politics also has to be understood in terms of class domination over political structures. The nature of political regimes has to be explained as the expression of specific interest and forces within particular national states, which can take important decisions for the operation of an economy. It must be kept in mind that the state is shaped by civil society, i.e., the conjuncture of wide range of social, cultural, economic and political forces. A historical analysis of these alone will enable to grasp the nature of the state in terms of its structure, function and legitimacy. In order to investigate the origins and characteristics of present day states, it is necessary to consider their political history and also the dynamics of the mode of production, capitalist or socialist. In addition, the conjunctures of socio-economic and political forces have created national cultures which legitimate the role of the state and prescribe the limits of its intervention in the sphere of social and economic activity. In this sense there are considerable differences not only between states based on different modes of production but also between political regimes situated within similar modes of production.

Thus according to the Marxist approach there is need for more theorised historical analysis of specific national states. Detailed comparative studies are also necessary in order to explain differences and similarities in terms of the structure and function of national states, the

development of their specific institutions, their varying autonomy in relation to various social and economic forces and their internal

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contradictions and dynamics of social change. At the same time emphasis on specific states should not detract from the consideration and comparison of broader socio-economic forces that differentiate or join together clusters of states. Indeed a comparative study of these forces should provide the framework within which any particular state formation should be analysed. It is particularly important in view of the coming into existence of post-colonial states and their nature of dependency on developed states. This has also created a wide range of supranational economics and political institutions. In this sense Marxist Approach also tends to look into a number of common trends in the development of national states and their nature.

Criticism

The Marxist approach, while gives importance to the economic factors and issues pertaining to developing countries it has its own weaknesses. First of all its belief that state is controlled only by economically dominant class and is an instrument in their hand has not stood the test of time. Many Marxists themselves now view state to be relatively autonomous, partially removed from the immediate control of capital and its vested interests. This alone can explain the persistence of important structural variations between different national formations. The state cannot be simply conceived as a servant of capital. Particularly in developing societies state plays a major role in directing and regulating economic development.

A second problem with the Marxist approach is that it does not take many minor but significant aspects into account. Because of that it remains unable to provide theoretical sophistication. In fact comparison has not been an important aspect of Marxist approach. However, in view of its emphasis on ideological and normative aspects as also for transformation of societies the approach has its relevance. With the collapse of Soviet Union and other East European socialist States it has become more debatable but has not vanished away.

Conclusion

From the above description of various approaches to the study of comparative government and politics it becomes clear that today the study of comparative politics operates upon a much broader base and uses large number of tools than it did 50 years ago. There are some

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traditional approaches to the study of subject which still are considered relevant by some. Around 1970 there evolved in comparative politics what has come to be called the modern approach. It displayed a strong urge to make the study of government truly comparative embracing all kinds of states to be analysed by means of abstract models to be tested by quantitative data. After the functionalist and systems analysis frameworks, which were oriented

towards functions, inputs and outputs, there was again a strong interest in political institutions at the macrolevel.14 Because differences exist regarding what is significant for purposes of comparison, approaches contain different criteria for selecting problems and relevant data for analysis. It is also a fact that there are alternative ways of thinking about facts and ordering them in the search for knowledge. The debate concerning superiority of one approach over another continuous. But the fact is that it cannot be said that which one approach is perfect. Comparative politics needs to examine the forces at work both within society as well as within the state and more importantly, the resulting inter-relationship between them. Emphasis on the state alone overlooks the importance of social dynamics and their potential consequences on politics. In the opposite direction, viewing politics in terms of the working of a holistic system (in the structural-functionalist sense) undermines the significance of independent and autonomous actions by those in position of political power, such as the formulation and enforcement of agendas.14 Therefore, approaches need not be considered mutually exclusive. One may employ two to more approaches in analysing the same problem. Such eclecticism is probably as desirable as it is necessary.

2.Classification of Political Systems

It has been observed in the earlier chapters that the comparative approach is particularly advantageous way of arriving at a better understanding of political systems. One aid in this process is classification, which clarifies as well as reflects our view of politics, forcing us to make explicit our assumptions about what are the most important dimensions of political activity.1 Attempts to produce classifications can be traced back to the beginning of the study of Political Science. Since Aristotle's time, it has been accepted that different kinds of regimes exist in the world, and they can be identified within frames of classification, whereby one can be compared to another. The ways and criteria for classifications, however, have differed both in terms of times and scholars undertaking the exercise. Classifications have been of governments, states or political systems. Similarly, these have taken note of structures, institutions, constitutions, behaviours, or social forces at work. Depending on the variables used different types of classifications have been produced. It is important to remember that all classifications in social sciences is somewhat arbitrary, the classification scheme depends on what aspect of the political system one wishes to isolate and emphasise; therefore, there can be no one scheme of classification that is suitable for all purposes.2 Nevertheless identifying patterns remains a central task of comparative politics.

The Ways of Classifying

Aristotle, who is regarded as the father of comparative political analysis, made one of the earliest attempts to classify government structures. His classification was based on the number of people who participated in governing (one, few or many), on the ethical quality of their rule, depending on whether it was in the general interest or in their self-interest; and on their socio-economic status. He classified the regimes as Monarchy, Tyrancy, Aristocracy, Oligarchy, Polity and Democracy. His own preference was clearly for Aristocracy.

Aristotle's Classification

	Rule by one	Rule by the few	Rule by the Many
Proper Forms	Monarchy	Aristocracy	Polity (Democracy)
Perverse Forms	Tyrany	Oligarchy	Democracy (Mob Rule)

Jean Bodin writing his Six Books on the Commonwealth in the sixteenth century, pushed Aristotle's classification further. Although, he was still primarily concerned with the question, which type of constitution is best, his insistence that the type of government depended on economic and geographical factors as well as political factors allowed him to make significant advances. There, however, was still emphasis on legal sovereignty. This, in fact, remained the hallmark of Political Science until the twentieth century.

Montesquieu produced another famous scheme of classifying governments. He suggested that there are three species of government: republican, monarchical and despotic. Montesquieu's scheme also depended on the number of people holding power. Republican government divides power between the many or the few. Monarchy is a system of government in which power, although in the hands of a single person, is regulated by fundamental laws and by the power of other groups in the society. Despotism is the worst form of government since total power is in the hands of one man.

Modern Ways of Classification

It is now generally agreed that comparative politics needs to examine the forces at work both within society as well as within the State, and more importantly, the resulting interrelationship between them and their potential consequences on politics. In the opposite direction, viewing politics in terms of the workings of a holistic system (in the structural - functional sense) undermines the significance of independent and autonomous actions by those in positions of political power, such as the formulation and enforcement of agendas. While social or political dynamics may be singularly important in particular cases, it is their interaction with one another and their mutual exertion of countervailing pressures which form the core and essence of politics. All States and

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societies have institutions that are attached to them and all state and social institutions interact and result in politics. These are phenomena that are universal to all political and social settings and can thus be comparatively applied to seemingly different cases.3 The classification schemes, therefore, have to take note of interrelations between different variables in addition to constitutional structures or political institutions.

In this context Jeen Blondel, using the political systems approach suggests that for classifying political systems three questions about norms need to be answered. These are one, the persons involved in the political process, that is: who makes the allocation? The second refers to the ways in which the decisions are taken, are there many restrictions on the examination of alternatives? The third question relates to the substantive content of the politics, what does the

allocation aim at achieving? Blondel accepts that these norms should be viewed as divided, not in a dichotomous manner, but along continuous dimensions.

Overall, therefore, determination of the position of countries at various points in time with respect to the three dimensions of norms is both a way of characterising the nature of political systems and a means of understanding the dynamics of these systems on a competitive basis. Political systems may be located at an infinity of points in the three-dimensional space determined by these norms. Indeed, no two political systems are likely to be placed at exactly the same point. Yet there are also considerable similarities in many of them. Based on these similarities Blondel suggests formation of clusters in the positions of countries in the three-dimensional, distribution of norms. He locates five such clusters of positions in the contemporary world. These, according to him can be labelled, "liberal democracies", "egalitarian-authoritarian", "traditional egalitarian", "populist" and "authoritarian-inegalitarian.4

Rod Hague and Martin Harrop in a similar way also stress three main factors while classifying governments. The first is the nature of the leadership struggle. Is the context for control of government open and legitimate, or is opposition suppressed as illegitimate? The second criterion is the extent of mass participation in politics. By what means can the population express preferences and interests so as to influence political decision? Third consideration is the values and priorities of government leaders? Using these criteria of leadership context, participation and policy direction Hague and Harrop distinguish the six major political families. There are: Traditional, Competitive oligarchy,

Military, Populist-mobilising, Communist Party state and Liberal democracy.5

Mehran Kamrava, suggesting the need to understand the states through interaction between state and society and state and social institutions suggests that recent global events have demonstrated that such conventional labels as "democratic", "communist", and "authoritarian" or even different variations of them, are no longer strictly applicable. He suggests that based on their component institutions and the nature of their nexuses with society, it is possible to distinguish four distinct though very broad types of states currently in existence. These are: First World democracies, which have much greater degrees of historical longevity; the more recent democracies which were born out of the democratisation process of the 1970s and 1980s; proto - or quasi; democracies, in which such democratic mechanisms as elections and political parties exist but the spirit of democracy does not; and non-democratic states, which frequently take the form of either bureaucratic -authoritarian regimes or inclusionary populist ones.6

The above glimpses of attempts to classify modern regimes suggest that there is yet not an agreement about a common scheme of classifications of states. There are differences on the basis of methodologies, ideological preferences, interpretations, etc. Also, there is a problem that political institutions with the same label may perform different functions in different political systems. There also is a question of value judgement. Classification, for instance, is sometimes used to praise or condemn a particular regime. Nevertheless, inspite of differences and

difficulties for a general understanding in terms of constitutional structures, territorial governance and ideological preferences present day political systems can be understood as:

a) Democratic or Authoritarian

b) Federal or Unitary

c) Capitalist or Socialist

Democratic Systems

Democracy has become a political cheer-word used as a term of approval rather than in any exact descriptive sense. The term is indiscriminately used by all types of regimes claiming some basis in popular support and to embody, in some sense the interests of the people.

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However, in accordance with general political theory and established practices by democratic systems what we understand is liberal democracy. Liberal democracy is a product of two concepts: the right to representative government and right to enjoy individual freedom. The tests for a political system claiming to be based on this philosophy would therefore seem to be the extent to which the government truly represents the mass of the people and the extent to which rights which individuals claim to have are protected. In practice the essential features of a liberal democratic system can be identified as:

1. Representative institutions based on majority rule, through free elections and a choice of political parties.

2. Limitations on the power of government, implying a pluralistic society in which the state is not all-embracing and exists alongside other, sometimes competing, interests.

3. Accountability of the government to the electorate.

4. Freedom of expression, assembly and person, guaranteed by an independent judiciary.

5. A skilled and impartial permanent public service responsible to the government of the day and, through it, to the electorate.7

The characteristics that have been used to describe liberal democracy are preconditions for effective popular control over government. But this does not mean that liberal democracy is based solely on the ballot box. The liberal character of government implies that majority rule and opportunities for citizens to articulate their views must be balanced by constraints upon the exercise of power. The preferences for popular majorities must be qualified by sensitivity towards the rights of minorities. Fundamental to liberal democracy therefore is the idea and practice of "constitutionalism". This relates to the procedures by which authority is exercised and arises from two distinct, though related concerns; first, that government procedures should be

regular and understood; and second, that over-concentration of power should be avoided.8 The basic assumption is that government exists for men and women, not vice versa. This further assumes that all people within that government are created equal in terms of their right to approach government. In all constitutional democracies officials who make law and enforce law are themselves subject to the law. All government actions must be performed in a legal manner and can be controlled by appropriate authorities. This precept is known as rule of

law. Liberal democracy in different variants exists in countries of Western Europe, North America, Japan, Israel, a number of commonwealth countries, particularly in India, and some Latin American States. Recently a number of East European countries including republics of former Soviet Union have also adopted one or the other variant of liberal democracy. All liberal democracies today are representative democracies. That is the executive and legislators both are elected representatives of the people. In terms of powers and functions and interrelationships of organs of government, there are different types of representative governments.

Presidential and Parliamentary Systems

Most popular representative systems today are Presidential and Parliamentary Systems. The United States is the model for the Presidential System, which has been imitated by many other countries. A single head of the executive, popularly elected President, is both the political leader and the head of the state, hence the major policy maker. J. Denis Derbyshire and Ian Derbyshire9 point out following four features generally present in Presidential System:

1. The President is elected for a fixed term to perform the dual role of head of state and head of government. As head of state he occupies a mainly ceremonial position and is the focus of popular patriotism. As head of government, he leads the executive branch of government, and is usually head of the armed forces and the state civil service. Also as head of government he is incharge of foreign affairs and is the main initiator of legislation.

2. The President's tenure is secure unless he commits a grave unconstitutional act. The United States President, for example, can not be removed by Congress except by impeachment.

3. The President governs within advisory cabinet of non-elected ministers (or departmental secretaries), whom he chooses and appoints and who are fully responsible to him.

4. Presidential powers are limited by the need for the approval of the assembly for certain executive actions. Under the United States Constitution, for example, Congress has sole legislative powers and the President's veto of an Act of Congress can be overridden by a two-third vote. The US Senate, in particular.

has strong counter balancing powers whereby the President can only make key federal appointments, judicial and cabinet, with Senate approval. Foreign treaties require a two-thirds majority of the chamber before coming into effect.

Above are the main features of the Presidential System. These are applied with differences with regard to tenure of office, exact powers and functions, relationship with legislature, etc., in specific countries. The basic merit of Presidential System is the stability of the government, because the tenure of the President is fixed. Also, it provides more liberty to citizens as there is separation of powers. Since ultimate decision making power lies with President, therefore, the system provides for quick decision making and efficiency in administration. The main defect of the system is possibility of President becoming too powerful and arrogant as he is not worried of being removed because of fixed tenure. At the same time in view of strict separation of powers between executive and legislature there can arise tensions between the two either because of party differences or issues of preference. Absence of continuous responsibility of executive to people's representatives may lead to undemocratic behaviour by the President. These merits and demerits are primarily academic, the real success or otherwise of the system depends on how the system is implemented and how the society takes it.

The Parliamentary System

The Parliamentary System, perhaps, is the most common in the world today. It is sometimes referred to as the "Westminster Model" because it originated, and is found in its clearest form, in the United Kingdom. The Parliamentary System displays three essential features.10

1. The rule of head of state is separate from that of head of government and is distant from party politics, serving mainly as the patriotic and ceremonial focus of the nation. The head of the state can be a President as in India, or a monarch as in the Netherlands or United Kingdom.

2. The executive is drawn from the assembly and is directly responsible to it, and its security of tenure is dependent on the support of the assembly, or parliament. In other words a 'no-confidence' vote in Parliament can bring down the government, resulting in a change of executive or a general election. It is in

such circumstances that the non-political head of state may become temporarily involved in politics by either inviting the leader of a party in opposition to form a new government, or by dissolving Parliament and initiating elections.

3. The leader of the party, or coalition of parties, commanding the

support of Parliament is called upon by the head of state to become Prime Minister. The Prime Minister then chooses a cabinet, drawn from Parliament. In this sense there is no strict separation between executive and legislature as members of cabinet are also members of legislature and participate in legislative activities also.

The fact that the parliamentary executive is drawn from and responsible to the Assembly, makes it, in theory at least, particularly accountable. In reality much depends upon the state of parties in Parliament. A British Prime Minister for example, enjoying a clear parliamentary majority, usually has greater executive power and direction than a United States President, subject to the checks and balances of a Constitution which gives significant power and authority to an independent Congress. In countries where coalition governments are the norm Prime ministerial authority is invariably weaker, with power being diffused among ministers drawn from a variety of parties. In such cases there is also problem of instability especially in multi-party states such as Italy and India. This results in public cynicism. In some countries special measures have been devised to buttress the chief executives authority and maintain political stability. For example in Germany members of assembly can only force the replacement of the Chancellor (Prime Minister) through a constructive vote of non confidence, by which a majority of members vote positively in favour of a proposed successor. Inspite of possibilities of instability, as for example India has witnessed in recent years, Parliamentary System is considered more responsible and accountable. It, of course, works well in situations of two party system.

The Presidential and Parliamentary systems are the two more popular forms of representative governments. These have also been adopted by many non-liberal democracies. There are other types of representative systems also. Some of them are a mixture of the Presidential and Parliamentary systems as for example in France, some are a bit different from the two as in Switzerland. Whatever the

structures are, in case basic principles of democracy are contained, the system inherently becomes responsive and responsible. Of course, not all existing democratic states are uniformly stable or successful in fulfilment of aspirations of their citizens. In particular, the newer democratic states that have appeared after the Second World War find themselves confronted with a series of debilitating and at times seemingly insurmountable obstacles which threaten their very foundations. But this is more because of weaknesses of leaderships then those of democracy itself. Therefore, it is impossible to say which system is better. Under various circumstances both have fallen to immobilism, instability, and the other abuse of power.

Authoritarian systems

The belief that democracy as a political system is normatively better than others does not necessarily result in its appearance and endurance around the globe. There are in many countries clearly non-democratic regimes in existence. These include authoritarian, totalitarian, military regimes, etc.

Authoritarian government can be considered as the oldest kind of government and quite widespread even today. It can exist in a tribal form, it can be found in a theocracy, or it can be a government of a charismatic leader; Authoritarian governments vary from civilian dictatorship to military juntas, and from one-man rule to a collegial oligarchy. In authoritarian regimes, political activity is controlled, all the media are subject to censorship, liberty is restricted, there is no legally recognised opposition, public criticism is rare and parliamentary institutions are absent or

meaningless. Power is exercised by small groups such as military leaders, party officials, bureaucrats, or religious figures. But economic activities can usually be pursued with some independence, a certain degree of cultural freedom is allowed and voluntary internal and external travel is allowed." The peoples responsibility, under an authoritarian government is to pay their taxes, to obey the laws, and not to attempt to involve themselves in political decisions. A rigid election every now and then is sometimes used to help legitimise the regime.12 A number of countries in Africa and Latin America fall in this category.

Some authoritarian regimes are personal or party dictatorships supported by a considerable part of the population and interested in

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general or economic reform. Such regimes in fact endow socially with an illusion. They espouse on populist policies and claim, often in the form of vitriolic rhetoric, to lead on behalf of not just the people but indeed the downtrodden and the disinherited. This catering to the masses is not necessarily democratic but is often manipulative, attained not by free choice but instead by a careful forging of circumstances in which participants are used as tools for particular political ends. Such regimes, to further their agenda, rely not only sheer coercion, but they cultivate mass based support from within society.13 Iraq, Libya, Burma, etc., can be cited as examples in this case.

Authoritarian systems or dictatorships may exist because a country has no tradition or standard of constitutional behaviour, because there is no general consensus about the desirability of freedom, or because a limited and close elite dominates the political process. Dictatorship may result from the instability or ineffectiveness of a democratic government, from the desire to put a particular ideology into effect, or from the reaction to economic changes and instability, or to defeat in war. In some instances, authoritarian governments can be seen in a positive light, especially in the case of relatively new nation states that face the twin challenges of establishing new and alternative institutions of public order and pursuing economic development at the same time. Sometimes the military leadership, regarding itself as the most honest, most efficient and most advanced organisation in a nation, may turn out the politicians or civilian rulers it believes to be corrupt, misguided or inefficient. It may do so where political instability results from irreconcilable political divisions or continual political crisis, or when the nation has been humiliated by defeat in war.14 Examples of such regimes are Chile, Ghana, Sudan, etc. Whatever that may be these regimes are first and foremost authoritarian, normal political life is reduced to a minimum and there is even the widespread belief among the authorities that politics can be abolished altogether and be replaced by management and administration. These regimes are also socially inegalitarian because they have been set up in order to defend a social elite which feels threatened by the growing influence of the popular classes and/or because they are associated with ideas of social as well as political hierarchy.15 A somewhat different form of authoritarian regime is that of totalitarian regimes.

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Totalitarian regimes

A totalitarian regime differs from an authoritarian regime in that it attempts to control behaviour totally and subordinates all organisations and individuals to the ruling group. Authoritarian regimes do allow individuals and groups some independence of action. The central feature of totalitarian systems, however, is that the State attempts to control the whole of society, minds as well as bodies and to this end mobilises the population.

In this context following can be described as the basic characteristics of a totalitarian system.

1. Official ideology

2. Single mass-party generally led by one leader or a small coterie of leaders

3. Government's control over communication system

4. Central Direction of the economy

5. Mass organisation to demonstrate the oneness of the population

6. No tolerance of dissent or opposition

7. Remaking of individuals

The totality of life under the auspices of the state's ideology becomes so overwhelming that the average person loses his or her individual identitity.16 The more notable totalitarian regimes that have appeared within the past few decades include among others, Nazi Germany, fascist Italy, Stalinist Russia, Maoist China and possibility Khomeini's Iran. Western commentators generally call all communist countries as totalitarian. This, however, is questioned by Marxist scholars who define communist regimes as people's democracies and dictatorship of the proletariat. We will discuss more about these regimes later, here it can be said that all communist regimes may not necessarily be totalitarian though most of them happen to be closer to that.

Federal and Unitary States

Above, we have discussed the classification of governments primarily on the basis of interrelationships of various organs of the government on the one hand and between government and citizens on the other hand. In addition to these structural aspects governments are classified also according to geographic division of powers. Classifying systems according to the geographic division of power gives us confedral

system at one extreme, unitary system at the other extreme, and the federal system in the middle.

Confederal form of system can be described as some sort of alliance of different sovereign states. In this form generally several sovereign states with unitary forms of government come together under a central government that is designed to make as uniform as possible the major laws of

each of the parts of the confederation. Each unit, being sovereign, can choose to recognise the power of the confederacy. But it is, to some extent, also free to decide whether or not to abide by the general laws proposed by the central government. Such a confederacy was formed in ancient Greece and is known as Athenian confederacy. The Swiss Cantons of the late medieval and Renaissance periods also formed a confederacy. From 1781 to 1789 thirteen colonies of America also attempted to form a confederation. In modern world there is hardly a confederation system. Recent attempts for establishment of a European Union are seen by some as steps towards that direction. But as yet it is not clear what exact shape it will take. History has shown that confederacies generally do not last long and break up either through war or apathy,17 better alternative that has emerged is Federalism.

Unitary Systems

Unitary government is the most common form of government. A model unitary government is one in which all governing power including sovereign power, exists in a single government over the entire nations. France, China, Japan, Britain, etc., are examples of unitary governments with power and authority concentrated at the centre. Such states may have sub-divisions within their boundaries, but these divisions are merely extensions or local offices of the central government. They, therefore, obtain their powers from the central authority. These powers are specifically delegated to them from the central government, which may change or withdraw them at its discretion. In other words regional or local authorities do not derive their powers from the Constitution but from legislature enactments of the central legislature. Sovereign powers are undivided. Thus, the British Parliament is sovereign and can regulate absolutely the division of labour between authorities within the United Kingdom.

The Spirit of nationalism has been the dominant element in the unitary states. This has not only stressed integration of nationalities

within the country, but, at times assumed an aggressive form. During last few decades, in view of rising of local aspirations, need for populate participation at different levels of governance and efficiency even in unitary states there has been a trend for substantial decentralisation of powers. In Great Britain, for instance, sovereignty is still retained by the national parliament, and national will prevails in all sectors of the country, but a degree of local autonomy is present nevertheless.

France has long been a country of centralisation, to a large extent because of the policy of the kings who wished to extend their hold on the country against the local aristocracy. But even France has made moves towards decentralisation in recent decades. The regimes which come to power with the aim of promoting radical new policies and where leaders fear that these policies will encounter substantial opposition are likely to support centralisation.18 It is generally believed that unitary systems are more cohesive and stable, though there are no theoretical or ideological reasons for the same.

Federal systems

Modern states, particularly large and plural ones, find it necessary to have institutions to administer the needs of particular regions as well as the whole population. Since the setting up of the United States as a federal government in 1789 federalism has been presented as the answer to the problem in a way which could maximise decentralisation and yet avoid the break-up of the polity. A federal system is one in which powers are divided between a central government and state or provincial governments. Both levels of government have certain powers of their own derived from the Constitution or interpretation of it. The states do not get their powers from the central government; power is shared between the central and state institutions. This can only be done successfully through the medium of a written, codified constitution. Apart from a written and codified Constitution and clear division of power between central and state governments another essential condition for the successful working of federalism is presence of an independent judiciary that can decide legal disputes arising between the centre and the states or two or more states.

The chief feature of a federal system, thus is that it has a government at the centre and another set of governments at the level of states. The central or Federal government has jurisdiction extending

over the whole country and people living therein. It can make laws or levy taxes on the subjects allotted to it by the Constitution. The State Governments deal with the people living in their territorial units on all subjects which are allotted to them in the Constitution. The centre and the states have co-ordinate and independent existence, each with its own instrumentalities and resources.

The exact nature and extent of independence of states in federal systems is not the same everywhere. Whereas USA is the example of a quite rigid federal system with states enjoying autonomous powers and unchangeable boundaries there are countries like India where not only states are dependent on centre but their boundaries can be altered to the extent of division or amalgamation of states by the centre. In between there are examples of Switzerland, Canada, Australia, etc., of more balanced relationships. During recent decades there have been simultaneous trends of centralisation and demands for more autonomy. Particularly in the post second world war period technological changes, the rise of the welfare state and pressure for international politics have been considered a centralising factors in many federal systems. Central governments have concentrated more and more powers in their hands. This has been allowed by the courts and people because of national interests. At the same time in many countries where central governments have concentrated powers for political reasons or otherwise cultural and ethnic minorities feel discriminated or deprived. Strong movements for state autonomies have emerged in some of these. In India and Canada, for example in some cases demand for autonomy has reached movements for separation. The federal systems, in fact are quite complex and have to work carefully to maintain what is referred as unity in diversity.

In comparing federal and unitary systems in the present context it is important to keep in mind the distinction between formal and actual distribution of powers. As has been said above, in unitary systems, inspite of the formal concentration of powers at the centre, regional and local

units may acquire authority that the central government rarely challenges. In many federal systems power has steadily moved from regional the centre. Thus the real differences between federal and unitary systems may be considered less significant than their formal arrangements suggest.20 In any case Federalism now is being looked upon as a better solution for accommodation of aspirations of various

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cultural, religious, linguist groups in multiethnic states. Even unitary states are initiating federal techniques in order to find administrative mechanisms which reduces centralisation when it appears to be too high as also to deal with increasing movements towards regionalism. It is so because federal system presents a practical constitutional way of winning support for political and economic integration from a heterogeneous population. The real success or failure of system, however, depends upon the attitudes of participants both governments and citizens.

Capitalist and Socialist Systems

Another mode of classification of states is based on ideologies. In brief an ideology is a body of ideas which reflects the beliefs and values of a nation and its political system. It is important in view of that a political system is both the product of and guardian of an economic and social system. It may be mentioned here that ideological base of a system has no necessary relationship with the institutional structures. For example many systems based on different ideologies can be presidential or parliamentary systems. So also they can be Federal or Unitary, democratic or authoritarian, etc. In other words whether a government is democratic, authoritarian or totalitarian, it can be affected by ideology. The political discourse today and much of international relations are affected, or have been affected in recent times by five ideologies. In historical sequence, they are liberalism, conservatism, socialism, communism and fascism. The only ideology not fully in effect today, and perhaps the weakest of all, is fascism. The other four in broader sense are some times combined in two sets, that is capitalist and socialist. Though this combination is not quite fair some observers do divide the states in these categories.

Capitalist Systems (Liberal and Conservative)

The capitalist systems are based on the laissez faire ideology of economy and society. This holds private property as the sacred right of the individual. Free trade, free contract, free economy, free market, competition are the hall mark of this ideology. It believes that market economy ideally optimises economic welfare as well as development. The market economy strives development without any central direction whatsoever. Individuals striving to maximise their economic welfare respond to a system of prices which is in itself the result of the

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interaction of the forces of demand and supply. The capitalist state, thus, gives priority to the interests, rights and liberties of the individual and believes that all social progress depends upon the unhampered initiative of the individual. It regards the state as human institution, created by

man for certain specific purposes like maintenance of law and order, peace and security of life and property. The guiding principle is maximum possible individual freedom and minimum state action. This freedom can be secured by leaving individual alone and allowing him/her to pursue his/her good in own way so long as it do not interfere with the similar good of others. An important aspect of capitalist system is competition. Capitalist systems generally are liberal democracies, but is not always so. Some capitalist systems at times have been thorough authoritarian.

In the present day world USA is an ideal representative of the capitalist system where free market has been able to achieve rapid social development through laissez faire. Here the economy is based on private ownership in a free market and individual entrepreneurial initiative, with little centralised planning. Japan is another example of a capitalist system. Most of the European and other industrial states economic systems are primarily based on capitalist free economy but many of them now are not strictly non-interference states. The policy of noninterference has come under criticism as it leads to concentration of capital in a few hands, monopolistic control of trade and emergence of big industrial houses on the one hand and the exploitation of the working class on the other. The property owning class uses its money power not only to promote its vested interest by denying the needs of the working people, but also to ensure management of the country's politics to serve its interests. According to Marxist critiques in capitalist systems -democratic or otherwise - the government is controlled by the capitalist, protects the interests of the capitalists, helps them in the exploitation of masses. It concerns itself with resisting pressure for social change.

In view of above criticisms and challenges posed by the emergence of socialist and Marxist ideologies and worker's movements most of the capitalist states now have turned to be welfare states. They under take positive actions for the welfare of workers and masses, removal of widespread inequalities and removal of unemployment, etc. Nevertheless the basic economic systems remain capitalist. With the

demolition of Soviet Union and East European socialist states capitalist systems have become more powerful.

Socialist Systems

When we talk of socialist systems we generally mean systems based on Marxist-communist ideological framework of state, society and economy. There are some states which describe themselves as socialist wherein there is governmental control over economy, state owns significant means of production including heavy industries, transport and communication. There is also some ownership of distribution process wherein states provide goods at regulated prices, etc. But strictly speaking these states are social democratic welfare states which through welfare measures want to bring harmony, balance and equilibrium among different groups in the society through positive interference. These states continue to have faith in the autonomy, rights and liberties of individual but consider man as a part of the social whole. Therefore, they work on the premise of state as a positive organ capable of performing useful functions on a mass scale.

Sweden, Denmark, Norway, Netherlands, to an extent Australia, New Zealand and Great Britain are examples of this. Marxist writers, of course, consider them as capitalist states trying to avoid conflict between the classes.

In strict ideological terms socialist systems are those which are based on the Marxist ideology of socialism. These are a relatively recent phenomenon. First such socialist/ communist state was established in 1917 in the shape of Soviet Union. Thereafter, communist regimes came up in the countries of Eastern Europe, China, North Korea, Cuba, Vietnam, Mozambique, Ethiopia. But it does not mean all socialist systems are similar in all aspects though they have some common characteristics. These characteristics emerge from the view that society is a class society where the interests of different classes are fundamentally opposite and always at odds. The state in such a society instead of being the common trustee of the whole society, becomes an essential means of class domination. The state in a socialist system, established after the revolution, is also a class state but its purpose is to abolish classes and class conflict and with the abolition of classes to wither away itself. The functions of the state in a socialist system therefore are : (1) establishment of Dictatorship of the Proletariat (Workers), (2) destruction of the capitalist mode of production; (3)

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establishment of a socialist mode of production and socialist society; and (4) to wither away.

In general, the following four characteristics can be considered both as defining characteristics and these make them different from western liberal democratic states. In the first place, all communist states in existence at present base themselves upon an official ideology -Marxism - Leninism, which is derived from the theories of Marx, Engels, Lenin and (in China) Mao Zedong, and which provides the vocabulary of politics in these states as well as the basis upon which their rulers claim to exercise authority. (This is not, of course, to say that all the rulers and populations of the communist states are necessarily wholly committed to Marxist values, which is a separate and empirical question.) The economy in the communist states, secondly, state is ownership, and production is typically organised through a central planning apparatus and conducted by means of national economic plans. The communist states, in other words, have what are normally referred to as 'command' or 'administered economies', rather than the 'market economies' of the capitalist West.

The third distinguishing feature of the communist states is/that they are ruled, in all but exceptional circumstances, by a single or at least a dominant communist party, within which power is typically highly centralised. This is ensured by the application of the principle of 'democratic centralism', by which each level in the hierarchy must submit to the decisions of the level immediately above it, and by the 'ban on factions', which forbids any attempt to organise an opposition within these parties (this does not, of course, mean that there are no difference of opinion or even informal groupings within them.) And finally, the range of institutions which in Western Societies are more or less independent of the political authorities, such as the press, the trade unions and the courts, are in the communist states effectively under the direct control of the party hierarchy. This wide ranging control over virtually all areas of society is known as the party's 'leading role', and for the communist authorities themselves it is of particular importance;

it was, for instance, to recover this 'leading role' for the communist party in Czechoslovakia that the Warsaw Pact powers justified their intervention in that country in 1968.

These features of the political system are all important, and they all apply, at least in principle, to all the communist states. It does not

follow, however, that the difference between one communist state and another do not exist. In fact there had emerged considerable differences between various communist states both on ideological and strategical issues. However, in general communist regimes have traditionally been relatively egalitarian. The fact that there are no substantial concentrations of wealth in the hands of individuals has a considerable egalitarian effect. Moreover, these states are characterised by an extremely developed social security system which provides the whole population with a basic equality of provision with respect to education, health and pensions.

Unfortunately, the planned and command economy in almost all communist countries has been manipulated by a strong one - party system dictating all aspects of life. There is complete prohibition and suppression of opposition and dissent in these systems. Party activity is all encompassing and continual, with no separation of policy making from policy formulation. That has made most communist countries almost bureaucratic authoritarian. This also has resulted in dissatisfaction among populations leading to political upsurgenies. As a result communism has been abolished in Soviet Union, most countries of Eastern Europe and some other parts. In China radical economic reforms have been introduced. Thus as in the case of capitalism there does not seem to be any more a classical communism also.

Limitations of classifications

From the above classifications of political systems, it becomes quite clear that in the modern situation classifications of states, either based on Constitutions or ideologies, can only be a broad generalisation. There are no clear cut general variables on which different authors agree as also states do not necessarily follow the prescribed or established norms of a particular system. Regimes also continue to change. In recent decades these changes have been quite rapid. Yet for a general understanding of political systems in a comparative perspective and suggesting for improvements of systems broad classifications both in structural and normative ways, as has been discussed above remains useful.

2 SALIENT FEATURES OF THE AMERICAN CONSTITUTION

"The American Constitution is the horse and buggy affair projected into a motorised era."

—Munro

As stated earlier, the present Constitution of the United States of America was adopted at the Philadelphia Convention held in 1787. It came into force in 1789, after it had been ratified by the minimum required number of States. The Constitution is unique in many respects. It is one of the briefest Constitutions in the world. Originally it consisted of 7 Articles but 26 Amendments have been effected in it during following years. The Constitution presents a classic example of its rigidity. The Separation of Powers, a doctrine propounded by Montesquieu, has found favour in the American Constitution in a way unknown to any other constitution of the world. The application of the theory of separation of powers has been combined with a remarkable system of checks and balances in the U.S. administration.

Again, the judiciary occupies a pivotal position in the American political system. It exercises judicial review. It interprets the constitution and has developed it. To take an instance the Constitution created a weak Federal Government but the Supreme Court has made the Central Government sufficiently strong in order to meet the needs of Modern America through its doctrine of implied powers.

Summing up the novelties and distinctive features of the U.S. Constitution, Lord Bryce aptly remarks.... "yet, after all deductions, it ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, its simplicity, and precision of language, its judicious mixture of definiteness in principle with elasticity in details."

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Following are some of the salient features of the Constitution of United States.

1. Written Character

Like other federal constitutions in the world, the American Constitution is written in form. It is a brief document consisting of 7 Articles and 26 Amendments. It was in fact a model of draftsmanship, of constitutional elegance, of brevity and of apparent clarity. Indeed it was a skeleton constitution, since framers of the constitution left the details to be filled in by the Acts of the Congress. The Constitution was thus a starting point of taking off ground. It has been adequately clothed with conventions, customs, judicial decisions and legislative measures. The unwritten element in the form of conventions has played a vital role so much so that the very nature of the constitution stands changed now. To take one example, the fathers of the constitution provided for indirect election of the President but as a matter of convention the election has now become direct.

2. Rigidity

The United States Constitution is the most rigid constitution in the world. It can be amended by a lengthy and cumbersome process. Because of the complicated nature of the amendment procedure, sometimes it takes years before an amendment becomes operative after it has been proposed. Every amendment which can be moved in two different ways, must be ratified by

three-fourth of the States. The rigidity of the constitution is obvious from the fact 'that during all these years it has been in operation, only 26 amendments have been made in the constitution.

Despite its rigidity, the constitution has been able to adapt itself to the changing circumstances. It has consequently stood the rigours of industrial revolution and democratic upsurge, the turmoils of the civil and global wars and economic crisis of the thirties.

3. Federal Character

The American Constitution is federal in character. It was originally a federation of 13 States but due to admission of new States, it is now a federation of 50 States. A constitutional division of powers has been made between the Centre and the federating units. The constitution enumerates the powers of the Centre and leaves the residue of powers to be exercised by the federating States. All powers not delegated to the Centre or not reserved for the people are exercised by the States—The constitution thus creates a weak Centre because residuary powers have

been given to the units. However, in practice, Federal Centre in America has become very powerful due to the application of the doctrine of "Implied Powers" as propounded by the Supreme Court of the U.S.A. Had the Centre been weak, the federal system would not have survived the onslaught of civil war.

4. Supremacy of the Constitution

The constitution is the supreme law of the land. Neither the Centre, nor the States can override it. A law or an executive order repugnant to the constitution can be declared unconstitutional and invalid by the American Supreme Court.

5. Separation of Powers

The U.S. Constitution is based on the doctrine of 'Separation of Powers' though there is no direct statement of the doctrine of separation of power. However, the three wings of administration viz., the executive, the legislature and the judiciary are inter-dependent and cannot be separated entirely in the interests of good government yet an attempt has been made in the American Constitution to separate them as much as possible. The Congress is the legislative organ. The President is the head of the executive. He is elected indirectly by the people and has nothing to do with the Congress. He enjoys a fixed tenure of 4 years and is not a member of the Congress and cannot be removed by vote of no-confidence before the expiry of his tenure of office. He does not participate in debates, nor can he dissolve the Congress. Both are independent of each other. The Supreme Court heads the federal judiciary and enjoys freedom in its work. However, the separation of powers, in actual practice, has been limited to a very large extent. The President, today, controls the legislative policy. This fact was established during Rooseveltian era. The President is impeachable by the Congress. This ensures coordination between the executive and legislative branches of the government. Likewise the other branches of the government have a slice of function of the other branches entrusted to it.

6. Checks and Balances

Recognising the importance of close co-ordination among three organs of the government, the fathers of the constitution introduced 'Checks and Balances'. The powers of one organ were so devised as to exercise a check upon the powers of others. As for example, the President can veto the Bills passed by the Congress. The Senate shares with the President his powers of making appointments to the various federal

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offices and conclusion of treaties with foreign States. All such treaties must be ratified by two-thirds majority in the Senate. Through this power, the Senate controls the internal administration and external policy of the President. The organisation of judiciary is determined by the Congress and the judges of Supreme Court are appointed by the President with the consent of the Senate. The Supreme Court can declare the laws passed by the Congress and executive action taken by the President ultra vires. In this way, the three organs of the government have been interlocked and interchecked. Eulogising this feature Ogg remarks, "No feature of American government is more characteristic than the separation of powers combined with precautionary checks and balances. Nothing quite like it can be found in any other leading country of the world."

7. Bill of Rights

The constitution guarantees fundamental rights of person, property and liberty. It is, however, noteworthy that these rights were incorporated in the constitution by a number of amendments effected after the constitution was promulgated. They were not enumerated in the original draft of the constitution. But by subsequent amendments (first ten) individual liberty has been effectively safeguarded. The rights of citizens are enforceable by recourse to the judiciary. These rights cannot be modified or suspended except by a constitutional amendment. Freedom of speech, of worship, of habeas corpus, no unreasonable search, and seizure which constitute hallmark of a just society, are now part and parcel of the constitution.

8. Judicial Review

The Supreme Court and lower federal courts possess power of judicial review of the legislative enactments. The Federal judiciary can declare any legislation or executive action null and void if the same is found to be inconsistent with the provisions of the constitution. The judiciary thus acts as the guardian and custodian of the constitution and fundamental rights of citizens. The Supreme Court has so interpreted the constitution that it has adapted it to the changing needs of society. It has enlarged the powers of the Congress. The supremacy of the judiciary over the executive and the legislature has led to the remark that the government of U.S.A. is governed by the judges and that the American Constitution is what the judges make of it. The critics describe the Supreme Court as a third chamber and judicial review as judicial veto.

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9. Republicanism

Unlike U.K. where a hereditary monarch is the head of the state, the U.S.A. is a republic with the President as the elected head of the State. The constitution derives its authority from the people. Moreover, the constitution makes it binding upon every constituent State to have the republican form of Government.

10. Presidential form of Government

The constitution provides for the Presidential type of government in the U.S.A. All executive powers are vested in the President. The President is not constitutionally responsible to the Congress in the manner in which the executive is responsible to the legislature in England or India. He does not attend its sessions, nor initiates legislation directly, nor answers questions. The Congress cannot remove him during the term of his office which is fixed for four years. On the other hand, the President cannot dissolve the Congress. The members of his Cabinet are neither members of the Congress nor answerable to it. They are his errand-boys who have been rightly termed as the 'family' of the President or his 'kitchen' cabinet.

11. Dual Citizenship

The U.S. Constitution provides for dual citizenship for the people of the United States. An American is the citizen of the U.S.A. as also of the State where he or she is domiciled. It is in contrast with the idea of single citizenship as incorporated in the Constitution of India which establishes a federal form of government as well.

12. Popular Sovereignty

The American constitution is based on popular sovereignty. The preamble of the constitution runs as follows:

"We the people of the United States in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and posterity, do ordain and establish this constitution for U.S.A." The ultimate sovereignty in U.S.A. is thus attributed to the people. The doctrine of popular sovereignty attributes ultimate sovereignty to the people and substitutes constitutional system of government for arbitrariness.

13. Spoils System

Spoils system is another important ingredient of the American Constitution. It prevailed in U.S.A. in worst form during the 19th century. According to this system, a government office was considered

as a spoil for the services rendered to the prospective president at the time of Presidential election. Hence so long as a particular President was in office, he had his supporters in all offices and they strove their best to ensure his election or re-election. If their party was ousted in the

next election, they had to tender their resignation and the new President had to keep their substitutes in those key offices. It led to inefficiency and corruption. Hence an act known as Pendleton Act (1883) was passed to put a stop to this system. Henceforth about 80 per cent of such offices were to be filled through competitive examinations. Thus spoils system persists only in 20 per cent cases. These offices are still the patronage of the American President.

14. Bicameral Legislature

Like U.K., U.S.A. too has a bicameral legislature. Its lower house is termed as the House of Representatives whereas the upper is known as the Senate. The upper House of U.S.A., unlike other upper chambers in the world, is more powerful than the lower. It is equipped with legislative, executive and judicial powers. It is described as the most powerful upper chamber in the world. Its tenure is 6 years unlike that of lower house which is elected only for two years. Moreover, it is a compact house consisting of 100 members whereas lower house consists of 435 members.

Thus it can be concluded that American constitution is a unique constitution presenting a constitutional model entirely different from that of U.K. Its stability and strength is the envy of the world constitutions. Some of the developing democracies like Sri Lanka and Pakistan opted for it and some of the constitutional experts and legal luminaries in India have recently suggested its adoption in India if India is to be brought out of moraes of instability and inefficiency.

Growth of the Constitution

The original constitution of the United States of America consisted of seven articles containing not more than four thousand words. It was framed to satisfy the requirements of the original thirteen States with a small population living in the pastoral-cum-agricultural age. The constitution of 1779 embodied only general outlines of the framework of the federal government. But the present constitution of the U.S.A. cannot be identified with the original constitutional document prepared by the Philadelphia Convention. Today it includes many rules and regulations, judicial interpretations and conventions, etc., which affect the distribution and exercise of the sovereign powers of the State. It has, in fact, changed beyond recognition according to the needs of the times.

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The various facts which have led to an all round development of the American constitution may be summed up as follows:

1. Amendments

Though the process of amending the constitution has been extremely slow, yet it had led to its growth. There have been only 26 amendments to the constitution since its inception. Ten amendments were added on December 15, (1791), soon after the promulgation of the constitution. These amendments incorporated the 'Bill of Rights' for the American people. The eleventh, (1798) and twelfth amendments (1804) removed some ambiguities in the constitution.

The thirteenth amendment (1865) abolished slavery in America. The fourteenth amendment (1868) regulated citizenship. Equal rights of the white and coloured people were established by the fifteenth amendment (1870). The sixteenth amendment (1913) authorised the federal government to tax incomes, without apportionment among several states. The eighteenth amendment (1920) prohibited the manufacture, sale and transportation of intoxicating liquors. The 19th amendment (1920) granted suffrage to women. The 20th amendment (1933) changed the dates for the beginning of the sessions of the Congress and of assumption of office of the President. The 21st amendment (1933) repealed the 18th amendment but prohibited the transportation of the intoxicating liquors into a State against its law. The 22nd amendment (1951) regulated re-eligibility of the President. The 23rd amendment (1961) gave the residents of the districts of Columbia the right to vote for President and Vice-President. The 24th amendment proposed in 1962 and ratified in 1964 prohibited the imposition of any poll tax. No person is to be denied right to vote by reason of failure to pay poll tax. According to the 25th amendment passed on February 11, 1971 if President cannot perform his duties due to his physical or mental ailment, the Vice-President will work as the Acting President. This amendment further authorises the President to nominate a Vice-President in consultation with the Congress if the office of President falls vacant as a consequence of these amendments.

The 26th amendment which enables the right to vote to all citizens of 18 years of age or more was signed by President Nixon on July 5, 1971. The U.S. Supreme Court upheld the legislation so far as it related to federal elections only.

However, the constitution would not have been dynamic as to keep pace with the rapidly changing social and economic conditions if it had banked upon amendments alone. Vital changes have been introduced in the original constitution through other means which are as under:

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2.Laws

The second factor responsible for the development of the American Constitution is the laws passed by the Congress. The framers of the constitution prescribed only the general outlines of the federal government. The determination of details in regard to the organisation and functioning of the government was left to the discretion of the Congress. Naturally, laws passed by the Congress have contributed more to the evolution of the constitution than the 26 amendments. The constitution made provision for the establishment of the Supreme Court, but its organisation, tenure and salaries of the judges were left to be determined by the Congress. Similarly, the constitution prescribed the composition of the two Houses of Congress but the method of election and suffrage were left to be determined by the State legislatures. Electoral Act of 1887 regulated the election disputes. Original constitution is silent about the organisation of the administrative departments. The Congress, by law determines their number, functions, organisation, etc. Likewise it lays down the budget procedure and has authorised the establishment of a national banking system. The constitution did not make any provision regarding legislative procedure. The laws enacted by the Congress provided for three readings and various rules for the regulation and control of debates. All these laws dealing with the

organisation and functioning of the government have expanded and enriched the constitution to a great extent.

3. Judicial Interpretation

Judicial decisions and interpretations have also played a major part in the evolution of the American Constitution. So great has been the role of the judiciary that some commentators of the American Constitution have named the Supreme Court as a continuous constitutional convention. Munro remarks "One might almost say that it (constitution) undergoes some change every Monday when the Supreme Court hands down its decisions." Justice Holmes once remarked, "Judges do and must legislate." The implied powers of the Congress owe their origin to the Supreme Court. The Supreme Court has given wide meaning to the words used in the constitution. The powers of the national government to regulate inter-state commerce, railways, telegraph, aeroplanes and radio all owe their origin to the decisions of the Supreme Court. The Supreme Court interpreted the clause which lays down that Congress shall have power to raise and support armies in such a liberal manner as the latter got empowered to draft millions of men even in peace time.

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The Supreme Court has strengthened the Centre at the cost of States, quite in keeping with the needs of the time.

4. Development by Executive

Powerful Presidents of the U.S.A. have also contributed a lot towards the growth of the American Constitution. Washington, Jackson, Lincoln and Roosevelt moulded and developed the constitution by a vigorous use of their Presidential powers. Ogg and Ray have rightly remarked, "In the exercise of their powers, many presidents have taken and maintained position virtually settling constitutional question previously considered upon or even giving the constitution some meaning of application never before attributed to it." As for example, President Washington created a Cabinet and began consulting it. Since then, the Cabinet has become a regular organ of the U.S. Government. To take another example treaties require senate's approval. The Presidents have been evading this senatorial approval by naming the Treaty as Executive agreement or Gentleman agreement. The latter did not require any approval. Some Presidents have successfully maintained that Congress had no authority to restrict their power to remove executive officials or to send the armed forces to any part of the world to safeguard American lives. Sometimes even the heads of the departments have taken decisions which involved interpretation of the constitution and addition of new meanings to the constitution. Though such orders are subject to judicial review, yet they often go unchallenged and become a regular part of constitution.

5. Conventions

The conventions have played a magnificent role in the development of the Constitution of the United States. The conventions are not a peculiar feature of the British Constitution alone. The

American Constitution is equally rich in this respect. The framers of the constitution only prepared a skeleton. The flesh has been added to it by the usages and conventions which have grown up during the preceding years. In the words of Beard, a great revolutionary change in the American Constitution has not been brought about by amendments or statutes but by customs and conventions. The conventions have changed the very spirit of the constitution. Some of these conventions are given below:

(i) The fathers of the constitution provided for an indirect election of the President. But by convention, the election of the President has become more or less direct. The fathers of the constitution wanted the electors to act independently while casting their votes in favour of candidates they deemed suitable for the office of American Presidency.

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The electors in practice are pledged before hand to vote for candidates nominated by their respective parties. They act as human robots. Thus the election of the President has become direct

(ii) According to the constitution, the Speaker of the House of the Representatives should be chosen by the House itself. In reality he is the nominee of the majority party.

(iii) The system of Senatorial Courtesy according to which the Senate accepts the recommendations made by the President for the appointment of the federal offices, is the result of a convention.

(iv) Similarly, the rule that a candidate for the election to the House of Representatives should belong to the constituency which he seeks to represent is based on a convention.

(v) The practice of the President keeping the leader of the majority party in the Senate informed about the progress of treaty-negotiations, is also the result of a convention.

(vi) According to the constitution, money Bills must originate in the House of Representative but Senate can traditionally consider revenue bills.

(vii) Prior to 1940, a convention set by President Washington - i.e., a President not to contest election for more than two terms - was strictly adhered to in America. President Roosevelt violated it as he contested even the fourth time. In 1951 according to an amendment, tenure of President was limited to two terms. Professor Beard feels that conventions in U.S.A. play as important part as in U.K. However, this is an exaggerated view.

The above description shows that conventions play a significant part even in the working of the written Constitution of the United States. But it must be remembered that the extent of the conventional element in the American Constitution is much less than that in the British Constitution. It can, therefore, be concluded that American constitution framed at Philadelphia has steadily expanded through amendments, laws passed by the Congress, judicial interpretations, executive orders and conventions. In the words of Munro, the American

constitution is "the horse and the buggy affair projected into a motorised era but in almost every line it has been expanded, modified and brought into articulation with the life of each succeeding age".

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3 THE AMERICAN FEDERALISM AND CHECKS AND BALANCES

"In spite of our fascination with bigness in most walks of life there is a provision of belief that too much power concentrated in one place is dangerous."

—Swisher

Originally the American Federation consisted of 13 States, now it comprises 50 units. It was established through centripetal process. The thirteen sovereign States surrendered some of their powers and created the Union (United States). Naturally enough, they surrendered as little powers as could be possible. The federal government has, therefore, delegated and specified powers. The residuary powers lie with the States. In this way, the constitution leaves a vast authority with the States. Woodrow Wilson pointed out that of a dozen great legislative measures carried through by the British Parliament in the 19th century, only two would have come within the scope of federal legislature in America (i.e., the Corn Laws and Abolition of Slavery). The constitution contains three lists of subjects, namely a list of what the Congress can do, a list of what the Congress cannot do and a list of that the States cannot do.

Division of Powers

The Constitution (Art. I, Sec. 8) enumerates 18 powers for the U.S. Congress. They include, among others, powers to impose and collect taxes and duties etc., foreign trade, inter-State commerce, naturalisation, common defence and general welfare of the United States, coinage and weights and measures, promotion of science and other useful arts, constitution of tribunals inferior to the Supreme Court, declaration of war, raising armies and making all laws necessary for the execution of these powers.

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The other two lists detail powers which are forbidden to the Centre and the States respectively. Section 9 of Article I, forbids Federal Government from suspending a writ of habeas corpus or from passing ex-post facto laws, granting titles of nobility, passing laws affecting religious beliefs of people in any way and abridging freedom of speech and press. The States are forbidden from making any alliance or treaty with any foreign power, coinage and, among other things, maintaining armies. The 10th amendment provides that the powers not granted to the Centre and forbidden to the States rest in the people themselves. These relate mostly to certain rights of the people which no government can violate. The constitution thus preserves the essential authority of the people in consistency with democratic principles.

The scheme of division of powers in the U.S. Constitution shows that the States enjoy all those powers which have not been given to the Federal Government and which have not been forbidden to the States. Such a system of division of powers is bound to make the Central Government weak since it enjoys jurisdiction over specified items only.

Thus the fathers of the constitution established a dual system of government, a national government with its own governmental agencies, exercising powers entrusted to it by the constitution and state governments equipped with residuary powers. Each of these sets of government in its own sphere, is autonomous and independent, neither encroaching on the other. Any change in the division is effected through an amendment of the constitution.

The Status of States in the American Federal System

The fathers of the constitution were keen to make states stronger than the centre. Hence residuary powers were given to the states. In forming the union, the states surrendered only partial sovereignty. The 10th amendment of the constitution specifically provided that they continued to possess an undefined amount of residual authority. There is no denying the fact that the thirteen states which joined the union were sovereign states but they agreed to surrender their sovereignty when they decided to constitute one state, U.S.A. They however, exercise those powers which have been left for them according to the constitution. In other words, the states are free to exercise residuary powers without federal control. The States do not possess the right of secession from the union though the constitution is silent about it. Since the southern states which attempted to secede, failed miserably in an open conflict (civil war), it became an eye opener for the member states that the union is indissolvable. The Supreme Court of U.S.A. also in

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'Texas vs White' (1869) described the union as "an indestructible union composed of indestructible slates."

The states enjoy legal equality though they vary in size and population. The federal Government also owes the same obligations towards these stales. This legal equality is evident from the fact that each state has been accorded equal representation in Senate. The Constitution clearly specified that this provision cannot be changed by amendments.

Federal Guarantees of the States

In order to strengthen the position of the states in the federal system, the constitution imposes certain obligations on the federal government, viz., respect for their territorial integrity, guarantee of a Republican form of government and protection against invasion and domestic violence. A brief explanation of these guarantees would not be out of place.

(a) Respect for Territorial Integrity

The federal government has been required to respect territorial integrity of the States. No state can be made to lose its territory save by its own consent. In other words, no new state can be carved out of the existing states, unless the legislatures of the states affected accord their approval.1

(b) Guarantee of a Republican form of Government

The federal government guarantees to every state a Republican form of government.2 However, the constitution has not elucidated the word, "Republican." Hence it has been subjected to varied interpretations. The Supreme Court has refused to pronounce its judgment on the matter which is political rather than constitutional or judicial. The President or the Congress also can give their interpretations.

(c) Protection against Invasion and Civil Commotion

The constitution enjoins upon the federal government to protect each of the states against invasion and on the application of the Legislature or of the executive against domestic violence.3 In case of invasion, the federal government intervenes without awaiting request from the state concerned. Such federal power flows from the 'federal war power'. For quelling domestic insurrection, the federal government intervenes only when the state authorities make a request to the central government or federal laws are violated or national property is endangered. The decision regarding federal intervention rests entirely with the American President. For instance, in 1941 President Franklin D. Roosevelt sent troops to crush a strike in a Californian aircraft factory though the state government made no such request.

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(d) Obligation of Slates towards Federal Government

The states also owe certain obligations towards the Federal Government. The States are required to conduct elections to Federal offices as the constitution does not make provision for a separate Federal election machinery. The members of the electoral college are elected in each state in a manner prescribed by the state legislature. The Senators are also elected directly in each State. The members of the lower house of the Congress are elected in each State generally in single member constituencies. Further, the slates can take initiative in preparing an amendment of the constitution. Their participation is essential for ratifying the proposed amendment as well.

Growth of Federal Authority

Although the Constitution created a very weak centre, the powers of the Federal Government have widely increased. Many factors have been responsible for this, viz., judicial interpretation, amendments, laws and regulations of the Congress and President, emergencies, personality pf President, etc.

1. The Supreme Court has so interpreted the Constitution that the powers of the federal government have increased even at the cost of the Slates. It developed the doctrine of 'Implied

Powers'. This doctrine, enunciated mostly by Chief Justice Marshal of the Supreme Court, provides that the constitution not only enumerated certain powers for the Centre, but also gave all those powers which are implied in the enumerated ones. There have been several cases when the Supreme Court, in interpreting the constitution, has helped the Centre through the application of this doctrine. A few examples may be taken to illustrate the application of this doctrine. The constitution empowers the national government to 'regulate commerce with foreign nations and among the several States'. The Congress has derived from this clause of the constitution the power to control all means of transport and communication. From the clauses giving the Congress the power to promote general welfare, it has derived the authority to pass social legislation like old age insurance schemes and other laws of this nature. Again, through the powers of the Congress to impose and collect taxes and duties, the Congress got the authority to establish and control exclusively the Central Bank of the United States. This is how the Federal Government has acquired greater authority which was originally not granted to it by the constitution.

2. Many amendments have increased the powers of the federal government. The 15th amendment gave the authority of judicial review

to the Supreme Court over States' legislation. The sixteenth amendment authorised the Congress to levy and collect taxes on incomes of all kinds whereas the original constitution had prohibited the Central Government to impose direct taxes.

3. The Congress has passed many laws which have widened its powers. Similarly, Presidents have issued rules and regulations in the exercise of their authority widening these powers of federal government. Presidents like Lincoln, Washington, Roosevelt, and Wilson have exercised dictatorial powers. They have taken action even without express constitutional justification. President Lincoln declared war against southern States on the question of slavery. Roosevelt's 'New deal' policy widened the control of Federal Government over subjects originally within States' jurisdiction.

4. Further, the growth of international relations and commerce has also enabled the Federal Government to widen its sphere of authority.

5. Recently, leadership of the United States of the western powers has placed unrestricted power in the hands of the Federal Government. In times of emergencies like economic depression, war and cold war between U.S.S.R. and U.S.A. the people of United Slates look to the National Government for solving all international problems in which the country is directly or indirectly involved.

6. The Federal Government makes grants-in-aid to State Governments and even local bodies. Fourteen per cent budget of Slates comes through these grants. Naturally the Federal Government reviews and examines the schemes and policies where the money is spent. The conditions generally laid down for the grants of financial assistance arc as follows:

(a) The Slate shall expend the money for the specific purpose for which it is granted.

(b) The State shall itself incur expenditure from its finances for the purpose in hand.

(c) The state shall establish suitable administrative agencies.

(d) In return for the assistance, the Federal Government will have the right to impose federal standards and regulations, federal inspection and federal audit of accounts. Besides, the federal government can withhold the grants if the state concerned docs not meet the national standard. This reflects that the acceptance of a general grant means acceptance of certain type of federal control over state autonomy. In the words of White, "Where there is money there is power and where there is money on this

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scale, there is substantial power. There can be a type of fiscal dependence which can erase the constitutional division of power."4

7. There have come into existence many inter-state-cum-federal organisations of mutual consultation. These organisations help in evolving uniform policies under the direction of the federal government.

All these factors have, thus, enormously increased the powers of Federal government. The increase in powers of central government, particularly in the present century, has led Rosec Drummond to remark "...our Federal System no longer exists and has no more chance of being brought back into existence than an apple pie can be put back on the apple tree." This is an exaggerated view. No doubt, era of Federalism has ended in U.S.A. Instead, era of co-operative Federalism has dawned. The Federal Government exercises the powers of guidance, supervision and control but that has neither encroached upon the autonomy of the states nor sapped their vitality. The states still constitute important entities. A vast residue of functions are still vested with them. In the words of Griffith "Their (States) vitality is still very great. The same social conscience that was among the factors causing the Supreme Court to let down the barriers to increased governmental activity nationally has its counterpart in its wide extension of the sphere of permissible state activity". In fact, they have developed their own reserved powers. They still provide a vast number of essential services to the people. They still control the police: the civil and criminal law, education and local government. In fact, there has been intensification of governmental activity both at National and State level. Munro has rightly remarked, "There has been an overall expansion of governmental power in the country as a whole and an intensified activity of governmental activity at every level, local and state as well as national." The states still are the pivot around which the American political system revolves. However, it will be wrong to conclude that federalism is under eclipse in USA. American Federalism has kept pace with the times. Schwartz correctly remarks 'The American states may be under constantly growing federal control yet it is unlikely that they will even have to look to Washington in determining their behaviour as every area of local government in England and Wales must look to Whitehall and Westminster if it becomes possessed of the desire to embark upon innovations."

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Amendment of the Constitution

One of the essential features of any federalism is the rigidity of the Constitution. The U.S. Government fulfils this requirement to a remarkable degree. Article 5 of the Constitution lays down a very cumbersome and difficult procedure for its amendment. There are two methods by which amendments can be effected. They are brought out as follows:

1. Amendments may be proposed by two-thirds majority in each House of the Congress. It must be ratified by three-fourths of total number of States. The ratification may be done either by State legislatures or by special conventions held in the States for this purpose. The mode of the ratification is to be determined by the Congress.

2. The States themselves may take the initiative in proposing amendments. If two-thirds of all the stale legislatures apply to the Congress for this purpose, the Congress calls a constitutional convention which shall, on the basis of the original recommendation, propose the amendments. The amendments must be ratified by three-fourth of all the Stales either through their legislatures or at specially convened conventions. The mode of the ratification is to be determined by the Congress.

Out of 26 amendments which have been effected so far, all but one have been initiated by the Congress and ratified by the State legislatures, i.e., Congress proposed them and submitted them for ratification to the State legislatures. Only the 21st Amendment which repealed the 18th amendment, (which had enforced prohibition) was ratified by conventions in the State.

Criticism of Amendment Procedure

(a) The Constitution did not fix any time limit for ratifying the constitutional amendments. This results in a great delay in their passage and implementation. Ohio State, for example, ratified a proposal after 80 years. Likewise, in case of child labour amendment proposed by Congress in 1914, only 28 States have ratified it so far. But now the Congress by its resolution can place time limit on ratification. For example, in the case of 18th and 2lst amendments, it clearly laid down that amendment would be lost if not ratified by the required number of States within 7 years.

(b) If a State once ratifies an amendment, it cannot go back. But if it rejects once, it can ratify it later provided it feels like revising its decision.

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(c) The Constitution prescribes that an amendment may be proposed by the Congress by two-thirds majority in each of its Houses. But it is silent as to whether two-thirds majority means the majority of total membership or members present and voting. As a matter of practice, it is the latter interpretation which has prevailed.

(d) There are, moreover, certain provisions which cannot be amended. For example, the right of every state to equal representation on the Senate cannot be taken away without the consent of the State concerned. Also no State can be split up into two or more or any State merged with it, without the prior consent of the legislature of the State concerned.

(e) The system of amending the U.S. Constitution is extremely rigid. Between 1789 and 1971 thousands of proposals of constitutional amendments were moved, but only 26 were finally accepted. This shows that U.S. Constitution lacks the virtue of adaptability with the change of time. The requisite 2/3 majority of the Congress is not easily procured. Hence it has been suggested that only a majority vote in both the Houses of Congress and ratification by two-thirds of States should be made essential to effect constitutional amendments. The proposal has not, however, been formally accepted as it envisages consent of the States and not that of population.

(f) The system of amendment is not sufficiently democratic as it envisages consent of the states and not that of the democratic population. The critics describe it as too conservative a system. An amendment ratified by 37 Stales which may have an absolute majority of the American population, can be stopped by the opposition of one small State from being effective. In other words fourteen small States with, say a little more than one tenth of the total population, may decide to oppose a proposal for constitutional amendment and may thus prevent about nine-tenths of the people from effecting any change in the Constitution. This is not in consonance with the spirit of democracy.

Despite the rigidity of the Constitution, the American people have succeeded in changing it as necessitated by the times. Between 1913 and 1933 alone for example, 6 major amendments were effected. In the words of Prof. Munro, "U.S. Constitution is a living organism. The rigidity has only been provided as the fathers of the constitution were cautious to avoid all possibilities of capricious changes in the Constitution". According to William Harvard all the amendments except the 22nd had direct or indirect democratising tendency, and have all made some contribution to the conception of a government resting

on a basis of as popular a sovereignty as possible. It may therefore be concluded that despite vehement citicism the constitution has been adaptable and it has not clogged the American progress. In the words of Zinc "In the United States the formal process is burdensome but other methods have grown up which are much less onerous".5

Separation of Powers and Checks and Balances

The principle of 'Separation of Powers' is one of the most important features of the American Constitution. The Constitution clearly states that all legislative, executive and judicial powers are vested in the Congress, the President and the Supreme Court respectively. There is no other Constitution in which the demarcation of the three wings of administration is so clear. In India, for example, all legislative power of the Union is vested in the parliament, but the parliament consists of the President and the two Houses. This shows that the executive has been associated with the legislature in a very active manner. Similarly, in England, parliament is sovereign in

every respect and the executive is subordinate to it. However, in the United States, each of the three wings is separate and distinct without being dependent upon the other. It is said that fathers of the American Constitution were deeply impressed by the theory of 'Separation of Powers' as proposed by Montesquieu. In their attempt to make the three wings as separate as possible, they have made each one of them independent of each other. The President, for example, has a fixed tenure and is not responsible to the Congress. The Congress is independent of the President since it cannot be prorogued or dissolved by him. Similarly the federal judiciary is also independent of both the executive and legislature. No Judge of the Supreme Court can be removed except by a very difficult procedure of impeachment. Thus, as Finer points out, the "American Constitution was consciously and elaborately made an essay on the separation of powers and is today the most important polity in the world which operates upon that principle".

Checks and Balances

However, the American Constitution has not produced a 'clean severance' of the three organs of the government. To secure the liberty of the people the authority of government was further weakened, i.e., by introducing checks and balances, so that one organ may put a curb on the other. They possibly apprehended that an organ of the government, left to itself completely, might degenerate and misuse its power, thus becoming tyrannical and oppressive. The Constitution has, therefore, provided for a system of internal checks and balances. According to Prof. Ogg "No feature of American Government, national, state and

often local is more characteristic than the separation of powers combined with precautionary checks and balances. The Executive, for example, is controlled by the Senate in the matter of making appointments to high offices. It is laid down that all high appointments made by the President must be ratified by the Senate. Again, it is the Senate which ratifies all international treaties made by the President. This power was effectively used in 1919 when the Senate refused to ratify the Treaty of Versailles which had been accepted by President Woodrow Wilson. The Senate, an important part of the U.S. Congress, thus controls the internal administration through its power of endorsing appointments made by the President and also its external policy through its power of ratifying all treaties and agreements to be made with a foreign State. The Senate, moreover, is the court of impeachment against the President and other high officials of the United States including the judges of the Supreme Court.

The President in turn, controls the Congress in the sense that all Bills passed by the Congress must be submitted to him for his approval. He may veto a bill, however, the Congress can override it by repassing the bill with 2/3 majority voting separately in the two Houses. But such a majority is not easily available. Hence the bills vetoed by the President are generally killed. The President can exercise his pocket-veto during the last ten days of the session of the Congress, by keeping the bill pending on the table, neither rejecting it nor passing it. With the end of session the bill is automatically killed. The President can exercise his influence on the Congress by threat of convening its special session if his point of view is ignored. During the special session the members of the Congress are not paid TA and DA. Hence they won't like to turn a deaf ear to President's message.

Besides the President has been vested with the power of issuing executive orders as well. These executive orders have the same force as the law. Keeping in view his influence in the domain of legislation it has been said "To say that American President does not possess legislative powers is to talk of philosophy."

Again, both the President and the Congress have certain checks on the judiciary. The President appoints the Judges of the Supreme Court whose approval is to be accorded by the Senate. Their salaries, etc. arc determined by the Congress subject to certain constitutional restrictions. The judiciary in turn exercises its control over the executive and the legislature through its power of judicial review. It can nullify the laws passed by the Congress and the orders issued by the

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executive if they are found to be at variance with the spirit of the Constitution. Thus the judicial review has assumed the shape of judicial veto. The Supreme Court sets the framework, both negatively and positively, within which the government works.

Thus we see that the principles of separation of powers and checks and balances are intertwined in American constitution. These two principles pervade the American political system from top to bottom. Dr. Finer has correctly said, "Not all the objects which the fathers had in view have been realised but their main intention to effectively separate the powers has been realised; for they destroyed the consent of leadership in Government which is now so important in the present age of ministrant politics." Prof. Beard is of the view that the separation of powers is a primary feature of American Government and is constantly made manifest in the practices of Government and politics.

It may not however be out of place to point out that checks and balances which were designed to promote overall equilibrium often have aggravated rather than ameliorated the ill effects of separation. The Presidential veto has been abused many a time and the Senate also has stood as an inseparable barrier in the way of American President particularly while according assent to treaties. Such a state of affairs results in paralysing the functioning of the government, particularly if the Chief Executive belongs to one party and the Congress is dominated by the other. President Regan a Republican in the past and now Clinton, a Democrat have felt pitched against opposition dominated Congress. The Supreme Court has also been overshooting the mark as in case of invalidating the New Deal Legislation of President Roosevelt. Hence Ogg and Ray remarked that checks and balances "designed to promote overall equilibrium often operate rather to aggravate than to ameliorate the ill efforts of separation as for example in the case of the Presidential veto and senatorial assent to treaties."6

References

1. Article IV, section 3, of the constitution.

2. Ibid., section 4.

3. Ibid.

4. White L.D., The State and the Nations, p. 18.

5. Line and others: American Government or Politics, p. 24.

6. Ogg F.A., and Ray F.O., Essentials of American Government, p. 39.

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4 THE AMERICAN PRESIDENCY

"Every four years there springs from the vote created by the whole people a President over that great nation. I think the whole world offers no finer spectacle than this."'

—John Bright

The United States Constitution vests executive powers in the hands of one individual—the President of the United States of America. His powers are so enormous, wide and overwhelming that he has been described as the 'foremost ruler in the world'. The office of the American President has been organised on the basis of non-Parliamentary or Presidential type of Government. There are Presidents in Parliamentary democracies too. But their authority is greatly limited. They are constitutional or nominal heads of their State. The Indian President, for example, cannot go against the advice of the Council of Ministers which is responsible to the parliament. In the U.S.A., on the other hand, the President and his Cabinet are not answerable to the Legislature. The President of the U.S.A. is supreme in executive sphere, making of course due allowance for some devices of internal checks and balances. The American President is not bound down by any cabinet. He chooses his own cabinet, which is at best his personal team of advisers. It has been rightly characterised as the 'President's Family', and the head of the family, the President, inevitably dominates them. Ogg rightly describes him as the 'greatest ruler of the world'. According to Henry he exercises "the largest amount of authority ever wielded by any man in democracy."

Quite a number of factors are responsible for this state of affairs. The constitution is very clear and unequivocal in giving all executive powers to the President Secondly, though he is indirectly elected by the Electoral College, in actual practice his election has become direct. As such he enjoys a greater measure of popular support.

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Indeed, the American Constitution has made the President a real executive head rather than a titular one as is the case in parliamentary governments. The American President, in respect of his powers, is best compared to the Prime Ministers of Parliamentary democracies enjoying the support of a stable majority in the legislatures. Nay, he is rather both the head of the state and the responsible head of the government. In many other nations, there is a chief of State whose duties are largely protocol in nature while the Prime Minister is the centre of power. But the American President is the nation's principal spokesman of both domestic and foreign policy.

Laski has rightly remarked, "There is no foreign institution with which in any strict sense, it can be compared because basically there is no comparable foreign institution. The President of the United States is both more and less than a king, he is also both more and less than a Prime Minister."2

Election Procedure

The Constitution provides for indirect election of the American President. The President is elected, constitutionally, by an electoral college consisting of as many Presidential Electors' as is the number of members in both Houses of the Congress, i.e., 535. This electoral college is constituted in each State and consists of as many members as each State has in the Congress, i.e., both in the House of Representatives and the Senate. Since each State has two members in the Senate, that means that number of Presidential Electors in each State is equal to the number of its members in the House of Representatives plus 2. The method of electing the Presidential Electors in each State has been left to be determined by the State legislature concerned. Originally they were elected by the State legislature, but now they are elected directly by the people. The Presidential Electors meet in each State and cast their votes on the day fixed for Presidential election. In a message to the Congress on March 22,1977 President Carter proposed a constitutional amendment calling for direct popular election of the President and abolition of the Electoral College. However, the proposal could not cut much ice.3

The American political system moves alongwith the calendar. The Presidential Electors are elected on Tuesday after the first Monday in November of every leap year. These electors meet in the capital of each State on first Monday after the second Wednesday in December, and record their votes for the Presidential candidates. A certificate of election is then sent to the Chairman of the Senate by each State. On the

6th of January, the Congress meets in a joint session, where votes are counted. The person securing an absolute majority of votes is declared elected. In other words, in counting the majority of votes, the majority of total votes is considered, and not simple majority. The new President is sworn into office on January 20. In case no candidate secures the required majority of votes, the House of Representatives elects one person from amongst the first three candidates, securing the highest number of votes. In such a case, each Slate has one vote irrespective of the number of representatives in the House. If this attempt also fails, then after 4th March, the Vice-President automatically succeeds to the Presidential office.

Thus we see that the Constitution has prescribed the method of election of the President with great precision. In the opinion of Hamilton, this process of election "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

Direct Election in Practice

Although the Constitution prescribes a system of indirect election, yet in practice the election of the President has become almost direct. The change has been brought about by the growth of powerful political parties in America. Months before the date of Presidential election, the major political parties hold their national conventions and nominate their Presidential candidates.

The constitution provided three steps i.e., the choice of electors, the voting by electors and the opening of the electoral certificates in the presence of the Congress. In actual fact two more steps have developed in nomination of Presidential candidates and election of the electors. This has made the election direct. A brief explanation of these steps will portray a clear picture of Presidential election in U.S.A.

A. Presidential Nomination

The constitution never intended such nominations. Hence there is not a word in the constitution regarding such nominations. Informal grooming of candidates is done before formal conventions of the parties are convened. A national committee of each party calls its own convention and makes the requisite arrangements. The calls are issued in January or February and the conventions meet during the summer. During the interval between call and convention, the political parties in each state select their delegates and also equal number of their alternatives, who serve in case any of the regular delegates are absent. With a full quota of delegates and alternates in attendance, the

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Democratic and Republican National Conventions are in fact unwieldy gatherings. National conventions are arranged by socialist, communist and prohibition parties as well but they small gatherings.

How delegates are chosen: In the beginning of the present century, they were named by party conventions held in the states and congressional districts. In 1905 Presidential primary originated. It required delegates to be elected directly. In the next two decades, almost thirty states adopted the system in various forms. The movement suffered some decline after 1916. In several states, law binds the delegates morally to support the popular choice.

A national convention at work: Next comes the meetings of the National Conventions of the parties in different states. 'The thousands of delegates are seated in the front portion of great hall, with the alternates occupying the rear." They are grouped on the floor by states. A temporary chairman is chosen who delivers from the stage a keynote speech praising the party's achievements. A committee is then appointed in order to scrutinize the credentials of the delegates. When its report is adopted a permanent chairman is elected. After these preliminaries are over, nominations for the office of the President are announced by the chairman to be in order. The role of states is taken in alphabetical order. The chairman of the delegation or anybody for him, may make a nomination. If a state does not propose its candidate, it may yield its place in the alphabet to some other state. After all the nominations have been done, voting begins by a voice vote. The role of the states is again taken in alphabetical order and the chairman of a delegation makes amendments. "Albama (etc.) caste its vote for so and so," or he

may announce a divided vote. Both the Democratic and Republican Conventions decide by a clear majority of all the member delegates. As such when the polling goes on, the weaker candidates drop out and votes are shifted around on successive ballots. One roll call follows another until decision is arrived at. For instance, Wilson was not chosen by the Republicans at the Baltimore Convention until 46 ballots had been taken. At a Democratic National Convention 103 ballots were required to make a nomination.

After the selection of the Presidential candidate, party nominee for the Vice-Presidency is chosen in the same manner through the display of less of fury. Though a national party convention in the United States seems to be a unique affair—the great concourse with its flag-bedecked stage and walls, the crowded floor...with delegates milling around the blaring bands and loud speakers, the galleries filled with cheering

onlookers, the atmosphere electric with excitement,"4 yet the issue is settled in private conference of relatively small number of party leaders and chairmen of the delegations from the big states. This is followed by a nation-wide Presidential campaign. Each party issues a campaign text book embodying the party programme and biographies of the candidates. Political professionals, public relation experts and local workers help the candidates. Besides, whistle-stop campaign is launched by the candidates.5

B. The Nomination of Electors

The next step is the nomination of Presidential electors in the several states. These electors are usually important party leaders or prominent workers. In each State, the political parties put forth their lists of electors who are nominated in whatever way the state laws or party rules prescribe.

C. Election of the Electors

Though the Presidential campaign is carried on with great excitement and emotions yet the election of Presidential electors is a quiet affair. Polling hours vary from State to State. Every citizen of 18 years of age or more, unless disqualified on certain ground, possesses right to vote. Though in theory the voters cast their votes for Presidential electors, yet in actual practice such votes are cast keeping in view a particular candidate for the Presidency for whom such electors are required to vote. Each of the States chooses as many electors as it has senators and members of representative in Congress. Presidential electors are chosen in each State as a group and not as individuals. All the nominees of the party which polls the largest number of popular votes in a State are considered to be elected. Since the electoral college is to consist of 535 members a Presidential candidate can get elected only if he captures 269 votes of the electors. The system has its defect. A Presidential candidate capturing majority of votes of electoral college may not have captured majority of the popular vote.

D. Election of the President by the Electors

Though voting by the Presidential electors is now a mere formality yet it continues to be observed. As provided under the Congressional law, the Presidential electors meet on the second Wednesday of December in their respective State capitals and cast their votes for Presidential and Vice-Presidential candidates.

E. Transmitting and Counting of Votes

The ballots arc then counted and certificates attesting the result are promptly mailed in sealed covers to Washington where they are opened

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in the presence of the members of the Congress. The President of the Senate counts the votes and announces the result which is hardly a guarded secret.

Procedure in case no candidate gets absolute majority: If no candidate secures the requisite majority, the issue is decided by the House of Representatives which elects by an absolute majority of votes one of the three candidates obtaining the largest number of electoral votes. The members of the House vote Statewise, each State having one vote irrespective of its population. This procedure was adopted thrice. In case the electors failed to elect a Vice-President by a clear majority, the Senate makes a choice out of the two candidates getting the highest votes. The senators vote as individuals and not by States. Only once the choice of the Vice-President was to be made through the senate.

Commenting on Electoral System James MacGregor says, "It is unfair, inaccurate, uncertain and undemocratic." The defects of the system are as follows:

(i) The Presidential candidate losing a state by even narrow margin forfeits all the electorate votes of that state;

(ii) the winner's electoral votes are unduly inflated out of proportion to his popular vote;

(iii) the electors are not legally apt to vote for the candidate who carries the state; and

(iv) in case of any candidate failing to secure absolute majority of Electoral college i.e., the Presidential Electors the issue is decided by the House of Representatives where each State delegation irrespective of size of the Slate casts only one vote in choosing one of the three top candidates.

Inauguration of the New President

The newly elected President is inaugurated on January 20 since the passage of the 20th amendment of the constitution effected in 1933. Prior to this, the new President used to be inaugurated on March 4, i.e., four months after the November polling. Such a long interval was thought undesirable as during this period, the out-going President could not take momentous decision if emergencies cropped up. At the inauguration the new President takes the oath of

office which is administered by the Chief Justice of the Supreme Court. The oath runs as follows:

"I do solemnly swear that I shall faithfully execute the office of the President of the United States and will to the best of my ability preserve,

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protect and defend the constitution of the United States." On January 29, 1977 Jimmy Carter a Democrat, entered the White House as the President of U.S.A. He defeated G. Ford, the Republican. Carter had 37,990,000 votes whereas Ford captured 36,130,000, MaCarthy, an independent won only 611,000 votes. In January 1981, Reagan a Republican assumed the office of the President defeating Carter by a big margin of votes.

Bill Clinton of democratic party has displaced the 12 years Republican regime in the 1992 elections and was re-elected in November 1996—elections the first Democrat to be re-elected in 50 years.

Qualifications

The Constitution provides that a candidate for Presidency must fulfil the following conditions:

(a) He must be a natural born citizen of the United States.

(b) He must not be less than 35 years of age.

(c) He must have lived in the U.S.A. for not less than 14 years.

Emoluments

The salary of the President originally was 25,000 dollars a year. It has been revised from time to time. In 1988 the President was paid annual taxable salary of $ 2,00,000 and expense allowance of $ 50,000. Besides he gets tax free travel expenses of $ 10,000 a year. Emoluments of the President cannot be reduced during the term of his office. He is entitled to the use of free residential accommodation known as the White House, a secretariat, a suite of offices, a private pullman car, a yacht and an aeroplane and a country House at Camp David. After retirement, he gets a pension of 63000 dollars per year and a staff support.

Tenure and Re-eligibility

The President of the United States holds office for four years. The Constitution, originally did not put any restriction on the re-election of a President. George Washington, the first President, was elected twice but he refused to contest election for the third term. Since then a convention had been developed forbidding the re-election of a president for more than two terms. The convention was scrupulously observed for a long time but it was violated during the war years when President Roosevelt was re-elected for the third and fourth terms in 1940 and 1944.

However, by the 22nd Amendment which was ratified by the required number of States in 1952, the total term for any President has been fixed at a maximum of 10 years. It means that normally a person

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cannot be re-elected for the third time, after the completion of two terms totalling 8 years. But, if the President dies when 2 or more than 2 years of his term are over, the Vice-President succeeding him, will have two or more chances of contesting election. But, if the Vice-President succeeds to the office when there are more than 2 years to go till the term expires, he will get only one more chance because the maximum term that can be enjoyed by any President is now fixed at 10 years. This is in contrast with the Indian practice where the President may be re-elected for any number of times, though in actual practice nobody has contested for more than second term.

The Succession

The original Constitution is silent as to who shall succeed to the Presidency in case both the President and Vice-President die or their offices fall vacant on account of resignation or removal. An Act passed in 1947 prescribed succession after the Vice-President in the following order: The Speaker of the House of Representatives, the President Pro-Tempore (for the time being) of the Senate, the Secretary of the State, followed by other members of the cabinet. The 25th amendment (February 10,1967) sets out the way the office of the President is filled in the event of his incapacity. According to it the Vice-President may take over the duties of presidency if the President states in writing that he is unable to carry out his duties and if, Vice-President and majority of the Heads of Executive Departments believe that there is a Presidential disability and send to Congress a declaration to that effect.

Removal of the President

The President may be removed from office before the expiry of the normal term through impeachment. The House of Representatives adopts by resolution articles of impeachment, charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate which acts as a judicial tribunal for impeachment. Its meeting is then presided over by the Chief Justice of the Supreme Court. The Senate may convict the President by two thirds majority of its members present and voting. The penalty cannot extend to more than the removal of the President from office and disqualification to hold any office of trust and responsibility under the Government of United States. The method of impeachment is not an easy one. During the long constitutional history of the U.S.A. only once in 1868, President Johnson was subjected to the process of impeachment but impeachment could not be carried through for want of a required majority in the Senate. President Nixon would have been impeached in case he had not tendered resignation.

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Powers of the President

It is often remarked that the President of the United States wields the largest amount of authority ever wielded by anyone in a democracy. Lord Bryce regards the American Presidency as "the greatest office in the world", Hawkins declares that the President of the United States is the foremost ruler in the world. He enjoys real and effective powers as contrasted with the powers of the King or Queen of England or the President of the Indian Republic.

Although the Constitution gave limited authority to the President yet, in course of time, this office gathered around itself a vast array of powers, much beyond the imagination of the framers of the Constitution. Whereas the Constitution made him only the chief executive head of the Republic, he may now be called the chief legislator as well... He has derived his plenitude of powers through various sources which may be summed up as follows.

Sources of President's Powers

(a) Constitution' An the first place the original Constitution confers certain powers and privileges.

(b) Supreme Courts Decision : In the second place, the Supreme Court enhanced his authority in all those cases in which the Constitution was not clear. As for example, the Constitution clearly prescribed the methods of making appointments to various federal offices but was silent about the mode of their removal. The power of removal of all federal officials was then vested in the President by the Supreme Court. Then the Constitution authorised the Congress to declare war, but power to terminate war was not clearly vested in any part of the federal government By the verdict of the Supreme Court, this power too was vested in the President.

(c) Statutes of Congress: A substantial part of Presidential powers has been derived from the statutes of the Congress assigning certain powers and responsibilities to him either directly or through implication. Laws are generally passed by the Congress in broad outlines and details therein are left to be filled in by the executive orders of the President. The Congress may also bestow upon him the exercise of wide discretionary powers. As for example, in 1933, the Congress vested in the President the discretionary powers to reduce gold contents of the dollar, etc.

(d) Convention and usage: The powers of the President have also been increased through conventions and usages. As for example, the convention of Senatorial Courtesy with respect to appointments has

virtually placed in the hands of the President unfettered powers regarding all appointments. Likewise, he is accepted as the leader of his party and as such conceded the right to be consulted on all matters affecting the interest of his party inside and outside the Congress. The President can get laws passed according to his wishes by the use of extra constitutional methods like threat of veto or appeal to the Nation through Radio and Television. Thus he is the chief legislator by usage.

(e) Emergency: Lastly, the powers of President increase enormously during emergencies. The President, for example, had almost dictatorial powers, during the two world wars.

Ferguson and McHenry are of the view that much of the President's authority accrues by virtue of factors beyond the formal powers. Prestige, as chief representative of the American people and as leader of political party, makes him a strong leader if he chooses the role and has the personal qualities to fill it

The President of America now enjoys extensive executive, legislative, financial and judicial powers which may be discussed as follows.

Executive Powers

Most important of all are his Executive powers. In the words of Ogg and Ray, "Whatever else he may be, chief legislator, party leader, general custodian of National interest, the President is first of all an executive." He exercises executive powers in the following ways:

1. As Chief Administrator

The President is the head of the national administration. All executive action of the Republic is taken in his name. He is responsible for the enforcement of all federal laws and treaties with foreign States throughout the country. He sees to the implementation of the decisions of courts and enforces the Constitution and laws of the country. He is responsible for the protection of the Constitution, laws and property of the U.S.A. He can use the armed forces for this purpose. He is assisted in his immense task by the entire federal bureaucracy as well. In the words of Johnson "as Chief Administrator the President fixes the term and temper and spirits in which the Laws are applied".

Besides, he enforces federal law and order throughout U.S.A. As such he is responsible for guaranteeing to every stale a republican form of government and protecting them against invasion and domestic violence. He can act on his initiative when Republican government is threatened in a particular state or if there is a danger of invasion of the state. Normally in case of domestic violence, President acts only if he is

requested to do so by the state legislature or if the legislature is not in session, by the state governor. He can however act independently, if domestic violence in a state endangers the execution of federal laws, the security of federal property or the smooth flow of inter-state commerce. For instance President Eisenhower sent federal forces in 1957 when the governor of Arkansas called out slate militia to prevent compliance with the order of a federal court on desegregation of Negro students. Likewise Kennedy sent Federal troops into the University of Mississipy in 1962 for a similar action.6

2. As Commander-in-Chief

The President is the Supreme Commander of the armed forces of the United States. As such he is responsible for the defence of the country. He appoints military officers with the advice and consent of the Senate and can remove them at will. Although the power to declare war vests in the Congress yet the President can make war unavoidable and necessary by his conduct in administration. As for example, President Truman took Police Action in Korea without authorisation by the Congress. In 1918 President Wilson sent American forces to Siberia to help allied troops when no state of war existed between the U.S. and Russia. Likewise Congress declared war against Germany in 1941 but Navy had begun to fire on submarines threatening convoys to Britain long before that. In fact shooting war had started in 1940. During the war, President's military powers increase enormously. He becomes the sole in charge of war operations. During World War II, President Roosevelt was given almost a blank cheque to conduct war on behalf of the United States. He became a sort of constitutional dictator. Again Vietnam war prompted Congress to give blanket decision making power to the President in 1964. President Nixon committed American troops in Cambodia in May 1970 and the Congress had to accept it as fait accompli. America remained involved in war in Cambodia and Laos despite vehement opposition of the Congress. It did lead to showdown between Congress and the President at a later stage. The Congress passed war power Act in 1973 which provided that the President can commit U.S. troops only when there is "an attack upon the United States, its territories or possessions or its armed forces". In other words, Congress limited the President's power to wage undeclared war and strove to restore its own control over war efforts. In the words of Haymen "In this epoch of cold wars, half wars and undeclared wars it appears at times that President's power to make war has virtually swallowed the Congressional right to declare war."7

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As C-in-C, he decides where troops are to be located and where ships are to be stationed. With his order, troops are mobilised, fleets assembled and militia of States is called out

3. As Exponent of Foreign Relations

The President represents the U.S.A. in foreign relations. He formulates the foreign policy of the United States. He appoints all diplomatic representatives of the U.S.A. to foreign States with the consent of the Senate. He receives the foreign diplomats accredited to the U.S.A. He can negotiate treaties and agreements with foreign States in his discretion.8 But all treaties with foreign States must be ratified by two-thirds majority of the Senate. This is no doubt a limitation on his authority regarding the conduct of foreign relations. But the President is not to face any difficulty if majority in the Senate belongs to his party. The President is, however, placed in a difficult position when majority of the Senate is hostile to him. President Wilson's efforts regarding the membership of the League of Nations, for example, were foiled by the hostile Senate. As a matter of fact, the President has a position of vantage in the conduct of foreign relations of U.S.A. since he is placed in a key position. He has unfettered freedom to negotiate treaties. It is only in the final stage that the treaties are placed before the Senate. Sometimes it becomes difficult for the Senate to reject them at the final stage. Otherwise if he is not sure of senatorial approval he can appeal 'unto caesar'. In June 1979 Carter signed Strategic Arms

Limitation. Treaty with Brezhnev to restrict chances of nuclear wars. He addressed Joint Session of the Congress. The speech was televised. The Senate had to accord approval.

Further, the President can enter into 'executive-agreements' which do not require ratification by the Senate. Executive agreement is a method to bypass the recalcitrant Senate. It is a sort of pledge of certain action by Executives of two countries. Gentlemen's agreement between Roosevelt and Emperor of Japan is an example. President Roosevelt agreed to persuade Congress to kill exclusive legislation and Emperor of Japan agreed to prohibit the emigration of coolies. The Atlantic charter is another example of such an agreement. In 1969 the President entered into 224 executive agreements. The Treaty that terminated Vietnam war in 1973, was called an agreement and not submitted to Senate for approval.

The Congress can also confer authority upon the President to make war agreements with other nations. Reciprocal Trade Act, 1934, for example, authorised President for three years to enter into trade

agreements with foreign countries and lower the tariff rules by proclamation to the extent of 50 per cent without the consent of the Senate. The power was extended upon 1945. These agreements are no less important than others.

Further, the President has the sole authority to extend American recognition to a new foreign State. It was according to this right that President Roosevelt accorded recognition to the Soviet Government in 1933. It was on account of the wilful policy of President Truman, Eisenhower, Kennedy and Johnson that the People's Democracy of China was not recognised by America till 1972. The power of recognition is an important instrument of foreign policy.

Secret Diplomacy: President may resort to secret diplomacy and enter into secret agreements with foreign powers and commit himself to a specific policy. Before and after U.S.A.'s entrance in World War II many secret conferences took place between President Roosevelt, British Prime Minister and heads of other governments. Some of the agreements arrived at were made public, others were kept secret

All these facts clearly show that President of the United States is the director of foreign relations. In the words of Ferguson, "As in military affairs the President dominates the field of foreign affairs."9 Washington, the first President, proclaimed the policy of 'American neutrality' in 1793. President Munro enunciated the famous 'Munro Doctrine'. President Wilson and President Roosevelt steered the ship of the State safely during the first and second world wars respectively. President Truman propounded his 'Truman Doctrine.' President Kennedy decided American relations with foreign States with full vigour and force. President Carter, Reagan and George Bush in particular did not lag behind in this respect. The Supreme Court described this power of the President as "delicate plenary and exclusive."

4. Appointments

The President makes a large number of appointments to the federal services. The power of making appointments is the most important and effective power in the hands of the President It enables the President to command the allegiance of a huge number of federal officers and secure their support for implementation of his policy.

There are two categories of federal Services, i.e., 'Superior Services' and 'Inferior Services'. Superior Services are appointed by the President with the consent of the Senate and members of the 'Inferior Services' are appointed by the President alone, according to

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civil service rules. The officers belonging to superior category number over 1,00,000 and their tenure of service is generally four years coinciding with the Presidential term. Out of these services, certain appointments are ratified by the Senate without any objection even if the majority in the Senate is against the President. For instance, the Senate would not ordinarily interfere in the President's choice regarding the appointments of his own Cabinet, i.e., heads of the federal departments, diplomatic representatives, military and naval appointments, especially during war. In all other appointments, the Senate exercises its power to reject or accept President's nominations. In 1925 appointment of Warren (as Attorney General) made by Coolidge was disapproved by the Senate. In 1989 appointment of Tower as Defence Secretary by President Bush was rejected by the Senate. Such examples can be multiplied. The President, however, has no difficulty in seeking such approval if his own party holds majority in the Senate.

A number of services especially of local nature are appointed by the President according to a convention, commonly known as 'Senatorial Courtesy'. The Senate usually ratifies an appointment of this nature if the Senator from the State in which the appointment is made, approves of it. But the Senators should belong to the President's party. The President can also evade the consent of the Senate in making appointments to higher offices if he so desires. He may fill a vacancy temporarily during the recess of the Senate. It is to be submitted to the Senate when it holds its session but in spite of objection by the Senate, the appointment may hold good till the end of the session. And the same person may be re-appointed by the President after the end of the session if at all he is removed during session.

Power of Removal

The constitution provides that civil officers may be removed by impeachment if convicted of treason, bribery or other high crimes or misdemeanors. It is, however, silent as to how and by whom they are removable for incompetence or for the good of the country. The critics are of the view that if concurrence of the Senate was necessary for appointments why should it not be required for removals? The Congress made an attempt in 1867 to prevent the removal of certain office bearers by President Johnson. By the tenure of office Act, 1867, it provided that any person holding a civil office conferred by the Senate should remain in office until his successor was appointed in like manner. The Act was repealed at a later stage and is considered as an unconstitutional

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enactment. In 1876, Congress again attempted to restrict the authority of the President by legislating that certain classes of post masters were not to be removed except with the advice and consent of the Senate. President Wilson challenged the constitutionality of this restriction when he summarily removed a post master without concurrence of the Senate. The concerned post master carried the matter to the Supreme Court which decided in favour of the President. Henceforth, this has become the sole authority of the President to effect removals. Certain classes of officers, viz., judges of federal courts, members of various boards and those appointed through civil service commissions are exempt from removal till they violate service conditions.

During the last over 200 years functions of the Executives have become manifold. The Congress has significantly enhanced President's authority regarding supervision of. administrative agencies. He coordinates the work of various departments, lays down policy to be followed by them and determines the organisational details to high executive orders.

Legislative Powers

Consistent with the theory of Separation of Powers, the constitution intended the President and the Congress to be in separate apartments. Hence the President does not possess the authority to summon, prorogue and dissolve the Congress. He cannot initiate any Bill directly in the Congress. The President, unlike the British or Indian Prime Minister, is not the leader of the majority party in the House. He cannot even sit in the Congress or participate in its deliberations. He has thus no direct control over the legislature whatsoever. The Congress is the real law-making body. The President can persuade and request the Congress for enactment of a particular law but he cannot threaten it as is the case with the British Prime Minister. The Congress may make laws against the wishes of the President, and he must execute them. The position, however, is not so desperate as it appears to be. During the course of time, the President has acquired a vital share in legislation. He has virtually become the 'Chief legislator'10 in practice. In the words of Dr. Finer, "The constitution intended that the Executive should be more than a mere executive, it very considerably modified the pure idea of separation of powers. He has become a very active legislative leader as well an executive." Another critic aptly remarks, "To say that American President docs not possess legislative powers is to talk of philosophy." Some of his legislative powers may be summed up as follows:

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1. Veto Powers

All Bills passed by the Congress must be referred to the President for his

final approval. The President can deal with them in three different ways:

(a) He may give his assent to a Bill referred to him and the Bill will become an act.

(b) He may reserve the Bill with him in which case it becomes a law at the expiry of ten days without his signatures provided the Congress is still in session. The Bill in such a case is killed if the Congress adjourns before the expiry of ten days. This is known as Pocket Veto.

(c) He may reject a Bill and may return it to the House with or without amendments. In such a case, the Bill may be repassed by the Congress by its two thirds majority in each House and then it will be obligatory on the part of the President to give his assent.

His pocket veto power is an effective legislative power in the hands of the President. During the last ten days of the session of the Congress the possesses an absolute veto power. It is interesting to note that towards the end of a session, numerous Bills and resolutions are passed by the Congress in order to clear up its arrears. A considerable number of last minute bills can thus be killed by the President if he is against them by his inaction. The fact is that this power has been frequently used by the various Presidents as they do not owe an explanation for inaction to the Congress. Hence Pocket veto is considered absolute as the Congress does not have opportunity, to override it. The pocket veto has been used over 700 times.

Otherwise too, a Bill rejected by the President is to be re-passed by two-thirds majority of Congress in each House. This much majority in the Congress is not always available in favour of a particular Bill. The result is that most of the Bills rejected by President are ultimately killed. Even the President may check the enactment of a particular legislation by giving a threat of his direct veto in advance.

The veto power was in fact meant to be a "salutary check upon the legislative body." Eight presidents before civil war did not exercise veto at all. Washington used it twice, Madison used 7 times, Grant 94 times, Theodore Roosevelt 82 times and Wilson 44 times. However certain presidents made frequent use of it. Cleveland exercised veto 413 times whereas Roosevelt and Truman made use of it 635 and 250 times respectively. Eisenhower used veto 181 times whereas Reagan only 22 times. Ford in his short tenure of 2 years used veto 72 times.11 Keeping in view such a frequent use of veto by certain Presidents Munro remarks

"What was intended therefore as a weapon of executive self defence, has developed into a means of guiding and directing the law-making authority of the nation. It has been expanded into a general revising power... it has developed the president into something like a third chamber of Congress thus making the chief executive a more active figure in legislation than he was originally intended to be."12 This is rather an exaggerated view. Of the 1195 regular vetoes applied by the Presidents before Eisenhower, 58 were overridden by the Congress. Laski remarks "It cannot be said that the power is a great one or that it has been widely used and Congress can always overrule the President by a two-thirds majority of the members who constitute a quorum in either House."13

Threat of veto: Even the threat of veto hangs like a sword of Damocles on the head of the Congress. The Congress men do not like to waste their breath on a Bill which ultimately is likely to be vetoed by the President. Hence it is not an empty threat. It is a familiar weapon of Presidential intervention. President Truman used this device to the maximum.

2. Messages

The President may send messages proposing some legislative measures orally delivered to the House or sent in the form of a document. As the messages come from the highest functionary of the State, these cannot be easily ignored by the Congress. President's message stirs the nation and it is one great public document which is widely read and discussed. In fact, many laws owe their origin to the Presidential messages. The famous 'Munro Doctrine' enunciated by President Munro, was transmitted to the Congress through a message. A Presidents' message may be primarily intended for foreign consumption. Its principal purpose may be to inform some foreign power regarding U.S.A.'s attitude on some phase of international policy. For example, President Wilson sent messages to Congress during years preceding U.S.A.'s entry in the Great War, just to let the European powers understand the U.S.A.'s attitude towards certain features of the great War. President Roosevelt's messages in 1941-45 also were motivated with the same desire. President Eisenhower submitted as many as 225 specific legislation requests to the Congress through messages. President Nixon introduced new practice of communicating short messages to the congress in place of one comprehensive message. Referring to the importance of such messages Munro has remarked "The President is the country's official spokesman on matters of foreign policy but in as

much as the support of Congress is needed to make President's declaration of policy effective, it is appropriate that such pronouncements be made in the form of messages to the national legislature."14

3. Special Sessions

The President has the right to convene special sessions of the Congress. All important laws were passed in 1913 in special sessions convened according to the wishes of President Wilson. The practice of convening special sessions of the Congress was very common previously. But under the new calendar introduced by the Twentieth Amendment, the need of special sessions has become less because the interval between regular sessions has been lessened. The importance of such sessions lies in the fact that members are not to be paid T.A. and D.A. when they are called to attend such special session. This has a deterring effect on Congressmen as cost of living is fairly high in U.S.A. and they won't like the President to make frequent use of this power to embarrass them.

4. Patronage

The President has extensive patronage in his hands. He makes a large number of appointments in the federal services. The senators and Representatives always want to win the President's favour in order to secure jobs for their supporters and friends. The Presidents of the United States have often made use of patronage and bargained with members of the Congress to get their proposals for legislation passed by the latter. In the words of Munro "The President can easily drop a hint to the heads of the departments that Congressmen who show themselves rebellious are not to be given recognition when the loaves and fishes are to be doled out."15

However, the Congress overcomes his threat to withhold patronage through the use of senatorial courtesy. This is mere refusal to exchange courtesies but it is meaningful.

5. Appeal to Create Republic Opinion

The President is not only the Head of the Republic but also the leader of the nation. His office carries an inherent respect. The nation listens to him with rapt attention. Whenever he finds that the Congress is pitched against him, he can make direct appeal to the nation, and may create public opinion against his opponents in the Congress. There are instances when this method was effectively used by the President to put the Congress on the right track. He exercises this influence through the media of press, radio and the television. Munro describes it as an appeal

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to Caesar. Franklin D. Roosevelt introduced a series of fireside chats over the nation wide radio network. These speeches throw a feeler. Reaction of the public if favourable the Congress is automatically influenced. Eisenhower also opened his mind to news and television cameraman. Kennedy sought public support by television, Wilson started meeting the press.

6. Informal Conferences

Most of the legislative programme of the Congress is discussed by the President at the dinner or tea table with the prominent party leaders in the Congress. The President, in fact, experiences no difficulty if his party has a majority in the Congress. In important matters pertaining to foreign affairs he may even consult the leaders of the other party Eisenhower frequently called democratic party leaders for consultation. In the words of Johnson, "a competent executive who knows the temper of Congress can bring many important issues to a successful termination by these informal conferences."

7. Delegated Legislation

In addition to the immense influences exercised by the President on the Congress, in the way referred above, he can legislate on his own authority as well. He has the power to make rules and regulations in the form of Executive orders. In most cases, the Congress passes laws in general outlines. The details are left to be filled by the Executive. The rules and regulations thus made have the force of law. This is known as delegated legislation or rule-making power. This power has increased immensely during recent years. President Roosevelt is supposed to have exercised this power extensively. He is said to have issued 3,703 executive orders during his Presidential career prior to 1944. During the same period the Congress passed only 4,553 laws. Though President is fairly powerful in the legislative field yet we can agree with Laski who remarked "The President is never the master of Congress except in relatively brief intervals of emergency."16

Financial Powers

Although the control over federal finances has been vested in the Congress, yet in actual practice the President directs and controls finance. It is under the direct supervision of the President, that the budget is formulated by the Bureau of Budget. It is placed before the Congress which can amend it in any way. But the general practice shows that the budget is passed as it is. Very few members of the Congress understand the technicalities involved in the Budget and it is

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difficult to amend it on account of its technicalities. The President is thus the general manager of the financial affairs of the government.

Judicial Powers

Like all other chief executive heads, the President of the United States enjoys the power to grant pardon, reprieve or amnesty to all offenders convicted for the breach of federal laws. He cannot pardon a person who has been convicted by inpeachment or for offences against the laws of the state. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

Party Leader: He is the leader in chief of the party. The White House is the biggest pulpit in the country. The Nation looks to the President for guidance on public issues. Every presidential broadcast induces the Congressmen to fall in line with him. He exercises substantial influence in legislation as party leader. In national emergencies he is the saviour of national interests. As such while a party leader his partisanship is to be within limits.17

Position of the American President

A perusal of the powers of the U.S. President proves beyond a shadow of doubt that he is one of the most powerful heads of the State. His powers are both real and effective unlike that of his prototype, the Indian President or the Queen of England. Here lies the justification of Sir Henry Maine's remarks that "The American President rules but does not reign." The fathers of the American Constitution took all the powers of the British King and gave them to the President, only restraining them where they seemed to be excessive". This probably is the best explanation of the huge powers of the American President. In the words of President Wilson himself, the nation as a whole has elected him and the nation is conscious that it has no other political spokesman. His is the only voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces can easily overpower him. He is the representative of no constituency but of the whole nation. He is also the ceremonial head of the Republic and performance of any dignified function is incomplete without his presence or message. A comparative study of the American President viz-a-viz British King and the Prime Minister prompts us to agree with Laski's remarks that "The President of the United States is both more or less than a King; he is both more or less than a Prime Minister. The more carefully his office is studied the more does its unique character appear."

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It may not be, however, out of place to point out that much of the President's authority accrues from the factors beyond his formal powers. "President as Chief representative of the American people and as leader of his political party makes him a strong leader if he chooses the role and has the personal qualities to fill it."18 President Wilson rightly remarked, "The Presidency has been one thing at one time and another at other time varying with the man who occupied the office and with circumstances that surrounded him." There have been strong Presidents like Jackson, Lincoln both the Roosevelts and Reagan. They led and the Congress toed their line. There have been weak Presidents like Hoover, Buchaman, Pierce and Carter who followed while Congress led. Thus much depends upon the personality of the President and the circumstances through which the country is passing at a particular time. A period of crisis necessitates a strong President whereas a person of mediocre ability can also quite succeed in a tranquil period. Roosevelt's greatness as a leader lies in his vigorous personality and capacity to tide over economic crisis and meet early challenges of the war.

However it may not be out of place to point out that the President can have smooth sailing and face tempestuous storms in case his party enjoys majority in the Congress Senate in particular. Treaties and significant appointments are subject to the approval of the Senate. If Senate is dominated by the opposition party his work is likely to be impeded and on account of non-functioning, his election the second time remains in jeopardy. President Clinton a Democrat is presently facing such a baffling situation. Since November 1994 elections both in the Senate and the House, the Republican have gained substantial majority. In the Senate consisting of 100 members his party has been left with 48 members whereas in the House of Representatives, the Republicans have 230 members against 204 of Democrats and one Independent. This loss of Democratic control of Congress meant that Republicans would have the power to block President Clinton (a Democrat) agenda for the next two years and possibly pass their own proposals over his veto. President Clinton who got elected on the plank of 'change' failed to bring about change fast enough for the people's liking. Hence his party suffered reverses despite his signal achievements in the Middle East, Haiti and in Ireland. The electorates focused their attention on domestic problems and wanted to bring about a change in the way Washington does business. This had made the position of the President fairly weak and he has started realising that he

will have to seek cooperation of the Republicans to implement the changes American public has so vehemently demanded by rejecting his party at the hustings. 18A The alleged sex scandals have affected Clinton's position adversely.

President and British King

The Queen of UK and President of USA are heads of their respective states. Both are the supreme command of defence forces and both perform commercial functions. Both receive foreign dignitaries and ambassadors accredited to their respective countries; both hold receptions and deliver formal speeches. Evidently this seems to be quite onerous schedule of both these functionaries. But similarities end here. The two different political systems have in fact made all the difference. In parliamentary system the head of the state is a mere constitutional ruler

whereas in Presidential system he is the head of the Government as well. As such in Britain the Queen is a constitutional head of the state performing mostly ceremonial functions. The American President being both the head of the state and that of the national administration performs the ceremonial functions which, according to Professor Laski, constitute merely the decorative penumbra of office.

More than the King

It has been rightly said by the Laski that the President is both more and less than the king of Great Britain.

President is more than the King because he is both head of the state and head of the Government. He is the real executive. His powers are enormous and authority onerous. King/Queen, on the other hand, is only head of the state. The governmental powers are exercised by the Council of Ministers headed by the Prime Minister.

Secondly, the President is the boss over the Cabinet. He constitutes cabinet of his choice. He can include even non-party men in the cabinet. The Cabinet is considered as a body of his boyerrands. He can oust them whenever he so likes. Lincoln once ignored the unanimous advice of his cabinet and pronounced the decision at the end of cabinet meeting '7 Nays one Aye. Ayes have it' President alone had favoured the proposition. The Queen cannot take decisions of her own ignoring the advice of the ministers.. The Ministers in UK are the real executive and the Queen being a nominal head has only the right to be consulted, right to encourage and right to warn. Bagchot attaches great importance to these rights.

Thirdly, the President is the real commander-in-chief. He can assume even the command. Half a dozen Presidents of USA have been

military officers. He cannot declare war but can create conditions which compel the congress to declare war. In UK Crown is the Supreme Command of the forces and not the king. War is decided by the Crown. King is only a formal approval agency. The decision is that of the Ministers and their leader the Prime Minister.

Fourthly, the President possesses the veto power over the Bills. His veto and Pocket veto along with his messages to the Congress, informal conferences with the congressmen, threat to call special sessions of the Congress and his authority to issue executive order in case of emergencies or when Congress is not in session make him Chief Legislator. The Monarch does not exercise any such authority. She does however read speech on the opening day of the session but even.that speech is a written document designed by the Prime Minister. The King (now Queen) signs on the dotted lines. Even she has ceased to be a signing machine as commissioners do the job for her.

Fifthly, Bureau of Budget frames the Budget under the President's guidance which is generally accepted by the congress. The King/Queen has nothing to do with the budget It is the prerogative of the ministers.

Less than the King

In certain aspects the President is less than the Monarch of Britain. British Monarch holds office for life on hereditary basis whereas the President can hold office maximum for ten years. Hence it is said that king reigns but does not rule whereas President rules but does not reign. His life tenure makes him reign.

Secondly, the Monarch is the head of the society, head of the church and the head of the nation being non-partisan. The President being an elected functionary is basically a party man. As such he is neither the head of the society nor that of the church. However, he does not cease to be the national leader though he does not command that respect of the head of the nation as the Monarch does. Ogg remarks "...with the king in Buckingham Palace people sleep more quietly in their beds."19

Thirdly, the Queen addresses the Parliament, can prorogue it and dissolve the House of Commons. No such power is vested with the President. In fact the Americans believed in theory of separation of powers. Hence they did not give the President to play that direct role in the legislation of the country. The President has indirect legislative authority which of course is immense.

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Fourthly, the Queen is the symbol of Commonwealth of Nations. As such the countries which were once dependencies of Great Britain and after attainment of Independence did not like to sever links with Great Britain decided to form Commonwealth of Nation with Monarch as the presiding genius. No such position is enjoyed by the President of USA as an association of this type does not exist in that part of the globe.

It can therefore be concluded that the American president holds the greatest and the highest political office in the world. The American president does have a halo of glory though not of sanctity round him. According to Sidney Hay man, he combines the sentimental aura of the crown with work day labours of a unitary Prime Ministership.

After comparing him with the king of Great Britain let us compare him with the elected functionary of Great Britain — the Prime Minister who, according to Ramsay Muir, is "adorned with such plenitude of power that no other constitutional ruler in the world possesses not even the President of USA."

Comparison with British Prime Minister

According to Prof. Laski there is no foreign institution with which, "in any basic sense", the American Presidency may be compared. However, as the real executive heads of two countries

the American President and the British Prime Minister may be contrasted in respect of their functions and powers, which are as follows.

1. The American President's term of office is secured constitutionally. He cannot be removed before the expiry of a period of 4 years unless impeached earlier, by the Congress, but it is a very difficult and complicated procedure. The British Prime Minister, on the other hand, depends for his term upon the backing of House of Commons. He continues in office as long as he enjoys the support of the majority party in the House. He must vacate his office, as soon as the confidence reposed in him by the majority is withdrawn.

2. The American President is indirectly elected by the Electoral College though the election has become direct. The British Prime Minister, on the other hand, is appointed by the Queen from the majority party in the House. He actually represents only a constituency from which he is elected. The American President in the words of Wilson "is the representative of no constituency but the whole people."

3. The President is the head of the State as well as of the Government. But the Prime Minister is only the head of the Government.

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4. The President is not responsible to the legislature for his action, whereas the Prime Minister is answerable and accountable to the House of Commons. The President, moreover, does not guide the course of legislation, nor is he a member of the Congress. His influence on the legislation is indirect though very effective at times. The Prime Minister, on the other hand, is the leader of the House of Commons and directly steers the course of legislation.

5. The American President is helpless if the majority in the Congress is against him. He cannot get all the necessary legislation enacted. The British Prime Minister is always the leader of the majority party and can get the necessary legislation passed. Threat of dissolution of the House of Commons stands like sword of Damocles on the heads of members of House of Commons. In this respect he is comparatively more powerful than the American President. Ramsay Muir remarked "the Prime Minister is adorned with such plenitude of power that no other constitutional ruler in the world possesses, not even the President of U.S.A."

6. The President possesses the veto power over laws enacted by the Congress. No such power has been vested with the Prime Minister. However, President's veto power except pocket veto is not final. His veto can be vetoed by the Congress. Hence the President may not always be sure of enactment or rejection of legislation as per his wishes.

7. The Prime Minister is only the head of his Cabinet. Since the Cabinet includes the leading party members with considerable backing, he cannot easily afford to ignore the advice of the Cabinet. He acts only as the leader of the cabinet. The American President, on the other hand, is the boss and the Cabinet members are his subordinate assistants. He is the master of his cabinet The Cabinet members are his advisers and said to be his boyerrands. They cannot displease their boss.

8. The American President's power of making appointments and formulating treaties is subject to approval by the Senate. There is no such restraint on the powers of the Prime Minister. All high appointments and treaties are made by the Prime Minister although formally they are made under the signatures of the Queen.

9. War in Britain can be declared by the Crown which means in actual practice the Prime Minister. In USA the President though commander-in-chief cannot declare war. The Congress can do so.

10. In USA Budget is prepared by the Bureau of Budget under his supervision but Congress can accept or modify it. In UK the Budget introduced by the Chancellor of Exchequer under the direction of the

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PM is apt to be accepted by the House of Commons otherwise House faces dissolution at the hands of the Prime Minister.

11. The American President derives his powers mostly from the Constitution. The Prime Minister of England, on the other hand, derives his powers from constitutional conventions. Theoretically all power is vested in the Queen and the Prime Minister and his colleagues are appointed only to aid and advise her. But in UK there is big divergence between theory and practice. The Queen is only a constitutional ruler or a constitutional executive.

Comparison with the Indian President

There is a great deal of difference between the American and Indian Presidents. The American President is the real executive, while the Indian President like the British Queen is only a titular head.

The American President is both the head of the State and the Government, while the Indian President is only the head of the State. The American President is elected more or less by the direct vote of the people while the Indian President's election is absolutely indirect. The American President holds office for 4 years and can seek re-election only once, whereas the Indian President holds office for 5 years and can be re-elected for any number of terms. The American President is neither responsible to the legislature nor is part of it but the Indian President is a part of the legislature. (The Indian Parliament consists of the President and two Houses).

Both the Presidents, however, can be removed only by impeachment, though the methods of impeachment differ. The Indian President can be impeached by either House of Parliament whereas in America it is the upper House—the Senate, which has the sole power of trying impeachment In India, on the other hand, either House of Parliament will have such power provided the other House has preferred the charges.

So far as the comparison of their powers and position is concerned it has been usual to regard the American President as wielding "the largest amount of authority ever wielded by any in a democracy." But a perusal of powers conferred upon the Indian President by the Constitution shows that the Indian President has, at least on paper, far more formidable powers. Leaving aside his vast executive, legislative, judicial and financial powers, his emergency powers are unprecedented. By an exercise of these powers, he becomes the kingpin of the whole constitutional machinery, both Central and States and the country is transformed into a unitary State. The superiority of the Indian President over the American President is seen in the following facts:

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The American President provides over a weak Centre while the Indian President does so over a strong one. In the American Constitutional system, the States occupy a place of vantage and the Centre occupies a position definitely of inferiority. In case of India on the other hand, the Centre has been made far stronger. Particularly the emergency powers given to the Indian President to suspend the autonomy of the States in limes of national crisis are such as are not enjoyed by the American President. The Indian President can suspend Constitution in a State and declare emergency either on the recommendation of the executive of the State and dissolve the Legislature and dismiss the State Council of Ministers. In financial emergencies, the Indian President has the power of reducing the salaries and allowances of all Government officials, whether of the State or of the Union, including the salaries and allowances of the judges of the Supreme Court and High Courts. Such a control over the judiciary is possessed only by the Indian President.

Apart from the emergency powers, the President of India has been given a formidable list of executive, financial and legislative powers as well. He is also the Supreme commander of the armed forces of India and can take an action in case of an imminent or actual aggression against India on the advice of the cabinet. Proclamation of external and internal emergency by the President and their subsequent revocation after the defeat of the Congress Party are the examples. Moreover, such powers are exercised on the advice of the Council of Ministers.

But this is only one side of the picture. In reality the Indian President occupies a position of far less strength than the one occupied by the American President. The President of America is both head of the State and of the Government. The Indian President is head of the State but not of the Government. The Prime Minister of India is the head of the Government.

In the next place, the Indian President has a lesser veto power than that held by the American president. The American President possesses double veto power. He can veto a bill passed by the Congress unless it is once again passed by the two-thirds majority of both the Houses. Then he has his 'Pocket Veto' power according to which a bill which is lying with him for signatures dies an automatic death if the session of the Congress comes to an end within ten days during which he is required to return the Bill. On the other hand, the Indian President has no such 'Pocket Veto' power. Besides, his veto can be overridden by simple

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majority in parliament. But the Indian President has the power of previous consent and the power of veto in certain bills within the sphere of jurisdiction of the State legislature. His veto is absolute in this respect. The American President has no such power at all. The Indian President can dissolve the parliament while the American President does not possess the power of dissolving the Congress.

However, in actual fact Parliamentary System of Government itself is the real check on the powers of the Indian President. The President is provided with a Council of Ministers which is required to aid and advise him in the discharge of his duties. Of course, originally the Constitution did not demand of him to follow the advice tendered by the Council, but in actual practice the President found it very difficult to go against the advice so tendered. After the passage of 42nd Amendment Act, 1976 he is bound to act on the advice of the Council of Ministers. In America, the Cabinet officers are mere boy-errands of the President. They are not responsible to the Congress nor have they any power to speak on the floor of the House. They are appointed by the President and are liable to be dismissed by him. They have no such status as the Cabinet members in India have.

As Laski rightly says: "The President (American) in a word, symbolises the whole nation in a way that admits of no competitor while he is in office. The voice of a Cabinet Officer is, at best, a whisper which may or may not be heard". In other words, it is the American President who determines the policy of the Government independently. The Cabinet ministers are his mere assistants. In India, however, the Cabinet occupies a position very much similar to that occupied by the British Cabinet. It is the Cabinet which is responsible to the people through its responsibility to the Lower House. The President prior to the passage of 42nd Amendment did not dare disregard such advice as was rendered to him by the Cabinet since it is the latter which is in control of the majority in the Lower House. It is this fact which greatly limited the powers of the President in actual practice in spite of the fact that he was not constitutionally required to follow the advice of the Cabinet before the enactment of 42nd Amendment. The fact is that whereas the American President is a real executive head, the Indian President was expected to be a constitutional head since the very implementation of the Constitution.

Thus it is evident that there is a great difference between theory and practice regarding the powers and position of the Indian President. In theory, the powers enumerated in the Constitution belong to the President but in reality they belong to the council of ministers (headed

by the Prime Minister)—a responsible body answerable for its policies and actions to Parliament. Though the executive authority of the Union is exercised in the name of the President, it is actually exercised by the council of ministers. It is the Ministers who take all the decisions although these decisions are executed in the President's name. However, it was feared that in times of constitutional crisis, these powers might turn out to be very real as happened in case of Weimer constitution of German Republic after 1928. Dictatorship was established in that State by the President by exercise of emergency powers. It was apprehended that in emergency the Indian President could be much stronger than the American President is or can ever be. But this was only a conjecture. The Head of the State in a Parliamentary Government cannot afford to be

a real head. Even in Emergency he is expected to act on the advice of the Cabinet. Both the External and Internal Emergency was proclaimed by the President on the advice of the Prime Minister. Emergency declared as a result of Chinese aggression on Indian borders was a mere mouth-piece of the Cabinet, in fact the Prime Minister. It provided an opportunity for the study of the actual powers of the Indian President during Emergency and the powers exercised by him indicated clearly that it was the cabinet whose decisions were being executed in his name. Internal emergency on the instance of Mrs. Indira Gandhi—the then Prime Minister further established the fact. However, the passage of 42nd Amendment set at naught all speculations about possible emergence of President's dictatorial rule in India.

The American Cabinet

The American Constitution did not envisage any cabinet to aid and assist the President in the discharge of his functions. However, in course of time, separate departments of the government were created, each of which is under the charge of a Secretary. To begin with only these departments were established. The heads of these departments are the principal advisers of the President and have come to be collectively known as the President's Cabinet. They are appointed by every President when he enters upon his office, and are usually his ardent supporters in the political field. They are not members of the Congress, nor are they responsible to it. They are the President's personal advisers, first and foremost. However, their appointment like all other high appointments, is subject to the approval of the Senate. According to a convention the Senate does not disapprove of such appointments. They hold office till the end of the term of the President. They may be

removed earlier if the President deems fit. At present there are twelve such departments are as follows:

Department Head of the Department

1. State. The Secretary of State (Minister for Foreign Affairs).

2. Treasury. The Secretary of the Treasury (Minister for Finance).

3. Defence. The Secretary of Defence (Defence Minister).

4. Justice. The Attorney General (Minister of Law).

5. Post-Office. The Post Master General (Minister of Communications).

6. Interior. The Secretary of the Interior (Minister responsible for the supervision of public lands, natural resources, irrigation projects and administration of Hawaii, Alaska, Puerto Rico, etc.)

7. Agriculture. The Secretary of Agriculture (Minister of Agriculture).

8. Commerce. The Secretary of Commerce (Minister of Commerce).

9. Labour. The Secretary of Labour (Labour Minister).

10. Health Educat. (Minister of Health) ion and Welfare.

11. Housing and The Secretary of Housing and Urban Urban Development

Development.

12. Communication. The Secretary of Communication

Position of the Cabinet

The President is not limited by the constitution while choosing his team of workers known as Cabinet. However, there are some practical considerations which cannot be side tracked. He almost always selects the members of his cabinet from within the ranks of his own political party satisfying all factions and giving consideration to experience, ability and different parts of the country. Besides, he has to see that they will serve as faithful advisers.

President Washington chose his team from among men of different political affiliations. For instance, he selected Thomas Jefferson as secretary of State and Hamilton as secretary of the Treasury. Both belonged to the party other than of his own. They caused much

embarrassment to Washington as they were generally at odds with him. Henceforth the practice of choosing the cabinet from President's own political supporters was adopted for ensuring harmony though occasional exceptions have been there. President Roosevelt (1940)—a Democrat appointed two Republicans, viz., Hi. Stimon and Frank Knox as members of his cabinet. Eisenhower appointed Mrs. Ovetor Culp Hobby—a Democrat as his Secretary for Health, Education and Welfare. Kennedy also included two Republicans—Douglas Dillon and Robert McNamara in his cabinet. However party necessities, geographical considerations and major religious groupings weigh heavily on the President's mind when he constitutes his cabinet. In U.K. the members of the cabinet are always drawn from P.M.'s own party if it holds absolute majority in the House of Commons.

The American Cabinet system differs greatly from the Cabinet system prevailing in countries, like India or England. The U.S. President cannot put his responsibility on the shoulders of his Cabinet, nor can he make it responsible for the executive actions. In other countries the Cabinet has a constitutional status and the ministers are directly responsible to legislature for their actions. They cannot be appointed or dismissed by the executive head of State, in his own discretion. They enjoy the support of the majority party in the legislature. They represent a powerful section of public opinion and are responsible to the legislature. In America, on the other hand, the Cabinet is more like the President's own Council of Advisers. It has no independent powers or prestige. According to Brogan, "the President of U.S.A. is ruler of the

heads of the departments". In India, the President cannot afford to disregard the advice of the Cabinet. But in U.S.A., it is the President's sweet will whether to accept the advice of his Cabinet or not. There is a classic example of that fact showing how utterly the President can disregard their advice. Once an important subject was being discussed by seven members of President Abraham Lincoln's Cabinet, with Lincoln in the Chair. When it was put to vote, the seven members voted in the negative, although Lincoln himself wanted a decision in the affirmative. He wound up the discussion by quietly saying: "The vote is 7 nayes, 1 aye. Therefore the aye has it." This shows the utter subordination of the Cabinet to the President. Laski has correctly remarked, "The functioning of American cabinet is not a pooling of the mind in the British sense."20 This cannot happen in countries like India, England and France.

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The American Secretaries are appointed by the President according to his free will and can hold office only so long as they enjoy his confidence. He can dismiss them at will. For example, Wilson dropped Bryan and President Arthur a weak President got rid of Blain—a popular Republican. The Cabinet meets ordinarily once a week. It is for the President to decide what matters are to be discussed. Proceedings are informal and there are no rules of debate. No official records of proceedings are maintained. Hardly any voting is there because ultimately it is the will of the President that prevails. This is in contrast with Indian or British Cabinet where all decisions are taken by a majority vote and regular records are maintained. In other words, the American Cabinet does not work according to principle of cabinet system strictly.

Besides, the members of President's Cabinet do not sit in the Congress. However, they may be asked to appear before the Congress. It functions as a body of individual advisors to the President. It does not work as a team. In the words of Brogan, "It need not or pretend to be unanimous for its will is the will of one man and his is the power and the glory and the responsibility."21 No doubt the ultimate responsibility for the administration and for the working of individual departments rests with the President.

Further, the cabinet is not a policy-making body unlike that of British Cabinet which formulates the policy. Even in vital matters concerning particular departments the President plays the role of a "court of appeal from departmental decisions." The important policy decisions are taken by the President in consultation with informal advisers who do not constitute his formal cabinet Wilson for instance depended more on colonel Horse than any member of his formal cabinet. Jackson leaned heavily on his Kitchen Cabinet and Palace guards who hardly formed his Cabinet.

Likewise, President Franklin D. Roosevelt placed far greater confidence in his "Brain trust"—a group of men—whom he gave more importance than his official family.

We can, therefore, come to the conclusion that for all intents and purposes, the Cabinet is the President's Family, and the President, as head of the family, dominates it. President Wilson is reported to have treated his Secretaries as office-boys. President Grant regarded them as second-lieutenants whose only duty was to carry out the orders of the President. In most cases they acted as body of advisers to the President and not a council of his colleagues. According to Fenno, "He is a

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policeman with sole and unlimited control over the traffic signals. Without the green light which only he can flash and for reasons largely of his own choosing the cabinet cannot even begin to function; whatever it does, it is always subject to his choice to change the signal from green to red."22

The position of the American Cabinet has been best described by Prof. Laski in the following words: "The American Cabinet is one of the least successful of American federal institutions. It can never be more than what the President makes it, and the President is rarely likely to make it an outstanding body."23 Laski correctly described the cabinet office as an interlude in a career but not a career itself.

American vs. British Cabinet

The similarity between the two Cabinets lies in the fact that both are the extra constitutional growth. In other words, they are the outcome of conventions. In other respects the American cabinet stands in sharp contrast to its counterpart in Great Britain. Such a sharp contrast can be attributed to two different constitutional systems. In Great Britain where parliamentary government prevails, the cabinet constitutes the real government It is mostly taken out of the Lower House. A few members of the House of Lords also are included, but all of them are responsible to the House of Commons. In the U.S.A., on the other hand, the Presidential type of government exists. As such the President or his advisers are neither drawn from the legislature nor are they responsible to the latter. They neither initiate legislation in the Congress nor speak on the floor of the Congress. This is unlike that of the U.K. where the members of the Cabinet sponsor legislative measures and pilot them through the Houses.

Secondly, political homogeneity is a cardinal feature of the British Cabinet. The ministers are drawn from the same political party. In case of a coalition also a homogeneous team is constituted. The American Cabinet on the other hand, may consist of heterogenous elements drawn from different parties. Even non-party members may be included in the Cabinet.

Thirdly, the British Cabinet follows the principle of collective responsibility, i.e., all for one and one for all principle. In matters pertaining to general policy, decision is always collective. The American Cabinet lacks this characteristic. The Cabinet consists of the heads of the departments who run the errands of President and are responsible to him. If anyone is ousted by the President the rest of the members remain silent spectators to his political misfortune. Oil scandals during President Hardings' time are revealing. Three members

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of his Cabinet were involved in these scandals. Criminal cases were filed against two of them. One was convicted but neither the President nor the rest of the members of the Cabinet took the blame upon themselves.

Fourthly, the President of the U.S.A. acts as a boss over the Cabinet whereas the Prime Minister of U.K. is only a leader of the Cabinet. He is considered "first among equals" by some, "moon among the lesser stars", by Harcourt and "Sun around whom the ministers revolve like planets" by Jennings. The President of U.S.A., on the other hand, is described as a huge colossus who rides roughshod over his cabinet colleagues. In the words of Laski, 'The real fact is that an American Cabinet officer is more akin to the Permanent secretary of a government department in England than he is to a British Cabinet minister."24

Lastly, in the U.S.A. membership of the Cabinet is an interlude in a career and not itself a career. Whereas in the U.K. membership of the Cabinet is rich for a successful parliamentary career. A membership of the cabinet may prove to be a stepping-stone for Prime ministership but attainment of a cabinet rank in the U.S.A. is not necessarily a step towards the presidency.

Thus it is evident that American Cabinet is a Cabinet in name. It lacks the salient features of British Cabinet system. Hence it is a misnomer to call it a cabinet.

America's Vice-President

The Constitution provides for the office of Vice-President of the United States as well. He is elected alongwith the President in the same manner. The Presidential electors cast two votes—one for President and the other for the Vice-Presidential candidate. A candidate for Vice-Presidency securing absolute majority of votes is declared elected. In case no candidate secures an absolute majority of votes, the Senate elects one out of the two candidates securing the highest votes. The qualifications of a Vice-presidential candidate are the same as for the Presidential candidate.

Two principles are kept in view in the election of the Vice-President. First is that the President and Vice-President should not belong to the same State and the second is that the Parties while nominating their candidates for the two offices should keep in view the fact that both the candidates belong to different wings of the party.

Functions

(a) The Vice-President of America is the ex-officio Chairman of the Senate. He has a casting vote which can be used in case of a tie.

Otherwise as Presiding Officer, he has very little of authority, because the Senate has its own rules and customs which the Presiding Officer must follow. It does not even appoint senatorial committees. His duties as chairman are formal and perfunctory.

(b) The Vice-President is to succeed the President in case he dies, or resigns, or is removed by impeachment. In this case he occupies the President's office for the remainder of the term and exercises all powers of presidential office. On eight occasions Vice-presidents succeeded to the

Presidential office on account of the death of the Presidents. Gerald Ford became President in August 1974 following Nixon's resignation.

(c) Sometimes the Presidents include the Vice-Presidents in their Cabinet as matter of courtesy. For example President Roosevelt included Vice-President Henry Wallace in his Cabinet. President Eisenhower sent Vice-President Nixon on a tour of the Middle East, India and Pakistan. The object of associating the Vice-President with the administration is to give him some training in this regard so that he may be able to handle the Presidential office if the opportunity arises.

But the fact remains that the office of Vice-President is a very weak office because no significant role is assigned to it. The first Vice-President Adams wrote to his wife "My country has in its wisdom contrived for me the most insignificant office that even the invention of man contrived or his imagination conceived." Roosevelt called it as an office unique in its functions or rather in its "lack of functions." Benjamin Frankin, condemned the Vice-President as "His superfluous Highness." Wilson described the position of the Vice-President as "one of anomalous insignificance and curious uncertainty." President Roosevelt once opined that he would rather be a professor of History than Vice-President. Marshall, himself Vice-President under Wilson, described himself as "a man in a cataleptic fit who is conscious of all that goes on but has no part in it" Hence the Vice-Presidential office is described as that of impotence. Clinton described "impotence as the mark of a second class office."25 Men of outstanding talent and strength of character are not attracted to this office. It has been suggested that some of the ceremonial functions of President may at least be transferred to the Vice-President or in the alternative some substantive functions of President should be transferred to him. Laski held the latter view. However, there has been no concrete outcome of such suggestions.

November 1996 Presidential Elections

William Jefferson (Bill) Clinton became the second democrat in sixty years after the legendary Franklin D. Roosevelt, to be elected to a second term in the White House. Clinton won 50 per cent of the popular vote

though his Republican challenger Robert Dole could muster merely 42 per cent. Billionaire Ross Perot—the gadfly Reform Party candidate— could capture only 8 per cent votes—11 per cent less than his tally in 1992. Surprisingly, President Clinton's performance in the Electoral College vote was still more impressive. This has, in fact, been one of the few elections in the recent past when a particular candidate maintained a constant lead over another as Clinton did, right from the primaries. The political prophets are surprised at such a landslide victory, as the Democrats had to eat humble pie at the hands of the Republicans in the 1994 mid-term Congressional elections. According to an Editorial, "The 1994 Republican landslide victory in the mid-term Congressional elections was probably one of the most humbling admonitions a sitting president had suffered since World War II."26 Hence the critics attribute Clinton's victory to a sort of thriving on political humiliation.

References

1. Munro, W.B., The Government of United States, p. 144.

2. Laski, The American Presidency, p. 230.

3. Competition Success Review, May, 1977 issue, p. 22.

4. Ibid, pp. 156-57.

5. Johnson Aludius O: Government in the United States (1958 ed) p. 286.

6. Haymen Sidney, The American President, p. 294.

7. The President does not personally conduct certain foreign relations of the United States. Much of the work is done by the Secretary of State. However ultimate responsibility is that of the President.

8. Ferguson and McHenry: The American System of Government, p. 313.

9. DE. McHenry: The American System of Government, p. 287 (1959-60).

10. Zink and others: American Government or Politics, p. 158.

11. We have referred to total vetoes-regular plus pocket reproduced from Wilson American Govt. Institution and Politics, 1987 p. 342

12. Munro, The Government of the United States, p. 178.

13. Laslri, H., American Presidency, (1952 ed.), p. 148.

14. Munro, The Government of the United States, p. 173.

15. Ibid.

16. Op. at., p. 148.

17. Redford Truman: Politics and Govt. in US. (1945 ed.) p. 30.

18. Ferguson and McHenry. The American System of Government, p. 287. 18A. Hindustan Times, dated Nov. 10,1994.

19. Ogg: English Government and politics, p. 112.

20. Laski, H.J., The American Presidency, p. 92.

21. Brogan, D.W., The American Political System, p. 109.

22. Fenno, R.I. The Presidents Cabinet, p. 29.

23. Laski, Ibid, p. 97.

24. Laski, H.J., op. cit., p. 87

25. Clinton, R. The American President, p. 102.

26. Hindustan Times, dated November 7,1996.

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5 THE CONGRESS: ITS COMPOSITION

"It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents."

—Woodrow Wilson

The first Article of the American Constitution states: "All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Thus the Congress is the main legislative organ of the American Government and is bicameral in its composition.

Why a Bicameral Legislature? Although the Congress which functioned during the Revolutionary War and thereafter the Congress of confederation consisted of only one chamber, it was not considered worthy of emulation by the framers of the constitution. They decided to have a legislative body of two chambers and there was little disagreement over the decision. The following factors influenced this decision:

(a) Their familiarity: The framers of the constitution were more familiar with bicameral legislatures than with those of a unicameral legislature. Most of the States which the delegates represented had a bicameral system. They also knew that the mother country from which they had recently separated had a bicameral parliament.

(b) To guard against despotism: One of the usual arguments in favour of the bicameral system is that a second chamber checks the despotism of the lower house. The framers of the constitution apprehended that a single house legislature might usurp the powers and they accordingly provided for a two-chambered legislature to act, in Hamilton's words, as an "impediment— against improper acts of legislation."

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(c) To ensure conservatism: The preference for a bicameral system at the Philadelphia Convention was also influenced by the desire to provide stability in government The country had just passed through a period of strife, turmoil and uncertainty. The fathers of the constitution wanted a government which would be able to maintain peace in the country. All this called for the creation of a house which would serve as a check on legislatures directly chosen by the people for short terms.

(d) Necessity to compromise: A strong determinant of bicameral legislature was the necessity to compromise the differences between large and small states. In the Congress which operated under the Articles of confederation each state had equal voting power irrespective of its population. The larger states opposed continuation of equal representation of the several states without reference to population. They pointed out to the unfairness of giving to the states which paid most of the taxes no more representation than to those which contributed little. The small states fought to retain their position of equality. They said that states, like men, were created free and equal. One of the delegates said that there was no more reason for favouring a large state in the matter of votes than for "giving a big man more votes than a little man." The disagreement over the representation issue was so deep that for a time it seemed as if the convention would break up in disorder. But happily a solution was found out through the channel of compromise known as concrete compromise. The compromise provided that the upper house of the proposed federal Congress should be based on the equal representation of the states while the lower house should represent the several states in proportion to their respective populations.

So, a Senate and' House of Representatives were established to form the Congress of the United States. The bicameral plan for Congress is so successful that little consideration is given today to seek departure from it.

The House of Representatives

Apportionment of seats: The House of Representatives is the lower chamber and may be designated as the "popular branch" of Congress. The original constitution did not specify the size of the House. It only stipulated that "representatives shall be apportioned among the several states according to their respective numbers. The number of representatives shall not exceed one for every thirty thousand, that each state shall have at least one representative. The actual enumeration shall be made within three years after the first meeting of the Congress of the

United States, and within every subsequent term of ten years in such manner as they shall by law direct."1 The first House, which met in 1789, contained sixty-five members who were allocated in the constitution. Thereafter, the Congress made assignments after each census, ranging from the basis of one representative for each 30,000 in 1792 to one for 3,45,000 in 1951. By 1911 the strength of the House had reached 435. After the 1920 census the Congress failed to carry out the constitutional mandate to reapportion members after ten years' interval. The Reapportionment Act of 1929 set the "permanent" number of House members at 435. The admission of Alaska in 1958 and of Hawaii in 1959 brought the total of House members to 437. The membership again dropped back to 435 as a result of reapportionment carried out in 1961.

The present strength of the House remains the same. In the November 1994 elections, the Republicans routed the Democrats. Out of 435 members the Republican Party won 230 whereas the Democrats could capture 204, one seat was won by an Independent. In the last House the Republican had 178 members whereas the Democrats had roped in 256.'A The Republican held the sway in November 1996.

Though there is no provision in the constitution regarding election of representatives by district, however, a law imposed it in 1842, and it has prevailed ever since. In 1872 a rule was added to require districts of substantially equal population. In 1901 the feature of compactness was added. The requirement of compactness, continuity were, however, dropped in 1929 and are not now in effect.

There is some controversy over the number of House seats and the mode of allocating them. Several representatives have expressed discontent over the large number of constituents each member must serve. On the other hand, some advocate reduction of the House size to about 300. The mathematical formulae by which House seats are allocated are still being disputed by statisticians.

Qualifications

As regards the qualifications of the members the constitution provides: "No person shall be a representative who shall not have attained the age of twenty-five years, and been for seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen." To put it positively a candidate for election to the House of Representatives must be:

(a) a citizen of the United States of at least seven years' standing,

(b) of twenty-five years of age or more,

(c) an inhabitant of the State from which he is elected.

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In addition, custom decrees that a representative must reside in the district that he represents but there have been exceptions. The constitution makes the House the judge of "the elections, returns and qualifications" of its members.

The constitution also provides certain disqualifications. No person holding any office of profit under the United States shall be a member of either House of Congress. Secondly, no representative or Senator may be appointed to any civil office which shall have been created or the emoluments of which shall have been increased during such time. Single member district system: In most of the States of the U.S.A. single member district system prevails. In some of the states the number of congressional districts has not been increased despite the increase in the number of members they are entitled to elect The additional representatives in these states are elected on a state-wide basis. They are termed as "representatives at large." Prior to 1929 single

districts were required to be equal, compact and continuous. The Act of 1929 omitted the words, "Continuous" "Equal", and "Compact." This has led to the rise of a nasty practice—Gerrymandering.

Gerrymandering: Gerrymendering, according to Dr. Munro, is an attempt "to lay out the districts in such a way that the interests of the dominant party will be served."2 The term Gerrymander is associated with the name of the Governor of Massachussets, Elbridge Gerry, who sanctioned the case of partisan district making. The principle behind this practice is to spread the majorities of a particular party in as many districts as possible and concentrate the strength of the opposition party in as few districts as possible so that they capture less number of seats. This assures the largest number of seats for the party in question and the fewest possible for the opponents. Thus each delimitation of districts reshapes the districts, making the electoral map look like a jigjaw puzzle. Hence it has resulted in the emergence of shoestring, saddle bell districts, starfish or lizard type districts. Commenting on the evils of Gerrymandering, Beard rightly remarks... "as a result of Gerrymandering, the House of Representatives is seldom if ever an exact mirror of the political opinions expressed at the elections."

Their Election: As regards the qualifications of the voters the constitution provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." This means that all those persons who are entitled to vote for the lower chamber of the state legislature are also entitled to vote for the House of Representatives. In other words, each state is

given the right to determine who shall vote for congressional elections... All the citizens of the age of twenty-one had the right to vote. Since the passage of federal voting Rights Act of 1970, the right to vote in all federal elections has been given to citizens of 18 years of age. It may be noted that unlike in India there is no national suffrage in the United States. There is no Election Commission nor are there federal election officers to register the voters or provide the polling places or punch the ballots. The State and local officials do the work. The representatives in the Congress are chosen by the election machinery which the states provide. The elections are held throughout the country on the same day, namely, on the Tuesday following the first Monday of November in every alternate year. The voting is by secret ballot. Almost all the states have made provision for absent voting, i.e., those voters who are absent from their homes on the election day can vote by mail or, in some cases, mark their ballots before leaving home.

Sessions: The House of Representatives holds one session in a year. The original constitutional provision called for the assembling of Congress on the first Monday in December, unless Congress should choose to appoint a different day, which it never did. This meant that the first session of the new Congress did not meet till thirteen months after the election, i.e., December next year. Meanwhile the old Congress met in December immediately following the election. This session of the old Congress was called the "lame duck" session. The newly elected members assumed office only on March 4 following their election. So they could not attend this session. Further the two sessions under the original plan were of unequal duration. The session which

began in December following the election was a short one as the terms of members expired in March, but the other session could be continued for a whole year.

The twentieth amendment added to the constitution in 1933 sought to correct the old plan. It provides: "The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day." Thus under the new plan, the newly elected members of the House of Representatives take office during the first week of January and immediately begin the first session which can continue for a full year if desired. Under the legislative Reorganisation Act of 1946, the regular session adjourns on July 11 unless otherwise provided by Congress.

The President has the power to call special sessions. As a rule, the President calls the special session only when there is some matter of

national urgency for the Congress to consider. The Congress can also meet in a special session on the call of the majority or minority leaders in the Congress.

The Quorum: According to section 5 of Article 1, a majority of members constitutes the quorum. In other words, it means that unless 219 members are present in the House of Representatives it cannot do its business. This requirement of the majority of those members "chosen, sworn and living" seems unduly exacting when compared with practice in India (10 per cent of the membership). Great Britain (40 members), Canada (20 members) or Australia (a third of the members). In order to make the quorum, some members attend the House unwillingly or under compulsion and who are not interested in the proceedings and even disturb the proceedings. It has been suggested that the quorum should be reduced. A smaller quorum, it is said, would lead to an improvement in the debate.

The Term: The House of Representatives has a short term of two years. This brevity of term does not provide the congressman sufficient time to make a broad record. He remains thus under perennial pressure to repair political fences for re-election. It has, therefore, often been proposed that the term of the Representatives be increased to four years.

The Privileges: The privileges of the Representatives include immunity from arrest and freedom of speech. Section 6 of Article 1 stipulates that the representatives shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance on the session of their House, and in going and returning from the same; and for any speech or debate. In either House, they shall not be questioned in any other place. The representatives enjoy immunity from arrest in civil cases only. In criminal cases, they are liable to arrest as other citizens. They can speak freely in the House without fear of criminal prosecutions or civil suits. The House has in this respect full power to determine its own rules, to discipline for excesses and to expel members.

The representatives are also given compensation. They receive a salary of 42,500 dollars a year, all of which is subject to income tax. Each member is allowed twenty cents per mile travelling

expenses to and fro Washington once each session. He is also given an allowance for clerk hire, 12,500 dollars per year. He can make use of mail service without the payment of postage. Free medical service is made available to him.

The Congressional Recognisation Act of 1946 has provided a pension system for retired members reaching the age of 62 who have

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served a minimum of six years and paid into the pension fund 6 per cent of their salaries. The quantum of pension is 2-1/2 per cent of then-annual salary multiplied by their years of service. The retirement plan in case of the Congressmen, it may be noted, is different from the plan for civil service employees. In contrast to the civil service retirement plan, the Congressmen are not required to retire when they reach the retirement age. Further, the members are free to elect whether they will come under the plan.

The Speaker

After a new House is elected, its first duty is to organise itself. The clerk of the last House presides. The roll call is taken to determine the presence of quorum. Then the oath of office is administered. Thereafter the House proceeds to elect its Speaker. The Constitution does not say much about his election, powers and functions. It only provides that the members "shall choose their Speaker and other officers." Though the constitution does not require the Speaker to be a member of the House, yet only a member of the House makes the choice but in practice, it is always agreed upon by a caucus composed of members of the majority party. If the same political party gets majority in the House, and the Speaker of the last Congress is returned, it is customary to reelect him. If same party is not returned in majority and there is a change in the relative strength of the parties as the result of an election, the next Speaker is likely to be the man who served as floor leader of his party when it was in minority. Thus, the Speaker is always the choice of the majority party. The House merely ratifies the choice.

Unlike in Great Britain, the election of the Speaker in the United States is not unanimous. In Great Britain there goes a saying, "Once a Speaker always a Speaker," but in the United Slates the Speaker of the preceding House need not always be reelected and this is especially so when there is a change in the relative strength of the parties. Moreover, in Great Britain, the Speaker is returned unopposed from his constituency as many times as he intends to be returned. But in America his election is always contested and he is never returned unopposed from his constituency. He is elected on party lines and remains partisan throughout his term.

His Powers

The speakership has always been an important office. Its power was greatly increased in the late 1880's and during the 1890's. There are two important reasons for such a development. Firstly, the constitution did not provide the House an official leadership. The constitution makers

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took it for granted that the House would lead itself. In their desire to establish a system of checks and balances, they freed the executive and legislative branches of the government apart leaving both Houses to work out their own plans for leadership. As the House grew in number and its legislative business expanded, the need for leadership developed and there developed the office of the Speaker. Secondly, the responsibilities of the House rapidly increased with the growth of population and with the development in industry and agriculture. The machinery of the House was slow to adjust to changing needs. Thomas B. Read, and Common (1903-10) known to history as "Czar Reed" and Czar Canon secured the adoption of rules which gave to the Speaker virtual dictatorial powers over the House. Munro writes, "Beginning with Henry Clay, the Speaker gradually became the recognised leader of the majority party, hence of the House as a whole. He became the man on whom the majority depended for getting its measure, safely through the maze of rules. More and more authority was absorbed into its hands until he became a virtual dictator of legislation." Young also remarks "The Speaker had become the autocrat of the House without whose assent virtually nothing of consequence could be done".3

But in 1910 there was a revolt against the abuse of powers by the then Speaker Joseph G. Cannon. The "Cannon Revolt", as it is called, waged by Democrats and progressive Republicans against the republican Speaker Cannon, clipped the Speaker's wings by depriving him of the Rules Committee membership and in 1911, he was deprived of the duty of appointing various committees. Henceforth all the appointments to the committees were to be made by the House itself.

In spite of all this clipping process the Speaker of the United States exercises numerous powers which may be enumerated as follows:

(a) The power to preside and recognize

The Speaker is the presiding officer of the House of Representatives. As such he conducts the proceedings of the House and recognises the members. The rules of the House provide that if two or more members rise, "The Speaker shall name the member who is first to speak." This in effect enabled the Speaker to exercise wide control over the course of debate in the House. He kept his eye under perfect control. He always recognised his members only.

It may, however, be mentioned that the scope of the power of recognition has been gradually reduced by the rules and precedents of the House. The consent calendar has done away with the Speaker's discretion in according or denying recognition when unanimous consent

is being asked. Similarly on Calendar Wednesday, when the name of a particular committee is reached, its chairman calls up a bill and he is recognised automatically for one hour. By 1911 the speaker was deprived of this power altogether.

(b) The power to maintain order

The Speaker maintains order and decorum in the House. The rules of the House in this respect are strict The members must address the chair respectfully, must not wear hats or smoke in the

House, and must obey the Speaker's rulings. If the speaker calls any member to order, he must immediately sit down. In case of disturbance or disorderly conduct the Speaker may either suspend business or instruct the Seargeant-at-aims to quiet any disorder in the House. But the Speaker cannot censure, expel or punish a member. Only the House can do that.

(c) The power to interpret the Rules

The Speaker interprets the Rules of the House and applies them. On many matters the Rules are simple and explicit and he must apply them according to their obvious meaning. He is also obliged to follow the precedents of the House, although it is within his powers to create new precedents, provided that the House so requires. The ruling of the Speaker, it may be noted, is not final. A majority of the House may over-rule the interpretation made by the Speaker, though it rarely exercises this prerogative.

(d) Chairmanship of Rules Committee (before and after 1910)

Before 1910 the Speaker used to be the Chairman of the Rules Committee. Originally this committee was a special Committee, its only function being to recommend a set of rules for the House at the beginning of each new Congress. This was not of any great consequence because the committee recommended that the rules of the preceding congress be adopted with perhaps a few minor changes. But in course of time, the Rules Committee became a regular committee with the right to report a new rule at any time or for any purposes. The Speaker being its Chairman was well in a position to secure at any time the adoption of a special rule, prevent consideration of measures to which he was opposed and to advance measures, which he favoured.

The growth of the Speaker's authority and his denial of the right to debate in many cases led to a revolt in 1910 against his legislative dictatorship. In that year a group of insurgent Republicans combined with the Democrats and deprived the Speaker of the power to appoint the Committee on rules and provided that the Speaker should

henceforth be ineligible for membership of the Rules Committee. In April 1911, the Democrats who won at the polls, changed the rules of the House in such a way that it took away the selection of standing committees and Committees' Chairman entirely out of the Speaker's hands.

(e) His other powers

(i) The Speaker signs all acts, addresses, joint resolutions, writs, warrants, and sub poenas as ordered by the House, (ii) Puts questions to vote, (iii) Appoints such select and conference committees as from time to time are authorised, (iv) If there is a doubt as to which committee a particular bill be referred to it is for the Speaker to decide the matter, (v) He can order the lobbies to be cleared if he considers the same necessary, (vi) He announces the order of business and also declares the results of voting, (vii) As a member of the House he has the right to speak and vote as other members, although he does not vote, except when the House is voting by ballot or when there is a tie. In case of tie he is apt to vote for his party.

His position

Although the Revolt of 1910 weakened the position of the American Speaker, he, however, continues to be an important officer. According to Finer, "He still remains in intention and practice a partyman. He is still one of the very small knots of congressional leaders who treat with the President, for passage of administrative measures. He is still consulted by, and is the Floor leader of the majority party, which considerably adds to his stature. He is still a major factor in deciding assignments to committees and the priority of business because he is one of the most eminent, usually the most eminent of the party, that indeed is why he was elected Speaker. Order and system in a House of 435 members there is bound to be and the power of leadership must somewhere be lodged. While until 1910 it was concentrated in the Speaker and his friends by grace, it is now concentrated in the Speaker's friends and the Speaker Leadership has been syndicated or put into 'common' but the Speaker is still the predominant member of the syndicate." Speaker Joseph G. Cannon, after the Revolt of 1910, put the position of the Speaker in these words: "The Speaker does not believe, and always has believed, that this is a government through parties and that parties can act only through majorities. The Speaker has always believed in and bowed to the majority in convention, in caucus, and in legislative hall and today profoundly believes that to act otherwise is to disorganise parties, i.e., to prevent coherent action in any legislative

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body, is to make impossible the reflection of the wishes of the people in statutes and in laws." The American concept of speakership has been well summed up by Longworth (ex speaker) "I believe it to be the duty of the Speaker standing squarely on the platform of his party, to assist in so far as he properly can the enactment of legislation in accordance with the declared principles and policies of his party and by the same token to resist the enactment of legislation in violation thereof."

Comparison with the British Speaker

The Speaker of the House of Representatives greatly differs from the Speaker of the British House of Commons. Briefly put the points of difference are as follows:

(i) In Great Britain the election of the Speaker is unanimous. Though he is chosen by the party, i.e., from among its members the opposition is always consulted before his name is proposed and if the opposition objects, his name is dropped. The purpose is to secure general respect and "no violent animosity." In 1945, when labour had a majority of over 200, it did not oppose the re-election of Colonel Clifton Brown who had been the conservative nominee of 1943. In the United States, on the other hand, the election of the Speaker is a contested one. Though he is usually the nominee of the majority party, the minority party, however, does put its candidate and the ballot is taken. With coming in of the other party in majority, the Speaker must change.

(ii) In Great Britain the Speaker is returned unopposed from his constituency as many times as he intends to be returned. But in the United States there is no possibility of his being returned

unopposed from his constituency and has to fight hard for being re-elected to the House of Representatives.

(iii) The Speaker of the British House of Commons becomes a non-party man immediately after his election to that office. He does not take part in the party conferences and does not associate himself with party resolutions. But the Speaker of the House of Representatives is actively and openly identified with his party's organisation. As a leader of the party in the House, he is supposed to defend the party's interest.

(iv) The Speaker of the British House of Commons acts impartially and judiciously. He is everybody's speaker. His rulings are fair and he follows the precedents of the the House. On the other hand, the Speaker in the U.S.A. acts as a leader of his party and uses the power of his office to promote his party's interest and programme. His rulings are as such biased.

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(v) The rulings of the Speaker in the U.S.A. are not final. A majority of the House of Representatives may overrule the interpretation placed on a rule by the Speaker. On the other hand, the ruling of the British Speaker is considered final and there is no attempt by any group to make an appeal to the House to overrule the Speaker's interpretation.

(vi) The Speaker in the U.S.A. takes parts in the debates and participates in the proceedings as a member of the House. He has also the right to cast his vote. But in England the Speaker never takes any part in the debates and never votes except when there is a tie.

(vii) In the United States the Speaker exercises his casting vote in the interest of his party, but in England the Speaker exercises it according to the established customs of the House.

(viii) In Great Britain the Chairmen of the Standing Committees are appointed by the Speaker from Chairmen's panel consisting of persons nominated by the selection committee. But in America the power of the Speaker to appoint the Chairman of various Committees of the House was taken away out of his hands in April, 1911. Today the American Speaker is relatively weak as compared to his counterpart in England.

(ix) Because of his partisan outlook and contested election the Speaker in the U.S.A. does not enjoy the same prestige and honour in and outside the House as does the British Speaker. The British Speaker refrains scrupulously from any display of personal sympathies or partisan feelings. He is not a leader but an umpire. Naturally, therefore, he commands respect from all sections of the House. His office is regarded as an office of great honour and prestige. All this does not hold true of the American Speaker. England did not face in its history of Speakership a revolt like the one which America faced in 1910-1911.

(x) In the U.S.A. the Speaker acts as the leader of the House but in the U.K. the Prime Minister or his nominee enjoys this privilege. This reduces the authority of the British Speaker comparatively.

The Senate

In Article 1 of the American constitution, the word "Senate" precedes the term, "House of Representatives," and this is not a slip of the pen. The constitution makers wanted to give the Senate an important position in the whole federal system and thereby an assurance to the States that as states they would have a dominating share in the government of the nation.

Apportionment of seats

The Senate is a small body of only one hundred members. Each state

sends two representatives irrespective of population or area. The most

populous state, New York, has the same number of senators as Nevada. The Constitution has protected the right of the states to equal representation. It provides that "No State, without its consent, shall be deprived of its equal suffrage in the Senate." While providing equal representation to the States it was pointed out by the Federalists that "the equal vote allowed to each is at once a constitutional recognition of the portion of the sovereignty remaining in the individual state and instrument for preserving that residuary sovereignty." The provision for equality was the result of a bargain, between the larger and the smaller states. Had it not been provided for, the federation probably would not have come into existence. In the Congress which operated under the Articles of the Confederation, each state had equal representation without reference to population. The small states, on the other hand, fought to retain their position of equality arguing that their sovereignty would be endangered if representation was based on population. As a means of resolving this conflict, the constitutional convention provided equal representation in the Senate and made the House of Representatives elected on population basis.

There has been criticism of the principle of equal representation in the Senate. Firstly, it is said that the Senators do not regard themselves the representatives of the States but consider themselves as representatives of the nation. Secondly, it is anomalical that geographical units rather than population should be the basis for representation. The fifteen states of Arizona, Delaware, Idaho, Moure, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont and Wyoming have thirty seats - about one-third whereas their total population is only about seven per cent of the national figure. Likewise, the states of New York, Pennsylvania, Illinois, Texas and California have a third of the national population but have only ten seats in the Senate.

However, as a practical matter, changing the basis of representation in the Senate appears out of question. A Constitutional amendment would be required to effect which a two-third vote in both Houses of Congress and ratification by three-fourths of the states is needed. There is hardly a chance that three-fourths of the states would ratify the amendment. The small states highly prize their prerogative of equal representation, and the number of these states is sufficient enough to prevent the adoption of any such amendment. Moreover, there are strong reasons to continue the

rule of equal representation. The Senate represents areas; the House represents numbers. A majority of House

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membership comes from ten States which are populous ones. Were it not for the principle of equal representation in the Senate, these ten States could control the legislative policy of the nation. Thus the Senate has provided a balance and counterpoise to the numerical strength of the bigger states in the House of Representatives.

The election

The constitution in its original form provided that Senators should be chosen by the legislatures of the several states. There were two main reasons for adopting this method. Firstly, the framers of the constitution thought that this method would bring in persons of wide practical experience who had served for a long period in slate legislature or in other public offices. Direct election, it was feared, might enable the demagogues to win at the polls but would not be possible for them to befool the state legislature by oratory and promises. Secondly, it was thought that indirect election of the senator would guarantee the permanence of the state legislatures and provide a connecting link between the state governments and the national government.

But the working of the indirect election belied the expectations of the constitution makers. Soon the country began to feel that there was too much "invisible government" in the selection of the senators, too much log rolling and too much money spending. With the growth of party system the indirect election had for all intents and purposes become the direct election. The actual choice of the Senator was made in the State party convention or in the party caucus. Often it was the result of secret deals. It was seen that many a time the support of some great financial interest, without any other qualification, placed many senators in their seats. Sometimes, the legislatures failed to elect a senator. From 1890 to 1912 not less than eleven states at one time or another were represented in the Senate by only one member. In 1901, the state of Delaware was not represented at all in the Senate. According to Garner, "Between 1895 to 1910, a number of wealthy men found their way into the Senate through the votes of legislatures who were liberally paid for their support."

As a result of these objections, the method of indirect election became unpopular and there was an agitation for a change to direct election by the people. Finally in 1912 the seventeenth amendment was submitted and passed which was proclaimed in 1913. The Amendment provided that the senators shall be elected by the people of the states directly. Thus the position today is that each state sends two members in the Senate who arc directly elected by vote of such persons as are entitled to vote for the lower House of the state legislature.

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In the November 1994 elections the Republican Party gained 8 seats in the 100-member Senate taking its tally to 52 as against the Democratic Party's 48. In the outgoing Senate the Democratic Party's strength was 56 and the Republican Party's 44. "The magnitude of the Republican

triumph was visible in the ease with which Republican incumbents won re-election. Not one of the Republican Senate incumbents was defeated".4 In November 1996 the Republican were left with 51 seats.

Thus the Republicans have seized control both of Senate and the House of Representation.

Their qualifications

A senator must be:

(a) at least thirty years of age;

(b) a citizen of nine or more years standing;

(c) an inhabitant of the State from which he is chosen.

It may be noted that residential qualifications are not necessary as in England or in India.

Their term

The senators are elected for a term of six years, one-third retiring after every two years. The rotation of the retiring members is so arranged that no state has to elect both of its senators in the same year. The retiring senators are eligible for re-election. The senators have been elected over and again. It is not uncommon for a senator to run 18 to 24 years of membership. In 1962 senator Carl Hyden of Arizona was marking his thirty-fifth year in the Senate. The Senate is thus a continuous body which is never dissolved as a whole. The greater length of term has a continuing influence. The senatorship is more desirable because a senator, by contrast with a representative, does not have to begin plans for the next election almost as soon as his term begins. Many members of the House want to enter the Senate, but only on rare occasions does a senator enter the House of Representatives.

According to the constitution, the Senate is given the power "to be the judge of the elections, returns, and qualifications of its members." Its means that the elected senator cannot take his seat until the Senate has adjudged him to be properly elected and qualified. In 1926 the Senate refused to admit two duly elected members (Frank L. Smith of Illinois, and William S. Vare of Pennsylvania) because of huge expenditure in primary elections. Since the adoption of the 17th Amendment, vacancies in the senate caused due to the death, disqualification or resignation of a senator, may be filled by appointment by a governor if the state law authorizes it. Virtually all state legislatures have given this authority to the governor.

Session

The Senate holds its regular session each year. It may also be called in special session by the President even when the House of Representatives is not sitting. This is because the Senate has

special functions which are not shared by the House of Representatives, e.g., approval of treaties, confirmation of appointments and trial of impeachments. The Senate has been called in special session a number of times without the House of Representatives being simultaneously summoned, but the House of Representative has never been called in special session without the Senate also being called because the House can do nothing without the Senate's concurrence.

The Presiding Officer

The Vice-President of the United States is the presiding officer of the Senate. But he is neither the leader of the majority party as is the Speaker of the House of Representatives nor is he partisan in the performance of his duties. He possesses the customary duties of a presiding officer. He does not appoint committees and has no vote, except in case of a tie. He cannot control the debate through the power of recognition. The President of the Senate must recognize the members in order in which they rise. It may be noted that sometimes he may belong to a different political party than that which controls the Senate. The Senate also elects from among its own members a president pro-tempore. Though nominally elected by the majority of the caucus he, like the Speaker of the House, is a high ranking member of the dominant party. He presides over the Senate in the absence of its president and succeeds to the Presidency of the United States upon the death or disability of the President, Vice President, Speaker of the House.

Privileges

The senators are guaranteed the same privileges and immunities as are guaranteed to the members of the House of Representatives. They draw the same salary and allowances as are drawn by the Representatives.

The Filibuster

The Senate like the House of Representatives has formed its rules of procedure. While these rules are generally similar, the procedure in the Senate differs from that of the House of Representatives in one important respect. The House of Representatives has framed rules regarding the time limit on the debates and individual speeches. As soon as the limit is reached, closure is applied. But in the Senate the debate is

unrestricted. A Senator can speak as long as he likes. The Senate has taken immense pride in its claim that it was a thoroughly democratic body, and that democratic discussion could continue as long as any member of the Senate wished to speak. Brogan wrote, "If the House of Representatives is the most shackled deliberative body in the world, the Senate is the freest."

Unfortunately, however, this freedom of debate came to be abused and gave birth to what is known as "Filibuster". Occasionally Senators representing a minority point of view continued to hold the floor for hours, delivering relevant and irrelevant remarks primarily intended to obstruct and frustrate the will of the majority. Thus, on one occasion Senator Tillman of South Carolina spent hours in reading Child Harold to his fellow Senators and threatened to continue with other

compositions of Byron. Senator Heflin of Alabama once began to read his own poems followed by dozens of telegrams and letters from his friends. Senator Huey Long of Louisiana entertained the Senate by discoursing on recipes for partridge, fried oysters, coffee, and turnips green. On one occasion La Follette held the floor for 18 hours and 23 minutes. In 1915 six Senators spoke for more than eleven hours each against the ship purchase bill. Filibuster blocked the passage of many bills and became "the most spectacular of American legislative abuses." A filibustering Senator has no obligation to speak relevantly. What he speaks may or may not have any relevance to the subject under debate. All that he has to do is to go on talking. In 1953 Senator Wayne Morse of Oregon spoke for about 22 hours and 26 minutes. In 1957 Strom Thurmond talked for more than twenty-four hours against the civil rights legislation.

The serious repercussions of filibustering had long been recognised but it was not before 1917 that an attempt was made to control it. At that time a group of sixteen senators, denounced by President Wilson as "a little group of wilful men" began talking extraneous matters towards the end of a session and tried to prevent the senate vote on a bill which would have given President Wilson power to arm merchant ships to enable them to protect themselves against German submarines. This filibustering stirred so much indignation that the Senate modified its rules and provided that debate on any legislative measure could be closed by a two-third vote. After adoption of a closure motion, no senator can speak for more than one hour. Closure was invoked in 1919 to bring to an end the discussion on the Treaty of Versailles. Since then it has been used three times more, but threat of its use has many a time terminated filibusters.

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In 1949, the Senate adopted a revised closure rule by which any matter under Senate proceeding (except change of rules) is subject to closure. (Formerly, it applied to debate on legislative measures only). But the closure was made difficult as instead of two-thirds of the members present the requirement was revised to two-thirds of the total membership of the Senate. Thus, whereas, prior to 1949 a closure could be applied by two-thirds of the members present, after 1949, it could be applied only if two-thirds of the total membership voted in its favour. In 1959 the rule was again changed to permit the imposition of closure by two-thirds of the senators voting, rather than by two-thirds of the total membership of the Senate.

In practice it is still possible to filibuster against any measure to which there is strong sectional or group opposition. Some senators have defended the use of filibuster. It has been characterised by some legislators as an appeal "from Philip Drunk to Philip Sober." Moreover, it is claimed that filibusters have "never kept any desired or desirable legislation off the statute book." The enforcement of closure has been desired a number of times. Filibuster, it is said, has defeated only such bills which would have served little purpose, except to arouse bitter sectional resentment. Filibuster is a rare exception. The Senate usually reaches a unanimous agreement that the debate must end by a stipulated time. Only the intransigent few take resort to filibuster and this they do rarely.

References

1. Article 1, Section 2, Clause 3.

1 A. Hindustan Times dated November 10,1994.

2. Munro, W.B., The Government of United States, p. 310.

3. Young: Ogg and Ray's Introduction to American Govt., p. 279.

4. N.C. Menon: 'Republicans rout Democrats in U.S. Congressional Polls' quoted in Hindustan Times dated November 10, 1994.

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6 THE SENATE : ITS SPECIAL POWERS

"The Senate is the centre of gravity in the government, an authority to check and correct, on the one hand the democratic recklessness of House, and on the other hand, the monarchical ambition of the President."

—Lord Bryce

The American Senate is the most powerful second chamber in the world. The framers of the American Constitution gave it not only coordinate authority in the legislative, executive and financial matters but conferred upon it certain special powers which are not enjoyed by any second chamber of the world. On account of its special powers the Senate has become "the most remarkable invention of modem politics."

The Senate as a Legislative body

(i) Co-ordinate powers

As a legislative body, the Senate is "a co-ordinate and not a subordinate branch of the American Congress." It has got co-equal powers with the House of Representatives. An ordinary bill may originate in either of the two Houses and will not become a law unless passed by both of them. No bill originating in the House of Representatives and passed by it can become a law without the concurrence of the Senate. In case of disagreement between the two Houses, a conference committee consisting of three Representatives of each House is appointed with a view to working out a compromise. In the conference committee, the Representatives from the Senate usually have the way as they are men with stronger personalities and better parliamentary skill. Thus in the field of ordinary law making, the Senate stands on an equal footing with the House of Representatives.

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(ii) Control over purse

In regard to money bills, the constitution does confer upon the House of Representatives the exclusive privilege of oiginating these bills, but the Senate has been given the power to propose

amendments to these bills and its approval is necessary for their enactment The Senate has made full use of its power to amend the money bills even going to the extent of making them entirely new bills. Thus on one occasion, the Senate changed all the effective clauses of a tariff bill and returned it to the House of Representatives "as amended." On another occasion, the Senate made as many as 847 amendments in a money bill received from the House. The power to amend the money bills has virtually led to the power of originating these bills "in fact, if not in form." It is also said that the Senate has originated "more important legislation than the House."

No upper chamber in any democratic country possess such vast legislative and financial powers.

(iii) Constitution Amending Power

The Senate and the House have co-equal powers for effecting amendment in the constitution. Proposals for amendments are to be made by a 2/3 majority of both the chambers. If request is made by the legislatures of 2/3 of states it is the Congress which convenes National Convention for proposing an amendment After such a proposal is made it is the Congress which decides as to which of the two methods of ratification are to be used.

The Special Powers of the Senate

In addition to the above legislative powers, the Senate has been given some special powers which are not enjoyed by any other second chamber in the world. The scope of these special powers is so vast that the Senate has become the most powerful second chamber of the world. As a matter of fact the fathers of American Constitution wanted to make the Senate the American counterpart of the British Privy Council and therefore they provided in the constitution that the president shall take the "advice and consent of the Senate in making appointments and concluding treaties with foreign countries." The special powers of the Senate may be described as follows:

(i) Confirmation of Appointments

Clause 2 of section 2 of Article 11 reads: "...The (President) shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the

Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." Thus the President cannot make any appointment without the consent of the Senate, except such inferior appointments as have been vested by the Congress by law in the President alone. In other words, with respect to the appointments to the higher offices, the President must call the advice and consent of the Senate—a constitutional obligation laid on him. The confirmation of appointments by the Senate is indispensable. No appointment made by the President is valid unless it is approved by the Senate.

The higher officers may be of two types : (i) those who serve the nation as a whole and whose functions are not restricted to a particular state or area, e.g., the judges of the Supreme Court, the ministers and the army officers, (ii) those who serve within a particular area, e.g., district judges, post-masters, district attorneys etc. In the case of the former category, the Senate has rarely rejected the nominations made by the President. But in the case of the latter category, the Senate has been very jealous to safeguard the rule of "Senatorial courtesy." The rule demands that the President should consult the senior Senator of the State in which the appointment is to be made, before making the nomination. If the senior Senator does not belong to the President's party, he should seek the opinion of the junior Senator. If neither Senator belongs to his party, he is not bound to consult either of the Senators but he will do well if he confers with the political leaders of the State. In fact, when some vacancy falls in a district or State, recommendations reach him. Since the President is not expected to know the qualities and capabilities of the local candidates, he must naturally rely upon local advice and find out the reputation of candidates in their own district or state. To give him this advice there can be no other better person than the one representing that area in the Senate. If the President does not observe the rule of Senatorial courtesy, there is a likelihood of the nomination being rejected by the Senate. In 1938 President Roosevelt nominated a federal judge in Virginia without seeking the approval of the senior Senator from Virginia—Carter Glass. Carter Glass later asked his colleagues to reject the nomination as he had been bypassed. The Senate rejected the nomination.

The Senate, when it receives the nomination, refers it to the appropriate committee. An appointment of the federal judiciary, for instance, is referred to the judiciary committee; that of an ambassador to the foreign affairs committee. The committee hears the objections, if

any and thereafter makes its report to the Senate. The Senate then votes. It is not bound to accept the recommendations of its committees, but it rarely votes contrary to the recommendations. Rejections of the nominations made by the President have not been numerous. It is generally conceded that the responsibility for making the appointments ought to rest upon the President's shoulders and that the Senate should not interfere where the nominees' record and reputation are not dubious.

(ii) The Approval of Treaties

The constitution requires the treaties concluded by the President to be approved by a two-thirds majority of the Senate. No treaty will take effect until so approved. The President negotiates the terms of the treaty and after the terms have been concluded, it is referred to the Senate which sends it to the foreign affairs committee. The committee may listen to objections from any source and hold public hearings. After the deliberations are over, it prepares its report recommending the approval or rejection or approval with reservations. The Senate discusses the report and goes through the provisions of the treaty. If the Senate accords approval, the treaty is put into force by an exchange of ratifications with the other country. If the Senate rejects the treaty, it is discarded and the labour of the treaty formulations goes in vain. If the Senate amends the treaty the President, if he so desires, may reopen the negotiations with the other signatory and try to

persuade it to accept the amendments. However, the action of the Senate is final and the President can do little about it.

To avoid the risk of the treaty being rejected by the Senate, the President keeps himself in touch with the leaders of the Senate, and especially with the Chairman of the Foreign Affairs Committee. If he does not keep himself in touch, he runs the risk of the treaty being rejected by the Senate. The treaty of Versailles was rejected by the Senate because President Wilson did not keep in touch with the Foreign Affairs Committee. That is why President Roosevelt appointed two members of the Senate Foreign Affairs Committee as delegates to the San Francisco conference which drafted the U.N. charter.

The constitution makers vested with the Senate the power to approve the treaties with a view to providing a safeguard against secret military alliances by the President. While realizing the need of "perfect secrecy and immediate dispatch" in making of treaties, the framers of the constitution also felt that it would not be wise to endow the President with an absolute control over foreign affairs. They thought of the Senate as a small Council, not a legislature. Since in their days there were

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thirteen states, so the confirmation required the majority of seventeen Senators only. And, therefore, they took the precaution against an ambitious President committing the country to a treaty or alliance.

It may be noted that all the treaties, military or otherwise, need approval by the Senate. So in America there can be no such thing as "Secret treaty." From the viewpoint of diplomacy, America may be in a disadvantageous position because the requirement that treaties must go before the Senate has occasionally prevented the President from making a good bargain. John Hay, Secretary of State in the McKinley administration said, "A treaty entering the Senate was like a bull going into the arena, no one could say just how or where the final blow would fall; but one thing was certain it would never leave the bull alive." But as pointed, the Senate has rejected only a very small number of treaties. More than 100 treaties have been submitted to the Senate, out of which more than 90 have been approved by it unconditionally. Hay's remarks are thus exaggerations. According to Munro, "The necessity of Senatorial concurrence has been on the whole salutary. It has held impulsive Presidents in bounds."1 Certainly the Senate has acted as a constitutional watchdog over the President's exercise of executive power.

(iii) To appoint investigation committees

The senate is empowered to appoint investigation committees to probe into the working of the government departments. Such committees which were originally meant for collection of data have proved to be mortal terrors for the departments. Dr. Munro describes such probes as "fishing trips". For example, the Truman Committee during the Great War probed into waste and inefficiency. Water-Gate Committee made sensational revelations. The Foreign Affairs Committee has been keeping the administration on its toes. In the words of C.B. Galloway, "The investigation committee has become more than a particular form of parliamentary procedure... It

has taken the place of the Cabinet in the English cabinet system, has provided an effective means of control, has informed public opinion and has considerably augmented the power of "Congress."

(iv) The power to try impeachments

The constitution makes the Senate the sole court to try all impeachments. Impeachment is of English origin. It dates back to medieval times and afforded the only means whereby an adviser of the crown could be brought to account by the House of Commons. The

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Lords heard the charges and gave its decision. The constitution makers were impressed by the impeachment procedure in England and so they provided for it in the American constitution as well.

Impeachment in America can be made against the President. Vice-President and all civil officers of the United States for treason, bribery or other high crimes and misdemeanors. The term "civil officers" includes such public servants as diplomats, members of the Cabinet and judges of the federal courts. The Congressmen are not included in the term "civil officers." The impeachment is made for serious offences including grave misconduct, a dishonesty or malfeasance in office. General incompetence or bad judgments are not valid grounds for impeachment.

The impeachment charges are levelled by the House of Representatives. A member of the House makes an accusation from the floor of that body. A committee of the House is appointed to investigate the charges. If the Committee recommends that the impeachment should be proceeded with, the House passes a resolution and prepares the articles of impeachment These are then transmitted to the Senate which has no option but to hear these charges by sitting as a court. In the impeachment proceeding, the rules of evidence are observed. The accused is allowed to be heard in his own defence. He may summon witnesses and may have his own counsel. The proceedings are public, unless the Senate votes for a closed hearing.

A two-thirds vote of the Senate is required for conviction. The punishment which the Senate can impose is removal from office and disqualification from holding a civil office ever again under the national government. There is no appeal or pardon from a penalty by impeachment.

There have been twelve impeachments so far and only on four times the Senate has held the accused guilty. The famous impeachments were those of President Andrew Johnson, Senator Blount and William Belknap. According to Dr. Munro, "An impeachment is at best, a cumberous and costly proceeding. It is not a method to be used if there is any simple way of securing an officer's dismissal. But in case of the President or of federal judges who hold their offices during good behaviour, or of cabinet members whom the President may decline to dismiss, it may be the only way of forcing anyone out of the office immediately. Threats of impeachment are made from time to time when members of the cabinet or other High officials become unpopular with congressmen. But most of these are mere political-vapouring.

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Impeachment is a procedure that should never be utilized except as a last resort."2

(v) Declaring of War

Though President is the Commander in Chief yet he cannot declare war himself. Both the Senate and House of Representative have coequal powers for declaring of war. However, President can create situation compelling the Congress to declare war. This again serves as a check on the powers of the President.

An appraisal of legislature, financial, executive and judicial powers of the senate reflects that it is a very powerful upper chamber, in fact the most powerful upper chamber in the world. It puts a curb on the democratic recklessness of the House of Representatives and imposes a check on the monarchical ambitions of the American President. Hence it is an asset for the American government system.

Causes of its Strength

The special powers of the Senate and its co-ordinate status with the House of Representatives have accorded to the American Senate the most enviable position among the second chambers of the world. While in other countries, the power of the upper chambers has decreased, in America the Senate has gained in power and prestige. According to Prof. Lindsay Rogers, the American Senate is "the most remarkable invention of modern times." Membership in it is greatly coveted. Prof. Laski regarded it as the sole effective federal chamber of the U.S.A. F.J. Haskin has rightly remarked, "There are things which the President and the Senate may do without the House of Representatives and the things which the House and the Senate may do without the assent of the President, yet the House and the President can do comparatively little without the assent of the Senate." Truly speaking no second chamber in the world enjoys the authority enjoyed by the Senate in the United States.

The following causes speak for its strength and prestige: (i) Small membership and long tenure: The membership of the Senate is small but its tenure is longer than that of the House of Representatives. Its small membership (100) has made it a more compact and efficient body. The House of Representatives is an unwieldy body of 435 members where the debates are not of such high standard as those in the Senate. The smaller number of senators gives men of talent a better chance to show their mettle and become known to the country at large. Further the senators are elected for a term of six years, whereas members of the House of Representatives are elected

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only for a two-year term. The senators are not, therefore, worried about their elections after every two years. During their six-year' term, the senators gain more experience and develop parliamentary skill and make more impact upon the nation. They are the senior law-makers of the country. By itself, the longer tenure in the state attracts to it the more ambitious and outstanding personalities.

(ii) Membership of Senate consists of senior politicians: As just said, the longer tenure of the Senate attracts the able and outstanding politicians to this chamber. It comprises the most talented and experienced political personalities of the country. A high proportion of its members are former Representatives, former Governors or ambassadors. The ablest members of the House of Representatives try to seek the Senate's seats. If we compare the personnel of the House of Representatives with that of the Senate during the past few years, it would be clear that the Senate has always consisted of more ex-government and more distinguished individuals. A number of senators have arisen to Presidency and Vice-Presidency. The locality rule has depleted the talent in the House of Representatives. The Senate on account of the better intellectual quality, legal talents and political wisdom of its members has, therefore, come to possess greater prestige than the House of Representatives.

(iii) Direct election of the Senators: The direct election of the senators has deprived the House of Representatives of its only claim to superiority that it is a popular chamber. The Senate is now as representative or popular as the House of Representative. In fact, the Senate has a distinct advantage over the House in this respect. A Senate represents a state as a whole while a Representative represents only a locality. The Senator can claim to be better representative of the state than a Representative. Moreover, this makes the outlook of a senator broader than that of the Representative who thinks in getting some benefit say, a post office or a school, for his locality. The senator thinks in wider terms. He is worried more about the interests of his State than of his locality. In other countries like England, Canada or India, the second chambers enjoy less prestige and powers because they are not directly elected chambers. But in America, the Senate like the House of Representatives is elected directly by the people. Hence it is equally a popular chamber, enjoys a prestigious position and does not give precedence to the lower House on this account.

(iv) Greater freedom of speech: The senators enjoy greater freedom of speech than the members of the House of Representatives. Combined

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with the fact that the Senate contains the more talented and experienced political personalities of the country, its debates are of a high order. The rules of debate encourage independence and provide full opportunity to the minorities to express their points of view. Consequently, the Senator "gives a vivid reality to political democracy in the United States which no other institution as fully or so gladly supplies."3 Though freedom of debate is often abused, giving rise to filibuster, yet it also makes the Senate the most effective forum in the United States "next only to the President himself." The debates of the House of Representatives get little publicity in the press but what is said in the Senate always hits the front page lines. The Senate, without doubt, is the most successful deliberative assembly in the world wherein the discussion is lively and dynamic.

(v) Solidarity of the Senate: The Senate is the one legislative organ in the world whose members have solidarity and unity irrespective of party affiliations. Each Senator jealously guards the rights and privileges of others and whenever an onslaught has been made to break its solidarity, it has always stood together, as for instance, in 1938 President Roosevelt tried to bypass the rule

of senatorial courtesy "but it stood solidly against" him. This sense of solidarity enables them to ward off all encroachments from outside. "The Senate," remark Swarthout and Bartley, "is alert against any possible threat of pressure by either of these two (the President and the House of Representatives) sources, and it is quick to resent any action it considers to be a danger to its prerogative or its traditions."

(vi) Absence of Parliamentary Government: The United States has a presidential form of Government. In a country with a parliamentary government, the executive is responsible to the lower house which makes it more powerful than the upper house. But in America, the executive is not responsible to the House of Representatives and this fact has denied the opportunity to the House to claim superiority over the Senate. In England and India the lower house enjoys pre-eminence over the upper house because the former can outvote the government from office. In the United States it is the Senate, the upper chamber, which exercises control over the executive in the form of approval of appointments and treaties and not the House of Representatives. This accords it a position of precedence over the House of Representatives which has not been vested with the power of controlling the executive.

(vii) Its equal legislative and financial powers: The second chambers in the other countries are given less share in law-making and

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financial matters which makes them inferior to the lower house. For instance, in Great Britain, the Commons can override the veto of the Lords by passing a bill twice in two consecutive sessions. In India, the Lok Sabha has an advantage over the Rajya Sabha in a joint session on account of its larger membership. In the United States in case of disagreement between the Senate and the House of Representatives, a joint conference committee consisting of equal representatives from both the houses is appointed and as referred to above, in the joint committee, the senators because of their wide legislative experience and longer tenure have greater influence.

As regards the financial matters the only eminence which the House enjoys over the Senate is that a money bill can originate only in the House of Representatives. But the Senate can make amendments to the extent of making it a new bill. Thus though the Senate cannot originate a money bill according to the letter of the constitution, yet in fact it can do so by drastically amending the bill coming from the House. According to Murrey, "the Senate has founded a way of doing what the constitution did not intend to do it." Thus the power of the House to originate a money bill has little significance in practice. It is obvious, therefore, that the Senate does not have a secondary position in respect to the legislative and financial matters. In fact, the Senate has come to have a dominant voice in legislation.

(viii) Its special powers: But these are the special powers exclusively conferred on the Senate which have added to its strength and prestige. No other chamber in the world has been given such power. Appointments proposed by the President are subject to its approval. No treaty can become valid unless it is confirmed by the Senate. Through its power to approve the appointments recommended by the President, the Senate plays a vital role in the administration.

The President always keeps the Senate informed of the important developments in administration. No other second chamber, not even the elected one such as the Swiss Council of States or the Australian Senate, has been given the power to approve the appointments of officers. Through its power to ratify the treaties, the Senate has come to exercise great influence on the foreign policy of the United States. President Wilson had again and again insisted that America should join the League of Nations, but the Senate refused and the U.S.A. could not become a member of the League. The President in order to save himself from the humiliation of rejection keeps the Senate in touch with the treaty parleys. 'The central fact," remarks Laski "is that the Senate of the United States is the one

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constitutional expedient that provides the American public with the material upon which it can make an effective judgment on the presidential policy.4 Its special powers have made the Senate unmistakably above all the other second chambers in the world.

(ix) As a court of trial: The Senate possesses the power of impeaching the President, Vice-President and all other important civil and political officers for treason, bribery, misdemeanor and other crimes. The House of Representatives frames the charges by two-thirds majority and the Senate can convict the person by two-thirds majority. This convention means removal of the officer. The method is not frequently used. Munro calls most of these impeachments as political vapourings.

Its legal powers and its actual role have made it the most powerful upper chamber in the world. In the words of Bryce, the Senate is the "centre of gravity in the government, an authority to check and correct, on the one hand, the democratic recklessness of the House, and, on the other the monarchical ambition of the President." F.J. Haskin rightly said, "There are things which the President and the Senate can do without the assent of the House of Representatives, and things which the Senate and the House can do without the assent of the President, yet the President and the House can do comparatively little without the assent of the Senate." The Senators are men of wide reputation who have held important positions in the country. That is why Charles Beard remarked that "It is from senators rather than representatives that the public may expect staunch defence of constitutional methods and powerful opposition to violent, high-handed and bigoted opinions and actions." In the words of Laski, the Senate can be called "The master of the House of Representatives." Lindsey Rogers rightly describes it as "the most remarkable invention of modern politics." It enjoys ascendancy over the House of Representatives on account of its compactness, long tenure of its members, its multifarious powers and unlimited freedom of speech. Direct elections of its members has further added to the prestige and popularity of the senators. Ogg and Ray have very well summed up the senatorial ascendancy over the House of Representatives in the words." ...Its members are on the average somewhat older, have wider knowledge of public affairs and in particular have more legislative experience because of longer terms, more numerous re-elections... Their small number gives men of talent a better chance to show their mettle. With rare exceptions senators enjoy far more patronage than do representatives and the senate's special powers of confirming

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appointments and assenting to the ratification of treaties, place in its hands weapon which can be employed formidably...."

The Senate Compared with the House of Lords

The Senate differs sharply from the House of Lords in respect of its composition and powers. According to Stanard Harold, 'The United States Senate is the strongest and the House of Lords the weakest of all upper Houses in the world today."5 The following points of comparison may be noted:

(i) The membership of the Senate is quite small, i.e., one hundred members but the House of Lords is an unwieldy House with over 1100 members.

(ii) The House of Lords is mostly a hereditary chamber. About ninety per cent of the Lords occupy their seats only because they are the descendants of peers. The Senate is an entirely elected chamber. There is no hereditary or nominated element in the Senate. The citizens of the states directly elect the members of the Senate.

(iii) The House of Lords is a permanent chamber. The Lords are members for life. They do not retire. But the senators occupy seats for a period of six years - one-third retiring after every two years. However in actual practice some of the prominent senators have enjoyed much longer tenure.

(iv) The Senate is a living and dynamic chamber wherein the standard of debates is of a high level. The senators take active interest in the proceedings and are politically wide awake. The House of Lords, on the other hand, is a sleeping beauty like that of Canadian senate. The Lords seldom attend its meeting and do not have much stake in politics. A majority of them are members by chance and most of them keep absent. Its quorum is just three. The House of Lords, as Winston Churchill described it, is an "unrepresentative, irresponsible and absentee" chamber. The Senate is a fully representative and responsible chamber.

(v) In powers also the House of Lords is far inferior to the Senate. As a legislative body the House of Lords has been reduced to a position of virtual impotence. The Parliamentary Act of 1911 and latter the Act of 1949 have clipped the wings of the Lords. Under these Acts the House of Commons was given the power to over-ride the veto of the House of Lords. The Act of 1911 provided that a money bill passed by the House of Commons could be sent to the House of Lords one month before the end of a session and it could be submitted for royal assent at the end of one month and it became law on receiving the King's assent

whether or not, in the meanwhile, it was passed by the House of Lords. In regard to non-money bills it was provided that if a non-money bill was passed in three successive sessions during a period of at least two years and was rejected on each occasion by the House of Lords, it could, on its rejection by the Lords for the third time, be presented for royal assent and would become law on receiving such assent notwithstanding that the House of Lords had not consented to it.

The Act of 1949 had reduced the requirement of three sessions to two and the period of two years to one. These two Acts have made the House of Lords a mere secondary chamber without any influence on legislation. On the other hand, the Senate is so powerful that it has overshadowed the House of Representatives. In matters of legislation the Senate has co-equal and coordinate authority with the House of Representatives. Any bill may originate in any House and will not become an Act unless passed by both the Houses. Money bill can originate only in the House of Representatives but the Senate has the power of amending or rejecting them and the House of Representatives cannot write off these amendments to carry over its veto. In a joint committee, as we have seen, it is the will of the Senate rather than of the House of Representatives that is likely to prevail. Further, the Senate enjoys special executive powers—the powers to approve the appointments and ratify the treaties which are not enjoyed by the House of Lords. In its relation to the House of Commons, the House of Lords is distinctively very inferior and holds a secondary position but the Senate, on the contrary, has overshadowed the House of Representatives and holds a primary position. There is little exaggeration in the observation that the House of Lords is the weakest second chamber while the Senate is the strongest second chamber in the world.

The Weaknesses of the Senate

There are some defects in the organisation and working of the Senate which may be pointed out. Firstly, the equality of representation irrespective of population and size is said to be undemocratic. Lindsay has estimated that more than half the senators are returned by less than one-fifth of the American people. This is an anomaly in a democracy that states should get representation irrespective of their population. Secondly, the change from indirect to direct system of election in 1913 has not changed the colour of the Senate's composition. Money, power and corruption continue to play a significant part in the election of the senators. The Senate has become a multimillionaire's club. The senators from Delaware are, more often than not, the nominees of the

great Du Pont Corporation. Those from Montana represent the powerful copper interests of that state rather than its people. Laski points out that there are always some senators "whose election is difficult to explain and still more difficult to justify." He writes, "There have been some senators from Pennsylvania, who ought to have been in jails instead of in Washington."6 From the geographical point of view, the agricultural bloc wields a power out of all proportion to the numerical strength it represents. Thirdly, the freedom of debate in the Senate has given rise to filibusters which hold up important legislation. Occasionally, filibuster has made the Senate appear ridiculous. Log rolling has become a conspicuous feature of the Senate. Fourthly, "senatorial courtesy" is only another name for favouritism and nepotism. Fifthly, senatorial investigations have encouraged Macarthyism and have engendered an atmosphere of intellectual terror making freedom of thought and expression a mockery. Lastly, the rule of two-thirds majority for approval of treaties has been criticised as a great impediment in the way of the President and it has been suggested that instead of two-thirds, a simple majority should be required for approval of treaties.

References

1. Munro, W.B., The Government of the United Slates, p. 295.

2. Op. cit, pp. 300-301.

3. Laski, H.J., The American Democracy, p. 92.

4. Laski, H J., op. cit., p. 90.

5. Stanard, Harold, The Two Constitutions, p. 112.

6. Laski, H.J., The American Democracy, p. 85.

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7 THE POWERS OF CONGRESS

"Congress is the American people, not all the people, it is true but the people assembled by proxy. It is expected not only to act for the people but to deliberate for them and decide whether or not to act at all. Its obligation to deliberate for the people cannot legitimately be delegated to any other agent."

—CB. Swisher

The Senate and the House of Representatives, as said in the earlier chapters, together constitute the Congress. It is the national legislature and exercises legislative as well as non-legislative powers. But unlike the British Parliament, its powers are defined and limited. It is not a sovereign body.

We may consider the powers of the Congress under two heads:

(i) Legislative, and

(ii) Non-legislative.

Legislative Powers

The Congress is primarily a legislative body. Its legislative powers may be grouped into three groups.

(a) Delegated Powers

The delegated legislative powers are the ones which have been specifically enumerated in the constitution. Thus, according to Section 8 of Article, the Congress has the power:

(i) to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defence and general welfare of the U.S.;

(ii) to borrow money on the credits of the U.S.; (iii) to regulate commerce with foreign nations and among the several states;

(iv) to coin money and fix the standard of weights and measures;

(v) to provide for the punishment of counterfeiting the securities and currency coin of the U.S.;

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(vi) to establish post offices and post wards;

(vii) to establish a uniform rule of naturalisation and uniform laws on bankruptcy throughout the United States;

(viii) to promote the progress of science and useful arts;

(ix) to constitute tribunals inferior to the Supreme Courts;

(x) to defend and punish the felonies and piracies committed on the high seas, and offences, against the law of nations;

(xi) to declare war, grant letters of marque and reprisal and make rules concerning capture on land and water;

(xii) to provide and maintain the navy;

(xiii) to make rules for the government and regulation of the land and naval forces;

(xiv) to raise and support armies;

(xv) to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

(xvi) to provide for organizing, arming and disciplining the militia;

(xvii) to exercise exclusive legislation in all cases over such districts as may become the seat of the government of the United States; and

(xviii) to make all laws which may be found necessary and proper for carrying into execution the foregoing powers.

The above powers are customarily referred to as "the eighteen powers of the Congress." The states retain rest of the powers not enumerated above.

(b) Implied Powers

Besides the above powers which have been specifically delegated to the Congress, it also exercises certain powers which are called the implied powers. The doctrine of implied powers was given judicial recognition in 1819 in the historic case of Me Culloch vs. Maryland. Chief Justice Marshall said, "The sound construction of the constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people." A narrow construction, he declared, would hamper the operations of government and make it incapable of performing the functions that it was established to perform. The Chief Justice said, "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adopted to that end, and which are not prohibited but consistent with the letter and the spirit of the constitution, are constitutional."

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The court in its judgment relied upon clause 18, Section 8 of Article 1 of the constitution which says that the Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." Thus the Congress possesses all the powers by implication which are necessary and proper for carrying out the powers expressly conferred by it upon the constitution. A number of powers which the Congress enjoys today have their bases in "implied powers". The right to provide for the establishment and supervision of national banks, federal reserve banks and various other banking and other credit institutions, the right to regulate the food and fuel consumptions, the right to take over the industries in times of national emergency, the right to regulate the stock exchanges or the issue of securities are the implied powers of the Congress because the constitution nowhere makes a mention of these powers. Thus the Congress has widened the scope of its legislative powers through the doctrine of implied powers. However, the Congress is not the judge of its own implied powers. The Supreme Court is the final judge in such matters and, on several occasions, it has denied Congressional claims to implied authority.

(c) Concurrent powers

The concurrent powers are those which may be exercised both by Congress and state legislatures. The right to enact laws relating to bankruptcy, the right to fix standard of weights and measures, the right to borrow money, the right to charter banks, the right to promote agriculture and the right to foster education are the concurrent powers. Whenever a conflict arises in matters of concurrent power, the state laws give way to the federal laws.

The Congress can make laws on all those subjects which (a) have been clearly assigned to it, and (b) may be reasonably implied from the express powers. It cannot make laws on those matters which have not been granted or which have been prohibited to it. Thus the Congress cannot levy taxes or duties on articles exported from any state, nor can it abridge guarantees contained in the

Bill of rights, change state boundaries without the assent of the states involved or grant titles of nobility.

Does the Congress of the United States exercise some emergency powers?

The Supreme Court has declared that "emergency does not create power. Emergency does not increase granted powers or diminish the

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restrictions imposed on powers granted or reserved." Thus, in an emergency the Congress cannot claim powers additional to the ones conferred by the constitution. Extraordinary conditions do not create or enlarge constitutional powers. In an emergency, the Congress may make vigorous use of powers already exercised but it cannot go behind the powers expressly granted to it or reasonably implied there from.

Non-legislative Powers

The Congress is popularly known to be a law-making body, but the making of laws is not its only task. It performs varied functions which, strictly speaking, are not legislative. The non-legislative functions of the Congress may be classified as follows:

(a) Executive

There is a presidential form of government in the United States and so the Congress does not control the executive the same way the British Parliament controls the national executive. The Congress cannot pass a motion of no-confidence against the cabinet, "nor can it move 'censure' or 'adjournment' motions. The secretaries (ministers) do not take part in its proceedings and are not present in the Congress to reply to its questions. Therefore, control of the Congress over the executive is very limited. The Congress controls the executive in two ways: (i) by confirming the appointments made by the President, and (ii) by ratifying the treaties negotiated by him. As said, earlier all the major appointments made by the President must be approved by the Senate by a majority of the members present and voting. Besides, treaties with foreign states cannot be effective until they are confirmed by a two-thirds vote of the Senate. Moreover, the Congress alone can declare war. The Congress has an intimate interest in the foreign relations of the United States. The President reviews the international situation in his message. The Congress permits the expenditure on international obligations. It may be said that the Congress had forced the President to relax his war policy in Vietnam.

(b) Administrative

The Congress is also an administrative body. It controls and directs the whole work of administering and enforcing its own laws. The Congress provides the money without which the laws cannot be executed or justice administered. It fixes the salaries and functions of the various officials of the Federal Services. It can call for reports and information from executive

departments and agencies. The Legislative Reorganisation Act of 1946 requires the congressional standing

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committees to exercise continuous vigilance over the execution of all laws falling within their jurisdiction. The Controller General is responsible to the Congress rather than the President.

(c) Investigative

"The proper office of a representative assembly," said J.S. Mills, "is to watch and control the government" and to make sure that the executive branch is carrying out the purpose of legislative polling agreed upon. In a parliamentary government, the legislature makes use of money levies to exercise such control. It can put questions, move adjournment and censure motions, bring in no confidence motions. In a presidential form of government there are no such means available to the legislature." Legislative investigations are, therefore, a major technique for holding the executive and administrative agencies accountable. The Congress employs regular or special committees to hold investigations into the working of the executive departments and administrative agencies. It can look into any subject matter whenever it deems necessary in order to carry out its duties. The Senate has been more active than the House of Representatives in the matter of conducting investigations and one of its typical investigations was the one conducted jointly in 1951 by its foreign relations and armed services committee into the dismissal of General Mac Arthur by President Truman.

The investigatory powers of Congress have been criticised by many Americans. Firstly, it is said that the constitution does not provide for such investigations. Secondly, sometimes, the investigations are politically motivated. Thirdly, the investigating committees often overreach themselves. Fourthly, the rules of due process of law are not binding on the committee since a congressional investigation is not a judicial proceeding. While there may be some truth in what has been said,, nevertheless the truth remains that "corruption and bribery have often been revealed only through Congressional investigations. The inadequacy of old laws and the necessity for new ones have been determined only by investigations. The abuse of offices, inefficiency, misapplication of powers have all been curtailed not only by investigation but by the constant possibility of an investigation." However, it is desirable that Congressional investigations should be conducted with restraint and dignity; otherwise, they can undermine the morale of public servants, invade the rights of private citizens and violate not only the separation of powers but due process of law.

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(d) Electoral

After every four years, both the Houses of Congress meet in a joint session to count the electoral votes cast for the President and Vice-President. If no candidate gets a majority of the electoral votes for the President, the House of Representatives elects the President from among the first three candidates. At such elections the representatives from each state vote as a unit. When no

candidate gets a majority for the office of the Vice-President, the Senate elects one out of the two candidates securing the highest votes. Only the Vice-President had been so far elected in this manner in 1837. The Congress has also the power to legislate on "the time, place and manner of holding elections for Senators and Representatives." It also prescribes the qualifications of members. In 1926, the Senate refused a seat to S. Vare because he spent too much money on the election campaign.

(e) Constituent

The Congress also plays an important role in the amendment of the constitution. A proposal for amendment of the constitution may be made either by a two-thirds vote of Congress or by a national convention called at the request of the legislatures of two-thirds of the states. Such a proposal will become a part of the constitution after it has been ratified by legislatures of three-fourths of the states or by conventions in three-fourth of the states. The Congress will determine which of the two methods of ratification will be employed. The Congress besides determining the method of ratification may also specify a time limit for ratification. Whatever method is adopted, it is clear that the Congress takes an important part in the process of amendment. It may not be out of place to point out that the amendments to the American constitution have so far been initiated only by the Congress. No national convention has been called for proposing amendments.

(f) Judicial

The House of Representatives brings a charge of impeachment against the President, Vice-President and other federal officers and the Senate sitting as a court hears the charge. Each chamber exercises disciplinary powers over its own members and can expel a member by a two-thirds vote.

(g) Financial

The Annual budget of the United States is passed by the Congress. It can make any changes on the revenue or expenditure side of budget. It has

unrestricted powers regarding appropriation of money. It can lend money to foreign states, grant subsidies to private enterprises and give grants-in-aid to the states. In fact, the Congress uses its financial powers to control the executive.

Conclusion

Surveying the above powers of the Congress, one might say that it is wrong to call the Congress a law-making body. If law-making had been its only function, the Congress would do the job in a few weeks every year. But it sits for a number of weeks because it has to hear the reports of the investigating committees, pass the national budget, create offices and prescribe their duties and salaries, and do a host of other things. It is the basis on which the American system of national

government rests. The constitution makers conceived of it as the most important branch of the government and the first Article of the constitution was devoted to describing its composition and powers. They conferred upon it vast defined and undefined powers. According to Tourtellot, "Because of its supervisory and appropriation powers, the Congress had stronger ultimate administrative powers than the Presidency, and because of its impeachment powers - it is a higher court of justice than any, including the Supreme Court, in the land." Steadily and gradually, the powers of the Congress have been growing. Two of the eighteen powers relate to levying of taxes, spending public money and for borrowing on federal credit The third brings in foreign and interstate commerce. "These three items alone have been expanded so amazingly that despite the six lines of type which they require in an ordinary printed copy of the constitution, they now constitute the basis for hundreds and even thousands of far-reaching statutes which Congress has from time to time enacted. The commerce clause has been invoked during the past decade to justify the regulation of business practices, the protection of organised labour, the regimentation of the coal mining industry and the stabilization of the stock and grain markets."' The remaining gap has been filled in by the "general Welfare" clause and the crowning extent was made under the "common defence" clause. In short, the Congress has taken more powers in its hands than the constitution makers might have hardly intended to confer. This may be partly because the problems which once used to be local have become national and partly because the country has grown more national minded. The states are no longer dreadful of a strong federal government which they once were at the Philadelphia convention.

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It may, however, be noted that on account of its parochial character the Congress has not been able to exercise its powers as effectively as the President and the Supreme Court have been exercising their powers. According to Tourtellot, "The Congress is not in any real sense, a national representative body at all, it is the sum of regional, i.e., state delegations."2 The senators and the representatives are peculiarly sensitive to the interests of the areas or groups they represent and to which they must return to seek re-election. The influence of pressure groups is very wide on the Congressmen. Lobbying of the pressure groups makes Congressman parochial rather than national in outlook. The Congressman has become "a conglomeration of local views and attitudes." Potter remarks, "In politics the whole is more than the sum of its parts, but the American Congress is made up only of the parts. No Congressional organ represents the nation as a whole." That is why we hear of "silver" Senators and "cotton" Congressmen, and "pork-barrel" and "log rolling" legislation.

Congress and the Executive

The American system of government is based on the theory of separation of powers. The Congress and the President are independent of each other. The President has no power to dissolve the House of Representatives. Likewise the House of Representatives has no power to remove the President. The President and his colleagues are not responsible to the Congress. The President can only be removed by way of impeachment. No amount of criticism by the Congress can turn the President out of the office. The Ministers or Secretaries as they are called do not have their seats in the Congress. Both work independently of each other.

Executive Control of the Congress

The effects of a system in which the executive and the legislative work are divorced from each other can never be wholesome. Both are parts of the same governmental machinery and none can function efficiently without the cooperation of the other. The constitution makers knew this fact and so they did not stretch the separation of powers too far and introduced devices to harmonize the differences between the executive and the legislature. The President is vested with positive as well as negative means of influencing the Congress.

The constitution provides that the President "shall from time to time give to the Congress information of the state of the union and recommend to their consideration such measures as he shall judge necessary and expedient." The outcome of this power of the President to

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send messages and recommend legislative proposals is self evident. Nearly three-fourths of the legislative work which comes before the congress, is submitted by the President. Though the congress is not bound even to consider the legislation recommended by the President, yet it cannot afford to treat his recommendations lightly.

President's Veto

Equally important is the President's power to veto the bills passed by the congress. Though he does not possess what is called "absolute veto" yet a bill sent back by the President requires 2/3 majority for its clearance which is not easy. Hence veto has almost become absolute. Besides, the "pocket veto" which he exercises is no less effective. The Presidents have used their veto power as a means of influencing legislation. They can threaten to use the veto over bills desired by the congress if it does not pass the bills recommended by them. The constitution makers also probably intended the "veto" to be used as a means of influencing legislation, and as a sort of weapon to be used in its own defence by the executive. They considered "President's veto as a legislative rather than an executive function," for it was inserted in that part of the constitution which relates to the organisation and powers of congress.

Other Means

Apart from messages and veto power, there are several other ways through which the President can influence legislation. His patronage is an effective means of securing the support of senators and Representatives for measures recommended by him. On the commencement of his term, the President has to make numerous appointments and by obliging the congressmen he can win their support. Further the President is the head of the bureaucracy. The Congressmen need the favour and guidance of administrative experts who work under the supreme direction of the President. A more important source of influence is his leadership of the party. As a party leader, he exercises ample control over the members of his party in the congress. He can appeal to the party loyalty of members of the congress. Then as an elected leader of the nation, the President enjoys a position of eminence. He can appeal to the Caesar. In other words, he can, through the press, the platform, the radio and television, mobilise public opinion against a recalcitrant Congress in case

it puts unnecessary obstructions in his way. Thus, while in theory, the Congress is independent of executive control, in reality, the executive exercises great control over the congress.

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Congress Control of the Executive

The Congress exercises control over the executive in numerous ways. The executive can do little or nothing without spending money. The Congress passes the budget every year and authorizes appropriations. It can curtail any administrative activity by reducing the appropriations.

Through Executive Powers

The Congress may create new offices and define their duties. It can also impose new duties upon the President through executive powers or upon any of his subordinates. It can even provide that duties which it imposes upon these subordinates shall be performed in a designated way. Further, the Congress may call for information from any administrative department. It can also appoint committees to investigate matters in any branch of administration. The investigating committees have many a time brought about the removal of the guilty officers.

The appointments made by the President are subject to the approval of the Senate. The treaties negotiated by the President are not legal until ratified by the Senate. The President keeps the Senate informed of his foreign policy. The power to approve the appointments gives a great patronage to the Senate and enables it to exercise influence over the Presidential nominations to various offices.

It is thus clear that despite separation of powers, the President and the Congress have been equipped with powers to influence each other. The Congress never loses sight of the fact that, the modern national state has become a social service corporation through the evolution of public welfare services and that the core of this development has everywhere centred in the executive. But at the same time to avoid the possibility of the executive getting autocratic the Congress exercises restraints over it Referring to President and Congress relationship Laski has remarked that the Congress "may respect him, it may never fear him, it gives him a general, if spasmodic support. But it is always looking for occasions to differ from him, and it never feels as really comfortable, as when it has found such an occasion for difference. In doing so it has the sense that it is affirming its own essence. It is more truly itself because it is exalting its own prestige."3

However, the relations between the Congress and the executive have not always been happy. At times relations have become so bad that they have condemned each other. President Johnson was impeached by the Congress. The relations between President Truman and the Congress ultimately degenerated into mutual defamation. The foreign policy of President Wilson was wrecked by the Senate. The United

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States could not become a member of the League of Nations. The Congress has the feeling that its enactments are used for purposes which it would not willingly sanction, and so it is of the opinion that it ought to supervise the agencies carrying out the functions which it has prescribed. On the other hand, the executive holds that the Congressional function stands completed when statutes are enacted. The administration and law enforcement belong exclusively to the executive. Thus the executive is constantly trying to divorce the administration from congressional control, whereas the Congress through control over appropriations, through investigations and the methods suggested in the preceding pages, attempts to keep its control over the executive. Hence a conflict.

The American Congressmen accept the leadership of the President only when they feel that something must be done to meet the emergency. Thus during the period of economic depression of the early 1930's and the Russian threat of the late 1940's, they delegated sweeping emergency powers to the President. But when there is no crisis, they insist that the President should justify his powers and proposals. Despite the possibility of Congressional executive conflict inherent in the American political system, America has been able to meet the problems of World War II and its aftermath successfully. But there is not always a crisis, nor is it good to create always a sense of crisis in Congress and the country when the President is eager to have his way. What is required is a more satisfactory continuous relationship between the President and the Congress so that the President may exercise a steady guidance in the congressional "consensus."

The critics of the present relations between the two branches of the government vary tremendously in their answers to the question, "On what lines should the relations between the President and the Congress be reconstructed?" Some of them would like to subject the executive to more effective legislative control. Others would create mechanisms intended to bring Congress and the executive together on the top of the governmental structure in the hope of housing the dynamics of both. Most discussions include proposals for establishing in some form a cabinet system.

The essence of a cabinet system is that the cabinet is formed from among the leaders of the majority party in the legislature and exercises governing power until the legislature demonstrates lot of confidence in it. Some discussion on the merits of the cabinet system took place before the joint committee which was making plans for the legislative

Organisation Act of 1946. Walton Hamilton of the Yale law school said, "The clash of executive and Congress is greatly overdone; it presents no more than a minor problem. The character of the English system is misused, the distinctive conditions of American society, which it would never fit, are overlooked; the activities which make up our pattern of government are not adequately taken into account. The life of any political system is function; imitation especially where situations are unlike, can never spell function." Accordingly, Hamilton expressed the view that the British Cabinet system would not suit the American constitution. He continued, "A small and compact nation, a clear cut social structure, a high regard for the properties, a general agreement on articles of faith, a zone of action narrow enough to blunt the edge of difference - such are the conditions of its success. But the conditions which make for success do not exist here. Our

population is made up of many elements, we have no class structure, no nucleus of first families, no common body of opinion which confines differences to non-essentials, no tendency for all members of Congress to think as one in the face of a crisis. There is no such, well ordered society here such as England possesses, to which the system of cabinet government can be fitted."

This feeling that the British cabinet system would not suit the American conditions is widely held and it is now believed that the Presidential system "with all its operational groaning and creaking has afforded a different, but equally practical and probably better adopted solution to the problem of governmental power in the United States."

Should there be a question hour? Some political scientists have argued for the use of the question hour in the United States. This, they say, would bring the ministers and the Congressmen together, thereby removing the great element of the indifference that now exists. But some thinkers regret introduction of question hour as a sheer waste of time without serving any purpose. The question hour as it operates in the House of Commons or Lok Sabha does not permit the detailed questioning which is often necessary to bring out significant facts. It is just a sheer exciting battle of wits. Walton Hamilton said in his testimony before the Joint Committee referred to above, "We have a device here which is vastly superior to that and that is the appearance of the administrative officer before the Congressional committee where the matter is a great deal more informal and the questioning is a great deal more scorching than it could ever be before the House."

Some more proposals have been put to improve the legislative-executive relations in the United States. These are the following:

(i) The members of the cabinet are to be permitted to sit in the congress and participate in the debates without a vote,

(ii) The cabinet be permitted to initiate legislation,

(iii) The candidates for membership in congress be permitted to run for election from any constituency without regard to their residence,

(iv) A joint legislative executive cabinet of nine congressional leaders and nine executive officers to meet regularly with the President be composed,

(v) A majority policy committee of the two houses be constituted to serve as a formal council to meet regularly with the executive to facilitate the formulation and carrying out of national policy. The problem of congress-executive relations remains. While this problem is in part a matter of machinery, it is also a matter of intent and spirit for making the best of the existing governmental machinery. When the President lacks friendliness and diplomacy, and when congress is dominated by obstructionists, relations are bound to be bad. So when members of the executive become intoxicated and try to prove their own alleged superiority over members of the congress,

the relations are bound to be bad. Similarly when leaders of the congress drunk with power sabotage every programme, the relations are bound to be bad. So what needs to be done is that the congressmen and officials be infused with the qualities of self-control and high statesmanship. The success of a system depends more upon the vision and the self-control and the goodwill of the men with whom two organs—the congress and the executive—are staffed than upon the mechanism of the system. To conclude, it may be said that the present system of congress-executive relations has served well enough and that the system contains within it the devices which harmonize their differences.

American Congress and British Parliament

America and England differ in their political systems. America is a federation with a presidential form of government. England has a unitary-cum-parliamentary government. The constitution of England is mostly unwritten whereas the constitution of the U.S.A. is a written one. The two countries having different political systems have essentially different institutions. The American congress is "something very different from the mother of Parliaments.4"

The following points of difference between the British Parliament and American Congress may be noted:

(i) England is a smaller country both in area and population than the United States but the membership of the British Parliament is larger than that of the American Congress. The British Parliament consists of over 1750,650 in House of Commons and over 1100 in House of Lords, members while the American congress consists of 535 members only (435 in the House of Representatives and 100 in the Senate).

(ii) The House of Lords is mostly a hereditary chamber, the Senate, on the other hand, is a directly elected chamber.

(iii) The British Parliament is a sovereign legislature, Congress is non-sovereign. The powers of the British Parliament are unlimited. As popularly said, "It can make minor a major and declare an illegitimate child to be a legitimate one but it cannot make man a woman and woman a man." There is no matter on which the British Parliament cannot legislate. Its laws are not subject to judicial review. No court in Great Britain can declare its laws unconstitutional. The American Congress, on the other hand, possesses limited powers as defined by the constitution. It has no jurisdiction over the matters left to the states. This is the inevitable result of the federal nature of American polity. Secondly, the laws made by the congress are open to judicial review. As Brogan has said, "The legislators have to think not only what their constituents want, or will stand, but whether what congress does decide will seem to five elderly lawyers the sort of thing the framers of the constitution would have approved of, if they could have foreseen what, in fact, they by no possibility could have foreseen."5

(iv) Lastly, the two bodies differ sharply in their relations to the executive. In Great Britain, the parliament at least, in theory, controls the executive. It is the master of the ministers who are

drawn from it and who are responsible to it for all their acts of omissions and commissions in politics. They are present in the parliament to answer the searching questions of the members. On the other hand, in the United States, the Congress and the President stand apart from each other. The Congress cannot remove the ministers nor are ministers present in the Congress to answer questions. There is no question hour in the United States. The Prime Minister can get the House of Commons dissolved, but the American President cannot dissolve the Congress before the expiry of its term.

It may not, however, be presumed that the British Parliament exercises more influence upon legislation and administration than the American Congress. Due to the parliamentary system of government, all the authority has passed on into the hands of the cabinet which is the

"Steering wheel of the ship of the State." The parliament has become a tool in the hands of the cabinet. In England we talk of the growth of cabinet dictatorship. But in the United States, there is no executive despotism. The American system operates under the principle of "checks and balances" which has checked the emergence of the dictatorship of the President or the Congress. If we look to the actual control, the Congress has exercised more effective control on the President than the British Parliament on the cabinet. The British Parliament merely registers the will of the cabinet, but the American Congress has on many occasions refused to approve the President's proposals. Thus the role that the Congress plays in administration of the United States is significant and vital.

House of Representatives Compared with the House of Commons

A brief analytical study of the powers of the Commons vis-a-vis the House of Lords and the House of Representatives vis-a-vis Senate proves the contention that the House of Commons enjoys greater authority than the House of Representatives. Since 1911, the House of Commons enjoys a clear supremacy over the House of Lords. But in the United States, the Senate has from the very beginning enjoyed greater prestige and powers than the House of Representatives. The Senate, as we have read earlier, possesses not only equal and co-ordinate legislative and financial powers but has also been given some special powers which have made the House of Representatives play an inferior role to the Senate.

The parliamentary character of the British Government also empowers the House of Commons to control the executive. On the other hand, the presidential character of the American Government has deprived the House of Representatives the privilege of holding the executive responsible to it. The control of the executive by the Commons established its superiority over the Lords whereas the absence of such a control in the United States makes the Representatives play second fiddle to the Senate.

In the sphere of legislative power, the House of Commons possesses the ultimate authority of passing the bills. The House of Lords can delay a bill only for a period of one year after which it becomes an act with the consent of the Queen. In the U.S.A. the Representatives cannot override

the veto of the Senate. In the joint conference committees, the will of the Senate has been prevailing over the Representatives.

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As regards constitution amending power the House of Representative shares with the Senate the power of proposing amendments to the constitution. In UK the majority in the House of Commons can bring about any change howsoever substantial. In England parliament by majority can do anything but make a man woman and woman a man. Practically speaking, majority in parliament means majority in the House of Commons.

In the financial sphere, the House of Commons is supreme. The House of Lords can detain a money bill for a period of one month only. In the United States, the Senate can amend a money bill to the extent of changing all of its provisions and making it a new bill. It can reject the money bills as well. The House of Representatives cannot impose a tax or sanction an expenditure without the consent of the Senate.

In USA the House of Representatives is vested with electoral powers. In case no presidential candidate captures absolute majority the House possesses other power of electing one out of three candidates as presidents of USA. The House of Commons is responsible for bringing a cabinet in power and then retaining it. Ministers are drawn from the party holding majority in the House of Commons.

The House of Commons can remove a ministry from the office. The cabinet is responsible to it and remains in office only so long as it enjoys the confidence of the Commons. The Lords cannot make or unmake a ministry. In the United States, the House of Representatives does not exercise any direct control over the executive. It can only frame charges. The trial is to take place before the Senate. Two-thirds majority is required in both the Houses to remove the President.

Thus looking to the superiority of the House of Commons over the House of Representatives with regard to control over legislation, finance and executive we may agree with Harold Stannard that 'The greatest of all the differences between the British and American constitutional practices lies in the widely different measures of authority enjoyed by the House of Commons and the House of Representatives."

References

1. Tourtellot, A.B., An Anatomy of American Politics, p. 78.

2. ibid., p. 79.

3. Laski, H.J., op. cit., p.129.

4. For comparison between the Senate and House of Lords see the last chapter.

5. Brogan, D.W., The American Political System, pp. 137-138.

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8 THE CONGRESS AT WORK

The real work of congress is transacted not on the floor of the two chambers but in the committees, which have been called 'little legislatures.'

—Joseph P. Harris

The two houses of Congress meet in chambers at opposite ends of the national capital building, a monumental building of marble and sandstone surmounted by a great dome. Seating arrangements are semicircular. Democrats sit at the right hand of the presiding officer as he faces the members, and the Republicans at his left In the Congress there are no so-called Treasury and opposition benches. The Speaker, except when the House is sitting as committee of the whole, is in the chair. Each party has its floor leader who is the official strategist of his party in the House. The floor leaders help the Speaker to keep things moving.

Process of Law Making

Law making is an important function of the Congress. According to Griffiths, both the British and Americans strive to provide thorough discussion and consideration. Both are determined that minority shall have a fair opportunity to be heard, to criticize, to offer alternatives. Both offer opportunity to criticize the administration and call it to account.

Introduction of Bill

In the United States, there are no government bills as they are in Britain. The government has no seat in the Congress and all bills, public or private, are sponsored by the members of the Congress. The President or any member of the cabinet cannot introduce a bill directly. If the government wishes to introduce, it may announce that the

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administration desires to have the bill passed. Majority of the bills are introduced on behalf of the administration. But some of them are inspired by pressure groups or private individuals. Anyway, whatever may be the source of initiative, the bills are introduced by the members of the Congress. If a Congressman desires assistance in drafting a bill, there is an office of Legislative Council at his service.

The procedure of introducing the bill is simple. The Congressman merely writes his name on the bill and drops it into a box known as the "hoper" on the clerk's desk. No limit is imposed on the number of bills a member may introduce. Each Congress has faced an average of about 14,000 bills but it is only a few hundred that ever get beyond the initial stages. The bills introduced remain 'alive' until disposed off or until the end of the existing Congress.

The bills and resolutions put into the box are sorted out and given serial numbers becoming "H.R. 253" or "S. 1160" or "H.J. Res. 268" or "S.J. Res. 14" indicating the House of origin and nature of the bill or resolution. There is not much of difference between the bill and joint resolution except that the latter is intended for temporary situations. Otherwise a joint resolution is similar to bill, undergoes the same procedure and becomes effective under the same conditions. A joint resolution is also submitted to the President for signature. After the bills have been sorted out and numbered, they are printed in the Journal and the Congressional Record.

The Committee Stage

The presiding officer decides to which of the various committees a particular bill will go for consideration, though often the contents of a bill virtually dictate the choice of the committee. Agricultural matters, for example, will go to the committee on Agriculture. Military matters will go to the committee on Armed Services. If the presiding officer has any doubt as to what committee should receive the bill, he may settle the problem by dividing the bill between two committees. In the case of so called private bills, the member who introduces the bill indicates the committee which he thinks ought to deal with it.

When a committee has received the bill, it gives to the bill a preliminary examination to find out whether it has any merit or not. If the committee finds that the bill is not worthy of consideration, it takes no further action and puts the bill back on the committee's files. The bill is merely "pigeon holed" that is pushed into the discard compartment of the Chairman's desk. That is what happens to most of the bills which a committee receives. The bills which the committee thinks worthy of

consideration are studied in detail and relevant information is sought from all the sources.

If the bill is an important public bill, the committee announces public hearings. The interested individuals and representatives of interested organisations may appear and give testimony. The opponents of the bill may also appear and state their positions. If the matter is regarded as requiring immediate action, the period for hearing may be limited to stated days and the testimony of each person may also be limited in time. Friends of the bill seek to demonstrate the necessity for its enactment while the opponents present evidence to show why it should not be passed or why it ought to be amended in a particular way before enactment. The representatives of the press attend the hearing and spread information about proceedings.

The committee also gets information and data from the committee library, the Congress library, official files and heads of the departments. It may appoint sub-committees to study the specified portions of the bill. The congressman also appears before the committee to inform it of what their voters think about the bill. The pressure groups also write to the committee or appear before it.

On the basis of information gathered from the official file, Congress library, heads of departments investigations and public hearings and the opinion received from the Congressmen

and pressure groups the committee arrives at its verdict. It meets in executive (closed) session and may take one of the following decisions:

(i) It may recommend the bill back to the House just as it stands with a recommendation that it be passed,

(ii) It may amend the bill and recommend that it be passed with the proposed amendments,

(iii) It may entirely change the original bill and recommend a new one in its place.

(iv) It may reject the bill and report that the bill need not be passed,

(v) It may decide not to make any report at all. In other words it may "pigeon hole" the bill.

If the committee fails to report the bill, the House may "discharge" the committee—that is, call upon the committee to submit the bill. The report is usually made by the Chairman of the committee or someone designated by him. The report is likely to run into only a few printed pages, but on important matters it may be an exhaustive and extensive report. It is accompanied by printed copies of the hearings, which may run into several hundred or even several thousand pages. Minority reports also may be filed.

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The Calendars

When the committee makes its report, the bill is placed on one of the three calendars. Bills raising revenue, appropriating money or property, directly or indirectly are placed on the Union Calendar. Bills which are public but not fiscal in nature are placed on the House Calendar. All bills of a private character are assigned to the private Calendar. There are two other calendars—consent Calendar and discharged Calendar. The bills which are non-controversial and have every chance of being passed by the House may be transferred from the Union or House Calendar and placed on consent Calendar if a request is filed. Bills withdrawn from the committee by petition are placed on the discharge Calendar. Above we have said that if a committee does not report back a bill, the House may 'discharge' the committee that is, call up a bill from it. Such bills are placed on discharge Calendar'

Consideration on the Floor

According to the Rules of the House, the bills are taken up for consideration by the House in their Calendar order, but numerous exceptions are made so that action may be secured on the more important measures. Several devices are used to select bills for consideration out of Calendar order:

(i) A motion may be made to suspend the rules which must receive a two-thirds vote,

(ii) Some committees may bring up privileged matters especially revenue and appropriation bills,

(iii) The Rules Committee may bring in special order for which the backing of a mere majority is sufficient,

(iv) Bill may be brought for immediate consideration by unanimous consent from the consent Calendar.

(v) On Wednesdays except during the last two weeks of a session the committees may call up for passage of some of their own bills, otherwise unprivileged,

(vi) The members may secure unanimous consent for immediate consideration of a bill.

The Calendars are very much crowded and only the important bills are selected out of their sequence by one of the above devices. Hundreds of bills 'die on the Calendars' in every Congress.

The House considers the bill or gives it a "second reading" in the committee of the whole. Technically, there are two committees of this kind, i.e., "committee of the whole House on the state of the Union" for considering all Union Calendar Bills (Bills raising revenue,

appropriating money or property) and a committee of the whole House for the consideration of private bills. A member moves that the House resolves itself into the committee of the whole for consideration of a particular bill. The motion if passed by the majority, the Speaker appoints a member to act as a Chairman. The procedure in committee of the whole is freer than in the House. A hundred members constitute the quorum. No record roll-call votes are taken. Motions to refer or to postpone the bill under discussion are not permitted. The bills are read section by section, and amendments may be offered to appropriate sections. When the discussion is completed, the committee of the whole rises and reports its action back to the House.

The device of the committee of the whole is an important device. It enables all the bills to be considered and discussed thoroughly in a less formal atmosphere and move speedily. Every member who desires to speak can speak and move amendments. "It facilitates rapid fiery critical debate which commonly shows the House at its best. And, for better or worse, the absence of recorded ayes and nays enables members to register their sentiments without check or restraint such as published votes sometimes impose."

The bills which are not considered by the committee of the whole are given second reading by the House sitting as House with the Speaker in chair. General debate precedes second reading. Amendments may be offered as sections are read. The House generally predetermines the time for debate and divides it equally between sponsors and opponents. The members in control grant time to those who wish to speak. It is very common for one member to ask another who has the floor if he will yield. If the member who holds recognition wishes to step aside for a moment, a question or brief statement may be interposed.

If the bill was referred to the committee of the whole, the bill when reported back is put before the House by the Speaker for accepting or rejecting the recommendations made by the committee of the whole. The House accepts the bill as reported by the committee. Thereafter the Speaker states, "The question is on the engrossment and third reading of the bill as amended."2 The third reading is merely formal. As a matter of fact, it is not read a third time, except by title, unless some member requests that it be read in full. The Speaker then states, 'The question is upon the final passage of the bill". The votes are taken and if the bill is passed, it is signed by the Speaker and transmitted to the Senate for concurrence.

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How Votes are taken?

Four methods of voting are used by the House. (1) The first is voice vote method. This is the usual method but if this is indecisive, or one-fifth of a quorum requests, another method may be used. (2) The second is division method wherein the members are asked to stand and the Speaker counts them. (3) The third is teller method wherein the members file past a given point to be counted for or against a bill. (4) The fourth method is Roll-Call method wherein the clerk of the House takes the Roll-Call, each member saying Ayes or 'nay' and the clerk records the Ayes or 'nay'. Naturally, the last method takes a great amount of House time as each name is called and the vote is recorded.

Consideration in the Senate

After the bill has been passed by the House, it goes to the Senate for consideration. In the Senate also the bill undergoes all those stages which it passed through in the House of Representatives. The President of the Senate refers it to the appropriate committee. The committee holds hearing on the bill, which may be more extensive or less extensive than those held by the committee of the first House. If the bill is one which has the support of the government it may conceivably have been introduced in both Houses at the same time. In that event, committee of each House may have held hearings, before either House passes the bill. When it is passed by one of them, it thereafter carries the number given to it by that House and is substituted in the other House for the bill originally introduced there. The House may hold additional hearings.

After the committee has considered the bill, it is placed on the Senate Calendar of Bills. It may be noted that unlike the House of Representatives, there is only one Calendar of Bills in the Senate. All the bills reported by the committees are put on this single Calendar. Since the size of the Senate is smaller and there is only one calendar, therefore the elaborate selective and restrictive devices employed in the House of Representatives are not used in the Senate. The Bills that are not objected to, are taken up in the order listed in the Calendar. The bills can be called up from the Calendar out of turn also. The second reading of the bill is done in the Senate. It may be noted that Senate does not make use of the Committee of the whole for the second reading of the bill. The plan was abandoned in 1933. Thus, the bill is read the second time in the Senate. Full discussion takes place and amendments may be proposed. The obstructionists may indulge in filibustering unless 'closure' is applied. After the discussion is over, the President puts the question for engrossment and third reading. Then the question is upon

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the final passage of the bill. After the votes are taken, the original bill together with the amendments, if any, is returned to the House of Representatives.

Conference Committee

If both the House pass identical versions of the same bill it is 'enrolled' on parchment paper signed and sent to the President. But if the Senate has made amendments to it, the amendments are placed before the House and the House may accept these amendments. But if the House does not accept the amendments, a member may request for a conference committee. The committee usually consists of three to five, sometimes nine members, from each House. These members are appointed by the presiding officer of each House. At the conference, only matters in disagreement are considered. In many cases, the result of the conference is a compromise. After compromise, each set of conference reports back to its House. If both the Houses accept the compromise, the bill is ready for the next step. If not, it goes back to the conference committee for further consideration. Conference committees, it is pointed out, have become a sort of third House. They are criticized because proceedings are secret and bills may be re-written arbitrarily.

President's Assent

If and when the bill is passed by both the Houses in identical form, it is signed by the presiding officers of the two houses and sent to the President of the United States. If signed by the President, it becomes a law. It also becomes a law if the President holds it for a period of ten days, Sundays excepted, provided during this period of ten days the Congress continues in session. If the President returns the bill to the House of its origin with a statement of his objections, which is called a veto message, and the Congress passes it again by a two-thirds majority, it will become a law on being passed for the second time. But if the Congress adjourns before ten days have elapsed since the submission of the bill to the President and the latter does not take any action over the bill, the bill is killed by the 'pocket-veto' of the President.

Once enacted and signed by the President, the bill becomes a law and may be found in the statutes at large of the United States for the particular session. From time to time, statutes are codified in the Code of the Laws of the United States of a General and permanent character... commonly called "U.S. Code."

The above is an account of the more important steps involved in the life of a bill from the time of its inception to the time when it becomes a

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law. The bill, as may be noted, runs the risk of being side tracked at any point. The committee to which it is initially referred, may 'pigeon hole' it After holding hearings, it may decide against reporting the bill or it may change the bill beyond recognition. After the bill is reported, it may be never brought from the calendar for consideration and may die languishing on the calendar. If it is considered, it may be amended or rejected by the House. If it is passed, the other House,

may amend or reject it. If it goes to the conference committee, the committee may be unable to agree, or one or both houses may refuse to accept the conference report. Then in the last stage of its journey, the President may veto the bill. So uncertainty prevails till the President has put his signature or it has become a law by the renewed action of both houses after the signature has been refused. Munro remarks, "On the way to its destination, there are hills to be climbed and streams to be boarded so that among the myriad bills that start their journey, it is only the most robust that survive the end."3

The Budget

The budget is the annual financial statement showing the expenditure and income for the incoming fiscal year.4 It is prepared at the Bureau of the Budget under the supervision of the Director. The Director is appointed by the President for an indefinite term (without confirmation by the Senate). After approval by the President the budget is sent to the House of Representatives. Without debate the appropriations section of the budget is referred to the committee on Appropriation. The Committee of Appropriations refers the various groups of items to several committees for detailed study and public hearings. These subcommittees which are organised on departmental lines, work on the figures, and, whenever necessary, call in the various executive officials to explain their respective needs. Those opposing an appropriation may also be heard. When the sub-committees have completed the study, each sub-committee drafts its own bill and reports to the general committee. The latter examines these bills and with change, if any, sends the various appropriation bills to the House. The House sitting as a committee of the whole debates these bills one after another. The House has a right to insert, strike out, increase or decrease items at its discretion, but this is rarely done. Consequently, the bills usually go through without a great deal of change from the committee's recommendations.

Having passed the House, the various appropriation bills go to the Senate. There also, they are referred to a committee on appropriations.

The Senate committee examines the bills and may propose any changes in the amounts. The Senate considers the reported bills. If the Senate has made changes, the appropriations are sent back to the House for concurrence, failing which they are referred to a committee of conference made up of selected senators and representatives. The conference committee tries to adjust the items and gets the appropriation bill into committee in such a shape that both the House and the Senate can agree on every word of it.

When an appropriation bill is passed by Congress, the President has no alternative but to sign it. He can veto the whole Bill if he so chooses but he cannot veto any individual items on it, leaving the rest to stand.

The Director of the Bureau of the Budget also prepares the revenue part of the budget. He obtains data from the treasury and prepares an itemised report showing the anticipated national receipt including revenues from existing and proposed taxes. After these taxes have been approved by the President, they form part of the budget and are sent to the House of

Representatives. The Ways and Means committee of the House takes up the task of studying new taxes. It holds hearings, and, when these are concluded, it reports one or more revenue measures to the House. The House in Committee of the Whole discusses the tax measure and may make changes. After the House has passed the tax bills, they go to the Senate which refers them to the committee on finance. The committee may recommend changes in the Bills which the Senate may or may not accept. In case the Senate makes some changes and the House does not conclude, they are referred to committee of conference which tries to reach a compromise. The conference committee reports the compromise to their respective chambers, which finally pass the bills and send them to the President to be signed.

Comparison of the law making procedure in America and England

The basic difference in the organisation of the national legislature in England and America has produced important differences in the law making procedure in the two countries. In the first place, it must be noted that in Great Britain the legislative business of Parliament is conducted under the guidance and leadership of the cabinet Majority of the bills are introduced by the ministers who have their seats in the Parliament. The ministers see through the passage of their bills. On the other hand, in America the Cabinet and the President are excluded from the Congress. They do not introduce the bills nor do they take part in the debates. The bills referred to as "administrative bills" are introduced by members of the Congress. In other words, in England, the cabinet plays

a great role in law making while in America the cabinet has no such role to play.

Secondly, in America all bills are private members bills, but in England the public bills are divided into Government bills and Private Members bills. In America there is no such thing as Government Bills.

Thirdly, in England a bill is referred to the Committee after the second reading, i.e., after the House has approved its aims and objects, but in America they are referred to the Committee after the first reading, i.e., without the House discussing its aims and objects. In other words, in America the bill does not come before the House before it is referred to the Committee but in England the House gets a chance to debate the aims and objects of the bill before referred to Committee.

Fourthly, in America the committee may not report back the bills to the House and may 'pigeon hole' them, but in England, the committee has to report back all the bills.

Fifthly, in America the Senate has got greater powers than the British House of Lords in respect of both the ordinary bills and money bills. In case of disagreement, if no compromise is reached at the conference committee, the Bill is killed.

Lastly, in England the king/queen has to accord his/her assent to the bills passed by the parliament. He or she is only a figure head. In America the President has the veto power and he may delay the passing of a bill.

Thus, while both the British and American systems strive to provide thorough discussion, and a fair opportunity to the minorities to be heard, to criticize and to offer alternative; to criticise the administration and call it an accursed, there are marked differences in procedural methods. The rules of procedure and precedents in both Houses and Senate according to Griffiths "present a maze, a mystery which even those of long standing membership often find it difficult to master completely."

Committee System

Much of the intensive work on legislation is done in committees. Both the Houses of Congress make use of the committees. In the United States the Committee system has a peculiar importance because it has a presidential form of government. Neither the President nor the members of his cabinet sit in either House of the Congress. The Congress is without leadership and this fact gives importance to the committee system in the U.S.A. As the two Houses have grown larger in membership and their problems have increased in number and

complexity, they have delegated even more important decision making to committees. In England, the committees do not have that much importance. The ministry in power controls and directs the work of legislation. In the United States the committees are "little ministries" with enormous power.

Kinds of Committees

There are two types of committees in the United States, standing committees and special committees. The standing committees are the most important committees. It is these committees which examine the bills and decide their fate. The special committees are appointed to perform a single definite task and, when that is done, they immediately dissolve. The standing committees are permanent or regular committees.

Standing Committees

The number of standing committees was relatively small for a long time but by 1927 the number rose to 61 in the House and 33 in the Senate. In 1946, Congress recognised fifteen committees in the Senate and nineteen in the House of Representatives. The fifteen Senate committees were listed as follows:

Committee on Agriculture and Forestry.

Committee on Appropriations,

Committee on Armed Services.

Committee on Banking and Currency.

Committee on Civil Service.

Committee on the District of Columbia.

Committee on Expenditures in the Executive Departments.

Committee on Finance.

Committee on Foreign Relations.

Committee on Inter-state and Foreign Commerce.

Committee on Judiciary.

Committee on Labour and Public Welfare.

Committee on Public Laws.

Committee on Public Works.

Committee on Rules and Administration. The nineteen House committees were listed as follows:

Committee on Agriculture.

Committee on Appropriations.

Committee on Armed Services.

Committee on Science and Technology.

Committee on Banking and Currency.

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Committee on Post Office and Civil Service.

Committee on the District of Columbia.

Committee on Education and Labour.

Committee on Expenditure in the Executive Departments.

Committee on House Administration.

Committee on Inter-state and Foreign Commerce.

Committee on the Judiciary.

Committee on Merchant Marines and Fisheries.

Committee on Public Lands.

Committee on Public Works.

Committee on Rules.

Committee on Un-American Activities.

Committee on Veteran's Affairs.

Committee on Ways and Means.

The reorganisation has eliminated overlapping to some extent and has also eliminated a certain amount of inter-committee strife. However, at present there are 16 Standing Committees in the senate and 22 in the House of Representatives.

Committee Memberships

Each Standing Committee includes members of both major parties. The ratio of Republicans to Democrats on each committee is approximately the ratio of the Republicans to Democrats in the membership of each house as a whole. All legislative committees in the Senate consist of thirteen members except the Appropriations committee which has 21 members. Membership of the legislative committees of the House of Representatives varies considerably, ranging from twenty five to fifty members. The Appropriations committee consists of fifty members. Armed services committee consists of thirty-five members, Agriculture committee consists of thirty members. Most of the other committees have either 25 or 27 members. Formerly, some members served on five or six committees, but now with the number of committees vastly reduced the great majority of members have only a single regular committee assignment.

The members of the committees are elected by the House itself. But what really happens is that when a new congress assembles, the members of each political party in the House hold a caucus or "conference". Each caucus selects a group of its own members to participate in the work of state making. The two groups work independently and then their lists are put together into a combined state. Thereupon the final state is submitted by each group to its own caucus

which approves it. Having been approved therein, it is reported to the House which accepts it without change. Thus while in theory the House elects the committees, in practice these are selected by small groups representing the majority and minority parties.

Certain long standing customs are observed in assigning members to the various committees. The seniority principle is observed in making the assignments. Membership on important committees goes to the senior members. The best that a new member can ordinarily expect is to be assigned to one of the less influential committees. Moreover, geography is also taken into account. Not all the members of any major committee are ever selected from one section of the country. Likewise a member's personal preferences are also taken into account. It need not be said that there is a tremendous amount of jiggling for position among the several members and some members are inevitably disappointed in the jiggling for position.

Committee Chairmanship

The chairman of a standing committee is usually the senior most member of the majority party in the committee. If he is the senior member of two or more committees he may choose the chairmanship of one of them. In that case the next senior member of the majority party will be the chairman. Seniority is calculated on the basis of continuous longest service on the committee. When the party balance shifts from one party to the other, the chairmanship also changes.

The practice of giving chairmanships on the basis of seniority has been much criticised. Senator Hubert Humphrey has characterised the practice as "the sacred cow in the legislative zoo". It leaves no scope for a member of administrative ability but not senior to be the chairman. It holds back men who have a natural aptitude for committee work, and pushes forward others who have little or no administrative ability. Length of service is not a sure guarantee of anything except a congressman's capacity to get votes in his home district. The seniority rule brings in another defect. It tends to bring about the selection of chairman from states which elect legislators from the same part, term after term and which tend to re-elect the same individuals instead of making new selections. The states or districts which shift back and forth between Democrats and Republicans fail to get chairmanship. In other words, chairmanships are held largely by Southern Democrats and 'old Guard' Republicans. According to Griffiths, the seniority rule "gives congress as a whole a somewhat more conservative tinge than is usual in the President or the executive branch generally."

Though the seniority rule has been criticised, yet there is little prospect of its being abandoned. It has a great advantage which outweighs all disadvantages. It settles the problems of allocating chairmanships peacefully and without controversy. The post of chairmanship is one of great patronage and influence. The chairman holds a pivotal position in the committee. If the seniority rule was abolished, there would be bitter and intense internal political warfare for chairmanship. Moreover, the congressional procedure is so complicated that none but experienced members of long standing can tread their way through its members. The rule of seniority produces an experienced corps of committee heads.

Role of Standing Committees

The standing committees in the United States play very important role in law making. All bills introduced are referred to standing committees. They "constitute the screen through which the great mass of proposed legislation is sifted". The congress receives 10,000 lo 15,000 bills. It is physically impossible for the congress to handle this plethora of bills. Not all the bills are important. It is the job of the committee to decide which of the bills are worthy of consideration by the House and do the preliminary work of collecting facts, information and public opinion about them. The standing committees do a lot of the work. They first give a preliminary examination to find out whether the bills have any merit or not The bills which are deemed worthy of consideration are sorted and the rest are "pigeon-holed." It is estimated that from 50 to 75 per cent of the bills introduced in the congress are pigeon-holed. The more important bills are studied in details and relevant information is gathered from both the official and non-official sources. Public hearings are held and the bill is thoroughly scrutinised. After thorough and searching examination the bills are reported back to the House. The bills which are not favourably reported by the standing committees have little chance of being passed by the House. The House does not devote much time to the examination of the bills because these have been already examined thoroughly by its standing committees. Thus the bills are actually discussed and passed in the standing committees. That is why the standing committees have been called "little miniatures" or "miniature legislatures" or "the eye, the ear, the hand and very often the brain of the House." The standing committees in the United States deserve a great deal of credit for the framing of legislation.

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The Rules Committee

The Rules Committee is the most powerful standing committee of the House of Representatives and as such deserves a special heading. The Rules Committee consists of twelve members and is a "kind of traffic officer" for the House. A vast number of bills are reported from its standing committees. These bills are placed on different calendars where they wait for their turn. But because some bills are regarded more important than others, machinery has to be devised for determining priority of consideration. The Rules Committee decides whether a bill shall be called up, and its will prevail unless at least half of the total membership votes to bring up a bill which the Rules Committee is unwilling to report. Thus the Rules committee determines priorities among the many competing bills which have been favourably reported by the Standing Committees. It decides how much time shall be allotted to the consideration of a particular bill and the condition under which amendments may be proposed and discussed. It can, at any time bring in new measure or resolution and interrupt the regular order of business in the House. It may itself draft a bill, bring it before the House for its passage in record time without reference to a Standing Committee. All proposals for amending the rules of the House are referred to it. It may disapprove these proposals and thereby block the passage of many a bill.

The Rules Committee reached the height of its restrictive powers during 1947 and 1948, when it was under Republican leadership. Resentment against an obstruction by the Rules Committee had been accumulating since the middle of 1930's when President Roosevelt and other New

dealers denounced it for obstructing the New Deal programme. When in January, 1949 the Democrats were returned to power they voted an amendment providing that if a bill is reported by a legislative committee it might call up the bill on any second or fourth Monday for consideration by the House. The twenty-one days rule, as it was called, restricted the powers of the Rules Committee and clipped its wings but nevertheless it became apparent that the Rules Committee had not been an irresponsible body as on several occasions it had blocked the bills on the request of the President and the House of Representatives itself. On January 20, 1950, a resolution for repeal of the twenty-one days rule was placed before the House but it was rejected. In January, 1951 the twenty-one days rule was eliminated and the full power of the Rules Committee was restored. At present the Rules Committee is again the most powerful single committee in the House.

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Special Committee

We have so far discussed the Standing Committees which are legislative Committees to which bills are referred and which report bills for the action of the respective Houses. Certain of the standing committees have specialised functions such as the committee on Un-American Activities and the Rules Committee. Although the Congress operates primarily through standing Committees, it from time to time also creates special committees for various purposes. Among the special committees the following are the important ones:

(i) Investigating Committees

The Investigating Committees are appointed by a resolution of the House for making designated investigations. The Chairman and the other personnel of the Investigating Committee are chosen by the House without reference to seniority. The desire for an Investigating Committee may originate from some aggressive legislator who wants a particular subject investigated or who wants for himself the prestige or notoriety which comes from heading a vigorous Investigating Committee. The first Investigating Committee was appointed in 1792 to enquire into a military disaster suffered in an Indian attack on the North West Territory. The Congress in the recent past conducted about one hundred investigations each, some through independent Investigating Committees and some through Sub-Committees of Standing Committees.

The Investigating committees sometimes seek information useful to them in legislation, but mostly they aim at exposing inefficiency or corruption in the administration. The investigating committees have been abused in recent years. Investigations are sometimes motivated by the desire of a political party to advance its own interest or to embarrass its adversary. In 1920 and 1930, the Democratic Party did its best to discredit the Republican party through investigation into the scandals of Harding Administration and the evils of bankers and businessmen. The Republican Party took its revenge in 1947-48, and 1950-54 to expose the shortcomings of Roosevelt and Truman Administration. Thus instead of giving fair, impartial information to Congress and to public for constructive use, an investigating Committee "usually starts out" to prove something and hunts the evidence which will support this proof. Moreover, the Investigating Committees have shown gross disregard to the right of individuals to privacy or

their right to treatment as self-respecting human beings. The investigation may be used to create unfavourable publicity for people whom the committee dislikes or

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whose views it dislikes. It may damage their position in their committees and interfere with their opportunities for earning a livelihood.

(ii) Conference Committees

Another type of special committee are the Conference Committees. They have been described as "the most important pieces of American Constitutional machinery, though unknown to the written Constitution." The Conference Committees consist of members of both houses who are appointed by the respective presiding officers. The members may be sometimes as few as three, sometimes as many as eleven. They usually include the principal sponsors of the bill in each house. The Conference Committees are appointed to adjust the difference between the two Houses, that is, when the House and Senate fail to agree upon any measure, one of them having passed the measure with amendments which the other declines to accept. The Conference Committee meets behind closed doors and tries to work out something which may be acceptable to both the Houses. The Committee is not supposed to put into a bill anything that is not already there, but sometimes in order to reach a compromise, a general reshaping of the bill is found essential. If the Committee fails to reach a compromise, the bill fails of enactment. If a committee does reach agreement it is reported to the respective chambers by the conferences. The compromise is generally accepted by both the Houses but if one of the Houses rejects the compromise, the bill is likely to be sent back to the conference committee for further consideration. A report from a conference committee is privileged, i.e., it may be presented at any time.

(iii) Committee of the Whole

This is merely the entire membership of the house sitting as one great committee. The Speaker does not preside over it but he appoints another members as its Chairman. The purpose of converting the house into committee of the whole is to expedite business and to this end the normal rules of the House are relaxed. The quorum is 100 members, not a majority of the house. There are no roll calls. After general debate, no member may speak longer than five minutes except by unanimous consent. The House makes great use of this facility and sits for a longer period as "House in Committee of the Whole" than in a regular session. All the appropriation and revenue bills are considered by the Committee of the Whole House.

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(iv) "Watch Dog" Committees

Though it was not named as such but the special committee appointed by the Congress under the Taft Hartley Act of 1947 to make a thorough study and investigation of the entire field of labour management agreement relations was labelled "Watch Dog" committee. When Congress makes

laws dealing with rapidly changing situations and when such laws confer broad powers upon administrative officers, it often seeks way of checking on the administration of these laws. One of the techniques used is the establishment of 'Watch dog committees'. The Congress appointed another such committee, the Joint committee on Foreign Economic Co-operation to study and report the experience of the Economic Co-operation Administration in administering aid to Europe under the so-called Marshall Plan. The members of the committee watched particularly the reaction of communist countries to the Marshall Plan and the conduct of beneficiary Government in living up to their commitments to the United States.

American and British Committee System Compared

The American Committee system differs from the British Committee system in vital respects. The points of difference are the following:

(i) In England the number of committees is much smaller than in America. There are nineteen standing committees in the House of Representatives whereas the House of Commons has only five Standing Committees. The British Committees in England are distinguished only by a letter of the Alphabet A, B, C, D, while in America, the committees have been designated after the subject matter dealt with by them. The members of British Committees are appointed by the Committee of Selection nominated by the party leader and confirmed by the House at the beginning of each session. In the American Congress the Committees are constituted by agreement between the "Committees" of the parties and then formally elected by the chamber concerned. In America, the Chairmanship goes to the seniormost member of the majority party on the committee but in England the Chairmen are appointed by the Speaker from a Chairmen's panel, consisting of not less than ten members nominated by the Selection Committee. Thus the Standing Committees in America differ in their number, size, mode of appointments and selection of the Chairman from those in England.

(ii) In England different kinds of bills are referred to different types of Committees. Thus private member bills are referred to the Committee on Private Bills. In America all the bills are referred to the same Committees as no distinction is made between government bills and private members bills.

(iii) In England the committees are general purpose Committees, each of them dealing with many different subjects. They are known as committee No. 1 and committee No. 2. In America the committees are of a specialised character dealing with a particular subject.

(iv) The Chairmen of the standing committees in England are neutral and act in a non-partisan way but the Chairmen of the Congressional Committees are party men and openly favour their party.

(v) The Committees in England work under the leadership of the cabinet whereas in America due to the theory of separation of powers the executive is conspicuous by its absence from the committees.

(vi) In England the bills are referred to the committees after the second reading, i.e., after the House has agreed to the principles underlying the bill. But in the U.S.A. it is sent immediately after the first reading even before the bill has actually appeared on the floor of the House.

(vii) In the United States, the Committees are far more powerful than the Committees in England. The American committees can kill the bill, by not reporting them back to the House. They can make amendments to the extent of changing the entire text of the bill. They can hold public hearings and lawyers can appear before them to support the case of their clients. On the other hand, the British committees do not enjoy such wide powers. Firstly, they must report back every bill sent to them. They cannot 'pigeon hole' any bill. Secondly, the amendments proposed by them must not cut into the principles of the bill, already accepted by the House. Thirdly, the Committees in England do not conduct public hearing. The Committees in America have been called 'miniature legislatures' as they conduct public hearing. Hence the British Committees cannot be called mini legislatures.

(viii) Lastly, the Committees in America have overshadowed the House of Representatives. The real law making is done in the Committees. A bill not favourably reported by the Committee has little chance of being passed by the House. The House does not debate the bill long, once it has been discussed in the Committee. On the other hand, in England, the House of Commons has not surrendered its power of law-making to the committees. Its Committees are only auxiliaries. They do not possess the power of life and death over the bills. The House of Commons jealously guards its responsibility of making laws.

Pressure Groups and Lobbying

A very important part in influencing legislation in America is played by pressure groups and lobbying. Pressure groups are the non-

governmental groups which are organised to exert pressure on legislation and administration. A division is made between pressure groups and political parties. We do not characterise a political party as a pressure group because by definition a political party is an organized group of people who aim at capturing the government through the use of constitutional methods for promoting national interests. The party has its leaders in the interests of the group exerting the pressure. It has no recognised leaders in the legislature. A pressure group is not a political group.

There is nothing illegitimate about the persuasive or coercive influence which the pressure groups exercise. It marks the exercise of the will of individuals and groups to shape the course of governmental action. The fact that legislators respond to pressures must not be taken to imply that the congressman is a completely helpless power or a rubber stamp. A pressure for legislation to better the conditions of labour, of industry, of agriculture is not an alien influence. The different pressure groups exert pressure in different directions and it is the legislator's task to find the highest measure of unity and harmony. He should find the common elements in the progress of several groups and work out patterns of legislation, for their mutual benefit.

The most powerful pressure groups in America are those representing labour, the fanner, the Negroes, the business and the veterans. The Chamber of Commerce, the Factional Association of Manufacturers, the American Bankers' Association, the American Farm Bureau Association, the American federation of labour, the American Veterans' Committee are the examples of some pressure groups. The pressure groups try to achieve their objects (i) by building up a strong organisation (ii) by carrying on propaganda through books, pamphlets, newspapers etc. and (iii) by lobbying.

Lobbying

Lobbying is a word used to refer to the methods by which pressure groups make themselves felt in the Congress. The activity takes its name from the long established practice by which interested parties have congregated in the lobbies of legislative halls to find out what legislators were doing and planning to do and seek legislative favours. The word 'lobbying' has had connotation because it implies the exercise of undue influence upon legislators who ought to think and act for the general welfare rather than for the welfare of a particular pressure group.

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Lobbying is in process all the time i.e. when the Congress is in session and much of the time when it is in recess. Subject matter and methods are infinite in their variety. It is said that there are more than a thousand "lobbyists" functioning permanently in Washington. There are many more active in State capitals. The pressure groups employ expert agents, sometimes former Senators and Representatives, for lobbying. By means of letters, telegrams, telephone calls, articles in the press, personal contacts and memorandums they try to influence the opinion of the congressmen. Sometimes, underhand methods like purchasing the votes of legislators, doing undue favours to legislators and intimidation of legislators are also used. A recent development in lobbying technique is what is known as "grass roots lobbying," i.e., influencing a Congressman by flooding him with letters, telegrams and telephonic calls from voters of his constituency and by whipping up campaign in local newspapers. The business groups maintain powerful lobbies in the Congress and the state legislatures.

Lobbying is carried on not only by the outside groups but also by groups, within the government itself. The government employees through their organisations try to exert pressure upon the Congress about compensation, classification, retirement benefits and other such favours. The military development and the Social Security Administration have brought pressure upon the Congress for the adoption or rejection of a particular policy or enlargement of a particular programme.

Lobbying, in spite of its dubious methods and undesirable influence, has become a part of the American system of government In England there is no lobbying or we may say lobbying plays an insignificant role there. The reason is that the cabinet responsible for framing the legislative programme and any bill favoured by the cabinet will be passed by the House of Commons because it has got majority in the House. So in England, the interested groups do not wander in the lobbies of the White Hall influencing the members of the parliament. They seek to influence the Prime Minister who is the leader of the cabinet and the House of Commons. In America the

absence of cabinet leadership in the Congress makes lobbying necessary and plays an important part in legislation. The Congress has not disapproved the lobbying rather it seems to approve of that process. Purification not the condemnation of the process was the purpose of the federal Regulation of Lobbying Act which was passed as a part of the legislative Reorganisation Act of 1946. In recommending the enactment of the bill,

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the Special Committee on the Organisation of Congress emphasised that all the bills did not seek to outlaw Lobbying. It only required certain classes of Lobbyists to register, to state their purpose and to list all contributions and all salaries and all expense account reimbursements. The registration of lobbyists has provided a wealth of information on the activities of the lobbyists, and the amount expended by them and the items of expenditure. But it is doubtful whether the information provided by them is wholly correct. There is also reason to believe that a great many lobbying activities are carried on by persons who ought to register but who have not done so. In any case, the requirement of registration has not restrained the practice and extent of lobbying in the United States.

References

1. A Calendar is a list of measures reported from the committees and ready for consideration by the House.

2. Engrossment means the typing of the bill exact in the form that has been given to it before third reading and final passage.

3. Munro, W.B. op. cit., p. 345.

4. In America, the fiscal year begins in July.

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9 THE FEDERAL JUDICIARY

"No feature of the Government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the arc of the Constitution."

—Lord Bryce

Courts are essential in all organized societies. Their organisation and role vary with the form of government, political theories, social and economic systems, traditions and customs. The Articles of confederation did not provide a federal judiciary in the United States. The Judicial task was left exclusively to the States. When the plans for a federal government were being laid at the Philadelphia Convention, the necessity for a federal judiciary was felt. Hamilton said, "A

circumstance which crowns the defects of the confederation remains yet to be mentioned, for want of a judiciary power. Laws are dead letter without courts to expound and define their true meaning and operation." In order, therefore, to function successfully, it was realised that the federal system of government must have a strong judiciary which shall remove not only the defects of the confederation but also provide harmony among the conflicting decisions of the highest state courts. This will also be in consonance with theory and practice of federalism. Accordingly, the constitution provided in Article III that "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." The Congress enacted the Judiciary Act of 1789 which with numerous amendments forms the basis of the federal hierarchy of courts.

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THE SUPREME COURT

Its Organisation

The Supreme Court is the creation of the constitution as it has been specifically mentioned in Article II. The other federal courts have been created by the Congress. The Supreme Court stands at the apex of the American judicial pyramid and since the early 1930's has been housed in an imposing marble structure, facing across the park towards the east front of the national capital. The constitution has not fixed the number of judges. The number was reduced twice and increased five times. The number of judges varied from 5 to 10. As first constituted it consisted of a chief justice and five associates. Its membership was reduced to five in 1800; increased to seven in 1807; increased to nine in 1837 and ten in 1863; reduced to seven in 1866; and in 1869 it was fixed at nine. Today the Supreme Court consists of one chief justice and eight associate judges.

Appointment

All the judges are appointed by the President and with the advice and consent of the Senate. The constitution prescribes no qualifications for the judge. Hence the President is free to appoint any one for whom senatorial confirmation can be obtained. The rule of "senatorial courtesy" does not limit the choice of the President From its very inception, an attempt has been made almost invariably to select men of high prestige and outstanding ability. Though sometimes appointments have also been made to repay political debts, to show deference to a particular section of the country or even to provide representation for a political party which would not otherwise be represented, even then the calibre of the men selected has been, in general, high.

Tenure

The judges hold office during good behaviour and are removable by impeachment only. A judge may retire, if he wishes, when he reaches the age of seventy or at any time thereafter. He can retire with full salary provided he has served on the Bench for ten years. He may retire at sixty-five with fifteen years of service, or at the age of 70 with 10 years service at his credit and receive full pay for life. Since the judges do not readily give up office even when they reach the

retirement age, there has been criticism of life appointments. It is contended that a tribunal made up of life appointees is undemocratic. The life appointees lack the needed incentive to keep up with the times and to exercise their functions in harmony with the dominant sentiments of the people. On the other hand, the defenders of life appointments contend that without

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security to tenure the court would lack the security of outlook which is necessary for sound performance. However, it may be said that the prestige of the Supreme Court has generally been maintained at a high level so as to indicate that the court has justified the confidence bestowed upon it in giving life tenure to its members.

The chief justice is paid 35,500 dollars a year whereas associate judges 30,000 dollars a year as salary.

Sessions

The Supreme Court holds one regular session every year beginning on the first Monday in October and ending early in the following June. Special sessions may be called by the Chief Justice when the court is adjourned, but the occasion must be of unusual importance and urgency. Six Judges constitute the quorum. The Chief Justice is the executive officer of the court; he presides over all sessions and announces its orders. The court conducts hearings on Tuesday, Wednesday, Thursday and Friday. On Saturday, the Judges confer among themselves and register their opinions. On Monday, judgements are delivered in public. All the judges sit together. There are no benches. A decision may be unanimous or divided, if divided, their majority and dissenting opinions are usually written. The Judges who agree with the majority decision, but not with the reasons may write concurrent opinions. The decisions of the Supreme Court are published in the United States Reports.

Its Jurisdiction

Section 2 Article III of the Constitution states: "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority - to all cases affecting ambassadors, other public ministers and consuls - to all cases of admiralty and maritime jurisdictions, to controversies to which the United States shall be a party, to controversies between one or more states; between a State and citizens of another state, between citizens of different States; between citizens of the same state claiming lands under grants of different States, and between a State or citizens thereof, foreign states, citizens or subjects." Clause 2 provides, 'In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make." Analysing these two clauses,

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the Supreme Court of America has both the original and the appellate jurisdiction.

(a) Original: The original jurisdiction is limited to the following cases:

(i) cases involving ambassadors, other public ministers and consuls;

(ii) cases in which a state shall be a party. By way of clarification, the congress has stipulated that the original jurisdiction of the Supreme Court can be invoked only in cases against ambassadors and other public ministers, and only in cases where, if a state is one of the parties, the other party is the United States, a foreign State or a state of the Union. The original jurisdiction of the Supreme Court is thus based on the kind of parties to the case rather than on its legal subject matter. The theory is that the dignity of the parties i.e., the ambassadors or the States demand that cases involving them should be lodged in the highest court in the land since appearance before the inferior courts may lower their dignity.

In fact very few cases come to the purview of the Supreme Court in its original jurisdiction. Generally cases involving question of constitutionality or otherwise commanding extra ordinary importance are brought before the Supreme Court. In all other cases, the Supreme Court has,

(b) Appellate jurisdiction, that is, it hears appeals in cases already decided either in State courts or in lower federal courts. Appeals cannot be taken in all the cases. The appeal to the Supreme Court can lie only in those cases where the highest state court:

(i) has held invalid some state law which is alleged to be in violation of the federal constitution, of a law made by the congress, or of a treaty made by the United States;

(ii) has held invalid a federal law or treaty. Since 1914, the Supreme Court has been given discretionary power to review the decision of a state court, if it sees fit, even when this decision has held a state law invalid on a question of federal right. Sometimes in consents to review such decisions, more often it declines.

Thus appeals to the Supreme Court can lie only on some legal or constitutional point. In other words, the appellate jurisdiction of the Supreme Court is based upon the subject matter of the case. If in a case the law involved concerns the federal treaties, the appeal can be taken to the Supreme Court. It may be noted that appeal from the highest court goes directly to the Supreme Court. No other federal court has the

authority to entertain an appeal from the highest court of a state on any matter.

No Advisory Jurisdiction

It will not be out of place to point out that the Supreme Court of America, unlike the Supreme Court of India, does not perform the advisory function. It has refused to advise the executive on

hypothetical questions. Nor does the court pass judgment upon political questions. It acts only when a law has been violated and the matter is raised in a specific suit.

Supreme Court at work

The Supreme Court holds one regular session annually. It commences on the first Monday of October and ends about the middle of June. The Chief Justice can convene special sessions of the court if urgently required. It conducts hearings of cases for a fortnight. It meets on Tuesday, Wednesday, Thursday and Friday. On Saturdays, justices confer among themselves and register their opinions. On Monday, judgments are delivered in public. Every fortnight of hearings is followed by a fortnight of recess. During this period, judges study and write opinions. For a session, quorum of six judges is required. Judges arrive at decisions by a majority vote. All decisions and opinions of the Supreme Court are published in the United States Report for record and guidance of the legal profession and general public.

Role of the Supreme Court

A mere description of the jurisdiction of the Supreme Court cannot give a correct picture on the role it plays in the American system. According to Bryce, "No feature in the Government of the U.S.A. has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, been more frequently misunderstood than the duties assigned to the Supreme Court and the functions it discharges in guarding the arc of the Constitution."

(i) As a protector of Federation: Generally in a Federation the powers are divided between the federal government and the states. In a federation there is always the possibility of disputes. According to Dr. Munro, "Without the provision of the Supreme Court, the American Constitutional system would have become a hydra-headed monstrosity, (there were 48 states in U.S.A. when Munro remarked this of forty-eight rival sovereign entities). It would have never gained that strengthened regularity of operation which it possesses today."1 By working out the doctrine of Implied Powers, the Supreme Court has conferred wide

powers on the congress. The words of the Supreme Court in the case of Maryland vs. Mc Culloch, "Let the end be legitimate, let it be within the scope of the constitution and means which are appropriate, which are plainly adopted to that end, and which are not prohibited but consistent with the letter and spirit of the constitution are constitutional," are really historic words. It is on account of the liberal interpretation by the Supreme Court that the federal structure devised in the eighteenth century to satisfy the requirements of thirteen states, with a small population living in pastoral-cum-agricultural age, is equally suitable to the needs of the most industrialised country consisting of fifty states today. Without a liberal interpretation by the Supreme Court, the U.S. federalism might have failed in the time of growing industrialisation and centralism.

(ii) Saviour of the Constitution: The Supreme Court is the guardian of the constitution. It can declare null and void a law passed by the legislature or any order issued by the executive organ

in the United States, if it is repugnant to the constitution. Its power of judicial review has protected the constitution from being violated and has checkmated the monarchical ambitions of the President and the democratic recklessness of the congress. Hence it has been rightly considered as the umpire of constitutional conflicts.

(iii) Guardian of the Rights: The Supreme Court 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 fields and prevented encroachments of human rights. It has declared laws unconstitutional not only on the basis that they were beyond the jurisdiction of a particular organ but also on the ground that they were unremarkable or unjust. It has determined the constitutionality of laws on the basis of due process of law clause of the constitution. Before 1930's 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. Since 1930's the court has expanded its interpretation of the due process clause for the protection of civil liberties and restricted the protection given to property. This indicates a trend in the beliefs of the court. As now constituted, the Court believes that men ought to be free to the maximum extent possible. In more than a score of cases the Supreme Court has upheld the right of freedom of religion. In a case decided in 1948 the court held that "Neither a State nor Federal Government can set up a church.

Neither can pass laws which aid one religion, and all religions, or prefer one religion over another." In a number of cases the court has upheld the rights of the Negroes. In the case of Browns vs. Board of Education, Chief Justice Warren observed in 1954, "Does segregation of children in public schools simply on the basis of race, even though physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe it does. To separate them from others of similar age and qualifications solely because of their race, generates a feeling of inferiority as to their status in the community and may effect their hearts and minds in a way unlikely ever to be undone.... Separate educational facilities are inherently unequal." With regard to the work of the Supreme Court in the field of personal liberties, the Report of the President's Committee on Civil Rights observed in 1947, "It is not too much to say that during the last ten years, the disposition of cases of this kind has been as important as any work performed by the court As an agency of the Federal Government, it is now actively engaged in the broad effort to safeguard civil rights."

(iv) Development of the Constitution: The Supreme Court has done much towards the growth of the constitution. The constitution of America is a skeleton document comprising 7 Articles and about 7,000 words. It was framed in 1787 for a country of thirteen states having a pastoral agricultural economy. Today, America is a country of fifty states and is the most highly industrialised country of the world. It is the biggest world power. Obviously a constitutional structure devised for a pastoral economy could not have meted out the needs of the present day America which has landed its cosmonauts on the moon. The necessary adoption could not have been secured through constitutional amendments as the constitution amending procedure is extra-ordinarily rigid. The Supreme Court has played a significant role in adapting the eighteenth century constitution to the space age needs of nuclear America. By putting a liberal interpretation

it has facilitated the growth of the constitution without the necessity of formal amendment. In the words of James M. Beck, "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 character of government." In the words of justice Hughes "Americans are under a constitution but the constitution is what the judges say it is."

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(v) Highest court of Appeal: The Supreme Court is the final court of appeal in the United States. It can entertain appeals from the state high courts and lower federal courts. Though its appellate authority is limited as not all cases may be appealed but there is no appeal against its judgment. Its opinion on a question of law is final. It has been termed as a "super legislature" or a "third chamber." It stands above both the President and the Congress. "Unlike acts of the congress it is immune to Presidential veto and unlike Presidential veto, it is immune to over riding by congress." In a sense it may be called the most autocratic political institution of America.

From the above account it is thus clear mat Supreme Court is an institution of great importance in the American federal system. It has been, according to Finer, "the cement which has fixed firm the whole federal structure." Laski rightly called it as one of the most successful institutions "not surpassed by any other institution in its influence in the life of the United States."

JUDICIAL REVIEW

Meaning of Judicial Review

By judicial review we mean the power of the judiciary to determine whether a law passed by the Congress, or any law enacted by a state legislature or any provision in the state constitution or any other public regulation having the force of law, is in consonance with the constitution. If it is not, the court refuses to give effect to the statute in question. In determining the constitutionality of the legislation, the court is not concerned with the wisdom, experience or policy of legislation. In the words of chief justice Marshall, "It neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the c institution; and having done that its duty ends." Even if the Court considers the Act unwise and harmful to both public and private interests, it is its obligation to sustain the Act provided it is within the delegated power. As we know, the constitution is a general document which requires a great deal of interpretation to discover its meaning. It gives powers ro the executive and the legislature. While doing some act in pursuance of their powers they give their own interpretation to the words of the constitution. If a person thinks that the legislature has exceeded its constitutional power in enacting a law, he may challenge the constitutionality of the law in the court. In deciding the case, the court interprets the constitution to

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determine the constitutionality of the Act challenged. This power to interpret the constitution and determine the constitutionality of a statute is called the power of judicial review. The American

constitution has accepted the principle of judicial review which has made the Supreme Court the most powerful judicial tribunal in the world.

Judicial Review does not only apply to federal and State statutes. Its scope is wider. The constitution of the states, treaties made by the Federal Government and the orders issued by the Federal and State executive's authorities come within its purview. However, questions of political nature do not fall within its jurisdiction. This has resulted in restoration of public confidence in the Supreme Court.

Constitutional basis for Judicial Review

The American constitution does not specifically grant the power of judicial review to the Supreme Court. Some writers have challenged the court's right to exercise this power. President Jefferson had declared that the design of the founding fathers was to establish three independent departments of government and to give the judiciary the right to review the acts of the congress and the President was not only the violation of the doctrines of the separation of powers and limited government, but it was also the violation of the intentions of the framers of the constitution. However, evidence records that majority of the members of the Philadelphia convention favoured judicial review. Alexandar Hamilton intended the Supreme Court to have the power to set aside Congressional legislation. He suggested independent judiciary as "an excellent barrier to the encroachments and oppression of the representative body." A specific provision was not added because they believed the power to be clearly implied in the language of Articles III and VI. Article VI Section 2 reads, "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, under the authority of the United States shall be the supreme law of the land." Article III Section 2 reads, "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made, under this authority."

Origin of Judicial Review

The Supreme Court faced the issue of judicial review for the first time in the case of 'Marbury vs. Madison' which was decided in 1803. The facts of the case were that the congress had provided in the judiciary Act of 1789 that requests for the writs of mandamus might originate in the Supreme Court. On the night of March 3, 1801, Marbury had been

appointed justice of peace for the District of Columbia by President Adams, whose term expired before the commission was delivered. The incoming President Jefferson and his Secretary of State, Madison, refused to deliver the commission to Marbury who immediately petitioned to the Supreme Court for the issue of the writ of mandamus under the judiciary act of 1789. Chief Justice Marshall, who wrote the judgment, declared that the Supreme Court had no authority to issue the writ because the Judiciary Act of 1789 had enlarged the original jurisdiction of the Supreme Court as prescribed by the constitution, and therefore, it was null and void. (The congress cannot enlarge the original jurisdiction of the Supreme Court which has been prescribed by the constitution itself.)

Chief Justice Marshall said that the constitution is the supreme law of the land and therefore must be paramount to any statute in conflict with it. He based his judgment upon the following assumptions:

(i) The constitution is a written document that clearly defines and limits the powers of government;

(ii) The constitution is a fundamental law and superior to ordinary legislative enactment;

(iii) An act of the legislature contrary to the fundamental law is void and therefore cannot bind the courts;

(iv) The judicial power together with oaths to uphold the constitution that judges take requires that the courts so declare when they believe acts of congress violate the constitution.

After this judgment, the principle of judicial review was firmly embodied in the American system of government. It is now as clearly established as though it had been expressly provided in the constitution.

Experience with Judicial Review

After the Supreme Court's decision in Marbury vs. Madison case, the power of striking down an act of Congress was not used until in the Dred Scot vs. Sanford case in 1857. In this case the court declared the Missouri Compromise of 1820 unconstitutional. This intensified the situation which later on erupted into the civil war. After the civil war there was a considerable increase in the restrictive activities of the Supreme Court. Between 1865 and 1900 it handed down some twenty-four decisions in which acts or parts of acts of congress were held unconstitutional. From 1900 to 1934 which was a period of greater increase in the amount of legislation, there were some forty such decisions which established barriers to the New Deal Programme. After 1937, the Supreme Court manifested a change of mind and did not stand

in the way of social and economic legislation. Although the court continued to pass upon the constitutionality of statutes, its decisions, however, did not arouse the controversy and indignation which its decisions had stirred during the New Deal period.

The New Deal Period

The period of 1930's was a period of economic depression in America. Mr. Roosevelt who took over as President in March 1933 promised a 'New Deal' to steer the country out of the economic chaos. Under his leadership the Congress passed in quick succession laws of far reaching importance. By 1935, these laws began to be brought before the Supreme Court. It declared five of New Deal Statutes unconstitutional during its term beginning in October 1935. In all, it invalidated twelve New Deal measures or provisions thereof within three years of its battle with the President. The majority of the court believed that the New Deal measures represented bad

economies and bad government. On the other hand, the New Dealers were convinced that the economic and political thinking of the judges was obsolete and should no longer be permitted to determine whether a statute was constitutional or unconstitutional. Roosevelt was re-elected in November, 1936 and flushed with his victory, he decided to put through his New Deal programme by reorganising federal judiciary. In his message to the Congress on February 4, 1937, he made some proposals for the reorganisation of federal judiciary. The immediate target of his proposals was the aged judges in the Supreme and lower courts. The most significant proposal was to give the President the power to appoint an additional judge for every member of the court who had served for ten years and who remained on the bench after reaching the age of seventy, provided the number of judges should never exceed fifteen. This proposal, it was presumed, would tend to embarrass older judges into retiring or resigning, but if they chose to stay on, it was with the knowledge that younger judges might be appointed to "assist" and perhaps might counterbalance their conservatism. As things stood at the time, there were six judges on the Supreme Court over seventy. Had they not retired, the President might have appointed six additional judges raising the membership of the court to the maximum of fifteen. The addition of six young liberals to the three already on the court would have ensured enactment of the New Deal legislation.

The proposal to "rejuvenate" the Supreme Court was defeated in the congress in its entirety. But the President won in another way. Vacancies soon occurred by resignation, retirement or death and

younger men were appointed. By the end of 1937, the liberals were clearly in the majority, and by September, 1942, only two of the men who constituted the Supreme Court during Roosevelt's first term remained. The new appointees held views acceptable to the President. Even before any changes were made in the personnel of the court, it manifested a change of mind by reversing its previous attitude towards New Deal statutes and by upholding the Social Security Act and the Labour Railway Act.

In Maryland v. McCulloch the Supreme Court declared the state law according to which stamp duty was imposed on the circulating notes of the bank established in Maryland as unconstitutional. The Court assented that congress possessed implied power to establish bank in any part of the country and any slate law imposing any restriction on it was illegal. Mc Culloch, the Bank Manager was justified in not paying the duty. This strengthened the centre at the cost of the states.

Criticism of the Power of Judicial Review

Although the pre-eminence of the Supreme Court in the American Constitutional system has been generally accepted, criticism has been frequently made of its power of judicial review. The following points of criticism may be noted in this respect

(i) It has become non-elective super-legislature: The first point of criticism against the power of judicial review is that it has made the Supreme Court a non-elective super legislature; Laski calls

it a 'third chamber.' The court while deciding the cases acts as a quasi-political body and determines not only the constitutionality but the propriety and justness of the laws. Many a law has been declared unconstitutional because, according to the court, they were not fair, just and reasonable. And what is just and fair is a political and not a legal question because the concept of justness and fairness is affected by the 'due process of law'. The judges, "can hardly fail to be swayed consciously or unconsciously by their social philosophies and general outlook on affairs." Between 1888 and 1937 the court became "an aristocracy of the robe and twisted the due process clause into a moat around all forms of private property." It censured all socialistic legislation, thereby protecting the right to private property and economic freedom. It did not even hesitate to veto the popular measures like rail road pension act and a state minimum wage law. In one case the court regarded income tax as a sheer assault on capital and contended that "it will be but the stepping stone to others, large and more sweeping, till our political contests will become a war of the poor against the rich, a war constantly growing in

intensity and bitterness." When the Supreme Court invalidates a law by imposing upon the nation its own interpretation of what the social and economic order ought to be, it certainly assumed to itself the role of a super-legislature. In Polter's words, "to strike down a national law is to drop a pebble in the legislative pool creating a disturbance that ripples out from the point of contact across a considerable surface of potential legislation.'2 According to Jackson, its decisions "prick out the drift of national policy." In the Atkins case Mr. Justice Sutherland "defined the role of the court in a way that a radical critic could hardly have bettered." Referring to this case, Mr. Baudin remarked, "the announcement that the court had constituted itself in a super legislature is perhaps plainer ihan in any other case." According to C.J. Hughes "We are under constitution but the constitution is what the judges say it is."

(ii) One man tyranny: The decisions of the court have taken place by majority vote. This resulted in one man tyranny. The critics have pointed out that the laws have been declared unconstitutional by 'five to four decisions', i.e., decisions in which five of the judges hold it to be invalid. In other words, it means that the opinion of a single judge may set aside the action of the duly elected congress and the President. The critics term it as "one man tyranny and as such an undemocratic arrangement." The Court is described as "archaic" and aristocratic political institution as five out of Nine Judges can play havoc.

(iii) It has clogged social progress: The critics allege that judicial review has often clogged the wheels of progress and obstructed the enactment of social and economic reforms. Presidents Jefferson, Jackson, Lincoln as well as Roosevelt have publicly condemned the court on this score. The excessive dependence on legal formulae shown by the judges has seriously retarded social progress. For the Supreme Court, Laski writes, "due process has meant not a road but a gate, and the thing it barred was an attempt to transform political democracy in the United States into social democracy." The court once called income tax as a sheer assault on capital. For more than twenty years the judges thwarted congress in enacting child labour legislation. They prevented states from establishing minimum wage laws of Roosevelt's New Deal programme and declared many New Deal measures as unconstitutional. The Supreme Court, it is said, is least responsive to public opinion and is never a ready contemporary institution.

(iv) Judges act as politicians: The history of the Supreme Court reveals that judges act as politicians. Chief Justice Hughes and his

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associates played a vital role in the defeat of Roosevelt's effort to pack the Supreme Court with his own men. When judges take to politics, prestige of judiciary is undermined and it ceases to play the role of custodian of the constitution. Hence Theodore Roosevelt had advocated that the constitution ought to be amended to permit the Congress to reenact by 2/3 majority any law that might have been invalidated by the Supreme Court.

Defence of Judicial Review

The above points of criticism are, however, mere exaggerations. A second thought on the whole issue will convince that the power of judicial review has not been abused by the Supreme Court It is not correct to term "judicial review as judicial veto." Moreover, the effect of judicial review has not been very significant. In a period of about 200 years or so, the Supreme Court has invalidated only about a hundred laws out of about seventy thousand laws passed by Congress. In most of the nullified laws, only a part of the law concerned was declared unconstitutional. This shows that the "incidence of judicial review of congressional legislation has been extremely slight." President Truman used veto on the Congress laws more than the Court did in its entire history, i.e., 226 times; Roosevelt used veto 631 times and Cleaveland 583 times. But for judicial review, writes Munro, "The American Constitutional system would have become a hydra-headed monstrosity of forty-eight (now fifty) rival sovereign states." In a country having separation of powers and a political system in which the executive is independent of legislative control and the legislature cannot be dissolved earlier than the expiry of its term, the power of judicial review constitutes the ultimate safeguard of individual liberty. In Great Britain the need for judicial review has not been felt because in that country the executive is responsible to the legislature and in case of a difference between the two the will of the legislature prevails. Secondly, Great Britain is not a federation of states and hence there is no rigid division of powers between the states and centre. The United States has a written Constitution wherein the citizens have been guaranteed some fundamental rights and the states have been given separate and independent powers. Hence the need for judicial review in the United States is greater than in Great Britain. In the words of Chief Justice Warren "....we are oath bound to defend the Constitution. The obligation requires that constitutional enactments be judged by the standards of the constitution. The provisions of the constitution are not time worn adages or hallow shibboleths. They are living principles that authorise and limit government power in our Nation."

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As regards the allegation of 'one man tyranny' there have been only a handful of cases in which laws of the Congress have been declared unconstitutional by a close veto of the justices, i.e., by the so-called 'five to four' decisions, and of these even fewer were of any substantial importance. Moreover, it is a misnomer to say that in such cases the laws are declared unconstitutional by the action of a single judge. Munro writes, "It is true, no doubt, that a five-to-four decision could not be made without the vote of the fifth judges; but neither could it be made without the votes of the

other four." The Privy Purses Bill was rejected by the Rajya Sabha of the Indian Parliament by one vote, was this one man tyranny? Manifestly not, for it were other votes which made this one vote more than one third majority vote of the members present and voting. Moreover, whatever proposal we make to replace the majority rule, someone judge would still hold the balance.

It has been alleged that the power of judicial review has been used to clog the wheels of social progress. This is far from truth. If we probe into the facts, we discover that the Supreme Court has from time to time upheld progressive measures. It has not always been conservative in its attitude. Had it been so, the Congress would not have rejected the proposal of President Roosevelt to 'pack' the Supreme Court with new and younger members of the Supreme Court who would not have obstructed the economic development of the country. The United States is today the most highly industrialised country in the world. The Supreme Court has always continued to act as the protector of those rights which are guaranteed to individuals and minorities by the constitution. It has given decisions aiming at improving the status of the Negroes in the country. The decision in Brown vs. Board of Education is a great landmark, worthmentioning in this connection. In November, 1969 it ordered immediate desegregation of public schools in Mississippi. It certainly aimed at removing social barrier between the whites and the Negroes. Again on June 28, 1978 in Bakke's case, judgment of the court left the door open to affirmative action which sought to mitigate the effect of social discrimination.

It may, therefore, be said that the abuses of judicial review have been rather exaggerated. Judicial review is no doubt a great power but it is neither so absolute nor so irresponsible as it seemed in its hey day. Whatever dissatisfaction may arise over the court's exercise of its power of judicial review, there is no workable substitute for it. None of the proposals to reform the Supreme Court has evoked popular enthusiasm. Americans have never been willing to put full trust in the majority of the Congress. They will never be prepared to abolish the power of judicial review. They remain more apprehensive of unchecked

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legislative and popular majorities than of an independent and strong judiciary. In fact, they are appreciative of the judicial interventions checkmating the brute majority of the legislature or the arbitraric acts of the President. In the words of Finer, "Such a court with such functions is the most original, the most distinctive American contribution to political science. It is the cement which has fixed firm the whole federal structure." Henry Commager describes USA constitution as a "dynamic not a straight Jacket; hence it requires interpretation in the light of contemporary values and needs and not remain confined to narrow perception of original intention of the founders of the constitution.

INFERIOR FEDERAL COURTS

Supreme Court stands at the apex of the federal and judicial hierarchy. Next below to it are the Federal Courts of Appeals created in 1891 to facilitate the disposition of cases and ease the burden of the Supreme Court Below these appellate courts are the district courts which are the federal courts of original jurisdiction.

Federal Courts of Appeals

There are eleven federal courts of appeals, known before 1948 as the circuit courts of appeal one in each of the judicial circuits in which the territory of the United States is divided and one in the district of Columbia. The number of judges of the federal courts varies from 3 to 6, but usually federal court is held with three judges participating. There was a time when the justices of the Supreme Court 'rode circuit' that is, were assigned to judicial circuits and held circuit court throughout the country in addition to sitting as members of the Supreme Court, though now time prevents them from 'riding circuit'. Each of the ten circuits is assigned to a member of the Supreme Court. The Chief Justice presides over a conference of the senior federal court judges from the various circuits which is held in Washington at least once a year. The purpose of this conference is to survey the work of the federal judicial system and to make recommendations as to how the work might be done with more despatch. The conference also helps in creating sense of unity among the various federal courts.

The judges of the federal courts are appointed by the President with the advice and consent of the Senate for terms of good behaviour with the privilege of retiring on full pay at seventy years of age under certain circumstances. Their positions carry somewhat more prestige than those of the district judges.

The primary function of the federal courts of appeals is to hear cases appealed from the lower courts. In many cases, where no issue

relating to the constitutionality of a law is raised, the federal court of appeal has final authority. This relieves the Supreme Court of some of the burden of appellate work. When a federal court of appeal declares a state law unconstitutional, an appeal may be carried on to the Supreme Court. In other cases, the right of appeal depends upon the willingness of the Supreme Court to review the issue. Circuit judges do not work with juries.

District Courts

The district courts are the federal courts of original jurisdiction. The United States is divided into nearly one hundred judicial districts. Each state constitutes at least one district, while the more populous states have two, three or even eight within their boundaries. Some districts are sub-divided into divisions. In each district, there is at least one judge though in many cases there are several judges for a single district. Where there is more than one judge in a district, each holds court simultaneously. They do not sit together. Judges can also be shifted temporarily from one district to another, whenever such action becomes desirable through pressure of work.

The district judges are also appointed by the President for life, or at any rate, for good behaviour. There have been occasional removal for misbehaviour either by impeachment or by demands backed by the threat of impeachment, but such actions have been rare. The appointments to the district judges are subject to the senatorial approval, and herein the rule of 'senatorial courtesy' plays its full part. District judgeships are regarded as the political spoils of the senators from the

respective districts. In order to secure senatorial approval, the President must make sure that his nominee has the support of at least one of the senators from the state in which the district is located if the senators are members of the President's own party. The district judges except for those assigned to the district of Columbia, must reside in the district or one of the districts, for which they are appointed. The court is held at regular intervals in various cities within each district.

Most cases and controversies start in district courts. Their's is chiefly original jurisdiction, no cases come to them on appeals. Nearly all the civil cases arising under federal laws and all those accused of committing federal crimes are tried in the district courts. The district court is the only federal court in which a jury is used. Appeals against the decision of the district courts lie to the circuit courts. In some cases, the appeals may also be taken directly to the Supreme Court.

Special Federal Courts

The courts described above, i.e., the Supreme Court, the circuit courts of appeals and the district courts have been categorised as constitutional

courts. These courts have been established under Article III to exercise "the judicial power of the United States." In addition to these courts, there are certain special courts which are commonly called 'legislative' courts because they have been created by the Congress under some specific grant of legislative power as provided in Article II of the constitution. They are in part judicial and in part administrative courts. Prominent among the special courts are the following:

Customs Court

This court was established in 1890. It has nine judges appointed by the President with Senate's approval. They serve during good behaviour. The court's office is located in the city of New York where most of its business is conducted although sessions are held in other cities as well. The function of the court is to decide controversies as to the valuations and duties arising under the tariff.

Court of Customs and Patent Appeals

This court was created in 1910. It consists of five members appointed by the President with Senate's approval for terms of good behaviour. It is in continuous session, usually in Washington, but it may hold its session in any judicial circuit at any time. It hears appeals from the decisions of the customs court and the United States Patent Office.

Territorial Courts

These are set up by the Congress in the American territories. Those with greater authority are located in Puerto Rico, the Virgin Islands, and the Panama Canal Lane. These courts have jurisdiction over all matters, local as well as federal which Congress may assign directly or indirectly through the territorial government.

Tax Court

It was established in 1942. It is a sixteen member court. It hears disputes arising from decisions of the federal tax-collection agencies.

Court of Military Appeals

It was created in 1950. It consists of three civilian judges appointed by the President with Senate's approval. It functions in Washington. It is an appellate court and hears appeals against the decision of the court-martials. It has no original jurisdiction.

References

1. Munro W.B., op. cited, p. 571.

2. Polter, A.M., American Government and Politics, p. 260.

10 POLITICAL PARTIES

"No country has ever been able to maintain, over considerable period of time, any form of democratic government without the aid of political parties. And it is safe to prophesy that no country ever will."

—W.B. Munro

Political parties are indispensable to the working of democratic governments. They constitute the backbone of democracy. They provide leadership and direction without which the "power of the people" would remain ineffective. Despite the fact that parties and their activities are subject to much criticism and abuse they are essential to the operation of democratic government. Without them, as MacIver says, "There can be no regular resort to the constitutional device of parliamentary elections nor of course any of the recognised institutions by means of which a party seeks to gain or to maintain power." In the American political system, political parties play a great role. America is a country where elections take place frequently. The President and Vice-President of America are elected every four years. Every other year, there is an election for the House of Representatives and one third of the seats in the Senate. In the states the Governors and Lieutenant Governors are elected after every two or four years. Then, there are elections to the State Legislatures and local councils. In most states, a number of public officers are also elected. Thus, America has numerous elections. Naturally, therefore, the political parties have come to play an important role in the functioning of the political system of that country.

Growth of American Parties

The history of political parties in America goes back to the pre-natal period of the constitution. Local cliques in towns, counties and states were even then operating to set the names of candidates. When the

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constitution was on its way to the states for ratification, its advocates, the Federalists, began planning to elect the maximum number of men of their choice to the slate ratifying conventions in competition with the anti-Federalists. Thus before the constitution was put into operation the different political groups had been actively engaged in organising public campaigns for getting their candidates elected. At the Philadelphia convention itself, the delegates were divided on party lines. The majority group led by Hamilton wanted to create a strong union by giving large powers to the federal government. The minority group led by Jefferson championed the cause of states' rights. President Washington did not let this spirit of party grow. To give "the fledgling government" a sense of unity and to rise above faction and party he included both Hamilton and Jefferson in his cabinet. But Jefferson resigned in Washington's second administration. Washington deplored the emerging state of affairs and in his farewell address, he warned the nation "against the baneful effects of the spirit of party generally." He said, 'There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limits is probably true and in governments of a monarchical cast, patriotism may look with indulgence if not with favour, upon the spirit of party. But in those of the popular character, in governments, purely elective, it is a spirit not to be encouraged - a fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warning, it should consume." But Washington, while warning the nation against the baneful effects of the spirit of party, himself was 'the leader of the Federalist Party'. So it may be said that Washington's warning was not against the formation of political organisations to persuade the people to vote for particular candidates holding particular points of view but it was directed against the uncompromising factional spirit because when Washington wrote his farewell address, factional bitterness was so intense as to threaten the operation of political fabric. In any event, the advice of President Washington was not heeded. The group spirit which underlay during his tenure came to the surface when he retired to Mount Vernon.

John Adams who became the President, could not check the breach between Federalists and anti-Federalists. Further. Hamilton's discussions with Adams weakened the Federalists leading to their defeat at the Presidency election of 1800. Jefferson was elected the President. The nation had been clearly divided into political parties. The

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agricultural population of the country voted for Jefferson, the industrial and the trading interests voted for Adams. The Federalists led by Adams paid more consideration to the interests of the moneyed and industrial interests and wanted to make the central government stronger. The anti-Federalists led by Jefferson were considered to be a party of the farmers and frontiersmen. The Federalists placed more emphasis upon order than upon liberty, the anti-Federalists laid stress upon the natural rights of men.

The Federalists' popularity continued to dwindle. At the election of 1820 they placed no candidate before the people. The anti-Federalists now known as Republicans were in complete control. The Federalist party went out of existence. Soon there were dissensions among the Republicans (anti-Federalists). Henry Clay, John C. Calhoun, William Crawford, Andrew Jackson, Dewitt Clinton and John Quincy Adams each had his following. Party politics gave way to personal politics. At the election of 1824 no candidate secured the requisite majority and the House of Representatives elected John Quincy Adams. John Adams and Andrew Jackson now became the two rival leaders and the erstwhile personal factions rallied behind these two leaders. One group led by Andrew Jackson was called the Democratic Republicans, the other led by Adams was known as the National Republicans (later Whigs).

The election of 1828, was fought by two parties, Democratic Republicans and National Republicans. Andrew Jackson, the candidate of the Democratic Republicans, won the election. Jackson was a strong President. His policies were forceful. He gave United States its first new deal. The party division became more solid. In 1832 Jackson was re-elected. The next election of 1836 was also won by the Democratic Party. In 1834 a Whig Party was organised by a combination of the National Republicans and the dissident Democrats who had been alienated by certain acts of President Jackson. In the election of 1840 the Whig President was elected, but he soon died after taking office. The Whig Party lost the 1844 election to the Democrats but in 1848 election its candidate was again elected. In 1852 the Democrats returned to power and remained in office till 1860.

The election of 1860 was fought on the issue of slavery. The Republican Party (old Whig Party) included abolition of slavery in its programme and got Lincoln elected as the first Republican President. Soon after the election of Abraham Lincoln, the southern states declared their secession from the Union. President Lincoln fought the civil war successfully with the result that when the war ended, it left the

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Republican Party strongly entranced. The party remained in power for twenty-four years. The 1884 election was won by the Democratic Party but it lost the next two elections. The Democratic Party gained Presidency in 1892 but lost it in the next election and did not regain it until 1912 when Woodrow Wilson was elected for his first two terms. In 1914 the first World War commenced. For the first two years America kept itself out of the war. In 1916 there was Presidential election and the American people in appreciation of Wilson's efforts to keep the country out of war re-elected him but no sooner he took upon the oath, circumstances forced America into the war. At the end of the war President Wilson negotiated the Treaty of Versailles which included a covenant for the League of Nations. The Senate did not approve the treaty which became an issue at the Presidential election of 1920. The Republican Party which was opposed to America joining the League won the election and Hardinge became the President but he died before the end of his term and was succeeded by Vice-President Colvin Coolidge. The Republican Party remained in the White House until 1932 when Franklin D. Roosevelt won the Presidency from the Democratic platform. Roosevelt remained in power upto 1945 having been re-elected fourth time. Roosevelt helped the Democratic Party gather a large strength. His hold upon the party was so strong that he got four presidential nominations from the party thus

breaking the tradition. Roosevelt died in 1945 and Vice-President Truman belonging to the Roosevelt's party stepped in the White House. At the elections of 1948, Truman was given a full four year term. President Truman followed the policy of post-war militarisation starting thereby a cold war against the communist bloc. In 1952, the Republicans under Eisenhower came to power. Eisenhower was re-elected in 1956. In 1960 the Democratic party again captured the Presidency and J.F. Kennedy became the President. The party remained in power until 1968 when Nixon, a Republican defeated the Democratic candidate. In 1976 Democratic Party with Jimmy Carter as the President came to power. Again in 1980 election Reagan, a Republican was elected defeating Carter who contested for the second time. In 1988 George Bush a Republican was elected as the President. In 1992 elections, the Republicans lost to the Democrats and Clinton entered the White House which he still occupies (July 1998).

In November 1994 elections the Republican Party swept the polls, both in the House of Representatives and the Senate. In the Senate the Republicans gained 8 seats taking their tally to 52 as against the Democrat Party's 48. In the outgoing Senate the Democratic Party's

strength was 56 and the Republican Party's 44. In the House of Representatives the Republicans captured 230 as against the Democratic Party's 204 making a net gain of 51 seats. It had 178 in the last House as against the Democratic Party's 256. (There was one Independent.) Leon Panetta White House Chief of Staff commented, "Obviously we are very disappointed with the trend of the voter... it reflects the fact that the American people wanted to bring about a change in the way Washington does business...." The Republicans still hold the sway in both the Houses.

The foregoing paragraphs have sketched the history of political parties in the United States. From the sketch it is clear that the political power in America has been shared by two parties. The Presidency has gone to either of them. A third party never got the chance to enter the White House though several times third parties did put up their candidates. As said, "Third parties in American national politics have played the role of innovators of policy not of holders of office." The two major parties today are the Democratic Party and Republican Party. The Democratic Party took form during Washington's administration under the leadership of Jefferson. It passed under various names, including anti-Federalist, Republican, Democratic Republican and Democratic. The party has demonstrated enormous ability to survive under difficult circumstances. The Republican Party is the successor of the Federalist Party, led by Hamilton. It passed under the names of Federalist, National Republican, Whig and finally the Republican.

Minor Parties

Besides these two major political parties, the minor parties which have appeared on the American political scene are the Prohibition party, the Socialist party, and the Communist party. The Prohibition party held its first national convention in 1872. Its fundamental principle was opposition to the manufacture, importation and sale of intoxicating liquors. Until 1920 its main programme was to secure the enactment of prohibition; then for a dozen years it devoted itself to the task of getting the eighteenth amendment enforced. In 1933, however, the amendment was replaced and the Prohibition party went into the background.

The Socialist Party was formed early in the present century by a partial union of the two earlier organisations, Socialist Labour party and Socialist Democratic party. The party has got some supporters in the urban areas. It is well organised and has a clear programme which includes public ownership of railroads, telegraphs, and telephones; state ownership of mines, forests and other natural resources; the socialisation of industry; the provision of work for the unemployed; and

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the expansion of social security benefits. Prominent among the political demands are abolition of the Senate, termination of the power of judicial review, election of federal judges, and introduction of initiative and referendum on a nation-wide scale.

The Communist party represents the most extreme left wing among political groups. It advocates a Marxist pogramme and is a well organised party. But it has made little headway on account of the strong anti-communist feelings in America.

There is no regular Labour party in the United States. However it does not mean that there is no organisation to look after the interests of the labour. The American Federation of Labour, the Congress of Industrial Organisations and the Railroad Brotherhood have a large number of voters. But these are not political parties in the sense that they put up their own candidates. At the time of elections, their voters cast votes for different candidates though sometimes either of them takes a decision to exercise vote for one of the major parties.

PARTY ORGANISATION

Loose Structure

A political party must be effectively organised for effective operation. As an army it must have discipline. The Democratic and Republican parties in America are unlike British political parties loosely organised. Each of the major parties claims to represent all people and all points of view in the country. Consequently, there are no rigid ideological differences between the two parties nor they are as unified as the parties in Great Britain. Laski aptly termed American political parties as 'federations of interests.' Party discipline, therefore, cannot be rigid. The people without changing their party labels vote with the rival party. There is often cross-voting in the Congress, the members of the Republican party voting with the members of the Democratic party and vice versa. Since defeat of a bill in the Congress does not bring the downfall of the cabinet, therefore, cross-voting and floor crossing does not have much political effect. Moreover, the national structure of a party does not exercise much control over the units below. The national committees do not dictate to the state committees and the state committees do not dictate to the county and city committees. In the words of Ogg and Ray "There is no flow of authority either up or down the scale, no genuine integration."

The National Committee

At the top of the party organisation stands the National Committee, In the Democratic party, it is composed of one man and one woman from

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each state territory. The members most commonly are chosen by state delegations to national party conventions, but in some states they are elected by state convention or committee or direct primaries. Thus the members of the Democratic national committee are not uniformly elected from all the states. Since two members are sent from each state therefore a national party committee consists of about over a hundred members.

The national committee wields great authority but in actual practice its work is confined to presidential election. Thus most of its work is confined to six months immediately before a presidential election. Firstly, the national committees fix the time and choose the place for holding their national conventions. They issue the calls for the election of the delegates and arrange all the other preliminaries. Secondly, they plan the election campaign and elect the different subcommittees to take charge of different branches of the work. Then they prepare the campaign literature, hire the speakers, arrange the meetings, raise the campaign funds, organise the canvassing and make arrangements for bringing out the voter on the polling day. Once the presidential election is over, the national committee's work is finished until the next election comes around.

To direct the work of the national committee and look after all the matters during the presidential campaign, a Chairman is by convention selected by the presidential nominee and formally elected by the committee. He need not be one of the committee members. Sometimes he is imposed on the committee without its being consulted. The chairman is an important person because he is the personal choice of the party's candidate for the presidency. Usually he is the man who manages his fight for the nomination. He is a factor of great importance in determining the party's failure or success at a presidential election. He decides how and where the campaign funds shall be spent and plans the election strategy selecting the weak spots in the fortifications of his adversary and bolstering up the weak places in his own. His job calls for a super-politician. If his party wins the presidency, he gets an influential voice in the distribution of patronage and he himself also is given an important office. Sometimes he is made a member of the cabinet.

Each national committee maintains a number of sub-committees or auxiliary committees. Among these, the Executive Committee is the most important. The other committees are finance committee, publicity committee, speaker's bureau and organisation committee. Various other groups are also constituted to do a lot of work. All these

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committees and groups function under the direct supervision of the chairman. The Secretary and treasurer also are the important party officers of the national level. The Secretary holds the charge of the party's national headquarters and supervises the vast amount of correspondence besides handling varied other campaign activities. The post of the treasurer is also important.

Upon him rests the chief responsibility for raising the millions which are necessary to run the election campaign.

Congressional Campaign Committee

The national committee looks to the election of the President and the Vice-President. To direct the campaign on behalf of the party aspirants for the national legislative seats, each party maintains a Senatorial campaign committee. The Congressional campaign committee is composed of one representative from each state chosen for two years by the party caucuses in the House. The senatorial campaign committee consists of seven members chosen for two years by the party caucuses within the Senate.

The Committee functions chiefly during campaigns, trying to maintain and increase the seats held by their respective parties in the Congress. They compile the voting records of sitting members, analyse political possibilities in the various states and districts, and in other way prepare for Congressional elections. For finances, they mainly rely on the national committee.

State Central Committee

The party organisation at the State level comprises primarily a State Central Committee and a Chairman. The committee consists of committee men who are chosen directly or indirectly by the party voters. The choice is usually made either by committees or by districts which vary from state to state. The state committees generally consist of local party leaders.

In general, the function of a State Central Committee is to see that the local party organisations are kept alive and attend to such matters as the registration of the party voters. It also has a voice in the distribution of patronage, that is, appointments and other favours. When the time for election in the state draws near, the State Central Committee makes the party's campaign plans, determines when and where the party convention shall be held, and how funds shall be raised. During the campaign the committees serve as a general board of strategy, arranging for the chief speakers; soliciting contributions, apportioning the

available money for expenses, preparing and issuing the campaign literature.

There is a Chairman of the State Central Committee who is nominally the head of its party organisation in the state. Sometimes he may be the real leader, but more often he is largely a figure-head. The Secretary of the state committee, is usually a paid official. Likewise, there is a treasurer. The Chairman is elected by the State Central Committee. In reality, however, the choice is made by the party nominee for Governor or by a state boss.

County Committee

There are over 3,000 counties in America and in all of them one or both the major parties maintain their county committees. The county committee coordinates the work of all lesser

bodies, acts on matters affecting county government and deals in important matters with state central committees. There is a chairman of the county committee and if his party controls the local bodies, he has much patronage.

There are also a large number of district party organisations standing between the state and local levels. They are set up in state senatorial, state representative, congressional, and state judicial districts. Their position in the party structure differs considerably from state to state.

Local Organisation

The precinct or polling district, is the basic unit in party organisation. Its size is determined by population, density and the number of voters. There are about 1,30,000 precincts in the country. Each precinct has between one and five hundred voters. The Chairman of the party precinct unit is responsible for maintaining party's direct contacts with voters. He looks to their difficulties and provides services so that they may vote for the party on the election day.

In an urban area a ward committee is usually the next level of the party organisation. A ward is an election district for city council men. The ward committee coordinates work of precinct units and deals with local political problems.

Above the ward committee there is the city committee which supervises the ward and precinct levels and attends to municipal problems.

In the rural areas there are village or township committees corresponding to the city committees in the urban areas. They coordinate the work of the rural precincts and plan party activities in relation to rural local government.

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Thus the party organisation in the United States forms a huge pyramid with the national chairman at its apex and the thousands of precinct workers at its base.

Direct Primary

The Direct primary plays an important part in the operation of the American political system. There are a number of elective offices in America. As remarked earlier America has the greatest number of elections than any other country. At the national, state, county, municipal and other levels a large number of offices are elected offices. The candidates for these offices were nominated in the early years by what has been termed caucuses. The community leaders of a party meet in a closed session and decide what names the party would propose as candidates for office at the ensuing elections. The pattern of caucus differed from state to state. At the state and national levels the legislative caucus, i.e., members of the party in the state and national legislatures nominated the candidates for state and national elections respectively.

The caucus as a nominating device gave birth to its evils. Besides being called undemocratic the 'caucus' was charged of corruption, intrigue, and bossism. It tended to perpetuate the power of

entrenched political cliques. The process was denounced as "king caucus". The resentment against the caucus system gave rise to the party convention system towards the first third of the nineteenth century.

The adoption of 'convention' in place of 'caucus' was hailed as a victory for democracy. A local party convention for nomination of the candidates for municipal or county elections consisted of all members of the party who cared to attend. But at state and national levels, where full attendance was not possible, it consisted of party representatives from the various localities. It was hoped that the convention method of nominating candidates would transform general elections into competitions between popularly chosen candidates rather than between the candidates of self perpetuating political bosses. But the people were frustrated in their hopes. The convention system also proved prone to corruption and hardly more democratic than the caucus system. The control of conventions fell into the hands of political machines constructed and operated by unscrupulous bosses for the advantage of a self-appointed group. By the beginning of the present century, the convention system lost the ground and gradually gave way to the direct primary. In all the fifty states the convention is either supplemented by the direct primary or has been entirely replaced by the latter.

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Connecticut provided for it in 1955. Under the direct primary system, candidates are usually required to secure the signatures of a small number of voters which bring their names on the primary ballot paper. On the primary election day, the voters of each political party determine which of the various candidates listed on the ballot paper will stand at the final elections as the authorised party candidate. Most of the states use the 'closed primary', which means that each voter may participate only in the nomination of candidates for the party with which he is registered. In the "open primary" used in eight states, the voters are free to vote in the primary of any party without the need of being registered with that party. There are also presidential primaries who choose the delegates to the national party convention which finally nominates the party candidate.

The direct primary came into use as a nominating device to enable party members to participate in the process of choosing party candidates without contact with or frustration by corrupt party bosses. The state legislatures have enacted many rules for safeguarding the operations of primary elections. But while the direct primary with legislative safeguards did eliminate a considerable amount of corruption in the making of nominations and did widen the citizen participation in the nominating process, it has not, however, solved all the problems. Abuses crept in and the control of nominations passed on into the hands of professional politicians. The primary has not succeeded to secure the able candidates for election. The clever politicians manipulate the primaries and succeed in managing the votes through fraud, force and intimidation. The primary system has also increased the expense which every candidate must incur. Voters in large numbers do not go to the polls on their own initiative, they have to be stimulated by a publicity campaign. Moreover, the primary has also not minimised the evil of bossism. As remarked by Munro, "The voice of the direct primary is the voice of the people but the hand is too often the hand of the politicians."1 In America also as in India, there is not enough politics by the right people.

PARTY FINANCES

Money is of key importance in election. A vast amount is needed to reach the electorate. The direct primary has doubled the expenditure. Though no reliable figures are available on total campaign cost incurred by a party, yet the amount spent usually runs into several million dollars. Wherefrom all this money comes? Part of it, but only a small

part, comes from the contributions of party members and party officials and the rich party candidates. By and large money comes from those individuals, groups and special interests who have a stake in the fortunes of a party. The corporations are forbidden by federal law and by the laws of thirty-six states to make campaign contributions. Therefore, gifts from corporate sources are made by officers of the concerns, who may be compensated through bonuses or stock options.

In recent years, laws have been passed by state and federal governments to prohibit the use of corrupt practices in elections. Nearly all states provide limits for the amount to be spent by or on behalf of individual candidates. In some cases, a ceiling is provided for the total expenditure to be incurred by state committees. The Hatch Act and civil service rules prevent forced contributions from Federal officers and from state and local employees who engage in federally aided work. The Hatch Act also provides that no individual may contribute more than 5,000 dollars to a political committee. It also prohibits any party committee to spend more than 3 million dollars in one campaign. Under the Taft-Haretley Act, the trade unions have been forbidden to contribute to political objectives and to spend union funds on them.

It need not be said that the prohibitions on sources of contributions are evaded by making indirect contributions. Many of the provisions of the corrupt practices laws, federal and state, are disregarded and evaded. As a matter of fact, these laws are ill-suited to present day conditions. The maximum limits on campaign expenditures are unrealistic and invite evasion. Ceilings on contributions are unworkable. The various laws, in short, have not succeeded in rooting out the role of money in elections. Should not then all limitations on amounts of money that can be expended, be repealed, so that the candidates and parties may at least honestly file their campaign returns?

PARTY PROGRAMMES

Lord Bryce after a deep study of the American political party system maintained that "the great parties were like two bottles. Each bore a label denoting the kind of liquor it contained, but both were empty." In fact there is little to distinguish between the political and economic policies of the two parties. There are no fundamental issues on which they may be said to be clearly divided. The lines of distinction are blurred. It is impossible to tell why a particular individual maintains loyalty to one party rather than to the other. In the words of Finer, "America has only one party, Republican-cum-Democratic, divided

into nearly equal halves by habits and the contest for office; the Republican being one half and the Democratic being the other half of the party." The election platforms of the two parties differ more in phraseology rather than in ideology. According to Hyman, "The idea of a pure conservative party and a pure liberal party in America has the same air of unreality as a plan to have a mountain range without valleys or a river without banks. Of themselves, mountains imply valleys and rivers imply banks. And the same is true of our party life. So long as we do not want a welter of one-interest of our ideological parties, by the very nature of our diversity, each party will and must have a mixed character. In particular must this be true under our federal arrangement where the legislative impulse is designed to come from below, and hot from above as in England."

Thus the writers have pointed out the absence of doctrinal and class rigidities of the European type in the American party system. It is difficult to state the fundamental differences between the Democratic and Republican parties. In the early days, the Federalists (forerunners of the Republican party) under Hamilton's leadership favoured centralised federation while the Democrats under Jefferson stood for decentralisation and states rights. In the economic matters, the Federalists, Whig-Republican party followed the policy of mercantilism and advocated high tariffs. The Democrats favoured laissez faire or the abolition of government control over business and advocated low tariffs. In the international field, the Federalists aimed at the opening and protection of overseas markets, the Democrats advocating an isolationist foreign policy. The Federalists drew their membership from the industrial, commercial and financial interests of the Middle States and New England whereas the backbone of Democrats was the agricultural class of the South and rural North.

Then the parties became divided on the slavery issue. The Democrats represented the interests of the farmers and planters and hence favoured the continuation of slavery while the Republicans represented the industrial classes and so they sought its abolition. The Democratic party had its influence in the South whereas the Republican party drew its strength from the North. The Republican party was known primarily as a northern party. With a few exceptions, Southern states always voted for Democratic candidates. The Republican Party has its strongholds in Rhode Island, Northern Great Britain and Massachusetts.

But the twentieth century changed the complex of the American society. Industry and trade have overshadowed agriculture and the

dividing line between them is no longer an issue. The question of federation versus states is no longer a valid question. American federation is a strong federation. America is a highly industrialised nation with a powerful voice in the world affairs. The under-developed nations seek its help and nuclear umbrella. The majority of the United Nations members are aligned with America. America influences UN decisions to a great extent.

All this has brought about a change in the complex of the political parties. The lines which divided them earlier have now become blurred. As a result, it is not possible to speak of the Democrats as the party of agriculture and of the Republicans as the party of industry and finance.

The parties now cut across all social groups, penetrate all territorial areas and seek the support of all economic groups. Both the parties promise all things to all men. Laski says, "It is difficult to find criteria by which to lay down permanent ideas of Democrats which are permanently in contrast with the permanent ideas of Republicans."2

In the economic field, both parties uphold capitalism and free enterprise and are equally opposed to socialism. Both have reconciled to a certain degree of governmental regulation of economic life. In the field of foreign affairs, no party now believes in isolationism. Both want to extend American influence through economic and military pacts. Both are anti-communist and want to check the infiltration of communism in Asia. Both have been once opposed to the entry of Communist China in the United Nations. Both wanted the United States to become the major military power and win the race of armaments against erstwhile Soviet Union. There may be distinctions of emphasis but in broad outlines the programmes of the two parties do not differ much. Each party is traditionally marked off from its rival, not by doctrine or class but by ancestry. An American belongs to a party primarily because his father and grandfather have belonged to it. In short, the American parties are not united in the sense in which political parties in European countries are, nor like the latter, they can be said to represent distinct social and economic classes or clear cut political and economic principles. An American party, in Laski's words, is "much more like a bloc of interests than a system of principles." Personalities and local politics rather than fundamental policies and principles play a far more important part in American elections.

Even so, differences are not entirely non-existent, though these differences are of degree than of kind. Firstly, there is a difference in the territorial strength of the two parties. The Republican party in the deep

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South is always in a minority. It is strongest in the North-East and Middle West Secondly, the workers though sometimes vote in large numbers for Republican candidates, their home is mainly in the Democratic party. The Republican party has been the party of the well-established, the rich and the powerful. Woodrow Wilson once remarked, "The chief difference between the Democratic and Republican parties is that in the Republican party the reactionaries are in the majority whereas in the Democratic party they are in the minority." Thirdly, the Democratic party derives its main strength from the agricultural class, whereas the Republican party derives its strength from industrial elements. While there are some exceptions, it remains still correct to say that financial magnates are more inclined towards the Republican party than towards the Democratic party even though some powerful financiers have aligned themselves with the latter. Fourthly, the Democratic party is by and large the party of lower tariffs, the Republican party is for protective tariffs. In the monetary field, the Republicans have been for "sound" money whereas Democrats have leaned towards the expansion of issues of paper money. Fifthly, in the international field, the Republicans stand for strong armies, international intervention and even war while the Democrats advocate caution, restraint and even isolationism.

But these differences, as said above, are differences more of degree than of kind. The truth lies in the fact that exponents of almost all respectable points of view on any issue can in fact be found

within the ranks of both parties. Both the parties are agreed on strengthening the system of collective security through the United Nations and on giving economic aid to the poor countries so that they may be able to resist communist aggression. In the domestic field, both parties are agreed on the need to check the rising price levels, to enact a national health programme, to support old age and unemployment insurance, to preserve and reclaim land and to provide reasonable security to the fanners and to secure equal rights for women with men. But on the basis of these similarities it would be an exaggeration to label two parties as "two empty bottles" bearing two different labels. According to Ogg and Ray, "Today both of the leading parties are notoriously conglomerate and disunited. Even yet, they are not properly to be written off as merely two bottles carefully labelled but empty. By and large, they still stand for distinctive things, traditions, attitudes, principles and policies. Cutting through all strata of society, penetrating all geographical sections, enlisting in some degree all economic interests, they, however,

must increasingly be all things to all men in order to hold, or hope to gain power."3

Peculiar Characteristics of the American Party System

Above we have described the history, organisation and programme of the American political parties. Now we may briefly summarise the peculiar features of the party system in the United States and compare it with the party system in England.

(i) Extra Constitutional Growth: Like the parties in Great Britain the political parties in the United States have grown without constitutional recognition. The Fathers of the American constitution were opposed to the party system and considered it detrimental to the national interests. Madison at the Philadelphia Convention was determined to create a system of government free from the "Violence of factions". Washington was also opposed to the spirit of the party and in his farewell address, he drew the attention to its baneful effects. The presidential form of government, the indirect election of the President were provided to keep the political parties away from the American politics. But even before the constitution was ratified, political parties had come into being. Local cliques in towns, counties and States were operating to get the names of candidates before the people and build up support for these candidates. At the Philadelphia Convention itself the delegates were divided into Federalists and anti-Federalists. After Washington laid down the office, the differences became acute and came on the surface. The political parties took a dominating position and contested the Presidency.

However, the political parties have been given statutory recognition. Laws both, by the Congress and the States have been passed, from time to time regulating their membership, organisational activities and finances. Nevertheless, they remain "voluntary bodies, largely autonomous and self sufficing. Their activities go far towards making Federal and State governments function as they do. But they are not themselves government organs."4

(ii) A two party system: The American party system like the British is a two party system. In both the countries according to Griffith, "certain inexorable trend seems to cause public support

to gravitate towards two major parties."5 Throughout its political history, the United States had two major political parties. The Anti-Masons, the Free Soil Party, the Green Backers, the Populists, the Prohibitionists, the National Progressive party of Theodore Roosevelt, the Progressive party of Senator La Folletta, etc., have come and gone. The Socialist party has

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been in the field since 1900 and has some influence in the New York city only. The Communist party was formed in 1920. Some Labour groups also exist. But "none of the minor parties has ever come within gun-shot of victory in national elections." On some occasions, minor party candidates for the Presidency have polled sufficient votes to hold the balance of power between the two major parties, but they have not been able to keep their separate identity. "Third parties in American national politics have played the role of innovators of policy, not of holders of office."6 The major parties have included much of what the minor parties advocated. They have taken over many programmes from the Populists, Green Backers, Socialists and Progressives. Those who take part in third party movements may never enjoy the fruits of office.

There are several explanations for such a development in America. Firstly, it is said that the American people like their English fellowmen are less doctrinaire and more compromising. Secondly, nationality and religious sentiments that factionalize the people in India are less vigorous in America. Thirdly, the English party system transplanted in the colonial era has continued after the independence as well. Fourthly, and most important, the American voting system especially the electoral college and the single member district plan of electing legislative representatives have produced the two party system. If a strong third party emerges and no candidate secures the electoral quota in the electoral college, the election is thrown to the House of Representatives which must select from the highest three, each state casting one vote. The plan naturally does not provide much scope for the emergence of the third parties. Likewise, the single member district system of electing legislative representatives magnified the strength of the leading party and discourages the development of minor parties. Fifthly and lastly, the major parties have soon absorbed in their own programmes the issues championed by the minor parties. The old parties have taken over much of what the left wing parties advocated two or three decades ago. Ogg and Ray have emphasised this fact by observing that "a remarkably large proportion of leading party issues in the past several decades were more or less forced upon the major parties in this way."7 Keeping in view the above facts Howard R. Penniman remarks "Healthy two party systems are in short supply in the world to day. But the same cannot be said of the United States". In fact the Republicans and Democrats have not been polarised into two ideologically pure conservative and liberal parties. Moreover the Biparty structure has not fragmented into ideological factions on European or Indian model.

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(iii) No fundamental ideological differences: The American party system differs from the British party system in the major respect that in England the two major parties, Labour and Conservative, have clearly distinguishable ideologies. The Conservatives are a party of the capitalist, barons, lords and aristocrats. They are wedded to the capitalist system of economy. The Labour party, on the other hand, is a party of the working class committed to a socialist

programme. In the United States, there are no fundamental differences of policies between the Democratic and Republican parties. Whatever blurred in the twentieth century, the differences, if any, are more of degree than of the kind. They differ more in phraseology rather than in ideology. Ideological differences are so negligible that Finer was led to remark that "America has only one party, Republican-cum-Democratic dividing into nearly two equal halves.... The Republicans being one half and the Democratic being the other half of the party." Lord Bryce described the American parties as "two empty bottles" each bearing the label denoting the kind of liquor it contains. The geographical differences too, that existed earlier, have been minimised. The Republicans today, are not as weak in the South as they were in the civil war period. Likewise, it would be wrong to say that the Democratic party is a party of the poor and the Republican party is a party of the rich. In both the parties, there are reactionaries as well as liberals. The difference may be of numbers.

Thus, there are little fundamental ideological differences between the two parties in America. Both uphold capitalism and regulated free enterprise. Both are agreed on the need to check the rising price levels, to enact a national health programme, to support old age and unemployment insurance, to preserve and reclaim land and to provide reasonable security to fanners and to promote the industrial growth of the country. Schattschneider remarks 'The Party system embodies the American idea of creative relation of government and business. This is why the Republican party is able to act as the guardian of free enterprise system without becoming disloyal to the democratic system. This is why the Democratic Party is able to espouse the governmental side of the controversy without even having sought or received a mandate to abolish the capitalist system."8 In the field of foreign affairs, both the parties are agreed on strengthening the system of collective security through the United Nations, on giving economic aid to underdeveloped nations so that they may be able to resist communist aggression, on economic and political cooperation with the countries of Western

hemisphere. The old dividing lines in terms of high tariff against low tariff, isolationism against internationalism, pacifism against militarism have been blurred. The principal difference between the two major parties is that one party is in power and the other is not.

(iv) Geographical and traditional differences: Though there are no fundamental ideological differences between the parties in America, the geographical and traditional differences are discernible. According to Brogan, each party "is basically traditional, marked off from its rival not by doctrine or class but by ancestry and geographical distribution of strength." An American belongs to a party primarily because his father and grandfather have belonged to it or because he lives in a region where the party has struck deep roots. The Republicans derive their main strength from industrial elements and the Democrats from the agriculturists. The Democrats are more firmly entrenched among poorer sections of the American society than the Republicans.

(v) Localism: The bed-rock of party organisation in the United States is local organisation. Local party machinery is concerned primarily with local issues. Even the candidates elected to the Congress and the state offices concern themselves more with local rather than national problems. The diversity of local issues throughout the United States makes it impossible for candidates of

the same party to take forthright positions on important issues and fight for them as party issues. An argument which will win the votes in Iowa may bring defeat in Massachusetts, and vice versa. A Democrat from Georgia cannot take the same position on civil rights for Negroes as a Democrat from Connecticut, without dooming his political future. This characteristic localism of American political parties has made them ineffective and inefficient instruments of government. In Great Britain, the party in power stands for well defined principles and runs the government in terms of these principles. It coerces the elected officials into supporting the party programme instead of merely catering to local interests and local constituencies. In the United States, the parties are effective instruments for getting their candidates elected and collecting the spoils of office but they are not effective instruments for running the government. Instead of acting as units and coercing all members into the support of party principles, the parties in America are split in all directions and fail to achieve national purposes. They are concerned primarily with winning the elections and only incidentally with Government.

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To sum up, the American party system "has always been one of the mysteries of American life to the enquiring stranger."9 Having grown without constitutional recognition, the political parties play an unusually important role in the American political structure and administrative functioning. A committee of the American Science Association listed out some criticism of the existing party system in its report in 1950. Among the criticisms included were the lack of discipline, the disparity between platforms and performance and weakness of leadership. The committee also pointed out to some organisational deficiencies. The national convention was judged "an unwieldy, unrepresentative and less than responsible body." The report of the committee called for stronger, better integrated and more responsible parties. However things have improved considerably with the passage of time. It is said that campaign reform, federal subsidies, television, more independent voting have all affected the parties roles." Still it is an undeniable fact that the loose two party system of the United States endures.

In the 1996 elections, the Republican party has retained the control of the Senate as well as the House of Representatives. This is the first time in six years that the Republicans have managed to win control of the Congress back to back.

THE CONSTITUTION OF GREAT BRITAIN

1 GROWTH OF THE ENGLISH CONSTITUTION

The English Constitution is the product of evolution and has been incessantly in the process of development, gradual and almost unconscious. Freeman writes, "The continual national life of the people, notwithstanding foreign conquests and internal revolutions, has remained unbroken for fourteen hundred years. At no moment has the tie between the present and the past been wholly rent asunder; at no moment have Englishmen sat down to put together a wholly new

constitution, in obedience to some dazzling theory. Each step, each change in our law and constitution has been, not the bringing in anything wholly new, but the development and improvement of something that was already old."1 In this chapter we propose to briefly analyse the process of the growth of the English Constitution; how the different political institutions came into being and how they assumed the present form. For this purpose we shall divide our study into the following main periods:

(i) Anglo-Saxon period

(ii) Norman period

(iii) Angevin or Plantagenet period

(iv) Tudor period

(v) Stuart period

(vi) Hanover period

Anglo-Saxon Period

The first period to which we can trace the growth of English political institutions is that of Saxon settlement. The Saxons drove the original people - the Celts - westward and occupied the larger part of England and settled firmly by the fifth century. The Saxon rule continued till 1066 when William of Normandy conquered England.

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The Saxon period contributed the institution of kingship to England. During this period England was a loose aggregation of tribal Commonwealths till the seven "Kingdoms', - East Anglia, Merica, Northumberland, Kent, Sussex, Essex and Wessex, were one by one absorbed "into larger areas. Ultimately Wessex established its sovereignty over the entire occupied portion of the country in the ninth century and thus the institution of Kingship - a single sovereign - was born. As Ogg writes, "Monarchy in Britain is an indigenous institution, not an importation."2

During this period the position of the king was weak. His influence depended upon his personal wisdom and vigour. He did not occupy the throne by strict hereditary right. He was hereditary only in the sense that he usually belonged to the same family, but if the eldest son was not acceptable to the Witenagmot, "a council of wise men," it could pass him over and choose an heir other than the eldest son. The selection could also be done from outside the ruling family if necessity arose. Thus, the Anglo-Saxon kingship was partly hereditary and partly elective.

The Witan or Witenagmot was an important body consisting of important men, lay and ecclesiastical. It had no fixed number and consisted of only such wise men of the kingdom whom the king was pleased to summon, though there were some people who could not be left out by the king. It customarily included the chief officers of the royal household, the bishops and other

leading churchmen, the aldermen of the shires and some high officers of the State. The Witan met periodically in different parts of England as there was no national capital at that time. It was presided over by the king who directed its business.

The functions of the Witan were not clearly defined. It performed such functions as the king wished it to perform. Generally it gave its assent to the king's 'dooms' or laws, made treaties and alliances, approved taxes or levies, raised land and sea forces whenever necessity rose, appointed and deposed the bishops, aldermen of shires and regulated ecclesiastical affairs. It also sat with the king as the Supreme Court of Justice. Though the Witan was not a representative body in the modern sense of the term, yet it was nevertheless regarded as reflecting the people's will. It could depose the king in case he acted arbitrarily and enthrone a king not related to the royal family. That is why the kingship never became absolute during the Anglo-Saxon period. The Witan may be regarded the prototype of the present Parliament and the

present Cabinet. It promoted the idea that the king should not act according to his own caprice but he should act "in council."

Aside from kingship, another important contribution of the Anglo-Saxon period is the institution of local government. During this period the majority of the population lived in small villages, agriculture being their principal occupation. Each village formed a township and was a unit of local government. The local government machinery consisted of a mote or town meeting and certain elective officers. A group of townships formed a hundred which probably contained a hundred warriors or a hundred heads of families. Each hundred had a local assembly consisting of the reeve and "four hood men" from each township. The hundred mote was presided by a hundred-man who was sometimes elected and sometimes appointed by a landowner who was lord of the region.

Above the hundred was the shire which was formed out of the hundred. The shire had its own mote which in the early days consisted of all the freemen who cared to attend. After lapse of sometime it came to include only the larger landowners, principal church officers, reeves and other persons from townships. The shire mote met twice a year and transacted mainly judicial business, though sometimes it also performed legislative and administrative work. The chief officer of the shire was the alderman who was appointed by the king. The shire may be regarded the progenitor of the modern county.

The significance of local government of the Saxon period, "lies not so much in the modem survival of ancient jurisdiction, like the shire, or of ancient offices like the sheriff s as in the formation of an ineradicable habit of local autonomy, which has ever been one of the most conspicuous characteristics of the British people."3 In the words of Dr. Munro, "There has been no time during the past thousand years when Englishmen have hot been electing somebody to represent them somewhere in township, shire, borough, parish, county or parliament."4

Thus, two main institutions of British Government developed during the Anglo-Saxon period. These were (i) kingship and (ii) local self-government. Kingship, as we shall study later, is the core of the British Constitution.

Norman Period

With the Norman conquest in 1066 a new chapter opened in the growth of the British Constitution. The first significant development of the Norman period was the growth in the royal power. As stated above the king of the Saxon period was weak. So the first task to which William

set himself was to make the king the real master. He was accustomed to vigorous centralised rule in the continental dominion and he wanted to establish the same in England. For achieving this object he took a number of steps. Firstly, he confiscated estates of the great earls and divided them out among his trusted supporters whose foremost obligation was to be obedient to the king. Feudalism, which had hitherto been only rudimentary involving relationships of an economic nature, now acquired a highly organised and political character. The second step which William took was to make himself the head of the church and assume the right to appoint the bishops thereby asserting a supremacy of the State in ecclesiastical affairs. Most important of all the steps, however, was to establish supremacy in the fields of justice and administration. The system of local justice was gradually replaced by the system of royal justice. The royal judges went about from county to county hearing cases, deciding them on uniform lines, harmonizing local customs and fusing them into a "common law." In the field of administration he increased the powers of the sheriffs who were appointed by the king and were responsible to him. The sheriffs enforced the royal will in the country, maintained law and order in the land and collected revenues due to the king. Thus by gradual steps the Norman kingship became strong whereas the Saxon kingship had been weak. The significance of all this royal centralisation was far reaching. In the words of Munro, "The growth of the royal power under the Normans and their successors paved the way for ultimate triumph of English democracy."

The Witan of the Saxon period came to be known as the Great Council or Magnum Concilium. Like the Witan it included royal officers, church dignitaries and other leading men of the kingdom who were summoned by the king. There was no elective element in the Magnum Concilium. The functions of the Magnum Concilium were more or less identical to those of the Witan. It helped decide upon policies of State, supervised the work of administration, assisted in making and amending the laws and sat as the highest court of justice. It may be noted that the actual power of the Magnum Concilium was lesser than that of the Witan because the Norman kings had acquired greater authority in comparison to the authority of the Saxon kings.

The Magnum Concilium met only thrice a year. To help the king carry on the government during the interval when the Magnum Concilium was not in session, another small body called Curia Regis of Little Council emerged out of the Magnum Concilium. The Curia Regis

was a sort of inner circle of the Great Council and included the chamberlain, the chancellor, the constable, the steward and other officers of the royal household. These persons were always with the king and accompanied him wherever he went. The Curia Regis performed the functions which the Great Council performed. The jurisdiction of each was not rigidly separated. The king used to refer matters of State to either of these bodies according to his direction. Sometimes, he did not refer a matter at all. He was not bound by their advice. However, the larger questions of justice, finance and public policy were held up for consideration by the Great Council. The habit of the Norman king to call the leaders of the people together and seek their advice on State matters, later on hardened into a usage which eventually became a constitutional principle. Out of the plenary sessions of the Great Council the British Parliament arose; out of the Curia grew the Privy Council (and the Cabinet), the exchequer (the treasury), and the high courts of justice. So the frame of government in twentieth century England owes much to this ancient council with its big and little sessions.5

Angevin or Plantagenet Period

The political institutions established by William, which had been wrecked during the reign of Stephen (1135-54), were revived by Henry II who founded the Plantagenet dynasty. Henry was a man of legal temperament, adroit and energetic. He handled the affairs in a masterful way and infused new life into the administrative and judicial systems. He introduced a distinction between the administrative and judicial functions of the Curia Regis and bifurcated its membership - one section acted as a royal council, later known as the Privy Council, while the other section confining itself to judicial functions became the parent of the exchequer and the high courts of Justice.

At the same time a development was taking place in the Magnum Concilium. Henry II summoned it more frequently and referred all important matters to it for deliberation. As its work became more extensive, its membership also began to grow. The first enlargement came in 1213 when King John addressed writs to the sheriffs directing them to send "four good knights" from every county to attend a meeting of the Great Council of Oxford. The motive of King John in inviting these knights was not to give any right of representation to the people but to make resistance to his proposed taxes the least possible. King John was a tyrant, wicked and a despot. Due to his despotic acts he lost the confidence of many of his supporters. Consequently the powerful

section of the country, the barons, presented to King John, the Great Charter, the Magna Carta on June 15,1215, and threatened a Civil War in case 'he refused to assent to it. John had no way but to assent to it. Being illiterate he could not sign it but the Seal of the State was affixed on it. The charter provided that the king must not act in certain matters without the consent of the General Council. It also provided that all the great barons should be summoned individually, and the knights of the shire by writs addressed to the sheriffs. The Magna Carta has been regarded as a charter of civil liberty for the British people. Not going into the question whether Magna Carta was such or not, we may, however, remark that the charter was strongly baronial in tone under which the barons wrested some advantages for themselves and not for the people. From the

constitutional point of view the charter laid down the principle that the authority of the king was not unlimited and arbitrary and the king could not impose certain taxes without the assent of the Great Council. The Magna Carta that way marked a milestone in the growth of limited monarchy in England.

In 1254 Henry III summoned two knights from each county who sat in the "parliament" convoked in that year. No agreement could be reached between the king and the barons over the proposed taxes with the result that they fell to quarrelling and eventually resorted to arms. The king was defeated and Simon de Montfort, the leader of the barons, emerged as virtual dictator of the country. Montfort convened a parliament in 1265 which was attended not only by the bishops, barons and knights of the shire, but also by two representatives from each of the twenty-one boroughs or towns known to be friendly. Though the motive of Montford in calling two representatives from each of the friendly boroughs might not have been any belief in popular government, yet he was the first man to bring the towns in a form of co-operation with barons, clergy and gentry thereby laying the foundation of the House of Commons in days to come. The meeting which he called "came nearer to being a genuine assembly than anything theretofore known."

But the practice of calling towns' representatives started by Montfort was discontinued by Henry III when he ousted Montfort from dictatorship. During the next thirty years the parliaments were called but without the representatives from the boroughs. It was in 1295 that Edward I resorted to the practice of Montfort and summoned all elements of the nation - barons, clergy, knights and burgesses - to meet in an assembly and vote over the proposed taxes. This assembly consisted of 572 persons of whom 172 represented the shires and the

boroughs and 400 belonged to the group of bishops, clergymen, barons and other aristocrats. It was a parliament in the true sense as it consisted of a good number of people's representatives. It has come to be known in English history as the model Parliament.

The model parliament met as a single chamber but voted the taxes by three divisions. The king called the clergy in one group, the barons and knights in the second group and the townsmen in the third group to hear his plea for money and give their consent in separate groups. Here we have a division of Parliament into three houses. Had this practice of voting taxes by three groups continued, England would have had a three-chamber system. But this three-chamber system never became a fixed practice and instead there grew an arrangement whereby the clergy and barons coalesced in another group. Thus, instead of three groups there came to exist two groups - one group giving birth to the House of Lords, the other to the House of Commons and there developed a bicameral system in England. By the end of the fourteenth century the system of two chambers had become an accomplished fact.

Thus, during the Plantagenet period, the powers of the Parliament increased. In 1341, the Parliament got king Edward I to agree to the following matters:

(i) The king will not levy any tax without the approval of the Parliament,

(ii) The Parliament may appoint a Commissioner to audit the accounts.

(iii) The ministers will be appointed by the Parliament,

(iv) The ministers will resign before the commencement of the session and reply to all the charges levelled against them.

The Parliament also acquired the right to dethrone a king. In 1327, Edward II was made to leave the throne.

It may be remembered that the Parliament of the fourteenth century was not primarily a law-making body. The laws were made by the king with the assent of the lords, spiritual and temporal. It was only after the lapse of further time that the commoners acquired any real share in the making of the laws. In the fourteenth century the commoners merely presented petitions and assented to the levy of taxes.

Tudor Period

The period from 1485 to 1603 is referred to as the Tudor period. During this period the political institutions whose foundations had been laid by 1485 were further developed and adjusted "leading to altered balances of power and mechanism of control". Before tracing the onward history

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we may enumerate the main features of the political institutions which had become firmly established till the accession of Henry VII on the throne:

(i) The kingship had become secure in the foundation,

(ii) The common law had reached an advanced stage of development.

(iii) The high courts of justice were functioning actively,

(iv) The system of local self-government through county and borough courts had become firmly established,

(v) The parliament had become an established fact and consisted of two houses - the House of Lords and the House of Commons,

(vi) The House of Lords was a vigorous and powerful body,

(vii) The House of Commons had won recognition and gained

considerable powers in the field of legislation. The constitutional history of the period 1485-1603 is the history of consolidation of the governmental system as it had stood in earlier generations.

During this period the Tudor monarchs concentrated wide powers in their hands and thereby heightened the effect of kingship. They even threatened the Commoners if the latter showed themselves obstinate. Henry VIII is said to have warned them on one occasion that he would send some of them to gallows if they did not take certain measures. Queen Elizabeth is actually reported to have sent two members to prison for their obstinate persistence in advocating legislative proposals distasteful to her. Thus, Parliament, though it survived, did not place serious obstacles in the way of royal despotism. Elections were held irregularly and sessions were held for a brief period. The Parliament that proved amenable was kept for years whereas one that showed obstinacy was summarily dismissed. The laws which the Parliament could not be induced to enact were made by royal proclamation.

It may not be, however, assumed that Parliament during the Tudor period was far from being unimportant. As Ogg says, "Not only in numbers, but also in spirit and morale, the House of Commons made steady progress in the Tudor period. Towards the end, there was a tendency to increased frequency of meetings and longer sessions, and this gave members a better chance to develop common viewpoints and the habit of working together."6 Queen Elizabeth consulted Parliament frequently and accepted its judgment on many important occasions.

Stuart Period

After the death of Elizabeth the throne of England passed to her cousin, James VI of Scotland, who in 1603 was crowned king of England as

James I. He soon came into conflict with the Parliament as he believed in the divine right of kings and laid great stress upon his royal prerogatives. However, there was no open rupture. It fell to the fate of Charles I that the conflict between the king and Parliament developed into a civil war. He was made to sign the Petition of Rights in 1628. Charles I was put on trial, condemned and executed. After the execution of Charles I, governmental changes came in quick succession. The kingship and the House of Lords were abolished as equally useless and dangerous. The Parliament formally proclaimed England a "Commonwealth" or Republic in 1649. A written constitution known as the "Instrument of Government" was adopted and Cromwell was named Lord Protector. But the Protector too had trouble with the Parliament and his new constitution failed to take root. "Shrewder men, including Cromwell, had recognised from the first that the English people were monarchist at heart and it is not too much to say that from the start the restoration of kingship was inevitable. Even before the death of Cromwell in 1658, the trend decidedly was in that direction, and after the hand of the great Protector was removed from the helm, the change was only a question of time and means."7

After the death of Cromwell monarchy was restored in England with the crowning of Charles II, the third Stuart. Charles II though tried to rule despotically, yet he was wise enough to perceive how far it was safe to go and what the consequences of transgressing the Parliament would be. He effected a sort of compromise between the royal authority and parliamentary supremacy and thereby managed never to risk his throne. His successor, James II, however, within a short time after his succession quarrelled with Parliament over the right to exercise his "dispensing power",

i.e., the right to suspend the operation of certain laws. He did certain acts like reviving the arbitrary ecclesiastical Court of High Commission abolished by Parliament in 1641 and promulgating a declaration of indulgence undertaking to give Catholics and Nonconformists far more freedom in religious matters than the laws of the land permitted which had led the parliamentary leaders to invite William, Prince of Orange, husband of Marry, James' eldest daughter, "to aid in upholding and protecting the constitutional liberties of the realm." The result was the "Glorious Revolution of 1688." In England, there was none to support James who fled to France and thus the Stuart monarchy came to an end.

The significant thing to be borne in mind about the constitutional development during the Stuart period is the establishment of

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Parliamentary supremacy and an attempt to compromise it with strong monarchy. Writing about the significance of the Restoration G.B. Adams stated, "The result in 1660 was a compromise; not less truly a compromise because it was expressed in facts rather than in words. The question which had arisen at the beginning of the reign of James I, whether it would be possible to make the strong monarchy of the sixteenth century and the strong parliamentary control of the fifteenth work together in practice — what boundary line could be found between the king and the constitution - had been answered by the discovery of a compromise. But it was a compromise of a peculiar type. As developed in the next hundred and fifty years, it meant that form and appearance remained with the king, the reality with the Parliament....The king is in theory sovereign, but his sovereignty can be declared and exercised only in the Parliament. The king gave up the power to determine by his individual will the policy of the State, but the surrender was disguised, by an appearance of power and for a long time by the exercise of very substantial power and permanent possession of important rights and influence. It was more than a hundred years before all that the compromise implied was clearly recognized and the balance established at its present level. But it was really made in 1660."8

Along with the development of Parliamentary supremacy during the Stuart period there also took place a change in the Privy Council, the successor of Curia Regis. It grew in size, including as many as forty members. Its functions also no longer remained mere advisory. It regulated trade, supervised the administration of justice, took control of finance and there was hardly any department outside its vigilant supervision. As due to its large size it could not effectively perform the function of advising the king, so Charles II adopted the plan of having a "CABAL"9 or inner circle of privy councillors to advise him on important confidential matters. This practice later on became the forerunner of the cabinet system.

Hanover Period

To prevent any recurrence of friction between the king and Parliament the latter proceeded to make the terms of acceptance of the Hanover dynasty watertight by setting them down in black and white and causing the sovereigns to agree to them. It, at its second session, in February 1689, incorporated a declaration of rights in a statute and adopted it as law. This declaration has been

called the Bill of Rights, which is one of the most important documents in English constitutional history. This document set forth the basic principles of British Government as they

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were understood by the Parliament at the time. Though it was not a constitution in the ordinary sense of the term, nevertheless, as Professor Adams pointedly observes, it was "most nearly of the nature of a written constitution of anything in English History."10 Without detailing the provisions of the Bill of Rights it may suffice to say that what the Bill of Rights did was "to sum up, very concretely the results of the Revolution and of the entire seventeenth century liberal movement, and to put them in legal form so unmistakable that they could never again be misunderstood or challenged".11 It "proclaimed the legislative supremacy of Parliament, reiterated a denial of the Crown's right to levy any tax or import without parliamentary consent, insisted that Parliament should be regularly called, and set forth a list of the individual liberties which were not to be infringed."12 It forbade the repetition of past unlawful practices branding them as illegal and pernicious. In the matter of succession to the throne it imposed the limitation that no Catholic nor any person marrying a Catholic should be allowed to inherit. In short, the document firmly established the supremacy of the Parliament and marked "the culmination of all the constitutional development that had gone before."13

With the events of 1688-89 the outlines of the English constitution were practically complete. The cardinal principles of the political system as it is today were put beyond danger of successful challenge. Britain had become a limited monarchy. Parliament had established her supremacy over the royal prerogative. The changes that have taken place since 1689 have not changed these general outlines of the British Government. However, some significant changes have taken place which are: (i) the decline of the actual powers of the king; (ii) the growth of the Cabinet system; (iii) the democratization of the House of Commons; (iv) the rise of the House of Commons to a position of superiority over the House of Lords; and (v) the growth of the party-system. A brief description of all these five changes follows:

(i) Decline of the actual powers of the king: Though the Bill of Rights had established the principle of parliamentary supremacy yet the king was not shorn of all its powers. He was still near the centre of the picture. He selected his advisers and other principal officers of State. He controlled the ministers' policies with no obligation to consult Parliament at all in advance of a decision. The ministers did not reflect any party situation in Parliament nor they needed to be the members of Parliament. For nearly two decades the kings continued to exercise the right of veto. In short. Parliament, though supreme in principle, was subject to limitations in practice.

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It was after the accession of George I in 1714, that there was a change in the situation. George I and George II had little or no interest in English affairs. They could not even speak the English language and knew nothing of English ideas and ways. Hence they let the powers, which their predecessors had enjoyed, slip out of their hands. By the middle of the eighteenth century the kings ceased to exercise their personal control over the Government. This power and control passed on to the ministers and Parliament. George III made a brave attempt to revive the old

royal influence but in vain. His successors had become accustomed to the new role of the monarch and did not assert their supremacy. The reign of Victoria removed any doubt about the position of the sovereign in the governmental system of the country. A satisfactory way of running the government without the active participation of the king had been worked out and no king or queen could have induced or compelled the nation to give it up.14

(ii) Growth of the Cabinet system: With the decline of the powers of the king there came a rise in the powers of his ministers particularly of those who came to be known as the Cabinet. A rudimentary form of the Cabinet had existed under Charles II who had gathered a group of men, usually known as Cabal, to take advice from them in lieu from the Privy Council as a whole. However, Cabal has very little in common with the Cabinet as we know it today. The king chose his ministers with no necessary consideration of the wishes of Parliament and these ministers used to be responsible not to Parliament but to the king himself. In fact, the term "Cabinet" was first used as a term of reproach being regarded as an instrumentality of intrigue in the sovereign's interest (the name arising from the king's habit of receiving the members in a small private room, or Cabinet, in the palace).

These were the events of the year 1688 and the succeeding years which made the development of the Cabinet system inevitable. William III in the beginning of his reign formed a ministry of both Whigs and Tories. But failing in the attempt to govern with a ministry composed of both Whigs and Tories he began selecting his advisers from among the Whigs only. William resorted to this method only as a matter of convenience but gradually it became a regular practice to select the ministers from among those members of the Privy Council who belonged to the dominant party in the House of Commons. Though there was no resolution or statute of Parliament to force- the king to restrict his choice in this way, but that was the most logical thing to do. William and Anne themselves presided over the meetings of the

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Cabinet but George I gave up this practice as he did not know English and designated Walpole to preside over the Cabinet. This resulted in making the most powerful man in the Cabinet its chief who would preside over its meetings, control it and report from the Cabinet to the king and from the king to the Cabinet. Being a member of the Parliament he also became a link between the Cabinet and Parliament and thus the office of the Prime Minister was evolved. When Walpole resigned in 1742 because of an adverse vote in the House of Commons, he established the principle of ministerial responsibility - the most important usage of the British Constitution. Thus, by the end of the eighteenth century all the principles of the Cabinet system had become clearly established in England. In the nineteenth century the Cabinet began to wield wide authority and gradually became the steering wheel of the ship of the State.

(iii) Democratization of the House of Commons: The democratization of the House of Commons was brought in the nineteenth century starting with the passage of the Reform Act, 1832. From its earliest days, the House of Commons had consisted of men who could hardly claim themselves to be the representatives of the people inhabiting the several counties and boroughs. County members were elected by the rural gentry, borough members by a mere handful of the borough residents. Many seats had fallen under the control of landlords and magnates; many

were openly sold and bought. Under these conditions the House of Commons could hardly be called democratic. It was hardly more representative of the nation than was the House of Lords. As Munro remarks, "The House of Commons at the end of the eighteenth century was a representative body in form but a very unrepresentative body in fact."15

It was in 1832 that the process of democratizing the House of Commons was set in. The Reform Act, 1832, liberalized the suffrage and in some degree adjusted representation to population. It also enhanced its strength and prestige. The successive Reform Acts further extended the suffrage and regulated the conditions under which campaigns were to be carried on, elections held and other operations of popular government performed. These reforms culminated in the epochal Representation of the People Act, 1918 which enfranchised upwards of twelve million men and women and in the Act of 1928 which gave to five million more people the right to vote. Both these Acts brought the House of Commons "to a point where it can easily be numbered among the most democratic parliamentary bodies in the world."16

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five The rise of the House of Commons to a position of superiority over the House of Lords: During the Hanover period important changes took place also in the relative importance of the two Houses of Parliament. Before the Glorious Revolution the House of Lords exercised unquestioned supremacy and was the dominating chamber for all purposes. But within thirty years of the Glorious Revolution the House of Lords began to lose its powers and by degrees the House of Commons was able to win first legal equality with the House of Lords and then supremacy over it. There were several factors which contributed to this end. One of them was the fact that during the reign of the first two Georges the dominating figure in the government was Walpole who was all the while a member of the House of Commons and made it the centre of legislative and political leadership. The Septennial Act of 1716 also contributed to the strength of the House of Commons as it extended the life of the House from three to seven years. It was, however, the Act of 1911 which sharply curtailed the powers of the Lords and definitely settled the ultimate supremacy of the Commons.

(v) Rise of the party system: The last notable development of this period is the rise of party system. Long before 1688 some groups called Lancastrians and Yorkists, Cavaliers and Round-heads had been there but these were political factions rather than political parties in the modern sense. Only the Whigs and Tories of the later Stuart period have better claim to be called political parties. Through the eighteenth and nineteenth centuries the party system gradually ripened and the country accepted the party system with all its implications. The minority in Parliament were no longer known as the king's enemies but as "His Majesty's loyal opposition." The party system has perhaps brought about the most significant changes in the spirit of British politics during the past over two hundred years.

Many other changes also have taken place since the end of the Stuart era. Scotland was drawn into a parliamentary union with England and Wales in 1707. Ireland was drawn into this union in 1800 but now all except Northern Ireland have gone out of it. England also developed a colonial empire during the period under reference which necessitated numerous additions to the English political structure without, however, swaying it from its accustomed foundations.

References

1. Freeman, E.A., Growth of the English Constitution, p., 19.

2. Ogg, E.A., English Government and Politics, p.4.

3. Ogg., op.cit.,p.l

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4. Munro, The Government of Europe, p.33.

5. ibid, p. 36

6. Ogg, English Government and Politics, p. 31.

7. Ogg, op. cit., 36.

8. Adams, G.B., Constitutional History of England, p. 335.

9. The word is formed by using the initial letters from the names of its first members - Clifford, Ashley, Buckingham, Aslington and Landerdale.

10. Adams, G.B., Constitutional History of England, p. 358.

11. Ogg, English Government and Politics, p. 40.

12. Munro, The Government of Europe, p. 45.

13. Ogg, op. cit., p. 40.

14. Zink, H., Modern Foreign Governments, pp. 17-18.

15. Munro, op. cit., p. 45.

16. Ogg, op. cit., p. 53.

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2 NATURE OF THE ENGLISH CONSTITUTION

The British Constitution is just like a river which glides slowly past one's feet curving in and out and almost lost to view in foliage.

—Satirist

Does Britain have a Constitution?

Thomas Paine and Alexis De Tocqueville are of the opinion that England has no Constitution. Thomas Paine declared that "where a Constitution cannot be produced in a visible form, there is none." In a spirited reply to Burke who defended the existence of the British Constitution, Paine asked, "Can Mr. Burke produce the English Constitution? If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a Constitution exists or ever did exist." Similarly, De Tocqueville said that in "England the Constitution may go on changing continually or rather it does not exist."

But both these writers are wrong in their opinions. They have misconceived the meaning of the term "Constitution" and also the real situation in England. The students of political science know that there can be no State without a Constitution - a body of fundamental rules and principles, determining the structure of the State. They also know that such rules and principles may be written or unwritten. The Constitution of England is unwritten as most of the rules and principles controlling the distribution and regulating the exercise of governmental power have never been reduced to writing in a single document. As we have seen in the preceding chapter, most of the constitutional principles and rules in England have grown by experience. The English Constitution is a product of many centuries of political growth. It is not the handiwork of any Constituent Assembly. Much of it has never been formally adopted at all. It can be amended at any time to any extent by a simple action of

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Parliament. "If Constitution means institution and not the paper which describes them, then the British Constitution has not been enacted but has evolved. Looking to all this it may be said that England has a Constitution but of an unwritten type.

It may not, however, be presumed that the English Constitution is entirely unwritten. There are certain charters, petitions and statutes in which some of the principles of the Constitution have been embodied in writing. Among these the important ones are the Habeas Corpus Act of 1679, the Act of Settlement of 1701, Fox's Libel Act of 1792, the Reform Acts of 1832,1867 and 1884, the Municipal Corporations Act of 1872, the Judicature Acts of 1873-76, the Local Government Acts of 1888, 1929, the Parliament Act of 1911, the Representation of the People Act of 1918, the Equal Franchise Act of 1928, and the Statute of Westminster of 1931. Thus it is clear that England has a constitutional structure though it is one which lacks symmetry. The Englishmen have shrunk from any effort to reduce their constitution to systematic codified form. They have "left the different parts of their constitution where the waves of history have deposited them", without ever attempting "to bring them together to classify or complete them, or to make it a consistent or coherent whole". According to Munro "the British Constitution is a complex amalgam of institutions, principles and practices. It is a composite of charters and statutes, of judicial decisions, of common law, of precedence, usages and traditions. It is not one document but hundreds of them. It is not derived from one source but from several.... It is a child of wisdom and chance."1

Sources of the English Constitution

From what has been written so far it is clear that the British Constitution has been derived not from a single source but from different sources. We can divide these sources into five groups.

(1) Conventions: Firstly, there are some principles of the Constitution which are based on what Dicey has called, "the conventions of the Constitution." In fact, the workability of the English Constitution is based upon conventions without which it would become unworkable. These conventions are regarded as sacred as laws of the Constitution. Their importance lies in the fact that fundamental principles of the English Constitution like the sovereignty of Parliament and ministerial responsibility to the Parliament upon which the successful working of democracy depends are regulated by conventions. It has been rightly opined that without the conventions, the British Constitution is like a skeleton without blood and flesh. The most important conventions in England are the following:

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(i) The Queen or King must accept the advice of the Cabinet.

(ii) No tax can be levied without the sanction of Parliament,

(iii) The Parliament must meet at least once a year,

(iv) The leader of the majority party in the House of Commons must be appointed as the Prime Minister.

(v) The Cabinet is collectively responsible to Parliament,

(vi) The Parliament shall consist of two chambers,

(vii) Only the law-lords shall attend the meetings of the House of Lords for deciding judicial cases.

A detailed discussion of these conventions we shall make elsewhere.

(2) Charters: The second important source of the English Constitution is the great Charters and Agreements which define and regulate the powers of the Crown and the rights of citizens, etc. Such charters have become historic documents and, therefore, an important part of the British Constitution. Among these documents the important ones are the following:

(i) Magna Carta (1215): It defined the organisation and powers of the Great Council in England and prohibited the imposition of certain taxes without the consent of the Great Council.

(ii) Petition of Rights (1628): It laid down that no person in England can be compelled to pay any loan, gift or tax without the previous sanction of Parliament.

(iii) Bill of Rights (1689): It made the Parliament the supreme law-making body and declared that it should be called regularly. It also provided a list of individual rights.

(iv) Act of Settlement (1701): It fixed certain rules regulating the order of succession to the British throne.

(v) Act of Union with Scotland (1707): It contains some provisions which have permanently united Scotland with England under one common Government.

(3) Statutes: The third important source of the English Constitution is the Statutes (Laws) passed by the Parliament from time to time. It may be noted that the British Parliament is fully empowered to change these statutes whenever it likes. The following are the important statutes of the British Parliament:

(i) Reform Act of 1832: This Act extended manhood suffrage to urban middle classes of England,

(ii) Parliament Act of 1911: It curtailed the powers of the House of Lords and permanently established the supremacy of the House

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of Commons. It also reduced the life of the House of Commons from seven to five years,

(iii) Representation of People's Acts of 1918 and 1928: These Acts established the principle of Universal Adult Suffrage by guaranteeing the right of vote to women,

(iv) Statutes of Westminster Act, 1931: It recognised the Independence of the Dominions of Canada, South Africa, Australia and New Zealand,

(v) Indian Independence Act, 1947: It handed over all political powers to India and Pakistan by the division of India,

(vi) In April 1969 the voting age was lowered to 18 years.

Besides, the Parliament has also enacted other laws, such as the Local Government Acts of 1888, 1924, 1933; the Abdication Act of 1936 and the Ministers of Crown Act, 1937.

(4) Judicial Decisions: Judicial decisions are the judgments and interpretations of the British courts which define the scope and limitations of the different charters, statutes and Common Law of England. So great is the importance of judicial decisions that Dicey termed the British Constitution as a judge-made Constitution. Good illustrations are the decisions in Bushell's case (1670), establishing the independence of juries, and that in Howell's case (1678), vindicating the immunity of judges.

(5) Eminent Works: Some of the eminent works written by authorities on the subject also form a part and parcel of the Constitution. May's Parliament Practice, Dicey's Law and Constitution, Blackston's Commentaries on English Constitution are some of the notable examples.

(6) Common Law: Common law may be defined as an "assemblage of all those rules and important principles, which are the product of slow process of long historical growth, being based upon the customs and traditions of English Society, and later on recognised by the courts of the country." Such rules are apart altogether from any action of Parliament and include many of the most important features of the governmental and legal systems and are fully accepted and enforced as law. The prerogatives of the Crown, the right of trial by jury, the right of freedom of speech and of assembly, the right of redress for tortuous acts of governmental officers rest almost entirely on common law. Ogg points out common law in course of centuries "acquired binding and almost immutable character."

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Thus, the English Constitution is composed of not one element, but different elements. However, its major part is unwritten. Hence a French writer compares it "with a river whose surface glides slowly, past one's feet curving in and out and almost lost to view in foliage." Lord Bryce has summed up the sources and nature of the English Constitution in these words, "It is a mass of precedents carried in men's minds or recorded in writing, dicta of lawyers and statesmen, customs, usages, understandings and beliefs, a number of statutes mixed up with customs and all covered with a parasitic growth of legal decisions and political habits."

Salient Features of the English Constitution

From the nature and sources of the English Constitution we get the following important features:

(1) Partly written and partly unwritten

The first important feature of the British Constitution is its unwritten character. But by unwritten we do not mean that none of its principles is written. There are several written parts of the British Constitution, like the Magna Carta, Bill of Rights, Reforms Acts, Parliamentary Act of 1911, etc., but the unwritten part is heavier than the written one. So by unwritten we mean that (i) the written part of the British Constitution is lesser than the unwritten one; (ii) the written part was not written at one time: (iii) whenever an Act was made the purpose was not to improve the whole of the Constitution. The English Constitution is largely based upon the customs and conventions of the British Society.

(2) Evolutionary

The British Constitution is a child of wisdom and chance. It has evolved itself gradually expressing itself in different charters, statutes, precedents, usages and traditions. It has grown like an organism from age to age. In the preceding chapter this evolutionary growth of the British Constitution has been very well illustrated. It is the oldest among existing constitutions. Its general framework has undergone no revolutionary overhauling for at least the past three centuries with the exception of the half dozen years in which Oliver Cromwell served as the "Protector of the Commonwealth." England has not witnessed a revolution comparable with the French Revolution of 1789 or the Russian Revolution of 1917. The British Constitution has not undergone sudden transformations at definite times and whatever changes have come from time

to time these have not deflected the main current of political development. In the words of Freeman, "At no time

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has the tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new Constitution in obedience to some dazzling theory".2 The political changes "have as a rule been so gradual, deference to traditions so habitual, and the disposition to cling to accustomed names and forms even when the spirit has changed, so deep-seated, that the constitutional history of Britain displays a continuity hardly paralleled in any other land."3

(3) Difference between theory and practice

One of the unique features of the British Constitution is the gap that exists between constitutional theory and governmental practices. In England, "nothing is what it seems to be, or seems to be what it is." In theory the Government of England is vested in the Crown. All officers of government are the servants of the Crown, summoned and dismissed at the royal discretion. No law is effective without the Crown's consent; no appointment is ever made save in the name of the Crown. No parliamentary election can be held save in obedience to the king's writ. The king is the Commander-in-Chief of all the British forces. The king alone can declare war and conclude peace and treaties. It is the Royal Navy, His Majesty's judges, His Majesty's Government, His Majesty's "loyal Opposition" and even His Majesty's subjects. In short the king is the source of all power.

But all this is theory. As Ogg remarks, "The Government of the United Kingdom is in ultimate theory an absolute monarchy, in form a limited constitutional monarchy and in actual character democratic republic." In practice, the king has become merely a figurehead. He reigns but does not rule. Through gradual stages all political power has shifted from the king to the people's representatives in Parliament. The king has now long ceased to be a directing factor in government and he virtually performs no official acts on his own initiative. Practice has quite overturned theory and as Ogg remarks, "There have come to be, in a sense, two constitutions rather than one - the Constitution that represents the system as it is supposed to be and the Constitution that represents it as it actually is."4 The truth is that the king, if he acts at all, acts only through ministers. England has become today not only a limited monarchy but to use the phrase of Mr. and Mrs. Webbs a "crowned republic."

(4) Parliamentary sovereignty

The sovereignty of Parliament forms another important feature of the British Constitution. There is no law which the British Parliament

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cannot make or unmake. No court can question the legality of its Acts. There is no legal difference between the constituent authority and law-making authority in England as it exists in

the United States or India. The British Parliament is both the law making and constituent authority. It can even change the succession to the throne by a simple Act and even prohibit the king to marry a woman of his choice. It can abolish the monarchy, deprive all peers of seats in the House of Lords, or abolish that chamber altogether. It can, in fact, do any or all of a score of other things that would amaze any student of the British Constitution. It can, observes Anson, "make laws protecting wild birds or shell-fish, and with the same procedure could break the connections of Church and State, or give political power to two millions of citizens and redistribute it among new constituencies."5 The British Parliament has, of course, done all these things and even more. So far as legality is concerned, the British Parliament is supreme and sovereign. As Ogg remarks, "The truth is that while Parliament operates under plenty of practical restraints - moral inhibitions, public opinions, international law, and international agreements, it nevertheless is legally unfettered, with any and of all its actions, immune from annulment except by its overaction."6

(5) A unitary constitution

The British Constitution is a unitary and not a federal one. A federal Constitution is one wherein the governmental powers are distributed among certain agencies, federal and divisional, neither of which has a power to alter the constitutional provisions. The important thing is that the distribution is done by authority superior to both federal and divisional governments. The United States has a federal Constitution. But in England the government is unitary. All the power is concentrated in a single government centred at London. The local areas derive their powers from the London Government. It has endowed them with such powers as it chooses to bestow and can change their powers at any time or even abolish them altogether. Thus, the British Constitution is unitary both in form and spirit.

(6) A flexible constitution

Again the British Constitution is flexible in nature. As already pointed out there is no difference between the procedure for a constitutional law and that of an ordinary law in England. The British Parliament is empowered to pass and amend the ordinary law as well as the constitutional law through the same ordinary procedure. There is no special procedure for passing a constitutional law in England. This

flexibility of the Constitution permits it to be adopted more readily to the new conditions than is possible in any other country.

It may, however, be noted that the flexibility of a Constitution does not entirely depend primarily on the breadth of its provisions. Though legally the Constitution of England is the most flexible in the world, yet actually "it is considerably less fluid than might be inferred from what the writers say." If the Constitution is couched in broad terms so as to permit changes in governmental practice without any formal amendments, there will be little need of amending the Constitution. This is true of the Constitution of the United States. Similar is the case with England. The English people are conservative having a Constitution broad enough to permit

changes in governmental practice. Naturally, therefore, few changes in it have been made over considerable period of time.

(7) Rule of 'law

Another important feature of the British Constitution is the rule of law. It has never been expressly enacted as a statute, but is implicit in the various Acts of Parliament, judicial decisions and in the common law. As defined by an English jurist, the rule of law means, "the supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals."7 In England, it may be noted, there is no Act which lays down the fundamental rights of the people. But it does not mean that the Englishmen enjoy noughts. On the contrary, their rights are as secure as in the United States or India wherein constitutions have defined specifically the rights of citizens. This security of the rights of British people is secured to them through rule of law. The citizens, the courts, the administrative officials, the king, all are subject to it. Under the rule of law, "obligations may not be imposed by the State, nor property interfered with, nor personal liberty curtailed, except in a legal manner and on legal authority."8 Of course, the Parliament has the legal power to limit, suspend or even withdraw any specific right, but tradition and public opinion will not tolerate any infringement not explicitly necessitated by national emergency. Moreover, the fundamental rights even in the countries having express constitutional provisions incorporating them are subject to limitations in the interests of national well being. The fact is, as Ogg observes, "that although at first glance private rights seem to enjoy no such sheltered position in Britain as elsewhere, they are, both in law and in practice, not a whit less secure on that account. After all, it is not in such matters paper

decorations that ensure results, but rather the sanction of tradition, principle and public opinion."9

(8) A parliamentary form of government

England has a parliamentary form of government as distinct from the presidential type of government. The king is the nominal head of the State. The real functionaries are the ministers who belong to the majority party in the House of Commons and remain in office so long as they enjoy its confidence. As the ministers are also the members of the Parliament, so there is co-ordination between the executive and legislative wings of the government. In the words of Bagehot, the Cabinet in England is a "hyphen that joins, the buckle that binds the executive and legislative departments together." In England there is little risk of conflict between the executive and legislature and the work of the government, therefore, goes on smoothly. It is on account of the parliamentary system prevailing in England that the British Constitution has been called the mother of parliaments.

(9) Separation of powers combined with concentration of responsibility

Montesquieu found the British governmental structure based on the principle of separation of powers. Apparently, it is so. The Crown is the executive; Parliament is the legislature; the courts form the judiciary. The executive in its purely executive and administrative capacity is not subject to so much control by the legislature as it is in the United States. In England the judiciary also takes no part in determining the law as does the American judiciary through the process of judicial review. Nevertheless, the Cabinet in England has assumed a dominating role not only in administration, but even in legislation and to some extent in judiciary as well. In the United States the role of the Cabinet is not so dominating as it is in England. The British Cabinet has become the steering wheel of the ship of State reducing Parliament to a tool in its hands. As Ogg remarks, "At London, concentration of responsibility, implicit in the cabinet system and held back by no constitutional barriers, cuts through every obstacle and brings the Prime Minister and his colleagues into the position of an all powerful government, leaving it to Parliament and the courts merely to regulate and check its action."10

(10) A blend of monarchy, aristocracy and democracy

The British Constitution has harmoniously blended within itself the three somewhat incongruous features of monarchy, aristocracy and democracy. The British king represents the monarchy which rests on the

hereditary principle. The House of Lords is aristocratic representing the Lords and nobles of the land. The House of Commons is democratic representing the people of the land. It is true that neither the king nor the House of Lords plays an effective role in the political set-up of the country, yet their continuance appears hardly reconcilable with democracy. And yet the Englishmen had never been in a mood to abolish these historic institutions.

(11) A Bicameral Legislature

The parliament is bicameral. The House of Commons, the Lower House is a directly elected chamber composed of 651 members11 and House of Lords is a hereditary chamber comprised of over 1100 members. The Lower House is much more powerful than the House of Lords.

Conventions of the Constitution

Earlier we had the occasion to remark that one of the important features of the English Constitution is what has been called "conventions of the Constitution." These conventions are so firmly rooted in the working of the English Government that without them the Constitution would become unworkable. In the words of Ogg, "ii goes without saying that anyone who desires to know the British Constitution as it is - even one who comes at it primarily as a student of law, as did Dicey - must study the conventions quite as carefully as the positive rules of law."12

Meaning of conventions

The conventions are those rules, understandings, precedents, customs and traditions which have been definitely recognised by the English society due to their practical utility and regarded as sacred laws of the Constitution. Prof. Dicey defines them as "the rules for determining the mode in which the discretionary powers of the Crown ought to be exercised." The conventions are the unwritten rules of conduct or political morality. They have not been formed in one day or at a particular moment of history. They are the result of long historical growth and are rooted in the practices and habits of the English people who have followed them for a long time and recognised them as a part of English law. J.S. Mill has called them as the "unwritten maxims of the Constitution."

According to Ogg and Zink, "Conventions consist of understandings, habits or practices which though only rules of political morality regulate a large portion of actual day to day relations and activities of even the most important of the public authorities."

Sometimes, a distinction is made between conventions of the Constitution and laws of the Constitution. The laws of the Constitution

are the historic documents and Parliament statutes such as the Magna Carta, the Petition of Rights, the Bill of Rights, the Habeas Corpus Act, the Act of Settlement, the Septennial Act and the Reform Acts. The conventions of the Constitution, on the other hand, are the principles and rules which have never been enacted by Parliament but have grown up entirely on the basis of usage and practice. These principles and rules do not appear in the statute books because, strictly speaking, they are not laws.

But this distinction between conventions and laws is sometimes difficult to draw. As Jennings writes, "What is law and what is convention, are primarily technical questions. The answers are known only to those whose business is to know them. For the mass of people it does not matter whether a rule is recognised by the judicial authority or not." The conventions are the fundamental rules of the British Constitution and it is difficult to see how these can be violated even though they are not the part of Statute Law. Moreover, many of the fundamental rules of the British Constitution have been now recognised by Acts of Parliament Jennings has rightly said that, "the Conventions are like most fundamental rules of any Constitution in that they rest essentially upon general acquiescence. A written Constitution is law not because somebody has made it, but it has been accepted." Freeman also opines, "We now have a whole system of political morality, a whole code of precepts for the guidance of public men which will not be found in any page of either of statute or the common law but which are in practice held hardly less sacred than any principle embodied in the Great Charter or in the Petition of Right..." Once the existence of conventions is recognised by law or by judiciary, they do not remain very different from laws.

Kinds of conventions

The important conventions which have grown up in England may be classified in three categories:

(A) Conventions relating to Cabinet: The first group of conventions relate to the Cabinet system. The constitutional history of England points out to the decline of the powers of the king and the consequent growth of the powers of the Cabinet. In fact, the whole of the Cabinet system is the product of conventions. Among the important conventions relating to the Cabinet system are the following:

(i) The ministers must be the members of Parliament.

(ii) The Prime Minister must be the leader of the majority party in the House of Commons and the other Ministers must be

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appointed on his advice. The Prime Minister will also distribute the portfolios among the Ministers,

(iii) The Prime Minister alone can request the Queen to dissolve the House of Commons,

(iv) The Ministry must either resign, if it loses the confidence of the House of Commons or it can make an appeal to the electorate,

(v) The Ministers are collectively responsible to the House of Commons.

(vi) The Queen will not veto the bills passed by the Parliament

(vii) The Queen will always act on the advice of the Cabinet.

(B) Conventions relating to Parliament: The second group contains the conventions relating to the Parliament, with special reference to the relation between the two Houses. These are the following:

(i) The Parliament consists of two Houses - the House of Commons and the House of Lords.

(ii) The money-bills will be initiated in the House of Commons,

(iii) The Parliament must be convened at least once a year,

(iv) Every bill must have three readings before finally voted upon,

(v) A speech from the Government benches in the Parliament is to be followed by a speech from the Opposition,

(vi) The Speaker must resign from the membership of the party to which he belonged on his election as Speaker and should become a non-party man.

(vii) The retiring Speaker must be returned unopposed to the House and be elected as Speaker as many times as he pleases,

(viii) No peer other than a Law Lord shall sit when the House of Lords is acting as a Court of Appeal,

(ix) The number of the representatives of the different political parties in the Committees of the House of Commons should be proportionate to their number in the House,

(x) The Government will not initiate legislation of a controversial nature without specific mandate from the electorate. This is known as Mandate convention,

(xi) If a member of the majority party is to be absent on any working day of Parliament when division of voting is to take place, he informs the Whip who finds out from the Opposition whether or not any member from his party is to be absent. This is termed as Pairing convention.

(C) Conventions relating to Dominions: The third group consists of the conventions which govern the relations of Britain with other Dominions. These are the following:

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(i) Every Dominion, more or less, is to be regarded as an independent country both in internal as well as external affairs, though a nominal allegiance to the Queen is to be paid,

(ii) Any alteration in law touching the succession to the throne must require the assent of Parliaments of the Dominions.

(iii) The rules for making treaties by any Dominions are still matters of conventions as embodied in the reports of the Imperial Conference of 1923, 1926 and 1930.

The Statute of Westminster, 1931 has embodied in a legal form most of the conventions relating to Dominions.

Sanction behind conventions

An important question that arises in connection with conventions of the Constitution is "what is it that gives them force?" If the Prime Minister does not resign on an adverse vote in the Parliament or if the Queen vetoes a bill passed by the Parliament both these acts would be unconstitutional, but how to enforce them. No court can give them effect as they are not a part of the statute. What is the sanction then behind them?

Prof. Dicey is of the view that conventions are observed because their non-observance will sooner or later lead the offender into conflict with the courts and the laws of the land entail grave consequences. In other words, conventions are observed since their violation will ultimately lead to the breach of law. Dicey illustrates his point by some definite cases. One of the conventions is that the Parliament must meet at least once a year. According to Dicey this convention is obeyed

because if the king does not summon the Parliament at least once a year and lets a full year lapse without its meeting, it would become difficult for the Government to carry on the administration without raising taxes unlawfully. The Army Act would expire and the Government would lose all disciplinary authority over the troops. Certain taxes would lapse and there would be no authority to spend a penny on the army, the navy or the civil service. Thus the king must either call the Parliament or collect taxes illegally and thereby be brought into conflict with the laws and court of the country. Similarly, if the Ministry does not resign on an adverse vote of the Commons, the Commons will not grant it money and the entire machinery of government will come to a stop. Dicey, therefore, remarks, "The force which in the last resort compels obedience to constitutional normality is nothing else than the power of the law itself. The breach of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of law, of the land....

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The conventions of the Constitution are not laws, but derive their sanction from the fact that whoever breaks them must finally break the law and incur the penalties of a law breaker."13

Lowell's view

But Dicey's theory does not explain the whole case. What Dicey says may be true of the important conventions, but many a minor convention can be violated without bringing the violator into conflict with the law of the land or bringing the wheels of government to a stop, for example, no breach of law would follow if the Speaker does not resign the membership of his party after his election to the chair. Lowell, therefore, is of the opinion that conventions are supported by something more than the realisation that their violation will lead to the violation of some law. "In the main," says Lowell, "the conventions are observed because they are code of honour. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. Moreover, the very fact that one class rules, by the sufferance of the whole nation, as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held."14

Dr. Jennings' view

An additional sanction comes from the force of public opinion. Dr. Jennings has remarked real obedience to law or conventions, which are of equal value, is based upon general public opinion and not upon force. Ogg also holds the same view when he says that for the really ultimate sanction we must look mainly to the force of public opinin.15 Government is a co-operative function arid law alone cannot provide for common action. The nation expects and has a right to expect that the administrators and legislators will not violate the usages of the country. The outburst of feeling that would follow if these are violated is a sufficient guarantee that they will be observed. In England plenty of trouble would arise from failure to observe the established constitutional usages of the land.

Utility of conventions

The main reason behind the continuity of conventions is their practical utility in the politics of England. Dr. Finer has remarked, "No written Constitution any more than the ordinary law, can express the fulness of life's meanings and demands, because the human imagination, even at its most talented, falls far short of reality."16 The conventions have

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helped the English unitary government operate democratically. They are the established intelligent practices and having stood the test of changing circumstances have democratised the executive by making Parliament the centre of gravity. They have enabled the treasury and opposition to work together for the national welfare, and democratically revolutionised the judicial system of the country by making only nine Law Lords to constitute the Highest Court of Appeal for discharging judicial purposes. So deep rooted have these conventions become in the habits of English people and so firmly is the mechanism of the Government erected on their foundation that to think of their violation is beyond comprehension. Dr. Jennings rightly points out that the Conventions: "do not exist for their own sake; they exist because there are good reasons for them". The importance of conventions can be discerned from the fact that even the most popular king Edward VIII could not dare to act against the wishes and advice of his ministers, in marrying the lady of his choice which he could legally do. It was just to honour the conventions that he preferred to abdicate. In short, the conventions "provide the flesh which clothes the dry bones of law" and have enabled a rigid framework of government to keep pace with the changing political ideas and the needs of the people. "In converting a monarchical into a democratic Constitution and in passing from the seventeenth to the twentieth century, the British eschewed writing the new articles: they preferred to rely on the growth and inheritance of customs - that is conventions."17 A.B. Keith also correctly remarks, "They cover the most important of the constitutional relations and utterly transform the practical meaning of legal enactments."

Rule of Law

In our discussion of the salient features of the British Constitution we had the occasion to remark that the guarantee of the fundamental rights of British people is secured to them through what has been called "rule of law". According to Dicey, rule of law means three things:

Firstly, it means that "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint."18 This principle implies that no one in England can be punished arbitrarily. All persons accused of an offence should be tried in an ordinary court of law in the ordinary legal manner and no one is to be arbitrarily deprived of his life, liberty and property. Cases are to be

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tried in an open court and the accused has the right to be represented and defended by a counsel of his own choice. Judgment is to be delivered in an open court and the accused has a right to

appeal to higher courts. These rules of judicial procedure reduce the possibility of executive arbitrariness and guarantee the British people security of their life, liberty and property.

Secondly, rule of law means equality before law. Dicey observes. "Not only with us is no man above the law, but (what is a different thing) here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals".19 This is a very important principle of the rule of law. It implies that in England every citizen, rich or poor, high or low, is subject to the same law and the same courts of law. If any public official does any wrong to an individual or exceeds the power vested in him by law, he can be sued in an ordinary court and tried in the ordinary manner. In other words, the English Law does not make any distinction between acts of Government and those of ordinary citizens. In this respect the practice in Britain differs from that in France where Administrative Law is in vogue under which the public officers are not amenable to the ordinary law for their public acts. There is no separate law for the public officials. They are subject to the same law which applies to ordinary citizens. The people who form the government should exercise their powers in accordance with the laws of the Parliament. Dicey remarks, "With us every official, from the Prime Minister to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."20

Thirdly and finally, rule of law means that with English, "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."21 This principle has emphasized the contribution of the judiciary in the protection of the liberties and rights of British people. In England rights of the citizens do not flow from the Constitution, but from judicial decisions. Prof. Dicey was a liberal of the nineteenth century and it was natural for him to pay his tributes to these liberal minded judges who contributed greatly to the protection of the liberties of English people in the past.

The rule of law is the product of centuries of struggle of the British people for the recognition of their fundamental rights. In Britain what is supreme is law. Every act of the Government must be authorised by law,

either by statute law passed by Parliament or by common law which has been recognised for many hundreds of years. In England, unlike in the United States of America or France, there is no written law or Constitution which incorporates the Rights of Man. These rights are secured to them by the rule of law. Parliamentary supremacy is subject to rule of law. In England nobility does not enjoy special privileges and cannot disregard the ordinary law. In short, rule of law affords the ordinary citizen adequate guarantees against undue interferences with his rights by any other person or any government servant. Laski defines Rule of Law which has been the safeguard of the freedom of Englishmen in these words "Statutes are not to mean merely what the ministry of the day may be tempted to make them. The intention of parliament is to be discovered by a body of independent persons free from any direct interest in the result and trained by long years of the practical standards of Judgment by which that intention may be tested. This is the famous rule of law...."

Exceptions to Rule of Law

Since Dicey wrote several developments have taken place in England in the light of which the Rule of Law needs restatement. In practice some significant departures from the meanings given by Dicey to Rule of Law have been made. In the first place, the growth of delegated legislation has touched upon the principle of Rule of Law. With the growth of the functions of modern State wide discretionary authority has been left in the hands of administrative authorities to meet the exigencies of time and peculiarities of a situation. The law, therefore, allows administrative authorities to use their discretionary power in their own way which cannot be questioned in a court of law. However, it does not mean that discretion may be used arbitrarily or maliciously. According to Lord Halisbury discretion should be exercised according to rules of reason and justice, not according to private opinion, according to law and not humour. Discretion should be used judiciously.

Secondly, there are certain Acts which have conferred some privileges and immunities over public authorities and which are not available to private individuals. Thus the Public Authorities Protection Act, 1893 provides that all proceedings against public officials for the excess, neglect or default of public authority must be started within six months of the Act. If it is not done so, the action becomes time barred. The citizen has to pay heavy penalty by way of costs if his suit against the public authority fails. Moreover, judges are not liable for anything done or said in the exercise of their judicial functions.

Moreover, daring the last forty years the government departments have been made the final courts of judgments in regard to many matters falling within their jurisdiction. For example, the Home Secretary may refuse in his discretion the certificates of naturalisation to aliens. He can deport an alien and his actions cannot be challenged in any court of law. The Crown can refuse passport to any person who wishes to go abroad and the exercise of this power cannot be challenged in a court of law. Similarly, the Minister of Health, the Board of Education, the Railway Rates Tribunal, the Board of Trade, the Minister of Transport and other authorities finally decide questions affecting the person and property of the citizens. Their decisions cannot be questioned in any court of law.

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Again, it hardly needs mention that the diplomatic agents accredited to England are immune from the process of the local courts keeping in conformity with the practice of civilised States. This immunity is also available to the foreign rulers, recognised international agencies and their officers. The Queen is not amenable to any court of law. The convention is that the Queen can do no wrong. She cannot be held guilty for the wrong acts of her ministers or servants. She is immune from all criminal prosecutions and civil trials.

Finally Dicey's contention that rights emanate from judicial decisions only is also not valid. He probably referred to only political rights. Many civil rights like the rights to pension, insurance and free education have been derived from statutes. Some important rights like the right to personal freedom, freedom of speech and to bring an action for wrongful arrest, assault or false

imprisonment are the outcome of common law. The famous "Habeas Corpus Writ" is an example.

It is thus evident that there are several exceptions to the rule of law. Dicey himself wrote in 1915 that during the last thirty years there has been deterioration in respect of the rule of law. The rule of law has been exposed to a new peril and that the old veneration for rule of law has waned. He was led to make this remark on account of the growth of administrative law and delegated legislation. Dr. Finer has also pointed out that the rule of law has suffered an eclipse on account of several unregulated growths.

Therefore, in the light of what has been said above, Dicey's rule of law needs restatement. According to a recent statement, the rule of law, "involves the absence of arbitrary power, effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that when discretionary power is granted in the manner in which it is to be exercised should as far as practicable be defined; that

every man should be responsible to law whether he be a private citizen or 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."22 Thus it is unrealistic under modern conditions to give the rule of law the strict interpretation given to it in the nineteenth century. However, the fact remains that the rule of law is yet an important principle of the English Constitution. England is still governed by law and not according to the whims and caprices of any individual.

References

1. Munro, W.B., The Governments of Europe, p. 23.

2. Freeman, Growth of the English Constitution, p. 19.

3. Ogg, English Government and Politics, p. 68. - 4. ibid., p. 69.

5. Anson, W.R., Law and Custom of the Constitution, p. 380.

6. Ogg and Zink, Modern Foreign Governments, p. 41.

7. He wart, Lord, The New Despotism, p. 19.

8. Ogg., op. cit., p. 80

9. ibid., p. 81.

10. Ogg, op. cit., p. 76.

11. As per April 1992 Elections.

12. ibid, p. 65.

13. Dicey, Law of the Constitution, p. 447.

14. Lowell, Government of England, pp. 12-13.

15. Ogg and Zink, Modern Foreign Governments, p. 31.

16. Finer, H., Government of Great European Powers, p. 49.

17. ibid, p. 50.

18. Dicey, A.V., Law of Constitution, p. 179. H.

19. ibid.

20. ibid.

21. ibid.

22. Wade and Philips, Constitutional Law, p.58.

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3 THE CROWN

"The King is Dead; Long Live the King."

In the last chapter we have reviewed some of the salient features of the British Constitution - the rule of law, the constitutional conventions, the wide gap between theory and fact, its antiquity and vigour. Now we proceed to study the system of government as it is carried on from day to day. In this study we shall first take up the Crown and the king.

Distinction between the King and the Crown

At the very outset, we are confronted with the distinction between the king and the Crown which Gladstone once pronounced the most vital fact in British constitutional practice. "Who rules England?" asked a Stuart satirist. "The king rules England of course." "But who rules the king?" "The duke." "Who rules the duke?" "The devil."1 Nowadays it is the Crown, not the king, that governs England as the monarch's official acts are ruled by the advice of the Prime Minister who is controlled in his turn by the House of Commons. In fact, the whole development of the British Constitution has been marked by a steady transfer of power from the king to the Crown. In early days, all the powers rested in the man who wore the Crown, but in the course of history these powers have been steadily transferred to the Crown. Two generations ago, Walter Bagehot wrote

that Queen Victoria could disband the army, dismiss the navy, make a peace by cession of Cornwall, begin a war for the conquest of Brittany, make every subject a peer, pardon all offenders and do other things too fearful to contemplate. Legally, the Queen can still enjoy all these powers. But today, all this is in theory. In actuality, these and other powers are performed not by the king but by the Crown. The king, who performs these powers is not the personal king, but rather the institutional king.

Therefore, the distinction between the king and the Crown is the distinction between the monarch as a person and monarchy as an

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institution The king is the physical embodiment of the "Crown". King is a Derson Crown is an institution. This distinction is well illustrated by the maxim, "The king is dead, long live the king." It merely implies that the person who occupied the throne is dead but the office of kingship as an institution survives. The Crown is eternal, the king is mortal. The death of the king makes no difference in the powers and duties of the Crown. According to Blackstone, "Henry, Edward, George may die but king survives them all." By king, Blackstone means kingly institution, i.e., the Crown. The Crown is an institution and so it never dies. The powers and functions of the Crown are not suspended by the death of the king, even for a single moment. Munro called the Crown, "an artificial and juristic person" who is neither born nor ever dies.

The Crown, as Mr. Sindney Low says, is "a convenient working hypothesis." Sir Maurice Amos says, "The Crown is a bundle of sovereign powers, prerogatives and rights - a legal idea." Historically, the rights and powers of the Crown are the rights and powers of the king. In theory this is still the case. But in fact, these powers and rights are exercised not by the king personally but by ministers in the king's name who derive their authority from Parliament and are responsible to it. According to Dr. Finer, "When we talk of the actions of the Crown in politics we mean that the People, Parliament and the Cabinet have supplied the motive power through the formal arrangements established by centuries of constitutional development. The Crown is an ornamental cap over all these effective centres of political energy." In the words of Ogg, the Crown is a "subtle combination of sovereign ministers (especially Cabinet members), and to a degree Parliament"1 It is a legal fiction. It is the institution to which all powers and privileges once possessed by the king have been transferred. The king is its physical embodiment, whereas the Cabinet is its "most concrete visible" embodiment.

Thus the distinction between the Crown and the king centres round the following points:

(i) The king is a person, whereas the Crown is an institution. When the king becomes institutionalized, it is called the Crown.

(ii) The king is mortal, but the Crown is immortal. The death of the king does not mean the death of the Crown,

(iii) The king is only a part of the Crown; besides the king, the ministers and the Parliament also form parts of the Crown,

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(iv) The king is only a person using the powers of the Crown.

All the powers of the State reside in the Crown. The Crown is the assemblage of sovereign power.

We agree with Dr. Munro who said, "The Crown is an artificial or juristic person. It is an institution and it never dies. The powers, functions and prerogatives of the Crown are not suspended by the death of a king even for a single moment."

Succession to the Throne

In Anglo-Saxon days the kingship was elective. The "Witan" normally chose a person of superior repute and capacity from among the members of a single royal family, but there was no definite rule or order of inheritance during those days. Gradually, however, kingship became hereditary and by the thirteenth century, succession clung to the right to determine succession when the line was broken or when there was uncertainty or dispute. Today succession to the throne is regulated by the Act of Settlement, 1701, which provided that in default of heirs to William III and of his expected successor, Anne, the Crown shall descend in perpetuity through the heirs of the Princess Sophia of Hanover, who was a grand-daughter of James I. The principle of heredity is determined by the rule of primogeniture, i.e., the elder in line being preferred to the younger and the male being preferred to a female. The heir must be protestant.

The succession to the throne is followed by a coronation but this ceremony has no legal significance. If the heir to the throne is a minor (under eighteen years of age) a regency is established to serve until the age of eighteen is attained. Regency also serves during any period when the monarch is prevented by any "infirmity of mind or body" which renders him incapable of performing the royal functions. It may also be added that the king may abdicate his throne, as Edward VIII did in 1936.

Powers of the Crown3

The powers of the Crown are derived from two sources, i.e., prerogative and statute. Originally, the powers; ©T the Crown were deemed to be "prerogatives" which inhered in the person of the king and were not conferred upon him by action of Parliament. Later, Parliament began stripping away the powers based upon prerogatives, while at the same time also bestowing new ones. Such powers which survived on the earlier basis constitute the prerogatives of the Crown. Thus, according to Dicey, the prerogatives are the residue of the discretionary or autocratic powers which have been left legally with the Crown. They denote the powers possessed without having been granted or conferred -powers acquired by prescription, confirmed by usage and accepted or

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tolerated even after Parliament gained authority to abolish or alter them at pleasure. These powers based on prerogatives form a very large part of the total powers of the Crown. Other

powers of the Crown are derived from the Acts of Parliament. The Parliament has not only cut down the powers of the Crown at certain points but has also added new powers. Thus when Parliament authorizes a new tax or imposes fresh duties of administration upon the Crown, it imperceptibly enlarges the volume of the powers of the Crown. However, the question of whether a given power is derived from prerogative or from statute is of little practical importance. What is important to note is that the powers of the Crown are continually undergoing change - sometimes being curtailed and sometimes being carried to new heights. F.W. Maitland says, "We must not confound the truth that the King's personal will has to come to count for less and less with the falsehood ... that his legal powers have been diminished. On the contrary, of late years they have enormously increased."4

The powers of the Crown may be considered under these heads:

Executive powers

The Crown is the executive. All executive authority is vested in it. It appoints all the high executive and administrative officers, judges, bishops, and the officers of the army, navy and air force; directs the work of administration; looks to the enforcement of all national laws; holds supreme command over the armed establishments; conducts the country's foreign relations; deals with the colonies and dominions and wields the power of pardon and reprieve. It can even declare war or peace, conclude a treaty without consulting Parliament. Thus the Crown is the supreme executive authority and holds wide executive powers.

However, all these powers of the Crown are exercised by the ministers, or the Cabinet. The Cabinet and individual ministers are allowed a relatively free hand in the administration of the country. It is they who see that the laws are carried into effect. They decide who shall be appointed to office. They direct British foreign policy and conclude treaties. They even decide the issue of war. They spend the money that Parliament appropriates. In short, the ministers, and not the king, are the real wielders of authority. Even the higher officers of the royal household are appointed with the approval of the Ministry. This shows the completeness of the control which the Ministry exercises over the administration. Whenever the Parliament bestows powers on the Crown, it, in fact, delegates them to the Cabinet. To the king as an individual the Parliament never grants any authority. The exercise of

the prerogative of mercy is primarily a matter for the Home Secretary, and the royal share is merely formal. In the matter of bestowing public honours on his subjects the king acts on the initiative and with the prior consent of his ministers. The Prime Minister and not the king is responsible to Parliament for inclusions in and exclusions from the list of honours. Thus, it is clear that all the executive powers of the Crown are now put into action by the Prime Minister and his colleagues. The king is only titular.

Legislative powers

The Crown is not only an executive but also an integral part of the national legislature. Technically, the law-making function is vested in the King-in-Parliament, which means the king acting in conjunction with the House of Lords and the House of Commons. But as in other things, so in law-making the king has yielded to the Crown.

Theoretically, the king summons and prorogues the sessions of the British Parliament, dissolves the House of Commons, assents to the bills passed by the Parliament and issues Orders-in-Council. Theoretically no bill passed by the Parliament can become an Act unless and until assented to by the king but once a bill is passed by the Parliament the king does not exercise the right to veto. But all this he does on the advice of the Cabinet. Rather it is the Cabinet which exercises all these powers. The king has long lost the power of issuing decrees without the concurrence of Parliament. The Orders-in-Council which are still issued, are never promulgated save at the behest of ministers who owe their authority to the will of Parliament. The assent of the king to the Acts passed by Parliament is never denied and is always given as a matter of course. This assent has never been withheld in the last more than two hundred years,5 and the whole ceremony by which it is extended is a picturesque formality. The king does not even read the bills. He has no responsibility because the bills would not have been passed had the king's ministers opposed them. So, when the ministers have the responsibility, why should the king reject them? The king's veto has fallen into disuse. Even if the Parliament were to send the king his own death warrant, he would be under the necessity of giving his assent to it. In 1936, Edward VIII gave the royal assent to the Act of Parliament providing for his own abdication.

Judicial powers

It is said, "The king is the fountain of justice", a survival from the old far off and forgotten days. In fact, the Crown does so as the king. The king appoints the judges, including the Justices of Peace in the counties and

boroughs in name only. They are the nominees of the Cabinet - which is the part and parcel of the Crown. All issues which come before the Judicial Committee of the Privy Council are decided by the Crown. All justice in England is rendered in the name of the king. Though theoretically the king exercises the prerogative of mercy and may grant pardon to persons convicted of criminal offences, yet actually this job is done by the Judicial Committee of the Privy Council. Munro opines, "this is not a judicial power it is an executive power which the ministers control."6

Head of church

Besides, the Crown is the head of the British Church. The archbishops, bishops, and other ecclesiastical officers are appointed by it. It is the final power in relation to ecclesiastical matters. The appointments are made on the advice of the ministers.

Fountain of Honour

The Crown is the fountain of honour. Each year a list of peerages and other honours like knighthood is prepared by the Prime Minister in consultation with the Cabinet. The Prime Minister is, however, acquainted with the king's sensibilities in making up the list. He may add a name or strike off a name at the monarch's request. However, it is not obligatory for the Prime Minister to act according to the likes and dislikes of the king.

From the above description of the king's powers it is clear that his powers are immense and important; but as remarked in the preceding pages this is so only in theory. In practice, the powers of the king have been transferred to the ministers who actually exercise these powers and are responsible for the day-to-day administration of the country. It was this fact that led Sir Henry Maine to remark that "the king of England reigns but does not rule." The real custodians of the powers of the king are the ministers who direct every action of the king. Even the Parliament has assumed a subordinate position. The authority of the Cabinet is so pervading and real that Ramsay Muir was compelled to remark that the "Parliament is a tool in the hands of the Cabinet."

But it should not be presumed that the king has lost all authority and become a cipher. He is by no means without influence in the field of administration and legislation. He personally performs certain specific acts. He receives foreign ambassadors and on the opening of a Parliament, reads the speech from the throne. It is the duty of the Prime Minister to keep the king informed concerning the major policies which his government proposes to execute and measures which his ministers

propose to lay before Parliament and to obtain the king's opinion, if he has any. Bagehot rightly remarked that the king has three rights - the right to be consulted, the right to warn and the right to encourage. The right to be consulted means that the Prime Minister should consult the king before taking an important decision on any public matter. The king is more experienced than the Prime Minister. He is a non-party man. Therefore, his advice as it would be based upon rich experience and deep knowledge it is apt to be a better advice. But if the Prime Minister does not act upon the advice of the King, the latter has the right to warn the former. He may tell the Prime Minister, 'Whatever you think good, must be carried. Whatever you think good, has my full and effective support. But for one or the other reason you are wrong, I do not oppose nor is it my function to oppose but I warn." If the king feels that the policy of the Prime Minister is for public good, he may encourage him so that the Government may feel that it has the king's support and it may carry out that policy effectively.

In the end the influence of the royal opinion will, of course, depend upon the ability and personal force of the king and his relations with the Prime Minister. Lowell has summed up the position of the king in these words, "According to the earlier theory of the Constitution the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the parts are almost reversed. The king is consulted, but the ministers decide."

The King can do no wrong

An important maxim on which the British constitutional structure rests is "the king can do no wrong." This maxim has three important implications:

Firstly, it means that the king is above law and cannot be tried in any court of England for any wrongful act done by him. For example, if the king commits any crime, there is no process known to English law by which he can be brought to trial. In short, this maxim ensures complete personal immunity to the king from the jurisdiction of ordinary courts of law.

Secondly, the maxim means that the king is above all responsibility for the acts done in his name. No person can plead the orders of the king in defence of any wrongful act by him. The king cannot authorise any person to do an illegal act. If any officer commits any crime under the orders of the king, it is the officer who will be held responsible and punished by the courts of England for such an offence. This point has been clarified in the Earl of Danby's case of 1679 who was impeached

by the Parliament of "high treason and diverse high crimes and misdemeanors." Danby pleaded that whatever he had done was by order of the King. He even produced the royal pardon for the alleged offence. Parliament held Danby's plea illegal and void and laid down that "the minister cannot plead the command of the king to justify an unconstitutional act."

Back in the days of Charles II one of his courtiers wrote on the door of the royal bed-chamber:

Here lies our sovereign lord the King.

Whose word no man relies on;

Who never says foolish thing,

Nor ever does a wise one.

This inscription truly represented the maxim, "the King can do no wrong" because Charles replied to this inscription that inasmuch as his sayings were his own, his acts were the acts of his ministers. The king assumes no responsibility for his participation in the administration of the country.

Thirdly, the maxim implies that for all intents and purposes it is the Minister-in-charge who is legally responsible for every act of the British Government performed in the name of the king. This is why every order issued by the king is countersigned by the Minister-in-charge who is politically responsible to the Parliament and legally responsible to the courts of law. Without the counter-signature of the minister concerned, no law possesses any validity in England and, therefore, cannot be applied in any court. It is because of the fact that the speech which the king delivers from the throne at the opening session of Parliament, is the handiwork of the Cabinet ministers. Even his tour programmes are decided by the Cabinet.

The Justification of Monarchy

Looking to the titular position of the king in England and his insignificant influence in the administration a pertinent question often asked is, "Why retain the kingship at all, if the authority of the Crown is no longer exercised by the king?" "What good purpose is served by continuing with monarchy?"

It is, of course, true that the king has become powerless but it does not mean that he is devoid of influence. Monarchy is popularly acclaimed in England and is now generally accepted by all political views. To quote Laski, "Monarchy, to put it bluntly, has been sold to democracy as the symbol of itself, and so nearly universal has been the chorus of analogy which has accompanied the process of the sale that

the rare voices of dissent have hardly been heard. It is not without significance that the official news- papers of the Trade Union Congress devote more space to news and pictures of the royal family than does any of its rivals."7 Although the Civil List, i.e., grant for the monarch and immediate members of the royal family amounts to five over hundred one per cent of the Budget,8 yet little suggestion is made that the people fail to get their money's worth. Ceremony, pomp and ritual connected with royalty are not necessarily against democracy, for, according to Jennings, "Democratic government is not merely a matter of cold reason and prosaic policies. There must be some display of colour, and there is nothing more vivid than royal purple and imperial scarlet."9 In the seventies of the nineteenth century England did see Republican Movement but the movement soon collapsed and Queen Victoria admonished publically Dile, - the chief adherent of the Movement before including her in her Cabinet. Since then the kingship has not faced any tempestuous storm which could shake its foundations. For the British "the Monarchy is a symbol of the enduring qualities of their race and living proof that whatever the future may bring it will not break too" radically with the tried and proven concepts of the past.10 What to speak of the Conservative Party, even the Labour Party has never felt any urge to abolish monarchy. The mass of the subjects adore their sovereign and that is due to various reasons.

Royal influence of the king

Though the King has long ceased to exercise the powers vested in him, it would be erroneous, however, to conclude that he has no actual influence in the government. He still personally performs certain definite acts. He receives foreign ambassadors, reads the speech from the throne, assents to the election of a Speaker by the House of Commons, dissolves the Parliament and selects the Prime Minister. These acts are so indispensable that if kingship were to be abolished some other provision would have to be made for them.

Moreover, the king because of his long continuity in office and the consequent experience he acquires thereof, can very well discharge the role of general counsellor. In the words of Bagehot, the king has three rights - the right to be consulted, the right to encourage, and right to warn. He maintains close touch with the Prime Minister who in consultation with the king often thrashes

out a subject in hand before it is discussed in the Cabinet meeting. On several occasions Queen Victoria wielded decisive influence upon public policies and measures, especially in connection with the conduct of foreign affairs. In 1869, she

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mediated effectively between the ministers and the Lords on the question of disestablishing the Irish Church. In 1840, she practically prevented war between Great Britain and France. In 1884, she brought about a sensible settlement between the Conservative House of Lords and the Liberal House of Commons. Similarly, the advice of Edward VII was a factor of great importance in the shaping and execution of public policy. He is known to have encouraged the Holdane army reforms and to have sought to dissuade the House of Lords from rejecting the Lloyd George Budget of 1909. He was always accessible to the ministers with whom he enjoyed discussing public affairs in a direct and informal way. George V also played an active role in the nation's affairs, especially in connection with the Irish question and the struggle over the Parliamentary Act of 1911. Though the ministers need not follow the advice of the king, yet they will hardly-disregard it. It is not only his exalted position that gives his advice weight, but also the fact of his broader knowledge being on the throne for sometime and his being above party politics also add to the value of his advice. According to Jennings, "In some matters especially on foreign matters and those pertaining to the Commonwealth, the king has often more knowledge than the Prime Minister." Asquith opines that the ministers consider the advice of the king more respectfully than the advice from any other source. "He is the umpire who sees that the great game of politics is played according to the rules."11 At times monarch may keep lips sealed for fear of being misunderstood or ignored. In 1986 Queen Elizabeth II was in fact unhappy over Thatcher's reluctance to apply sanctions against racist minority government of South Africa yet the Queen avoided pressing the Prime Minister for accepting her views.

Supply of leadership to the British nation

In addition to the tangible services which the monarch performs and the influence he wields in government, the king furnishes a leadership for British society. "In an age of lightning change," writes Ogg, "it lends a comfortable, even if merely psychological, sense of anchorage and stability; with the king in Buckingham Palace, people sleep more quietly in their beds."12 The visits of the king during the Second World War, to the various theatres of war and the bombed areas of England, had inspired the Britishers to mobilize and fight heroically at the war fronts. "God save the king" is the national anthem. The Monarch is a more personalized and attractive symbol of national integrity. The national anthem excites the soldiers who sacrifice their lives for the king. The British society then accepts the king as its head with pride and

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without any regression. "If royalty had been found blocking the road to full control of public affairs by the people, it is inconceivable, the forces of tradition could have pulled it through."13

King as symbol of commonwealth unity

Besides, the king provides a symbol of imperial unity. He is the mysterious link, the magic link which unites loosely bound but strongly interwoven Commonwealth of Nations, States and races. The king is the symbol of the free association of the members of the Commonwealth of Nations. Presently the Queen as the head of the Commonwealth is a connecting link between England and nearly fifty other independent countries. Break this link furnished by royalty and all that is left of the union of autonomous partners in the Commonwealth disappears. Mr. Laski holds that, "Irrespective of their differences all the political parties agree that the Crown is an essential element of the imperial unity." If kingship had not to exist no dominion would have accepted the President elected by the British as their head of State.

Practical utility of the king

Practical utility of the king which is an undeniable fact is discernible from the following points: (i) If no party is holding majority in the House of Commons and a coalition is to be formed choice of a leader for Prime Ministership falls on the king. In 1924, George V chose Ramsay Macdonald and not Asquith as the leader though the Labour Party had behind it only one-third of the member of House of Commons, (ii) Whenever the Labour Party captures majority it invariably selects it own leader but the conservatives have been losing the choice to the Monarch and then adopt the Prime Minister as their leader. Kalvin in 1923 and Chamberlain in 1937 were made leaders of the Conservative party after their appointment as the Prime Ministers. Likewise when Anthony Eden resigned in January 1957 due to Suez Canal crisis, Queen selected Harold MacMillan much against the expectations of people who were expecting R.A. Butler to be his successor. Labour Party docs not appreciate the Monarchy selected Prime Minister/Commenting on MacMillans appointment, James Griffith labour leader said "We do not question that Crown acted with the constitutional propriety... but... we do believe it is important that parties themselves should decide or their leaders." (Hi) If during exceptionally abnormal circumstances the Prime Minister advises the king to dissolve the House of Commons the latter can reject the advice. For over last 100 years Monarch has not refused dissolution. According to Stannard, "If Chamberlain had advised dissolution when Germans were crossing the Albert channel.... At such

critical moments the limits of the conventions that keep the Crown out of politics were reached and the reigning sovereign must himself decide in the last resort where his duty lies." Moreover King/Queen may have to allow dissolution even twice within a year as was done in 1910 on the request of P.M. Asquith. In 1974, the House was dissolved twice once on the request of Heath and second time on the advice of Wilson. Evidently if the Monarch refuses dissolution he would be sacrificing neutrality that may endanger the Institution itself, (iv) During the period when one ministry resigns and the other is to take its place all the powers though temporarily pass on to the king. Obviously without a king a void can be caused, (v) The king's role as a critic, adviser and a friend cannot be underestimated. According to Bagehot, the king exercises three rights - right to be consulted, right to encourage and right to warn. Sovereign advises and ministers take decisions. He is kept informed by the Prime Minister about the proceedings of the Cabinet. If the Prime Minister fails to convey to him the decision of the Cabinet he is within his right to seek information on his own accord. Besides, a word of warning by the king - the only non-party man in the government - is given proper weight by the ministers. The nation and its representatives

still honour the king's warnings and words of advice, (vi) Receiving of ambassadors, reading the speech from the throne assenting to the election of the speaker, convening a conference of leaders to meet a baffling crisis are some other personal functions of the king. Mr. Jenning rightly sums up, "In the first place the king supplies the vital element of personal interest to the proceedings of Government.... He therefore, supplies the personal and picturesque element which catches the popular imagination far more readily than constitutional arrangement, which cannot be heard or seen and a King or Queen who knows how to play this part skillfully by a display of tact, graciousness, and benevolence, is rendering priceless services to the cause of contentment and good government... very closely allied to this personal character of the king is the great unofficial and social influence which he yields, and, not he alone, but the Queen and in a lesser degree, the other members of the royal family. Their influence in matters of religion, morality, benevolence, fashion and even in art and literature, is immense.... He is permanent; he is above all parties; he does not bargain for places and honours; he has nothing in the way of ambition to satisfy, except the noble ambition of securing his country's welfare. So he can say to ministers with all the weight of his experience and position: "Yes, I will, if you, insist, do as you wish; but I warn you, you are doing a rash

thing.... But a minister will, unless he is an exceptionally rash person, think many times before disregarding a warning from the king."14 According to the Earl of Balfour, "The British monarchy is the living symbol of our national history. Instead of hiding the popular aspects of our institutions he has rather brought them to light. He is not the leader of the nation, he is the King of all." Jennings also points out, "We may criticise the Government but we would all praise the king."

Even if monarchy is abolished, nothing would be gained now. In spite of the fact that monarchy persists, England is no less a democracy than either the United States or India. Abolition of kingship would not make it more democratic than she is today. Moreover, even if it were abolished, something would have to be substituted because a parliamentary government needs a titular head of State. The Prime Minister is not a titular head in any country. If monarchy is abolished and a republic set up and a President is substituted in place of the king, the question would arise: What powers should the President possess? If he is made an American prototype that would mean an end to the supremacy of the Cabinet and through it of the Parliament. If he is made a French prototype of the Fourth Republic, it would only be perpetuating the position of the king under a different name. Moreover, there would be the danger of the President involving himself in party politics. Thus neither the American nor the French type would suit England because the Englishmen would not consent to the establishment of an independent presidential executive on the American model, nor they would regard the French system as an improvement upon what they already have. To all this we may also add the fact that kingship has not proved an impediment to the progressive development of democracy. Had the king proved so, kingship would have hardly survived so long. In the words of Morrison, "The security and popularity of the British monarchy today are largely the result of the fact that it does not govern and that government is the task of the ministers responsible to the House of Commons elected by the people. The monarchy as it exists now facilitates the process of parliamentary democracy and functions as an upholder of freedom and representative government."15

Therefore, besides the traditional conservatism of the British temperament which also accounts for the survival of monarchy, there are many other practical considerations, as we have seen above that keep monarchy in the saddle. Laski writes, "Thus far, beyond doubt, the system of limited monarchy has been an un-questionable success in

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Great Britain. It has, so far, trodden its way with remarkable skill amid the changing habits of the time. Its success, no doubt, has been the outcome of the fact that it has exchanged power for influence; the blame for errors in policy has been laid at the door of ministers who have paid the penalty by loss of office."16 The monarchy as it exists now facilitates the process of parliamentary democracy. Monarchy has withstood the test of time and the British people realize and appreciate its dignifying, unifying and stabilising influence. Neumann rightly remarks for most of Englishmen "the Monarchy is a symbol of the enduring qualities of their race and living proof that whatever the future may bring it will not break too radically with the tried and proven concepts of the past."17 The institution of monarchy has thus become a part of British heritage and culture. It is based on public opinion. The people want that the king should continue to be head of England and England should continue to be as now, "a crowned republic." The Englishmen see no reason why this venerable institution should be abolished. If monarchy is abolished, the British Church will be left without a ruler, the social structure will have to be completely reorganised, the important link between England and the British Empire would be broken, the loyalty of the British people would become a mere imaginary symbol, and the economy, if any, would prove futile. Otherwise too the total expenditure on the royal family and the palace is just a small fraction of 1 percent of the total budget of Great Britain which is insignificant. Lowell, has aptly said, "If the king is no longer the motive power of the ship of the State, it is the spar on which the sail is bent, and as such it is not only a useful but an essential part of the vessel."18 Although on its face a gross anachronism in a democracy the monarchy "remains impregnable, entrenched, being indeed, like the weather, something that the average Englishman simply takes for granted."19

However, the image of monarchy has been tarnished to a considerable extent due to ignoble happenings in the Royal family. The Charles-Diana affair has diminished the halo of sanctity round the British' monarchy. Most people in Britain are keen to have Prince William and not his father as the future king of Great Britain.

The fatal accident of Princess Diana in Paris invoked sympathies of the commoners and her funeral on September 6, 1997 shook the traditional Royalty to its last fibre and virtually brought it on the streets of London. After the funeral P.M. Tony Blair met the Queen for four hours and later commented that he would help modernise the monarchy. A think tank supported by British P.M called upon the monarchy to

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apologise for Britain's wrong doings in the Imperial past.

The Queen is also very keen to improve the image of the Royal family in the wake of the Charles-Diana affair and public pressure to strip the Royal family of prestigious privileges.

References

1. Munro. W.B., The Governments of Europe, p. 49.

2. Ogg, English Government and Politics, p. 83.

3. Since the Crown is an institution and its powers are exercised by the king as a person, therefore, the powers of the Crown are also the powers of the King.

4. Maitland. F.W., Origin and Growth of the English Constitution, p. 37.

5. The veto was last employed in 1707 by Queen Anne in defeating a bill settling the militia in Scotland.

6. Munro, The Government of Europe, p. 6-1.

7. Laski, H.J., Parliamentary Government in England, p. 392.

8. According to the Civil List adopted for the present Queen the total expenditure is as quoted above.

9. Jenning, W.I., The British Constitution, p. 111.

10. Neumann: European and Comparative Governments, p. 31.

11. Munro, op. cit., p. 63.

12. Ogg, op. cit., p. 112.

13. Ogg and Zinc : op. cit. p. 65.

14. Jenning, W.I., The British Constitution, p. 111.

15. Morrison, H., Government and Parliament, p. 92.

16. Laski, H.J., Parliamentary Government in England, p. 395.

17. Neumann: European and Comparative Government p. 30.

18. Lowell, A.L., The Government of England, vol. I, p. 26.

19. Ogg, op. cit., p. 114.

20. Hindustan Times dated September 10, 1997.

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4 THE CABINET

"The Cabinet in England is the steering wheel of the ship of the State."

—Ramsay Muir

As we have observed in the preceding chapters the Cabinet is the real executive in England. The vast and growing powers of the Crown are being exercised by the Cabinet which has become the supreme directing authority and has come to be called the pivot of the whole political machinery. In this chapter we shall study the composition of the Cabinet, its functions and responsibilities.

How the Cabinet arose

The British Cabinet is the product of a long historical growth. To begin with, it was a part and parcel of the Privy Council which itself was the descendant of the Old Curia Regis of Norman times. The Privy Council was a body to give advice to the king and help him with the routine work of administration. Its members were chosen at the discretion of the king. With the passage of time the membership of the Privy Council increased to such a large extent that it became difficult and inconvenient to hold a meeting of all the members for taking some important decisions. Consequently the kings began to consult only those few councillors who happened to be their favourites. The exact date at which this practice originated is not known, it probably began sometime before the public learned of it. Charles II (1660-1685), at any rate, elected five members - his close friends, to advise him in private. This circle was known as 'CABAL' after the first letters of the names of the five members. But these members were not responsible to the Parliament. They held office during the pleasure of the king. The case of the Earl of Danby, who was impeached by the House of Commons and convicted by the House of Lords, laid down the principle of Ministerial Responsibility for all acts

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of the king. However, by 1688 the Cabinet system, as it is understood today, had not acquired a definite form and shape. The Cabinet was still a vague and confused institution.

The Glorious Revolution of 1688 and the Act of Settlement, 1701 cleared the way for the establishment of parliamentary supremacy, and smoothened the growth of the Cabinet system. Prior to 1688 the king chose his advisers from his own close friends and supporters. He did not take into account the fact whether they had majority in the Parliament or not. He also did not give any consideration to their party affiliations. They were not responsible to the Parliament. William III on ascending the throne selected his advisers from both the major party groups in parliament But this plan could not work efficiently as the ministers drawn from two opposing political parties could not work together. Consequently, in 1693-1696 he selected his advisers only from the Whig party. Later on, it became a convention that the ministers be chosen from

amongst the members of the majority party. The Cabinet of 1697 popularly known as Sunderland's Junta is regarded as the real beginning of the Cabinet system. It was constituted on the principle that all the members should be drawn from the dominant party in parliament. Queen Anne carried the Cabinet system a stage further when she kept the Whig ministers in office in spite of her personal sympathies for the Tories. Thus the first principle of the Cabinet system, i.e., that the ministers be drawn from the majority party in the parliament, was evolved.

But by this time the office of the Prime Minister had not arisen. Both William and Anne presided in person at the meetings of the Cabinet This gap in the Cabinet system was filled in by George I who abstained from presiding at meetings of his Cabinet and commissioned Robert Walpole for this function. Walpole held this position not because of the king's favour but by virtue of his being the recognised leader of the dominant party in Parliament, thus making him the first Prime Minister in the modem sense though he was not called the Prime Minister at that time. Walpole presided at the Cabinet meetings and at the same time served as the leader of the House of Commons. He remained at his post till he had a parliamentary majority and resigned at once as soon as he failed to command a majority. Thus in Walpole's administration we may find all the essential characteristics of the present day Cabinet system. He moulded the Cabinet system into the form which it retains today.

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Although by the eighteenth century the cabinet system had come to be established, yet it did not attract the attention of any author. The constitution makers of the United States made no mention of it. We do not find any reference to it in Blackstone's Commentaries on the English Constitution. De Lolme also made no reference to it in his book. Bagehot for the first time made a reference to it in his book published in 1867.

During the nineteenth century the Cabinet system became more crystallised. Now it was established that the ministers must be members of the Parliament, that they must have majority in the House of Commons, that they should belong to the same party and work under the leadership of the Prime Minister.

In the twentieth century the practice that the Prime Minister should belong to the House of Commons became established. In 1923 Lord Curzon could not be appointed the Prime Minister because he was a peer. Instead Mr. Baldwin became the Prime Minister. The Ministers of the Crown Act, 1937 gave a legal sanction to the institution of the cabinet. It recognised for the first time the office of the Prime Minister by giving him salary of £10,000 a year as Prime Minister and First Lord of Treasury. During die twentieth century the Cabinet gained more and more powers. Today, it is the pivot of the British administration.

Distinction between Cabinet and Ministry

It would be worthwhile to first examine the distinction between Cabinet and Ministry. Sometimes, the word Ministry is used to mean Cabinet as if the two words are synonymous. But these two terms denote distinct parts of the Government. Broadly, the distinction between Cabinet and Ministry is two-fold, one in respect of composition and second, in respect of

functions. The Ministry is a large body consisting of "the whole number of Crown officials who have seats in Parliament, are responsible to the House of Commons, and hold office subject to the approval of the working majority in that body. AH the members of the Ministry are not the members of the Cabinet. There are five categories of ministers. In the first place, are the heads of the principal governments, e.g., the Secretary of State for Foreign Affairs, the Chancellor of Exchequer, the First Lord of Admiralty, etc. These members meet collectively and decide upon policy. Secondly, there are other high officers of the State, who are not incharge of departments, e.g., the Lord Chancellor, the Lord Privy Seal and the Lord President of the Council. Thirdly, there are parliamentary Under Secretaries who are

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different from permanent Under Secretaries. Fourthly, there are government whips and lastly there are a few political officials of the Royal Household, e.g., the Treasurer, the Comptroller and the Vice-Chamberlain.

All these five categories of ministers who number more than sixty make the Ministry. The Ministry does not meet as a body for the transaction of business. It has no collective functions.

The Cabinet, on the other hand, consists of such members of the Ministry as the Prime Minister invites into the inner circle, although there are some members of the Ministry who cannot be left out by the Prime Minister. The number of the Cabinet ministers varies round about twenty. Thus in respect of composition the Cabinet is a smaller body, whereas the Ministry is a larger body. The former is an inner circle within the bigger circle of the latter. All Cabinet members are ministers, but not all ministers are Cabinet members.

The Cabinet generally includes the following:

(i) The Prime Minister and the First Lord of the Treasury,

(ii) The Lord President of the Council,

(iii) The Lord Chancellor.

(iv) The Principal Secretaries of the Foreign Office, the War Office, the Dominion Office, the Colonial Office, the Ministry for Air, and the Scotland Office,

(v) The Lord Privy Seal,

(vi) The First Lord of Admiralty,

(vii) The President of the Board of Trade,

(viii) The Ministers of Agriculture and Fisheries, Transport, Health, Labour Co-ordination and Pension,

(ix) The Post Master General.

Functionally, the Ministry differs from the Cabinet in that whereas the members of the Ministry have duties only as individual officers of administration, the members of the Cabinet have collective obligations. The Cabinet meets in a body, the Ministry never meets so. The Cabinet deliberates on matters of policy and sees that the policy formulated by it is carried through. The members of the Cabinet are the most important members of their party and play an important role in the leadership of the country. The Ministry is in fact not a body at all.

Organisation of the Cabinet

The first step in the formation of the Cabinet is the selection of the Prime Minister. It is now a well-settled usage that the Prime Minister must be the leader of the dominant party in the Parliament. So when a

Prime Minister resigns by reason of defeat at the polls or on the floor of the House, the king merely summons the victor and commissions him to make up a ministry - which tantamounts to appointing him Prime Minister. In earlier days, the king was likely to have some real choice in the matter but with the crystallization of the two-party system he has no choice but to call upon the leader of the majority party, however much his personal preferences might run in a different direction.

Although there is no bar for a peer being appointed the Prime Minister, but nowadays it is almost a rule that the Prime Minister be a commoner. Since the Prime Minister is responsible to the House of Commons, therefore, it is necessary that he should maintain close contact with it. No peer has held this office since 1902.

Once the Prime Minister is selected, he proceeds to draw up a list of Ministers. Ostensibly he has a free hand. In no way does Parliament control his selection of men and he can be sure that the King will assent to whatever list he carries to Buckingham Palace. However, there are various considerations of a practical nature which he must take into account. He cannot be guided solely by his personal likes or dislikes. He usually consults some of his leading followers. He must also see that various interests are represented. The members of the Ministry must be taken from both the Houses. The Prime Minister can hardly miss the surviving members of past ministries of the party if they are in active public life and desirous of appointment. In 1929, Mr. McDonald did not want Arthur Handerson to be the Secretary of Foreign Affairs but when Handerson refused to accept any other office, Mr. MacDonald had to yield. He has also to look to party solidarity in making up his ministry. In normal times it is taken for granted that the Prime Minister will select his colleagues from his own party. 'The British Government is essentially a party government and the party spirit supplies the driving force of the whole machine."1 The Prime Minister also includes some young men of the party who have made reputations for themselves in parliament. Regard is also had for geographical considerations; there must be ministers not only from England, but also from Scotland, Ireland, and Wales. Last but not the least, the Prime Minister has also to keep in mind the debating qualities and popularity of his ministers.

Every Minister must be a member of either House of Parliament. If he is not a member of the Parliament at the time of his appointment, he must become a member after his appointment. This can be arranged by making him a peer or by "opening a constituency" by inducing some member of the House of Commons to vacate his seat. Though there

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have been exceptions when ministers held office without being members of Parliament, "the House of Commons is, however, extremely critical of such exceptions. Practical convenience as well as constitutional convention, therefore, compel the Prime Minister to confer office only upon members of Parliament or peers."2

When the list is completed, the Prime Minister submits it to the king who assents to it. It does not, however, mean that the king has no say in the matter. Queen Victoria successfully advised the Prime Minister not to appoint certain individuals as ministers. After the king assents to the list, announcement forthwith appears in the London Gazette to the effect that the persons listed have been chosen by the Crown to occupy the posts bracketed against their names. It may, therefore, be said that the task of forming a new ministry demands of the Prime Minister great tactical skill. It is a task of much delicacy - "a work of great time, great labour and great responsibility."

Features of the Cabinet System

The Cabinet, as we have seen above, is a smaller circle within a larger circle. It has come to occupy a very important place in the working of the whole political system. It is the driving and the steering force of the governmental machinery. Prof. Dicey has said that the executive functions in England are carried by a committee which is called the cabinet. Laski has called the cabinet the committee of the party which has got majority in the House of Commons. In fact, the stupendous success of the parliamentary system of the Government in England may be properly attributed to the Cabinet's high degree of adaptability. The important features of the Cabinet system are detailed below:

Exclusion of the King from the Cabinet

The first important feature of the British Cabinet system is the exclusion of the King from the Cabinet. Though the King is the chief executive head and all the executive actions are done in his name, yet he stands outside the actual working of the Cabinet. He does not attend the Cabinet meetings and remains neutral and above party politics. As we have seen, the abstention of the King from Cabinet meetings was originally a matter of accident because George I had stopped presiding over the Cabinet meetings as he was not conversant with the English language. Today it has become a matter of great constitutional importance that the King is excluded from the Cabinet.

Co-operation between Cabinet and Parliament

The second important feature of the cabinet system is the complete cooperation and harmony between the cabinet and the parliament. The

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Prime Minister is the leader of the majority party in the parliament and all the ministers are also its members. If he is not, he becomes a member after his appointment. The membership of parliament accords to ministers a representative and responsible character. It binds the executive and legislature together with the result that there is no working at cross purposes between the two organs. The ministers can get the desired legislation passed whereas the parliament keeps itself informed of the administration through questions and also controls the executive thereby. This harmonious collaboration ensures a stable and efficient government.

Ministerial responsibility

In the performance of its multifarious tasks the Cabinet is guided by the rule of ministerial responsibility. This responsibility is of two kinds: legal and political. By legal responsibility we mean that every act of the Crown must be countersigned by at least one minister who can be held responsible in a court of law if the act done is illegal. The King cannot be held responsible for any of his acts. In all of his acts the ministers are responsible. This principle of legal responsibility has become a part of the law of Constitution.

But it is another kind of responsibility, i.e., political responsibility, which is the essence of the cabinet and is "Britain's principal contribution to modern political practice." We shall consider this aspect of responsibility under three heads:

(i) Responsibility of the King: Legally the Prime Minister and the Cabinet are appointed by the King and if he is not satisfied by the Cabinet, he can dismiss it. But this is just a theoretical maxim and in practice the King can never exercise this power without the possibility of serious consequences to his Throne. This aspect of responsibility only means that it is the duty of the Cabinet to keep the King informed of all its decisions.

(ii) Responsibility of its own ministers: This is a consequence of the doctrine of the Cabinet's solidarity and collective responsibility. The Cabinet as a whole is answerable for the acts of its members. Since a minister, by a particular mistake, can involve the whole Cabinet in trouble it is essential that every member must consult others before taking any important decision. Along with it, he must support the decision of other ministers. In case he finds himself unable to do so, the proper course for him would be to resign. There are cases when one minister resigns and others remain in office. Lord John Russel resigned in 1855 because he agreed with Rockbuck's motion and was not

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prepared to join with the cabinet in resisting it. General Peel and three other ministers resigned because they did not agree with and support Disraeli's Reform Bill. Lord Morley and Burns resigned in 1914 as they could not approve the decision to war. In 1938 Anthony Eden resigned

because he did not agree with the foreign policy of Mr. Chamberlain. In 1961 John Profumo Minister of War had to resign as he had an affair with Christinkeeler—a call girl who simultaneously had a relation with the Attache of Soviet Mission in London which could result in leakage of secrets. This saved Macmillan's Government which was otherwise under fire on the floor of the House of Commons. Likewise two junior ministers — Lord Lambton and Lord Jelicoc who had illicit relations with Nouma Levi — a call girl resigned and Heath's Government was saved. A serious threat to Mr. Thatcher's Government was averted in 1986 when Aucher - Deputy Chairman of Conservative party exposed in a sex scandal resigned the post. Thus if individual ministers own responsibility the Government is saved. But all these cases of resignation by an individual minister and others remaining in office only prove the principle of collective responsibility and the need of agreement among all the members of the Cabinet so long as they are in office. Lord Salisbury had once said that whatever takes place in the Cabinet, every minister who does not resign is fully responsible for it. He cannot later on say that he agreed on one point but on the other point his colleagues forced him to agree. Lord Morley had also said that generally the whole Cabinet is concerned with every important decision. Its members take oath together and go out together. The Cabinet is one unit. Its views are put before the King and the parliament as if these are the views of a single individual. It gives its advice to the King, the Commons and the Lords as one unit. The first feature of the Cabinet is its joint or undivided responsibility. Therefore, it is necessary that the minister should either agree with the decisions of the Cabinet or resign. Lord Melbourne used to tell his colleagues that what we do is not so important as that we all should speak with one voice.

(iii) Responsibility to the House of Commons: This aspect of the Cabinet responsibility is by far the most important because it is a well recognised fact of the British Constitution that the Cabinet can remain in office only so long as it enjoys the confidence of the House of Commons and that it must resign when it loses the support of the majority of the members of that House. This obligation to resign is collective. All the ministers must resign. They fall and stand together. "This may sound rather rough," writes Morrison, "and indeed from time

to time it is. But the Government must stand together as a whole am ministers must not contradict each other, otherwise cracks will appear in the government fabric." Collective responsibility is the sine qua not of the Cabinet system. Ogg writes, "When a minister - either because o his own action or because of actions of a subordinate for which he is responsible - falls into such a predicament, he is not left by colleague; merely to sink or swim while they look on from the distant shore. Either they jump in and push him under, or they haul him into their boat and accept his fate as their own."3

There are various ways in which the House of Commons may show its lack of confidence in the ministry and thereby compel it to resign or appeal to the electorate. It may pass a simple vote of "want of confidence," thereby expressing disapproval of general policy. It may pass a vote of censure, criticizing the cabinet for some specific act It may defeat a government bill or may amend it in a way that the ministers are unwilling to accept it. Amendments brought forward in the House are often accepted by the minister in charge of the bill, but if these are not accepted the cabinet must resign. The first cabinet to bow as a body before a hostile House of Commons

was the Ministry of Lord North in 1782. To quote a recent example in March 1979 Labour Govt. headed by James Callaghan had to quit when no confidence was passed in the House of Commons on the move of Mrs. Thatcher. The Government ordered general elections on May 3, 1979. Mrs. Thatcher came in power.

It is not binding that the cabinet must resign on an adverse vote in the Commons. Instead, it may continue in the office and advise the King to dissolve parliament and hold a general election. If the election yields a majority prepared to support the Ministry, it is given a new lease of life. But if the result of the polling is unfavourable it does not wait for parliament to assemble and vote want of confidence. It hands over the seals of office and makes way as quickly as pending business can be cleared up.

It may be asked what would happen if a ministry does not resign on the defeat in the House of Commons. Certainly the obligation to resign in such a case is not a legal one but rests on convention and immediately no remedy is available against such a cabinet. However, in the long run a cabinet must find it impossible to carry on the administration in defiance of the Parliament. The budget must be voted annually and if the majority opposes it the cabinet will have to raise money without parliamentary sanction which would be an illegal act. Once a cabinet

acts illegally, the courts can take action against it. Thus the cabinet on being defeated in the Commons must resign.

(iv) Leadership of the Prime Minister: The fourth important feature of the cabinet system is the leadership of the Prime Minister. The cabinet works under his captaincy. "The Prime Minister," according to Morley, "is the keystone of the cabinet arch." Although all the members of the cabinet stand on an equal footing, yet the dominance of the Prime Minister is evident. He exercises a general supervision over the work of his colleagues. He is the umpire in case of any difference of opinion among them. In case of difference of opinion between him and one of his ministers, it is the minister who resigns if he is unable to agree with the Prime Minister. We shall have occasion to refer to the position of Prime Minister later in this chapter.

(v) Secrecy and Party Solidarity: Another important feature of the cabinet system is the secrecy of the policy and party solidarity. The meetings of the cabinet are held "in camera" and are not open to the press. Its proceedings are secret and confidential. All the ministers are expected to maintain complete secrecy with regard to the proceedings and policies of the cabinet. The Prime Minister, or some other authorized spokesman, may give to the press some indication of what has happened, or may make statements in parliament from which a good teal can be deduced. In short, the cabinet not only deliberates privately but it throws a veil of secrecy over the proceedings. Secrecy combined with the leadership of the Prime Minister helps the ministers to present a solid front. The ministers are well aware that any lack of solidarity, or even the appearance of it, will soon rise to plague them. So they present a solid front to the outside world and speak with one voice and support each other. Thus secrecy and party solidarity are essential parts of the Cabinet system.

(vi) Political Homogeneity: The last feature of the British cabinet is its political homogeneity. It is a secret of collective responsibility. The members of the cabinet are taken from the same party. The party which secures majority in the Commons is given the opportunity to form the cabinet. The leader of the party becomes the Prime Minister who includes members of his own party in the cabinet. Since all the ministers belong to the same party, they hold similar views. They examine the problem from the same view point. The party organisation of the cabinet gives it unity of purpose and it can follow a policy which will get the majority support from the Commons. That is why, a coalition ministry is not much favoured in England. Though there has been a

coalition ministry but it has been an exception rather than the rule and that too under extraordinary circumstances. Such a ministry did not last long. It may also be remembered that political homogeneity adds force to the principle of collective responsibility on which rests the entire structure of the British parliamentary system.

Mitchell sums up the most important features of the Cabinet "The doctrine of collective responsibility is fundamental to cohesiveness: cabinet secrecy follows as a matter of common necessity....."4

Functions of the Cabinet

In discussing the functions of the cabinet a distinction may be made between individual and collective functions. By individual functions we mean the functions which every member of the cabinet performs individually. Each member of the cabinet holds the charge of one or the other branch of administration and looks to its functioning. The functions which the individual minister performs within his department may be called the individual functions of the cabinet In addition to their individual functions the members of the cabinet also perform a number of functions in a collective capacity. They form a body and as a body they deliberate upon the policy and formulate decisions. Regular meetings of the cabinet are held once a week when the parliament is in session. During the parliamentary session the Cabinet meets when there is a need for the meeting. The meetings ordinarily take place at the Prime Minister's official residence, No. 10 Downing Street, or occasionally in the Prime Minister's room at the House of Commons. According to the Report of the Machinery of Government Committee (1918) there are three functions of the Cabinet:

(i) The final determination of the policy to be submitted to Parliament,

(ii) The supreme control of the national executive in accordance with the policy prescribed by Parliament,

(iii) The continuous coordination and delimitation of the authorities of the several departments of the State.

Policy determining functions

The Cabinet is primarily a deliberative and policy formulating body. All sorts of domestic and international problems are discussed in the Cabinet and decisions in regard to the policy are reached. The Cabinet takes the decision on a particular national or international problem and once the decision has been taken, all the members of the Cabinet are expected to abide by it irrespective of their personal likes or dislikes.

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When policy has been determined by the Cabinet, it is put into execution either by administrative action or by getting a new bill enacted. Legislation is, thus, the handmaid of administration.

Legislative functions

The Cabinet Ministers guide and control the work of Parliament. They prepare the speech from the Throne in which the programme of legislation is set forth at the beginning of every Parliamentary session. They formulate, introduce, explain and urge the adoption of legislative measures upon all manner of subjects. Though non-ministerial members also may present the bills, there is little hope of their being passed unless they receive the support of the Cabinet. Practically all of the time of the House of Commons is consumed in the consideration of the measures in which the Cabinet is interested. When will the Commons meet and what matters it shall consider and how much time will be given to different matters - all these are decided by the cabinet. It is no exaggeration to say that today it is the Cabinet which legislates with the advice and consent of Parliament. To sum up in the words of Ogg, the Cabinet Ministers "formulate policies, make decisions and draft bills on all significant matters which in their judgment require legislative attention, asking of Parliament only that it gives effect to such decisions and policies by considering them and taking the necessary votes."5

In the twentieth Century the cabinet has come to possess delegated legislative authority and administrative adjudicatory powers as well.6 This has enhanced its prestige and increased its authority considerably. Addition of such powers has been categorised as "New Despotism" by some critics.

Supreme control of the national executive

The Cabinet is the Supreme National Executive. Legally, all the executive power vests in the King, but, as we have seen in the preceding chapter, it is the cabinet which really exercises all the executive powers vested in the king who is only a titular head of the State. The ministers preside over the departments of government and carry out the policy determined by the cabinet and approved by the parliament. The ministers scrupulously follow the directions of the cabinet. Any deviation there from by a minister may lead to his removal.

The cabinet may get the orders-in-council issued by the King's order to give effect to some more general line of policy including even a declaration of war. It may be noted that both the World Wars were declared by orders-in-council. Moreover, the power of delegated

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legislation has further enhanced the executive authority of the Cabinet. In modern times the volume of legislation having increased, the parliament passes law in skeleton form, leaving it to the cabinet to fill in the gaps and make rules and regulations for giving effect to these laws.

The cabinet does not consider the appointments to lower posts but all the major appointments are decided by the cabinet. Thus, appointments to the offices of Ambassadors, High Commissioners, Governors, etc., are made upon the advice of the Cabinet.

The Cabinet as a Co-ordinator

Though administration is divided into numerous departments, yet it is difficult to execute a water-tight division among various departments. The action of one department affects the work of another department. Indeed, the government is a unit and every problem cuts across departmental boundaries. In this case the Cabinet does the task of coordinating policy. "This means not only the linking of specific administrative decisions by reference to general policy, but the expression of the same general policy in legislation."

Determination of Finances

According to Ramsay Muir, the Cabinet also decides as to what taxes will be levied, how these will be collected and in what manner these will be spent. The decision regarding the imposition of taxes, abolishing or reducing the old ones is taken in the cabinet. The Chancellor of the Exchequer is an important member of the cabinet. He prepares the annual budget and before it is presented to the parliament, it is discussed in the Cabinet.7

It can, therefore, be concluded that the Cabinet has not only become the real executive but has also assumed the role of a little legislature. It formulates the policy, enforces the laws, run the administration, effects important appointments, decides on matters of war and peace, prepares budget, awards honour, initiates legislation and secures its passage. The cabinet is the government of Great Britain.

Cabinet Dictatorship

The authorities of the British Constitution have described the importance of the Cabinet in colourful phrases. Lowell calls it "the keystone of the political arch." Sir John Marriott refers to it as "the pivot round which the whole political machinery revolves." Ramsay Muir called it "the steering wheel of the ship of State." Gladstone found it the "solar orb round which the other bodies revolve." The fact cannot be denied that the Cabinet has steadily grown in power. Whereas in the

nineteenth century we used to speak of the parliamentary supremacy, in the twentieth century we speak of the Cabinet dictatorship. Ramsay Muir writes, "A body which wields such powers as these may fairly be described as omnipotent in theory, however capable it may be of using its omnipotence. Its position, whenever it commands a majority, is a dictatorship only qualified by

publicity. This dictatorship is far more absolute than it was two generations ago."8 There are several factors that have given rise to the dictatorship of the cabinet.

(i) Growth of Party System: One of the major factors which has given rise to the cabinet dictatorship is the growth of party system in England. Before 1832 and for some time even after that there was no party organisation and little party discipline. In those days the members contested the election to the House of Commons on their own account and with their own resources. When they went to the parliament they aligned themselves to one party or the other according to their political convictions. Their allegiance to the party was only of a general and very flexible character. So long as they agreed with the policy of the party they voted for it, but if they disagreed on a particular question, they voted for the other party. Those were the days of free voting and cross voting. Debates on particular problems were very significant and convincing, arguments detached large numbers from the opposite camp. In short, the control of the House of Commons over the cabinet was genuine.

But all this, however, changed as a result of party organisation that sprang up in Great Britain after the increase of electorates as a result of various Reform Acts. No party organisation was needed when the electorate was small and handy. But when it was considerably increased permanent organisations became almost indispensable for the purpose of bringing voters to the polls. Elections became costlier than before. The candidates were no longer confined to the rich classes but people from the lower, middle and even labouring classes aspired membership of the parliament. The party organisation enlisted the voters, carried propaganda, collected money, selected candidates for the various constituencies and helped them with money. The party extracted a pledge from the/ candidates that if returned to parliament they would abide by the instructions of the party leaders. Hence an independent member of the House of Commons is a rare personage now. Members of the majority party whose leaders form the cabinet are pledged to support them, no matter what the policy may be. Parliamentary debates have been robbed of their significance. A debate hardly alters a single vote. If

a member feels that he cannot vote for his party, the proper course for him is to resign his seat which he won on the party ticket.

Now it is easy to understand how the cabinet has found it possible to establish a sort of dictatorship over the House of Commons. With majority behind it, the Government can defeat any hostile move coming from the opposition. There is rarely a substantial amendment to the bills as they are introduced by the cabinet and there is hardly any alteration in the budget as it is introduced. As Sydney Low remarks, "Now-a-days a cabinet is never defeated on the floor of the House of Commons." It resigns either as a result of defeat of the party in general elections or else as a result of split among the leaders of the party themselves. The legislature has lost all the powers to the cabinet. Law making has been annexed by the government. With the whip over the heads of its supporters on the benches the cabinet makes it next to impossible for even the ablest and most spirited among them to question publicly, much less to vote against the proposals upon which Whitehall has revolved. Today, the conscience of a member has no place, he has to follow the party lines inevitably. The party discipline is no less severe than military discipline. The

entire party system has become essentially professionalized. Anyone violating the party discipline and going against the party mandate can at once be removed from the party. Removed from the party his political future gets bleak. Without party it is difficult to contest the election and win, and if somehow he is elected, he remains without any effective voice. Under the circumstances each member prefers to follow the party mandate than charter his own course and suffer its disadvantages. The party members, therefore, are pledged head to foot to vote for the party. No wonder then that the cabinet has succeeded in establishing its dictatorship in the country and made the House of Commons a tool in its hands. Flushed with the majority the Cabinet can press unpalatable measures on the House of Commons and even violate the solemn pledges made at the time of general elections. In the words of Prof. Keith, "What is clear, however, is that a Government with a large majority is limited in its legislative programme only by its own good sense and its respect for those rules of debate which generations of men in all parties have agreed upon."* The dictatorship of the cabinet is a patent fact.

(ii) Growth of Delegated Legislation: The growth of delegated legislation has also led to the growth of party dictatorship. The functions of the modern State are no longer confined to police functions. It today discharges numerous social welfare functions. The

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modern legislation is so vast in scope and intricate in nature that no parliament can possibly find time to supply all the detailed legislation. So the parliament in Britain as elsewhere has adopted the practice of passing laws in skeleton form leaving to the cabinet the job of filling in the detailed provisions. This authority to issue delegated legislation has raised the cabinet to the status of real Legislature and practically reduced the parliament to a secondary position. Complaint is frequently heard in England that parliament is merely handling back to the Crown the powers which it won after battles for centuries, from the king. As a consequence of the wide scope of delegated legislation the government in England has become a government "by executive order rather than by law, by decree rather than by deliberation."

(iii) Administrative Justice: Administrative justice also has contributed to the growth of cabinet dictatorship. In recent years it has been the tendency of governments to empower the executive bodies to hear disputes related to their departments, pronounce judgments and enforce their penalties. In many cases there is no right of appeal to the courts. Hardly any important department fails in these days to have a wide range of judicial powers which it exercises under statutory authority and in complete independence of the court of law. The Board of Education hears and gives final decision upon appeals turning upon essentially judicial questions arising between local educational authorities and the managers of denominational schools. The Ministry of Transport similarly disposes of appeals in regard to the granting of various kinds of licences. The Home Office exercises numerous functions of a judicial nature, involving intricate questions of law and functions in fact, "ranging from the decision as to whether a man is or is not an alien, and if an alien, of what nationality, to the commutation of the death penalty in capital offences."10 In one of its judgments, the House of Lords pronounced that the administrative tribunals need not necessarily follow the procedure of a law court. The administrative judges may follow the procedure which satisfies their purpose.

(iv) Power to Dissolve the Parliament: Another factor that has contributed to the growth of cabinet dictatorship is the power of dissolution into the hands of Prime Minister. One of the conventions in England is that in case a Ministry is defeated on the floor of the House of Commons, it need not resign immediately but instead the Prime Minister can request the King to dissolve the Parliament who accedes to the request and orders the dissolution. This threat to get the parliament dissolved hangs like the sword of Damocles over the heads of the

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members of the parliament who come to their senses as soon as this threat is given by the cabinet. The dissolution of the House means fresh elections and extra expenditure to be incurred by members and entails the likelihood of losing the seat. No individual member, therefore, likes to take the risk of an election contest and consequently there is unflinching obedience to the dictates of cabinet. Bagehot once remarked that the cabinet gets its life from the House of Commons but unlike other organisms it has the power to destroy its life-giver.

(v) Collective Responsibility: Besides the above factors, the evolution of the principle of collective responsibility of ministers to the parliament has also contributed to the rise of the cabinet. The ministers sink or swim together. Their solidarity has helped them to be more assertive and thus strengthen the cabinet.

(vi) Peculiar Conditions of British Parliamentary Life: Peculiar conditions of British Parliamentary life also do not enable the House of Commons to control the cabinet effectively. The theoretical accountability of cabinet to the House of Commons remains in abeyance for nearly half of the year when Parliament is not in session. During the summer session of the parliament also half of the House is busy in amusement rather than work. In the words of Sidney Low, "Members of the House of Commons are occupied in various ways. They have many things to interest them during the short London session though they may have every desire to do their political work properly. The circumstances are much against them. Half the House is taken up with business and the other half with amusement. As the session goes on and weather grows warmer the London society plunges into its summer rush of brief excitement and many members find it difficult to devote their energies steadily to their parliamentary duties." Thus the very working of the British parliamentary life itself helps the cabinet to become autocratic.

Consequently, most of the powers of the Parliament have now been usurped by the cabinet. With the majority at its back, the cabinet has brought the parliament under its control. The cabinet possesses the means to maintain its majority. A government which has a real majority can be reasonably certain of maintaining itself in power as long as parliament lasts.

Conclusion

It should not, however, be presumed that the cabinet can ride roughshod over the parliament and that it is not responsible for its acts to any other power. The cabinet cannot behave rudely in the parliament and dictate

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to the minority. If the cabinet maintains threats of dissolution and shows incapacity to soothe the public, its own supporters will revolt against it. It has to keep itself aware of the feelings and accommodate these feelings in formulating the government policy even at the necessity of a change in policy, otherwise it may create critical situation. The cabinet has its finger always on the pulse of the House of Commons and especially of its own majority there. Its function is, in large part, to sum up and formulate the desires of its supporters. The Prime Minister should, in the words of Carlyle, say that, "I am their leader, so I follow them." Though it may not be an exaggeration to say that at present the cabinet legislates with the advice and consent of parliament, yet to be sure the Houses have still a good deal of opportunity to discuss public policy and to bring public opinion to bear upon them.

Moreover, there are the customs of the House which the cabinet cannot violate without giving rise to an uproar in the parliament and outside. These customs arose for the protection of the minority and the speaker is the impartial custodian of the rights of the minority. These customs modify considerably the rigours of the majority rule. The cabinet, therefore, cannot dare go against the customs of the parliament without incurring a risk to its own life. Then, there is the opposition to criticise the government for its wrongs and lapses. Diligent performance of this duty by the opposition is a major check on the cabinet. The government recognises that it is its duty to meet criticism not by suppressing opposition but by convincing it through rational arguments. A government which does not respect the House and neglects the opposition does so at its own peril. The cabinet is, no doubt, normally the master of the House of Commons but, as Laski says, "there are always limits to its mastery which it must take into account,"11 The question of the cabinet becoming a dictator, therefore, becomes remote. Dr. Jennings has given a very balanced comparison of dictatorial countries with the rule by the British cabinet in the following words: "The real difference between Britain and the dictatorship countries is that with us there is not one faction seeking to maintain itself in power by persuasion, fraud or force but at least two factions each trying to achieve and maintain power by persuasion."

Nor is the cabinet insensitive to public opinion. It is careful not to do anything which will antagonise the people. There was a time when the government was not much in the public eye. There were no telegraphs or telephones; newspaper service was slow and scant; people travelled but little; public opinion had small opportunity to form or

function Now, all is different. The government today works in the glare of pitiless publicity. It must keep its ear to the ground and have regard for the susceptibilities and reactions of the man in the street to a far greater degree than in the old days. This means that the ministers now take their cue more largely from what seems to be public opinion. In 1934 there was a great outcry against the provisions of the Incitement to Disaffection Bill. The National Government had an unprecedented majority and, no doubt, the Bill was passed, but the Bill as passed, "was very different from the Bill as presented; and public had amended it." In 1935, Sir Samuel Hoare, the Foreign Secretary resigned, because he could not "get the confidence of the great body of opinion in the country." In 1940, public opinion compelled the government to resign. The dictatorship of the cabinet is, therefore, not a matter of reality if government by public opinion is to be accepted as the formula 0/ democracy. Referring to the growing authority of the cabinet but

within limits Lowell correctly opined, "It is an autocracy exerted with the utmost publicity under a constant fire of criticism and tempered by the force of public opinion, the risk of a want of confidence and prospects of next election."

The Prime Minister

In describing the features of the British Cabinet system we had the occasion to remark that the leadership of the Prime Minister forms one of the essential features on which the Cabinet System works. Now we shall examine the position of the Prime Minister in somewhat greater detail.

The office of the Prime Minister as we have shown earlier, is the result of a mere accident. Walpole was the first Prime Minister of England who was commissioned to preside over the meetings of the cabinet because George I did not know English language and was not interested very much in English affairs. Till recently, his office remained unknown to the law. Not until 1878 did the term "Prime Minister" make its appearance in any public document. It was in the treaty of Berlin that Lord Beaconsfield was referred to as "first Lord of Her Majesty's Treasury, Prime Minister of England." But this designation as "Prime Minister" was, as Sydney Low points out, "a concession to the ignorance of foreigners, who might not have understood the real position of the British plenipotentiary if he had been merely given his official title."12 It was by an Act of 1906 which gave a definite and exalted rank to the Prime Minister by fixing the order of precedence in state ceremonials, and made him the fourth subject of the

realm. The Chequers Estate Act, 1917 refers to "the person holding the office popularly known as Prime Minister" and provides for the use of chequers by the incumbent of the office. The Ministers of the Crown Act, 1937, recognised for the first time, the office of Prime Minister by giving him the salary £10,000 a year as Prime Minister and First Lord of the Treasury. Presently he draws £ 58,650 per year as salary and £ 13,875 as constituency allowance. These Acts, though, have recognised the constitutional position of the Prime Minister, yet they have not conferred any legal power as such. Whatever powers the Prime Minister exercises are derived from constitutional conventions. What Gladstone has said 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." Parties contest elections projecting an individual as prospective Prime Minister. 1979 election of House of Commons was in fact election for choosing Mrs. Thatcher (Conservative) or Callaghan (Labour) as the P.M. The conservatives in April 1992 elections captured majority due to John Major, a dynamic Prime Minister who took over from Mrs. Thatcher only in Nov. 1990.

Functions of the Prime Minister

(i) Formation of the Cabinet

The functions of the Prime Minister are many and varied. His first function is to make the government. Being the leader of the majority party in the House of Commons, he is called by the king to form the ministry. Although the prime minister is the sole authority to select any person

as the minister of the cabinet, yet he is influenced in his judgment by many considerations. He has to accommodate the claims and views of leading members of his party. He may consult some of them. According to Lord Woolton "whilst it is probable that Prime Minister may confidentially consult some of his potential colleagues as to the choice of the Ministers he should submit to the Crown. The decision is his and his alone. It is for him to decide on the size of the Cabinet. He has a free hand in shaping his government according to his own view of what is likely to work best and according to his personal preferences. "The prime minister," remarks Finer, "has to make the cabinet work, it is his; he must give it cohesion; he must arbitrate differences of view and personality; he must fit all the necessary talents together into a republican team."13

(ii) Distribution of Portfolios

The allocation of offices is also done by the Prime Minister, although a minister can decline what is given, if he commands much support in the

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party as to make it unwise for the Prime Minister to dispense with his services. In 1929, MacDonald did not want to appoint Arthur Handerson as the foreign minister, but ultimately he had to give the foreign office to Mr. Handerson as the latter was not willing to accept any other office.

(iii) To Shuffle the Ministry

The Prime Minister has also the right to reshuffle his pack as he pleases. He can review the allocation of offices among his colleagues and consider whether that allocation still remains the best that can be effected. He can request any of his colleagues to resign if he thinks that his presence in the ministry is prejudicial to the efficiency or stability of the Government. He can also advise the king to dismiss a minister. In July 1962, MacMillan dismissed 7 out of 20 ministers. Sir Robert Peel once said, "Under all ordinary circumstances if there were a serious difference of opinion between the Prime Minister and one of his colleagues, and that difference could not be reconciled by an amicable understanding the result would be the retirement of the colleague, not of the Prime Minister." To sum up, the Prime Minister is the keystone of the cabinet arch and can make or unmake the cabinet in any way he likes.

(iv) Chairman of the Cabinet

The prime minister summons the meetings of the cabinet and presides over them. He decides the agenda of the meetings and it is for him to accept or reject proposals made by its members for discussion. Though there is little possibility of the ministers disagreeing in the cabinet meeting as they must eventually agree if party solidarity is to be maintained, however, if differences crop up, then the prime minister as the Chairman of the Cabinet may impose a decision. Describing MacDonald as an excellent chairman of the cabinet Samuel says, "MacDonald was a good Chairman of Cabinet, carefully preparing his material beforehand, conciliatory in manner and resourceful. In the conduct of a cabinet, when a knot or a tangle begins to appear, the important

thing is for the prime minister not to let it be drawn tight; so long as it is kept loose it may still be unravelled. MacDonald was skilful in such a situation - and there were many."14

(v) As Coordinator

The prime minister also acts as the guide of the cabinet. In the words of Mackintosh "...a body of the size of the cabinet loaded with business will simply fail to operate unless it is subordinated to a chairman who can guide, summarise and close the discussions.15 He tries to coordinate

the policies of the several ministries. It is his endeavour to see that the government works as a unit and the different departments do not pull in opposite directions. The prime minister is, as Morrison says, "eminently a co-ordinating minister. He has to keep abreast of a wide range of matters. He cannot know everything that is going on over the whole field of government and it would be foolish for him to try, but he must know enough to be ready to intervene if he apprehends that something is going wrong." Sometimes, the prime minister may commit himself to a particular policy even without previously consulting his colleagues. Chamberlain adopted a foreign policy of his own, forced it in the foreign office and compelled Anthony Eden, the foreign secretary, to resign.

(vi) Leader of the House of Commons

It is now an established precedent that the prime minister must belong to the House of Commons. He acts as the leader of this House. He represents the cabinet as a whole in the House. He makes authoritative statements and explanations of the government's policy; speaks on most important bills; and at crucial stages also bears the brunt of debate from the government benches. In fact, the House always looks to him as the fountain of policy. The party whips in the House are under his direct supervision and through them he issues orders to the members of the party in the House. It is he who decides as to when the House is to be summoned and for what period. In short, the prime minister being the leader, guides and influences all the legislations in the House of Commons. However on certain occasions the prime minister deputed one of his senior colleagues for the job. In 1976, Callaghan named Michael Foot as the leader of the House.

(vii) Power of Dissolution

The prime minister is the only person who is authorized to advise the King to dissolve the House of Commons. It is he who has to choose the best moment for election. This power in the hands of the Prime Minister puts the members of the House on his mercy because dissolution means new elections without the certainty of being elected. "Men do not like to run the risks," observes Byrum Carter, "which are involved in this process if little is to be gained from incurring the danger."16 Though the king can refuse dissolution to the prime minister yet it is hard to conceive that in practice he will ever do so. During the last hundred years there has been no instance of a refusal of dissolution by the king when advised by the prime minister. It may be emphasized that the right

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to advise a dissolution is possessed by the prime minister who exercises this right in his discretion and judgment. Sir John Simon wrote in 1935, that "the decision whether there shall be an immediate general election, and if so, on what date the country shall go to the polls, rests with the prime minister and until the Prime Minister has decided, all anticipations are without authority."17 Keith is of the opinion that the Prime Minister should consult the Cabinet on the issue of dissolution.18

(viii) Channel of Communication

The prime minister is the main channel of communication between the cabinet and the king. Though any minister has a legal right of access to the king; and on more than one occasion Queen Victoria conferred with individual ministers practically behind the back of their chief, but this practice has been discontinued. Now the prime minister apprises the King of the opinions and decisions of the Government. He also carries the opinions of the King to his colleagues and thus acts as the link between the king and the cabinet, interpreting the opinions and decisions of one to the other.

(ix) Chief Adviser of the king

The prime minister is also the chief adviser of the King. He recommends the names of the persons on whom the honours are to be bestowed by the King. He also advises the King in matters of appointments and other matters of national importance. He can render any advice to the King without even consulting the cabinet. The prime minister frequently visits the Buckingham Palace to see the King. In busy periods he supplements his visits by daily letters. Thus the Prime Minister enjoys a great patronage.

(x) Representative of the nation

In addition to the above functions the prime minister also performs many other functions of a varied nature. He occasionally attends and participates in international conferences or meetings. Lord Beaconsfield attended the Congress of Berlin, Lloyd George participated in the peace conference at Paris, Chamberlain attended the meetings in Germany preceding the Munich Agreement, Churchill met Roosevelt several times and Stalin two times. In dealing with Commonwealth countries and dominions he takes the lead. His position in foreign affairs is so important that foreign secretary is always close to him. Finer remarks "Indeed so important is the field of international affairs that the Prime Minister often virtually assumes a close surveillance of his foreign minister."

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In brief, the prime minister is the president of the cabinet, the leader of the parliament, the main link between the King and ministers, the recognised leader of the nation and the symbol of supreme political power. He is hard-worked and always pressed for time. He receives a number of callers on more or less important public business, confers with individual ministers, goes

through innumerable papers, supervises endless correspondence, and when parliament is in session, spends much of almost everyday on the Treasury Bench.

Position of the Prime Minister

From the above description of the functions and powers of the British prime minister it is crystal clear that the prime minister is the pivot of British administration. His position has been variously summed up by writers. Lord Morley said, "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 exceptional and peculiar authority." Ramsay Muir is not prepared to accept Prime Minister as primus inter pares (first among equals). He is of the view that a person endowed with such a plenitude of powers as no other constitutional ruler in the world possesses, not even the President of the U.S.A., is not a mere first among equals, Harcourt describes Prime Minister as "Inter Stellas luna minores" - a moon among lesser stars. Jennings is of the opinion that the Prime Minister is rather "a sun around which planets revolve."" Prof. Munro called him "the captain of the ship of the State." Prof. Laski has described him as "the pivot around which the entire governmental machinery revolves."

The phrase primus inter pares does not rightly sum up the position of the prime minister. Mr. Churchill writes, "In any sphere of action there can be no comparison between the positions of number one and number two, three or four. The duties and problems of all persons other than number one are quite different and in many ways more difficult.... The loyalties which centre upon number one are enormous. If he trips he must be sustained. If he makes mistakes they must be covered. If he sleeps, he must not be wantonly disturbed...."20 In fact the Prime Minister is the sun around which planets revolve. He is the pivot of the cabinet. Without him the ministers have no existence. He is the most important person. Nothing can take place in the government against his will. His shadow can be seen in every department of administration. He is in fact though not in law the working head of the state, "Few, if any.

positions in the world carry with them greater powers than the British Prime Ministership,"21 writes Ogg. It should not, however, be assumed that all British Prime Ministers have been equally powerful.

The actual power of the Prime Minister varies according to his personality and the extent to which he is supported by his party. There have been prime ministers like Pitts, Peel, Disraeli, Gladstone, Lloyd George and Churchill, who were of dominating personalities. On the other hand there have been prime ministers of mediocre personalities like North, New Castle, Liverpool and Campbell Banherman. In fact, the elections in England have become the issues of personalities. A general election is now a plebiscite between alternative personalities. The only question which the voters are asked is whether they wish to be governed by Gladstone or Disraeli, Salisbury, Balfour or Campbell Banherman, Asquith or Balfour, Lloyd George or Asquith, Baldwin or MacDonald, MacDonald or Handerson, Churchill or Attlee. John Major

conservative or Neil Kiunock22 (Labour). Gladstone while referring to the election of 1857 rightly said, "It is not an election like that of 1784, when Pitt appealed on the question whether the crown should be the slave of an oligarchic faction; nor like that of 1831, when Grey sought a judgment on reform, nor like that of 1852, when the issue was the expiring controversy of protection. The country was to decide not upon the Canton river, but whether it would not have Palmerston for prime minister." The result of this sort of electioneering "is necessarily to give the prime minister a national standing which no colleague can rival so long as he remains the prime minister."23 It strengthens his hands against his colleagues and makes him the sun around which the planets revolve. However, when all is said and done, the prime minister, according to Dr. Finer, is not a Caesar or a divinity whose authority cannot be challenged. We should not forget that the office of the prime minister "is necessarily what the holder chooses to make it and what other ministers allow him to make of it,"24 because as Palmerston once remarked, "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."25

Privy Council

Before closing this chapter we may briefly describe the composition and functions of the Privy Council. The Privy Council is the descendant of the Great Council of the Norman and Angevin kings. In its present form it emerged in the fifteenth century as an offshoot of the Permanent Council (that part of the Curia Regis which remained after the King's

Bench and other high courts were split off from it). Thus it represents the final product of the process of division and devolution by which the functions of advising the King and carrying on the government in his name were kept in the hands of a relatively small body. Out of the Privy Council emerged the cabinet which, as we have seen, controls the entire administration of the country.

Composition and Functions

The Privy Council has not gone out of existence, though as an advisory body it has been supplanted by the cabinet It is still there and consists of some 320 persons. Its membership consists of the Archbishops of Canterbury and York and the Bishop of London; higher judges and retired judges; many eminent peers; a few colonial statesmen; all cabinet ministers, past and present; the Prince of Wales and Royal Dukes; and many other people of distinction in legislature, art, science and law who have been elevated as Privy Councillors. Once made a Privy Councillor, a man normally remains such for the rest of his life. The Privy Councillor bears the title of Right Honourable.

The Privy Council usually meets at the Buckingham Palace once in two or three weeks. Sometimes the King attends, although his presence is not essential. The quorum is three and obviously four or five Councillors are summoned of whom all are members of the cabinet. These four or five Councillors carry the work in the name of the Privy Council. The Lord President is always in attendance and presides over its meetings. As a whole the Privy Council meets only on

ceremonial occasions, such as on the death of the sovereign to proclaim the successor to the Throne and on the occasion of the coronation of the new sovereign.

Though the Privy Council has long ceased to perform advisory or deliberative functions, nevertheless, it still remains the ultimate executive authority. Its business mainly consists of adopting orders in-Council which the cabinet has already agreed upon. The Cabinet, it may be noted, does not give orders but only decides that orders shall be given or that the King shall be advised to act in a certain manner. To give the orders is the business of the King-in-Council. The total number of orders issued in a year is around 600, which runs considerably higher at the time of war. Many of these orders come from the departments fully drafted and require merely the formal approval of the council; others are sometimes in rough form and are put in shape by the drafting experts of the Privy Council Office.

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The Privy Council also maintains certain committees. There is the 1116 non-statutory committee on the affairs of the Channel Islands, and statutory committees exist for the Universities of Oxford and Cambridge and Scottish University. There are also the committees for scientific and industrial research. But the most important is the Judicial Committee of the Privy Council which was created by statute in 1833 and serves as the Supreme Court of Appeal in ecclesiastical cases and in cases appealed from admiralty courts and courts from the dominions and the colonies.

References

1. Muir, Ramsay, How Britain is Governed, p. 85.

2. Jenning, W.I., Cabinet Government, p. 53.

3. Ogg, op. cit., p. 103.

4. Mitchell JDB, Constitutional Law (1968....) p. 190

5. Ogg, op. cit., p. 143.

6. See the details under next heading.

7. Muir, Ramsay,: How Britain is Governed p. 89.

8. ibid.

9. Keith, The British Cabinet System, p. 249.

10. Robson, W.A., Justice and Administrative Law, p. 2.

11. Laski, H.J., Re/lection on the Constitution, p. 96.

12. Sydney Low, The Governance of England, p. 156.

13. Memoirs p. 3.

14. Finer, Governments of the Great European Powers, p. 14.

15. Quoted by Jennings, Cabinet Government, pp. 176-177.

16. Mackintosh: The British Cabinet (1968 ed) p. 428.

17. Carter, Byrum, E., The Office of Prime Minister, p. 274.

18. Keith, The British Cabinet System, p. 304.

19. ibid, p. 305.

20. Jennings, Cabinet Government, p. 183.

21. Churchill, W., Their Finest Hour, p. 15.

22. Ogg, English Government and Politics, p. 153. 3 April 1992 elections in UK.

23. Laski, Parliamentary Government in England, p. 241.

24. Jennings, Cabinet Government, p. 183.

25. Ashley, E., Life and the Correspondence of Palmerston, p. 257.

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5 THE CIVIL SERVICE

"The best minister is one who can think quickly and systematically over the varied problems put before him. His first quality is commonsense and the second one is his capacity to judge the people."

—Laski

So far we were studying the political executive - the cabinet. Now we turn our attention to the permanent executive who form the civil servants. It needs hardly be mentioned that the work of the government would never be done if there were only ministers to do it. These people cannot carry the routine tasks of collecting taxes, auditing accounts, arresting the criminals, inspecting factories and carrying mails. These tasks are carried by a number of officials and employees who are not whit less necessary to the realisation of the purpose for which government exists and who together form the permanent executive. It is with this branch of executive that the common man mostly comes into contact with and it is through this branch that the National Government

establishes its contacts with the rank and file of citizens. In this chapter we shall concern ourselves with this branch of the executive.

Civil Servants Contrasted with Ministers

Before we begin to evaluate the role of civil servants in British administration, we may just for a while engage our attention to certain distinctions between ministers and civil servants.

(i) A minister is a political official, a civil servant is not

The minister is always a party man who is elected on a party ticket and is associated with one or the other political party. He is selected as a minister on account of his party affiliation and prominence and while he is in the cabinet he helps frame party policy and secure its enactment into law. Without party he, as an individual, has no power, he is in office

so long as his party is in power. He carries with him the party label. As such he is a political official.

On the other hand, the position of the civil servant is quite different. He is what he is because he is non-political. The Constitution debars him from membership of the Parliament and refuses him to actively participate in party politics and he does not identify himself with a particular party. He is in office not to keep any party in power but to execute the laws and orders of the government no matter which party is in power. If a civil servant desires to become a member of the House of Commons, there is an order-in-council dating from 1884 which asks him to resign his office as soon as he announces his candidature for election. To keep the civil servants politically neutral various statutes have been enacted from time to time. As long ago as 1710, a statute forbade any post-office official to endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to sit in parliament. The prohibition was later extended to other groups. Today, the position is that no civil official can make a political speech, write a partisan tract, or edit, publish a party newspaper, canvass for a candidate or serve on a party committee. If he does so, he runs the risk of being removed from the service. The civil officials are, of course, entitled to vote but their political rights begin and end with casting of their votes.

(ii) The Minister is an amateur, the civil servant is an expert

A minister is chosen for his post by the Prime Minister not because he knows much of the subject concerning his department but because he is an important party man, or an active debater in Parliament, or an effective trade union organizer or is a good platform speaker, or for some other such reason. Moreover, while in office the minister devotes so much of his time to the cabinet, parliamentary, party and social activities that he can, in fact, learn little about his department except in certain larger aspects. He is occasionally shifted from one department to another and has brief tenure due to the political character of his office. Sometimes, good many ministers may be men who know next to nothing about the branch of government of which they

suddenly find themselves in-charge. A former school teacher may be assigned Labour and a general merchant may be appointed Defence Minister. Sir Sydney Low writes, "We require some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs. A youth must pass an examination in arithmetic before he can hold a second class clerkship in the Treasury but a Chancellor of the

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Exchequer may be a middle aged man of the world, who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of those little dots when first confronted with the Treasury accounts worked out in decimals. A young officer will be refused his promotion to captain's rank if he cannot show some acquaintance with tactics and with military history, but a minister for war may be a man of peace - we have had such who regard all soldiering with dislike and have abstained from getting to know anything about it."1 In brief, ministers are generally amateurs.

On the other hand, the civil servants are experts in their subjects or are in process of becoming experts. As already said they are appointed not for their political affiliations but for the knowledge that they possess. They are even imparted requisite training in a particular subject before they are appointed to the post. They remain in office permanently and not for just four or five years. Long continuity in office makes them experts in the administration of affairs.

(iii) The tenure of the Minister is short, while that of the civil servant is long.

The minister is not a permanent official. He is in office so long as his party is in power. This period may extend from four to five years. But the civil servant is a permanent servant of the crown. He remains for twenty to thirty years.2 Cabinets and parliaments come and go; but the permanent staff remains firmly entrenched.

(iv) The political staff is small, the permanent staff is large

The number of ministers who make the political staff of the British administrative departments is about a hundred, 20 being cabinet ministers. This number is a very small fraction of the entire administrative personnel. The permanent staff is many times more numerous than the political staff. In 1832 the total number of national civil servants excluding labourers was 31,305. In the recent past the figure stood well above 3,00,000 exclusive of over 1,25,000 labourers and other employees who are not permanent civil servants in the narrower sense of the term.

Organisation of the civil service in England

All the employees of the British Civil Service have been classified into five categories in accordance with their status and dignity of office. These categories are:

(i) The Administrative class

It is the "pivotal and directing" class of the whole civil service. This class includes high civil service officers like permanent Secretary,

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Deputy Secretary, Under Secretary, Assistant Secretary, Principal and Assistant Principal. Upon this class rests the responsibilities for formulating policy and for controlling and directing departments. These officers are "responsible for transmitting the impulse from their political chief, from the statutes and declaration of policy, through the rest of the service and out of the public."3 In the words of Jennings the function of the administrative class is "to advise, to warn, to draft memoranda and speech in which the Government's policy is expressed and explained, to make the consequential decisions flow from a decision on policy, to draw attention to difficulties which are arising or are likely to arise through the execution of policy, and generally to see that the process of government is carried on in conformity with the policy laid down."4

The members of the administrative class are recruited through a civil service competitive examination between the age group of 201/2 and 24. New recruits serve a two-year probationary period and are promoted on the basis of merit and performance.

(ii) The Executive class

The second category of the British civil service is the class of executive officers. They do the work of the supply and accounting departments and of other executive or specialized branches of the service. In brief, these officers carry preliminary investigations of the problems before the department, collect data, arrange and classify it, and make observations thereto. They may also exercise discretion in matters of minor importance.

These officers are recruited between the age of 17V2 and 19 from among the men and women who have completed secondary education, and pass the competitive examination. The members of this class can also be promoted to the Administrative class if they show resourcefulness, judgment and initiative.

(v) The Clerical class

The third category of British civil service is that of the clerical class officers. They are recruited at the age of 16 to 171/2 through a competitive examination of the standard of the intermediate stage of secondary course. This class is sub-divided into (a) the higher clerical class, and (b) the clerical class proper. They carry the routine business of the Government like the keeping of official records, preparation of accounts and facts, summarising and collecting documents of senior officers. They have no initiative or discretion.

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(iv) The Writing Assistant class

This class is recruited generally from among the women and engaged in copying, filing, addressing, counting, and other simple mechanical work. The Assistants are recruited through an examination held twice a year.

(v) The Typists and Shorthand Typists class

This class, as is clear, consists of the typists and shorthand typists. This class is exclusively recruited from among the women and girls.

In addition to these five classes in the main hierarchy of civil service there are a number of technical and scientific personnel including doctors, architects, engineers and scientific research staff. They are selected not through any written examination but through the method of competitive interviews.

Role of civil service in England

During the last few years the civil service has assumed great prominence in the British administration. As we have seen earlier, the Minister is an amateur, being apolitical and non-permanent person who comes to head the Department without any expert knowledge of its working. The civil servant is an expert professional, non-political and permanent person who has spent several years in the Department and gained rich experience of its working. Naturally under such conditions the Minister has to rely on his Secretaries (civil servants) for information about matters of which he knows little or nothing. The Secretaries put forward their own suggestions, arguments and advice; and the minister according to Ramsay Muir "except a self-important or a man of a quite exceptional group power and courage he will "in ninety-nine cases out of a hundred simply accept their views and sign on the dotted line."5 So much have the ministers come to rely on their Secretaries that one writer was prompted to remark that "the minister is a tool in the hands of the permanent officials."

The role of civil servants in the actual administration of England can be explained by enumerating the various functions which they perform. The following main points will clearly indicate the role of the British Civil Service.

(i) Administrative role

Firstly, the civil servants play an important role in the administrative sphere of the government. Most of the general policies which are issued by the cabinet, are in reality chaikcd out in detail by the efforts and intelligence of the civil servants. Being in office for long years, the civil

servants acquire great knowledge and experience and they are consequently able to frame the best administrative policies of the British Government. They supply the data and facts to the minister. According to Laski, an important function of the administrative class is to collect all the material so that a correct decision may be taken. Moreover, once the policy has been decided, it is left to the civil servants to execute it. The Minister has no time to look to the daily routine of

the department. He devotes so much of his time to the Cabinet, parliamentary party, social and other activities that he can in fact learn little about the department except on very broad outlines. Frequently he is shifted from one department to another. He is a layman. The civil servant being an expert and fully conversant with the details and their implications accordingly tends to shape the day-to-day working of the department. According to Ramsay Muir.... "The power of bureaucracy is enormously strong. Under the cloak of ministerial responsibilities it has thriven and grown."6

(ii) Legislative role

It is perhaps in the field of legislation that the role of the civil servants is supreme. The Bills introduced in the parliament are first framed and given shape by the civil servants. "Only an expert can fit the new policy into the old administration; and the permanent official may often have to suggest the Political Minister what can and what cannot be done as well as how to do and what can be done. Thus new policy is very often the actual product, and still more often the result of corrections and suggestions of the permanent civil servants."7 What the minister does is to lay down the broad principles for framing the rules and leave it to the civil servants to prepare the details. The great role of the civil servants in the legislative sphere can be further proved by the fact that most of the rules and regulations concerning the Departments are issued by them under the signature of the minister. This is what is called delegated legislation. It is true that the powers of delegated legislation are exercised in the name of the Minister but, in fact, they are actually exercised by the civil servants.

(iii) Judicial role

The executive goes a step further by establishing administrative tribunals to decide the disputes arising under administrative rules and orders. These courts are often manned by experienced administrators. The procedure of these tribunals is very different from that of the regular courts The aggrieved may not appear in person, be represented

by counsel, or produce evidence; and if the case goes against him, he sometimes has no opportunity to appeal.

It thus appears that the powers of administrative legislation and administrative justice have made the civil servants powerful, arbitrary and free from restraint because both the Parliament and Courts of Law are ousted from the exercise of their respective authority of legislation and dispensing justice.

(iv) Financial role

Fourthly, it is the civil servants who prepare the Annual Financial Statement of the British Government. The taxes to be levied and the expenditure to be met are suggested and drafted by the Secretaries of the Department of the Exchequer. The Secretaries being experts in financial matters prevail upon the Chancellor of the Exchequer who may have little knowledge of

maintaining accounts and calculating mathematically the revenue and expenditure of the Government.

In addition to what has been said above, the civil servants give a lot of help to the ministers in running the departments and disposing of the day to day work of the government. The civil servants formulate answers to the questions put to the ministers in the parliament and supply them the information and material necessary to decide a particular case. Not only that, the civil servants also give their comments and solutions which are generally accepted by the ministers. Sometimes, the speeches to be read by the ministers are prepared by the civil servants. Thus the civil servants exert a vast influence upon the minds of ministers and help them in tackling the various problems concerning the government. They are the reservoir of knowledge and experience and enable the government to maintain efficiency of administration. When the minister is installed, he very often knows nothing about the business of his department. He has his policy and ideas but they are often confused and vague. The civil servants of the upper rank give shape and substance to the vague aspirations and the misty ideas of the ministers. Thus the vital importance of the civil servants in a democratic set up cannot be under-estimated.

Has the civil servant become a bureaucrat?

On account of the pivotal position which the permanent civil servants have come to occupy in the actual administration of England and of the influence they exercise in shaping its course Ramsay Mutrftas4aid-the charge of "bureaucracy" at the doors of the British Government and maintained that in England, "bureaucracy thrives under the cloak of ministerial responsibility." He writes, "In the nature of things the

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minister is at the mercy of his subordinates. The influence of the permanent officials upon the minister is no less than controlling. Though they are not supposed to have any share in directing, 'the affairs of State, they do, in fact, as we have seen above, have a very important share."

But is the charge of bureaucracy laid against the British Government correct? According to Laski, "Bureaucracy is the term usually applied to a system of government, the control of which is so completely in the hands of the officials that their power jeopardizes the liberties of ordinary citizens."8 The civil servants are not the masters of the situations. Of course, the Minister relies for information on the civil servants, seeks their advice and sometimes guidance also, but no minister ever acknowledges any obligation to accept and act upon the views of his subordinates. "It is he, not they, who will have to justify to the cabinet whatever decisions are made, and also bear responsibility for them on the floor of an inquiring, and perhaps censorship, House of Commons, and the last thing that he would surrender would be the right to make the decision himself."9 Lowell in his book The Government of England writes that in England the danger of bureaucracy has disappeared through the particular type of relationship between amateurs and professionals involved in the clear distinction of political from non-political agents. It may be accepted that the ministers are work-ridden and arc not experts, but it does not mean that they are mere tools in the hands of the civil servants. The position of the minister visa-vis his secretaries depends very much on his own personality. If he is man of strong will, he can keep his civil

servants under his control. The history of British administration shows that if a minister has firmly decided to do a particular thing and if he is a man of determined will, he has succeeded in keeping his officers under his control. Of course, some ministers are not interested having no particular policies of their own and want to earn only fame and money as a minister. Such ministers definitely become a tool in the hands of their civil servants. But such ministers also have their own importance in the cabinet. If all the ministers of the cabinet are equally intelligent and strong willed it would be difficult for the cabinet to function efficiently. Consequently, the prime minister has to find out not only ministers who have ambitious plans but also such ministers who may be contented with their secondary position. We should not forget the fact that the role of the civil servants is mostly advisory. The ultimate decision rests with the minister. Even where the civil servants decide, and if any citizen feels

that injustice has been done to him, he can make an appeal to the minister or draw the attention of the government through the representative from his constituency in the parliament. The civil servants cannot afford to be arrogant. They know the precarious position of their political chief and, therefore, do not make mistakes. They are controlled by parliament and are answerable to their political chief. Undeniably, they play a role whose importance it would be difficult to minimise, but they do not dominate the scene. The civil service in England is not irresponsible. The civil service provides the element of efficiency in British administration while the political executive provides the element of democracy and thus the British administration is both democratic and efficient. Hence Ramsay Muir correctly remarks "it would be wholly untrue to say that our system is a pure uncontrolled bureaucracy."10

Should the Minister be an expert?

Sometimes, it has been suggested that only those persons should be appointed ministers who have adequate professional experience related to the work they will be expected to perform. In the absence of such experience and expert knowledge they have to depend upon their subordinates and simply endorse their decisions. Sidney Low remarks, "A youth must pass an examination in arithmetic before he can hold a second class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of 'these little dots' when first confronted with Treasury accounts worked out in decimals." It is argued that in France and other continental states, it has not been uncommon to/ put military men in-charge of the War Ministry. Similarly, in the United States also there is a growing tendency to place on the head of at least a few of the executive departments, e.g., Agriculture and Labour, upon with professional experience related to the work which they will be expected to supervise. '

Of course, it is clear that the departmental head, who is experienced in the work to be carried on under his direction, will look after his work in a better way. But this does not mean that all the ministers should be expected to qualify as experts or technicians. A number of activities are performed simultaneously in the departments each requiring a high order of technical proficiency. It is vain to hope that the Minister-in-Charge or any other man can be a master of

all. Moreover, the minister need not be a master of any because his business is not to do the work of

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the department but to see that the work is properly carried out by the ff To quote Ramsay MacDonald. "The cabinet is not a collection of experts on any one subject. Were that so, its corporate responsibility for government would be unreal. It is a committee of men of good commonsense and intelligence, of business ability, of practical capacity, in touch with public opinion, on the one hand, and by reason of that, carrying out a certain policy, and, on the other, it is the controller of a staff of experts who know the details of departmental work.... The cabinet is the bridge linking up the people with the expert, joining principle to practice. Its function is to transform the messages sent along the sensory nerves into commands sent through the motor nerves. It does not keep the departments going; it keeps them going in certain directions."11 According to Laski, "The best minister is one who can think quickly and systematically over the varied problems put before him. His first quality is commonsense and the second one is his capacity to judge the people."

Moreover, there are strong reasons why the minister should be a layman. A layman sees the department as a whole and in its relation to other departments. His vision is wide and his attitude compromising. The vision of an expert is generally narrow and his attitude uncompromising. When an expert supervises the work of an expert, there is likely to be friction and disagreement because experts easily do not come to an agreement. In order to avoid the danger of friction it is necessary "to have in administration a proper combination of experts and men of world."12 Again, an amateur serves as "the intermediary between the department and the House of Commons, keeping them in touch with public opinion and the other informed on administrative needs and problems."13 A minister must have the interests of the whole public in view. A minister for Agriculture must serve not only the agriculturists but also the miners. These larger interests would be less adopted to serve if he has only a departmental point of view. Therefore, it is always better to have a layman as the head of the department so that he may take not a departmental but a whole view of administration. "We send men into the Treasury", writes Laski, "not because they are trained economists; so also in the Ministry of Agriculture or the Board of Education. They are valuable as administrators less because they have expert knowledge of technical subject-matter but because we believe, on the evidence rightly, that their training will endow them with qualities of judgment and initiative without which no government can be successfully run. But these are exactly the qualities a politician must have if he is to be successful, normally, in the struggle for place."14

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In the end, it may also be asserted that a politician who becomes a minister, may not altogether be a layman. Before becoming a minister, he may have given proof of his ability and intelligence in the parliament. As a member of the parliament, he may have been well-acquainted with those facts and ideas regarding which he is to take a decision as a minister. He may have been well experienced in administrative matters as well. In fact the qualities which make a man a successful politician also go to make him a successful administrator.

References

1. Low, Sydney, Governance of England, pp. 201-202.

2. In Great Britain an Official holds office during good behaviour, or until he reaches the age of sixty. At the option of the official this age limit may be extended to sixty-five.

3. Finer, The Theory and Practice of Modern Government, p. 767.

4. Jennings, Cabinet Government, p. 116.

5. Ramsay Muir : How Britain is governed p. 43.

6. ibid p. 51.

7. Burns, CD., Whitehall, p. 69.

8. Laski, H.J., Parliamentary Government in England, p. 285.

9. Ogg, op. cit., p. 217.

10. Ramsay Muir; op. cit., p. 44.

11. MacDonald, Socialism and Government, pp. 34-35.

12. Lowell, A.L., The Government of England, vol. I, p. 173.

13. Ogg, op. cit., p. 215.

14. Laski, Parliamentary Government in England, p. 293.

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6 THE BRITISH PARLIAMENT

"The British parliament can do everything but make woman a man and man a woman"

—De Lolme

The British Parliament has been called the "mother of Parliaments" whose progeny has spread into every civilized country. It is the oldest, largest, most powerful and most interesting of modern legislatures. Its influence has been worldwide. Now we turn our attention to this august assembly of British intellectuals, statesmen and magnates.

How the Parliament originated and developed into its present form has been explained in the first chapter. We need not repeat the whole history of its growth, but need draw the attention to

certain important facts of its growth which has been more or less spontaneous, slow and sometimes haphazard. It took eight centuries to transform parliament into a governing body elected on the basis of adult suffrage. All these eight centuries had been a period of struggle starting with King John who was made to sign on June 15,1215 the Great Charter, Magna Carta. Thereafter, the parliament continued to struggle for substantial control of finance, legislation and administration. The Revolution of 1688 established the sovereignty of Parliament by reducing monarchy to a subservient position. With the first Reform Act of 1832, began the movement of making the House of Commons a popular chamber by extending suffrage. During the period 1832-1928 there were passed several electoral Reform Acts which gradually granted every male and female of twenty-one (now reduced to eighteen) the right to vote, thus completing the process of democratization of Parliament.1

Sovereignty of Parliament

If we study the history of the growth of parliament one thing would become clear that in its struggle with the Kings the parliament finally

emerged as the supreme authority over the country's affairs and ripened its strength by the eighteenth century. There are three important landmarks in the growth of the sovereignty of parliament. The first was when parliament resolved in December 1648 to bring King Charles I to trial who was subsequently executed in 1649. It was the same parliament which abolished monarchy by an Act and declared England to be a Commonwealth. In 1660, the parliament restored Charles II to the throne on the condition of his co-operation with it. The events of bringing Charles I to trial, abolishing monarchy and declaring England a Commonwealth, and then restoring monarchy clearly illustrate the sovereignty of Parliament.

The second landmark is the Glorious Revolution of 1688 when James II was made to abdicate as he failed to co-operate with parliament. It was the same parliament which invited William and Mary to the throne. Then in 1701 the parliament passed the Act of Settlement which determined the order of the succession to the throne. The Act laid down not only who should reign next but also on what conditions he should reign.

The third landmark is 1785 when younger Pitt became the Prime Minister and the King ceased to choose and dismiss his ministers. The cabinet system now became finally fixed and henceforth ministers came to be chosen and dismissed by Parliament.

These three landmarks in the history of the British Parliament illustrate that the parliament is supreme and unlimited. It has gained substantial control over finance, legislation and administration. It can alter or rescind any charter, agreement or statute, it can cause any official of the government to be dismissed and any judicial decision to be made of no effect. It can bend the constitution in any direction it likes. It can levy any taxes and put an end to any usage and overturn any rule of common law. The power and jurisdiction of parliament, says Sir Edward Coke, "is so transcendent and absolute as it cannot be confined either for persons or causes within any bounds." Blackstone, J.A.R. Marriot and De Tocqueville also hold the same view.

According to Blackstone, "the parliament has the supreme and unlimited power to make all kinds of laws, to sanction them, to elaborate them and to interpret them. It can do all those acts which are possible." According to J.A.R. Marriot, "From every point of view, the British Parliament is the most peculiar and powerful institution. It is the oldest. Its jurisdiction is the widest and its powers are unlimited." According to De Tocqueville, "The British Parliament has full powers to amend the constitution. It is

a legislative assembly and at the same time a constituent assembly too." De Lolme said that, "Parliament can do everything but make woman a man and man a woman."

Dicey's interpretation

Dicey has given an exhaustive description of the doctrine of the Sovereignty of Parliament. He writes, "The sovereignty of parliament is from a legal point of view the dominant characteristic of our political institutions.... It means neither more nor less than this, namely, that parliament thus defined has, under the English Constitution, the right to make and unmake any law whatever, and further no person or body is recognised by the law of England as having a right to override and set aside the legislation of parliament."2 Thus, according to Dicey, the following are the main features of the doctrine of the Sovereignty of Parliament:

(i) That there is no law which the parliament cannot make,

(ii) That there is no law which the Parliament cannot unmake,

(iii) That there is no authority recognised by the law of England which can set aside the law of parliament and declare such a law void,

(iv) That there is under the British Constitution no marked distinction between constitutional laws and ordinary laws,

(v) That the Sovereignty of Parliament extends to every part of the King's dominions.

In brief, the parliament can make any law it pleases. Every Act of the parliament is constitutional. The courts have no power to declare any parliamentary Act unconstitutional. If a measure is contrary to the constitution as it has hitherto existed, the constitution simply becomes something different in that regard. No one can allege that a particular Act of parliament is ultra vires. The word of parliament is law, however much it may cut across existing constitutional arrangements. The courts will enforce whatever law has been enacted by the parliament. The only way of getting rid of it is to procure its repeal by another parliament Act. Thus, the American practice of judicial review has not gained any foothold in England which still holds to the principle that whatever parliament legislates is law and remains such until repealed by parliament itself. The sovereignty of the parliament is absolute in its negative and positive aspects.

To illustrate the Sovereignty of Parliament, Dicey quoted the Act of Settlement, Act of Union, Septennial Act and Acts of Indemnity. The Act of Settlement, 1791, made fundamental changes in the law of

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succession to the throne and debarred certain people from the throne who could succeed to it under certain conditions. The Septennial Act, 1716 extended the life of parliament from three to seven years. This was a case of an existing parliament extending its own life by four years. In 1936 the parliament passed the Abdication Act and laid down that the King cannot marry against its will. By the Indemnity Acts passed from time to time the parliament legalised the Acts which were illegal at the time of commission.

Limitations on Parliamentary Sovereignty

The foregoing remarks about the Sovereignty of Parliament may lead the students to wonder what protection the individual citizen in England has against infringement of his personal liberties and what is there to prevent parliament from passing arbitrary acts? The age of royal despotism is gone but what about this new despotism of an omnipotent parliament? Certainly the parliament has legal power to make or unmake any law but a legal truth may be a political untruth. Jennings rightly pointed out. "It cannot be said that it is dictatorship. At worst it is dictatorship for a term of years... but dictators who at short intervals have to beg the people for their votes .... Parliament cannot govern. It can do no more than criticise."3 There are many moral and political checks which limit the Sovereignty of parliament.

(i) Moral Limitations: The first check is a moral check. The parliament will not make any act which violates the moral conscience of die British as people. "If a legislature decided," as Jennings writes, "that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; that legislature must go mad before they could pass such a law and subjects be idiotic before they could submit to it.'4 In fact, no legislature can even think of such a legislation. Democracy is a government by consent and no democratic government should act against the moral will of the people. If it does, the people will take revenge.

It is true, as Dicey says, that law is law whether it is moral or not. It is law because it has been enacted by the parliament. Moreover, the supremacy of parliament is not mentioned in any constitutional document. It is the mere expression of custom and carries with it the acquiescence of the people whose will is supreme and sovereign. We should not talk of legal fiction but of political truth and the political truth is that the British Parliament is bound in the exercise of its supremacy by the customs and moral codes of the people.

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(ii) Rule of Law: Another significant limitation on the legal supremacy of Parliament is the Rule of Law. We have already explained the concept of Rule of Law. The Rule of Law means that no authority can act arbitrarily and deprive the British citizens of their fundamental liberties. The Rule of Law is closely related to the Supremacy of Parliament. To quote Barker, "Sovereignty of

Parliament and Rule of Law are not merely parallel; they are also interconnected, and mutually inter-dependent. On the one hand, the judges uphold and sustain the Sovereignty of Parliament which is the only maker of law that they recognise (except in so far as law is made, in the form of 'case law', by their own decision); on the other hand, parliament upholds and sustains the rule of law and the authority of the judges, who are the only interpreters of the law made by parliament and of the rest of the law of the land."5

(iii) Public Opinion: Dicey himself recognised the purely legal aspect of the doctrine of the Sovereignty of Parliament and pointed out that this legal concept is operated within two limits, external and internal. The parliament will not pass a law which will be opposed by the people and so is restrained externally from doing those acts which will lead to mass opposition. Laski confirms "No parliament should dare to disfranchise the Roman Catholics or to prohibit the existence of Trade Unions in Great Britain.

(iv) Statute of Westminster: The Statute of Westminster, 1931 has also limited the Sovereignty of Parliament, which inter alia provides that no Act of British Parliament passed after 1931 is to extend to a Dominion unless the Act expressly affirms that the Dominion concerned has requested and assented to it. Every Dominion is completely independent to pass any law even though it may be against a law of England.

(v) International Law: Then there is the International Law which has limited the jurisdiction of the parliament. In West Rand Gold Mining Coy. vs. The King, it was decided that International Law is a part of the municipal law of the land and, therefore, the parliament cannot enact any law repugnant to the principles and practices of International Law.

(vi) Judge made law: Judicial interpretations and judgments of the Courts become precedents in due course and begin to be followed by the judges of the coming generations. Ultimately such decisions known as judge made laws assume the shape of laws. Such laws are not changeable by the Parliament.

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(vii) Delegated Legislation is another inroad on the Sovereignty of Parliament. Parliament being overburdened with work and also holding sessions for less than half a year permits other bodies to share in law-making. The orders in Council issued to meet emergencies during the absence of Parliament have the force of laws.

The fact, therefore, is that although at first glance the parliament may seem to enjoy unlimited powers in law, but in practice it is bound by tradition, International law, Statute of Westminster and public opinion. Ultimately, the legal sovereign derives its authority from the political sovereign, the people. Thus the ultimate sovereignty in England lies with the people. Thus in to days' practical politics parliamentary sovereignty is a political myth. It remains only a representative avenue of debate rather than controller of the governance of country.

The House of Commons (HOC)

The House of Commons, says Sidney Low, "is the most remarkable public meeting in the world. Its venerable antiquity, its inspiring history, its splendid traditions, its youthful spirit and energy, the unrivaled influence it has exercised as the model of Parliament, its inseparable with the vitality of English nation, its place as the visible centre and the working motor of our constitution, all this gives it a unique place."6 Of the two houses of the Parliament, the House of Commons is indeed the most important and powerful chamber. "When," once wrote Spencer Walpole, "a minister consults parliament, he consults the House of Commons; when the Queen dissolves parliament, she dissolves the House of Commons. A new parliament is simply a new House of Commons."7 So, we shall begin our study of the parliament with the House of Commons not only because of its primacy but also because the position, functions and problems of the second chamber, the House of Lords, cannot be properly understood until we understand the nature of the House of Commons.

Organisation

The House of Commons is purely an elective body and it has always been so. In earlier times, it included the spokesmen of the land-holders, merchants and guild men and so it continued until hardly more than a hundred years ago. Then in the course of the nineteenth and twentieth centuries parliamentary suffrage was by stages extended to the general mass of the people and the House of Commons became a popular chamber in the real sense of the term. The electorate became numerous

and heterogeneous and the functional groups were replaced by territorial groups.

The membership of the House is raised after every ten yearly census. Thus it was raised from 630 to 635 in 1974 and then to 650 in 1983. The House of Commons till 1992 election consisted of 650 members8—523 from England, 38 from Wales, 72 from Scotland and 17 from Northern Ireland. In April 1992 elections the House of Commons consisted of 651 members. In May 1997 elections the House consisted of 659 members. They are now elected from single-member constituencies arranged on a geographical basis. The average number of voters in a constituency is 75000. The constituencies are in all casv counties, boroughs or sub-divisions thereof. The constituencies do not cut across county or borough boundaries. They are commonly contained wholly within a single county or borough. Every constituency has a distinct name, e.g., the borough of Bradford, the Central Division of Portsmouth. The delimitation of constituencies takes place upon each general election. There are as many single membered Constituencies as there are seats in the House of Commons. Every man and woman of the age of 18 or above is now entitled to vote. Minors, criminals, idiots, aliens, bankrupts and lunatics are excluded from suffrage. All British subjects of either sex who are of age are eligible for election, provided they are not minors and lunatics, bankrupts and criminals. Clergymen of the three historic churches, peers of England, Scotland and Wales or persons holding contracts from the government and holders of office under the Crown are debarred from seeking election. In short every person, man or woman, who is of eighteen years of age and is not otherwise disqualified, may cast a vote and seek election after attaining age of 21. He can contest from any constituency.

We need not discuss how the election campaign is carried in England but need only point out some of its significant features. The election fury lasts hardly a fortnight or so; nominations are made on the eighth day after the date of the royal proclamation summoning a new parliament and polling is held on the ninth day after the nomination. Polling takes place throughout England on the same day and is finished in one day. The parliamentary laws set a limit on legal campaign expenditures which was fixed at £ 450 plus two pence per registered voter in county constituencies and one and a half pence per registered vote in borough ones. This limit is subject to change from time to time. All campaigning expenditures must be made through an authorized agent of the candidate. After the election is over a sworn statement of all disbursement must be rendered.

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Tenure of the House

The life of the House of Commons is five years unless sooner dissolved by the King. During emergency, its life may also be extended. The House of Commons elected in 1910 continued to function till 1918; and likewise the one elected in 1935 pulled on till 1945. Under a rule dating from 1623 a member cannot resign his seat as, according to the ancient theory, service in the House of Commons is regarded as not a right but duty. If a member wants to resign, there is a roundabout way which consists in procuring appointment to some public office. Though there are many such offices but the one usually sought for the purpose is the Stewardship of His Majesty's Three Children, Hundreds of Stoke, Des borough and Burnham. The member who wishes to resign his seat applies to the Chancellor of the Exchequer for this office and his request is usually granted. The appointment to the post of Stewardship results automatically in the vacating of the seat in the House of Commons, because it is a paid office under the Crown. The member after getting the appointment resigns the office of Stewardship.

Ramsay Muir has at great length discussed the existing method of election and criticised it for its defects. He concludes that the existing method is in the highest degree, unjust, unsatisfactory and dangerous. It disfranchises a large majority of electors, encourages and compels a sort of dishonesty in both the elector and the candidate, distorts the national verdict and produces extravagantly unjust results. Men of distinction who could be most suitable for parliamentary work are kept out. However, without going into the merits of these defects and evaluating the British election system it need only be said that it is too much to ask of an electoral system that gives universal satisfaction.

The Speaker

After the, general election is over the new House of Commons meets as soon as possible - the interval between the election and the assembling of the new parliament hardly exceeding two or two and a half weeks. The first task which the new House of Commons does is to elect the Speaker. Now we shall study the institution of Speaker ship in England.

The institution of Speaker ship rose very early in English history when the House of Commons was merely a petitioning body of recognised spokesmen. In those days (it is difficult to give any

precise date) the leader of those spokesmen used to carry to the King the wishes of the House. He alone had the right to speak for his fellow members and hence his name, Speaker. That function of the Speaker is now obsolete, though he still remains the official spokesman of the House.

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The first Speaker known to have been chosen as such was Sir Thomas de Hungerford, elected in 1377.

In earlier days, the Speaker was appointed by the King and long after the office became nominally elective the usage was for the sovereign to "name a discreet and learned man" whom the House proceeded to elect. Today the speaker is not named by the King, but the choice of the House is still subject to approval by the Crown though the approval is merely formal. The Speaker is elected at the beginning of each parliament by and from among the members of the House. If the Speaker of the outgoing parliament is still a member of the House and is willing to be re-elected, he is usually re-elected. A change of party situation in the House since he was originally elected makes no difference. The election of the speaker is unanimous. His constituency is not contested by any party when general election takes place. Only on two occasions the Labour Party put up candidates against the speaker but they suffered crushing defeat. This is an eye opener to the parties that a convention is not to be flouted. So it is said, "Once a Speaker always a Speaker." If a new man is to be found, the selection is usually made by the Prime Minister after making certain that the selection will be acceptable to at least the government majority in the House. The opposition does not by convention oppose the nominee of the government who is unanimously elected by the House. For instance in 1945, when the Labour Party came into power, it did not oppose the reelection of Colonel Clifton Brown, who had been the conservative nominee in 1943. Hence the endeavour is to elect the Speaker unanimously and to secure general respect for him. The speaker receives handsome salary of £ 40340 a year and is provided free residence inside the Westminster Palace. John Wakeham is the present speaker.

Powers and Functions of the Speaker

The Speaker is the presiding officer of the House of Commons and as such his functions are many and arduous. We shall consider his functions as follows:

(i) To defend the House against itself: The chief function of the Speaker is to defend the House against itself. He presides over all the meetings of the House except when it sits as a committee of the whole. He recognises the members and as such decides who shall have the floor first. The members address their speeches and remarks to the chair. He sees to it that the proceedings of the House are conducted with decorum. He has wide powers to check disorder, irrelevant speech and

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un parliamentary language and behaviour. It is a rule that when the Speaker stands, a member must not remain on his feet. If the Speaker finds signs of disorder he says a few words by way of

admonition or appeal and the passion of members are cooled down. In case of serious disorderly behaviour by a member—a very rare case the Speaker may ask him to withdraw from the chamber. If he does not withdraw the Speaker will "Name" the member which means suspension from attending the future meetings. The Speaker may even adjourn the House if disorder persists. There is a remote possibility of such disorder. Comparing British speaker with President of French Chamber of Deputies Morrisoh remarked "....The President sat in his place ringing the bell vigorously and at length. It almost seemed that the louder he rang the bell and the longer he rang it the worse the disorder became. I could not help thinking with some British parliamentary pride of Mr. Speaker in the House of Commons."9

(ii) Interpretation of rules: The Speaker interprets and decides the law which regulates the procedure of speech of all members in the House of Commons. He sees that the debate centres on the main issues before the House and members do not indulge in irrelevance. He gives his rulings on the rules of the House. His rulings are final; "the chair, like the Pope," humorously replied Speaker Lowther when asked how errors that he made could be rectified, "is infallible." Of course, the Speaker shall make his rulings in such a fashion that the members will have complete confidence that they represent not the Speaker's own will imposed upon the House but rather the will of the House itself as embodied in its rules and precedents.

(iii) Announcement of results etc: The Speaker puts questions and declares results of actual voting which takes place on various legislative measures introduced in the House of Commons. He can prevent the putting of the question to a vote when moved by a member of the majority until he is personally satisfied that the minority has been given due opportunity to debate its views. He also decides whether to admit or rule out amendments. He has also the power of decision on the admissibility of question.

(iv) Certification of Money Bill: He is empowered to certify that a bill is a money bill. This power was given to him by the Act of 1911. Money bills can be introduced only in the House of Commons.

(v) Allocation of Bills and appointment of Chairman of Committees: He decides how Bills are to be allocated between the various standing committees. He also appoints the chairmen of standing committees, whom he chooses from the panel of the chairmen.

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(vi) Casting Vote: He is authorised to give his casting vote in case the votes of the House are equally divided. But he tries to give his casting vote in such a way that it maintains the status quo, upholds the established precedents and previous decisions of the House and avoids making himself personally responsible for bringing about any change. In fact he maintains an attitude of neutrality and impartiality both in and outside the House of Commons.

(vii) Power of Kangaroo Closure: Since it is not possible for the House to discuss all the Bills clause wise because of very little time at its disposal, consequently when the pressure of business is very much excessive, the Speaker is empowered to select from among the many Bills introduced and amendments tabled, the most important ones for discussion and put them before

the House to speed up legislation. This selection of important Bills by the Speaker is called the method of Kangaroo-closure in England.10

(viii) Protection of Privileges: The Speaker protects the privileges of the House from encroachments. When ministers tend to encroach upon the privileges of members, or refuse to answer questions or do not give sufficient information, it is to Mr. Speaker that the members appeal to safeguard their privileges. He protects the House against contempt. Thus the Speaker is the custodian of the privileges of the House and is the guardian of its dignity.

(ix) Special Sessions: He is authorised to summon a special session of the House of Commons if some crisis occurs when Parliament is not in session. He can convene the session on the request of the Prime Minister, the leader of the opposition or a specified number of members.

(x) Representative of the House: The Speaker is the only constitutionally recognised representative of the Commons. In this capacity he issues a number of warrants in its name. He is the head of the Speaker's Department of the House of Commons. He executes its orders and decisions. The members of the House have access to the King only through the Speaker. In the name of the Commons he conveys thanks. He indeed speaks for the House and not to it. In the words of Morrison, "The Speaker is also the ceremonial head of the House. He is in fact a member of parliament. He is available to members who seek advice or who are anxious to remedy what they believe to be a grievance."11 Whenever any member dies or resigns his seat from the House it is the Speaker who declares his seat vacant and issues an order for holding bye-election to fill that seat

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In all of these activities the Speaker refrains scrupulously from any display of personal sympathies or partisan feelings. He is an impartial arbiter in the proceedings of the House. He holds members sitting on both the Treasury and opposition benches in equal respect. According to Buirs, it is the function of the Speaker to protect the rights of the members of the House. He acts impartially like a judge of the Supreme Court. As Lowell says, "He is not a leader but an umpire." From the moment he takes the chair, he ceases to be a party man. He discards his party colours and attends no more party meetings. Like an umpire he is to see that game of politics is played according to rules and nobody plays foul. He maintains an attitude of neutrality in politics and this neutrality is not a fiction but a reality, as is shown by the fact that the Speaker is never opposed for re-election in his own constituency. "The endeavour of 150 years," writes Dr. Finer, "has been to make the Speaker the objective embodiment of the rules and laws of the Commons, purgating him from the last milligram of partisanship."12 In this regard he stands in sharp contrast to the American Speaker who is a party man in the House as well as outside it.

Comparison with the American Speaker: The following points may be noted:

(i) The Speaker of the American House of Representatives is a party man. He belongs to the majority party in the House. The British Speaker, on the other hand, is a non-partyman. After his election to the chair he severs all his relationship from his party and acts impartially.

(ii) The American Speaker openly favours his party in the House of Representatives. He is guided by his party interests. On the other hand, the British Speaker is an impartial person. He is not related to any party. He speaks the least after his election as the speaker.

(iii) The British Speaker does not take part in the debates within the House, nor does he cast his vote. He only exercises a casting vote in case of tie and that too according to the established precedents and rules of the House. On the other hand, the American Speaker takes part in the debates, casts his vote and exercises his casting vote not impartially but as dictated by the interests of his party.

(iv) The decision of the British Speaker is final. There is no appeal against it. But the decision of the American Speaker is not final. An appeal against his decision can be made to the House. The House can reverse his decision.

(v) The office of the British Speaker is not contested. The Speaker is re-elected. "Once a speaker, always a speaker" is the famous maxim

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in U.K. In general elections too, the opposition does not put up a candidate against him. In America, the office of the Speaker is contested. Both the parties put up their candidates. There is no question of his being elected unopposed. A party victorious at polls is apt to get elected its own man as the Speaker.

(vi) The American Speaker does not enjoy the prestige and honour which a British Speaker has, since he is a party man.

(vii) The American Speaker does not have the power to decide as to whether a Bill is a Money Bill or not. The Parliament Act of 1911 has given such a power to the British Speaker.

(viii) The British Speaker possesses the full disciplinary authority over the members of the House. As such he can name a member for any number of days. The American Speaker cannot expel a member who is rowdy and does not obey the chair. The House can take final disciplinary action against a recalcitrant member.

(ix) The British Speaker can recognise the member, i.e., he can ask any of the aspirant speakers to speak. The American Speaker was deprived of this power in the 1910-11 revolt against him. Now, this is the privilege of the House itself.

(x) The British Speaker's authority is final regarding the interpretation of the rules of the House, but in U.S.A. final authority in this matter rests with the House itself.

(xi) In U.K. leadership of the House vests with the Prime Minister whereas in USA the Speaker leads the House.

(xii) The British Speaker appoints Chairmen of Standing Committees whereas the Committees are constituted by the selection committee. The American Speaker prior to 1910-11 possessed the power of appointing chairmen as well as members. The latter was deprived of this power after revolt against speaker in 1910-11. Both the speakers enjoy identical powers as well viz., presiding over the House, putting the question to vote, announcing the result of the vote, deciding the point of order, protecting the privileges of the members, issuing the warrants in the name of the House, issuing writs for elections, heading the Administrative, department, checking un parliamentary remarks and serving as channel between the House and the Chief Executive.

No wonder then that the Speaker ship in England is regarded an office of great honour and prestige. The Speaker is an able, vigilant, imperturbable and tactful person. In the official order of precedence he ranks next after the Lord President of the Council, which makes him the seventh subject of the realm. He receives a liberal salary, has an official

residence in Westminster Palace and gets both a pension and a peerage when he retires.

Committees in the House of Commons

Democracy has brought about a revolutionary change in the nature of laws. In a non-democratic country, laws are the commands of the rulers and these are made without any reference to the people. In a democracy, on the other hand, laws are expressions of the will of the people which is manifested in the Parliament by their elected representatives. The volume of legislation also has increased with the growth of social welfare legislation. Naturally, therefore, every legislative body makes use of committees which do a large part of preliminary work. The use of committee system in order to save time and gain in efficiency has become a phenomenon with the legislative bodies of the world. The British House of Commons is no exception to this rule. The British committees employed in the House of Commons are of five kinds: (i) The Committee of the Whole House; (ii) Select Committees on public bills; (iii) Sessional Committees on public bills; (iv) Standing Committees on public bills; and (v) Committees on private bills. A brief description of these committees is as follows:

(i) The Committee of the Whole House: The Committee of the Whole House is the first in importance. It consists of all the members of the House of Commons but is distinguished from the House in the following respects:

(a) The Committee of the Whole House is presided over not by the Speaker but by the Chairman of the Committee (or his deputy), who sits, not in the Speaker's chair, but in the clerk's chair at the table.

(b) The mace, which is the symbol of authority of the Speaker, is placed so long as the committee is in session, under the table:

(c) The rules of procedure in the committee are relaxed; a member may speak several times on the same question; motions need not be seconded; discussions cannot be terminated by a motion;

and any matter which is voted upon can easily be opened up for reconsideration. Procedure is thus less formal and rigid than in the House as such.

When the work of the committee is finished, motion is made that the committee "rise and report." The Speaker then resumes the chair and the chairman reports the committee's action. This is, in other words, the House reporting to itself. Then the House with the Speaker in the chair proceeds to adopt its own recommendations.

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The Committee of the whole House may meet for four distinct purposes; (i) the Ordinary Committee of the whole House on a Bill; (ii) the Committee of the whole House on a Money Bill; (iii) the Committee of Supply; and (iv) the Committee of Ways and Means. The first committee meets when the House by a resolution passes that any ordinary Bill should be sent to the Committee of the Whole House rather than to a Standing or Select Committee. However, the Committee of the whole House on an ordinary Bill is rare as now the ordinary bills mostly are referred to one of the Standing Committees. Important matters invariably considered in the committee of the whole House include the estimates of expenditure and of revenue. When the business in hand relates to expenditure, the committee is known as the Committee of the Whole on Supply or simply the Committee of Supply; when it relates to revenues, it is styled the Committee of Ways and Means.

(ii) Select Committees: Select Committees are appointed to consider and report on specific subjects on which legislation is pending or contemplated. They collect evidence, examine witnesses and in other ways obtain necessary information. These committees consist, as a rule, of 15 members and are appointed from time to time as the need arises. As soon as they have done their job, they go out of existence. Thus they are temporary in nature. The findings of these committees are not binding. Each committee chooses its chairman and each keeps detailed records of its proceedings. It may be noted that a select committee has no power to require the attendance of persons or the production of papers or records unless it has been expressly so authorized by the House. The members of the committee are appointed by the House. The number of Select Committees is usually small, something like a score are provided in the course of a session. However after acceptance of John Stevas proposal in June 1979 House of Commons creates every year 14 specialised select committees. Each of these Committees consists of 9 to 11 members who are appointed by the committee of selection and formally approved by the House. These committees have added to the effectiveness of the House of Commons and accorded greater role to the backbenches.

(iii) Sessional Committees: These Committees are appointed for single session to deal with certain specified matters, such as examination of petitions. The Committee of Selection is a Sessional Committee which consists of 11 members and is named by the House itself at the beginning of the session. Others of the type are the

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Committee on Standing Orders, the Committee on Public Accounts, the Committee on Privileges and the Committee on Public Relations. Generally eight or ten sessional committees are created for an entire session.

(iv) Standing Committees: It is the Standing Committees which are by far the most important ones and appear to be "miniature legislature." In 1882, two standing committees were appointed to deal with: (1) law, courts of justice and legal procedure, and (2) trade, agriculture, fisheries, shipping and manufactures. These Committees were known as Grand Committees. In UK they are general purposes committees. In 1907, the number of such committees was raised to four. Each committee consisted of 60 to 80 members and all bills except money bills, private bills and bills for confirming provisional orders were referred to one of these committees unless the House directed otherwise. In 1919, the number was raised from four to six. In 1925, the number was reduced to five and in 1947, to "as many as shall be necessary."

Each committee consists of members from 30 to 50 with the provision that the Committee of Selection after conference with the government and opposition leaders might add from 10 to 35 such additional members who are specialists and experts in the subject which is the substance of the bill, to serve during the consideration of that bill only. The Committees are not named as in other legislatures by subject matter but are distinguished only by a letter of the Alphabet: A, B, C, D. However Scottish Committee13 is named after the subject matter i.e. Scottish Committee to deal with Scottish affairs. Likewise Welsh committee considers the annual report for Wales and other matters concerning that part of the country.14

The members of the standing committee are appointed by the Committee of Selection. The chairmen are appointed by the Speaker from a chairmen's panel consisting of not less than ten persons nominated by the Selection Committee. Members of all the parties are included in the committee. Before 1919 no Standing Committee could sit while the House was in session but now that restriction has been removed and committee can sit while the House is in session.

Every bill goes to Standing Committee. The committee thoroughly scrutinizes the bill and evaluates it. It holds open hearing and lakes evidence. All information which is needed is supplied by the Minister-in-charge of the bill. The opposition supplies the contrary information. After having examined the bill thoroughly the Chairman of the committee reports back the bill to the House.

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(v) Committee on Private Bills: The Committee on Private Bills in the House of Commons consists of four members who are appointed by the Selection Committee whereas in House of Lords each such Committee consists of five members. The number of committees depends on the number of bills to be examined. The membership of this committee is also not very large. The members of the committee have to declare that they have no personal interest in any way in the bill before the committee. They have to make impartial examination of the bill. The procedure is somewhat akin to judicial procedure. These Committees report to the House whether or not the Bill may be passed.

About the Committee system in England it has been said that the committees of the House of Commons are not small expert bodies undertaking special examination of the bills and possessing the power of life and death over the bills. Every bill must be reported back and the House jealously guards its responsibility of making laws. It has not surrendered its power of law-making to the committees. Its committees are only auxiliaries, "the mere accessories of the legislative and critical machine." The committee system does not bring expert scrutiny to bear upon the bill. The members of the committee are constantly changing. They have no permanence or individuality. The standing committees do not conduct public hearings and take no evidence. Thus the committees in England do not overshadow the House of Commons.

Powers and Functions of the House of Commons

The House of Commons is the most important organ of the British Government. At present, it enjoys the highest powers in the legislative, financial and executive fields of the administration of England. Since 1911 the House of Commons has assumed final powers of law-making which are firmly shared with the House of Lords. As we have said earlier, the House of Commons is the Parliament. "When a minister consults Parliament, he consults the House of Commons; when the Queen dissolves Parliament, she dissolves the House of Commons. This is merely an epigramatic way of saying that the leadership, power and prestige of the House of Commons are such that for many purposes Parliament and the House of Commons are one and the same thing. The main functions and powers of the House of Commons may be explained as under:

(i) Legislative Functions: England has a unitary form of government and there is only one legislature, one executive and one judiciary for the whole of the land. The House of Commons being the popular chamber enjoys vast powers in the field of law-making. As we

have seen in our study of Parliamentary Sovereignty, there is no law which the House of Commons cannot pass. Formerly, its powers of law-making were co-ordinate with those of the House of Lords, but the Parliamentary Act of 1911, as amended in 1949, has greatly curtailed the powers of the Lords and has made the latter subordinate to the Commons. Now the final word regarding all legislative work of the Government lies with the House of Commons, it enjoys supreme authority in the field of law-making. Though it by itself can do nothing as the laws are made by the King, Lords and Commons but the powers of the Lords and the King are subject to significant limitations. House of Lords can delay a non-money bill for more than a year and the king cannot withhold his consent. Thereby, not only the initiative but also the decision with regard to all bills have now been left to the House of Commons. Its power over legislation is very impressive.

(ii) Financial Powers: The House of Commons wields great authority over the nation's purse. It was through the control of the nation's purse that the House of Commons rose to supremacy. According to the Act of 1911 all money bills must originate in the House of Commons. The powers of the House of Lords over the money bills are very much limited. At the most it can delay the money bill for one month. If during this period the Lords do not pass the bill, the

House of Commons sends it to the King which becomes an Act on receiving his assent. In short, the power of the House of Commons over money bills is complete and decisive.

In addition to it, the House of Commons exercises a great control over the finances of the Government. It discusses and then passes the Budget. The Lords are not empowered to override the Bill of the House of Commons which is the final authority to sanction all expenditure and taxes. In short, the House of Commons must put its final seal before any taxes can be raised and expenditure made.

(iii) Control over the Executive: The third great function of the House of Commons is to control the executive. England has a Parliamentary form of government and so the executive is responsible to the popular chamber of Parliament. The council of ministers can remain in office so long as it enjoys the confidence of the House and it must resign whenever the policy of Government proves fundamentally unacceptable to the House. Therefore, "an obligation rests upon the House of Commons to exercise a day-to-day control over the ministry in such a way that fundamental disagreement between the executive and the representatives of the people will be clear and manifest." The House

of Commons maintains its control in two ways; (i) by seeking information about the actions of Government, and (ii) by criticism.

The members of the House of Commons can put questions to the Government which the ministers are obliged to reply. At the commencement of the sitting of the House, one hour four days in a week is devoted to answering questions by the ministers which have been put to them. It is called the "Question hour." The purpose of putting questions is mostly to bring the work of the various departments under public scrutiny. The number of questions put to the ministers at every session runs nowadays into thousands; and question hour is an interesting portion of every daily sitting. It is the most effective check on the day-to-day administration. As an English authority testifies, "There is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received."15 The device helps greatly, as Lowell observes, "not only to keep administration up to the mark, but to prevent growth of a bureaucratic arrogance which happily is as yet almost unknown in England."16

The House of Commons is not only a law-making body but is also a debating assembly. The most important function of His Majesty's opposition is to criticize administration and policy making. The best opportunity for the opposition to criticise the governmental policy as a whole is when the House debates the reply to the King's speech. Then the opposition criticizes the government's policy and puts the ministry on the defensive which has to reply to the criticism of the opposition and defend the government's policy.

Again a member may move a motion of censure or motion of general want of confidence in the ministry. Motion for censure is usually aimed at an individual minister. But the criticism of an individual minister under the theory of collective responsibility amounts to the criticism of the whole ministry. Then there may be moved a motion of general want of confidence in the government. This is an extreme procedure, but it is sometimes resorted to. The House of Commons, therefore, possesses wide opportunities for control of the Executive. That such control is needed, is clear because the executive

has extended its functions to the extent that they touch the very bones of individual lives. Finer remarks, "The government departments are virtually forty great monopolies; they need a strong force outside them to shake them up."17

Law-making Procedure

In the early stages of its history, it may be recalled, the House of Commons had no power to make laws. It merely petitioned the Crown to make laws who then framed and enacted laws at its own discretion based upon the petitions of the House. Sometimes, the laws made by the Crown turned out to be very different from what had been asked for. This led to a demand by the House of Commons for a share in law-making. Gradually the demand was yielded to until at last, by the fifteenth century the two Houses became full-fledged legislative bodies, and developed a parliamentary procedure of law-making, giving each bill three readings referring it to a committee, and voting it and sending it to the King for his assent.

Before we describe the existing procedure of law-making in England, we may just refer to the various kinds of bills that appear before the House. Bills are usually divided into Public Bills and Private Bills. Public Bills are of general application and pertain to the whole public and to the larger parts of the kingdom. On the other hand, private bills are of local or private interest which concern a specific person, corporation, group or local area. In other words, they are not public concern. Public Bills may be sub-divided into Government Bills and Private Members' Bills. A Government Bill is one which is introduced on behalf of the government by a minister. A private member's bill is introduced by a member of the House who is not a member of the government. Public bills may be either money or non-money bills. First we shall describe the procedure of Public non-money bills.

Public Bills: (non-money Bills): The process of converting a public bill into an Act of parliament is long and intricate. It has to go through various stages before it can be enacted into a law. The various stages through which every public bill has to cross may be explained as under:

(i) Bill drafting: Before the parliament the bill comes in a fully drafted form. The bill must be laid down in exact words and be complete in every respect. The first step, therefore, in introducing a bill is the drafting of the bill itself. If it is a private member's bill, it is drafted by the member himself or with the help of anyone whom he may employ for the purpose. If it is a government bill, it is prepared by public draftsmen in the office of the Parliamentary Counsel to the Treasury.

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The minister in whose province the bill falls, first prepares a rough outline showing the main features of the project. Then the cabinet discusses the proposal and if it accepts the proposal a memorandum is sent to the office of the Parliamentary Counsel where the skilled draftsmen work up the measure in detail. The draft bill comes back to the cabinet which gives it a final look over and the bill is ready to be carried to the parliament.

(ii) Introduction and first-reading: When the bill has been finally approved by the cabinet, it is introduced by the minister concerned. There are two methods of introducing a bill—either on a motion or on a written notice. Under the former procedure the minister may ask for leave to introduce the bill. The minister makes a speech explaining and defending the bill's contents. After debate over the motion, the House votes whether to grant or withhold the desired permission. Usually permission is granted because refusal would mean a defeat for the ministry. However, the practice of introducing a bill on motion has fallen into disuse and the present method is to introduce it on written notice. Under this method the introducer gives notice of his intention to bring a bill, which notice appears on the "order of the day." On the appointed day the Speaker calls the name of the introducer to present his bill at the clerk's table. The clerk of the House reads out the title of the bill. Sometimes only a "Dummy Bill" is placed on the table of the clerk. As soon as the clerk has read the title, the introduction of the bill, along with its first reading, is over. It may be noted that in the stage of introduction and first reading there is no debate and discussion. The bill thereafter is printed and awaits its turn to be called up for the second reading.

(iii) Second reading: The third stage in the life of the bill is the second reading stage. On a day fixed in advance by an order of the House, the member-in-charge of the bill moves that it "be now read a second time." He explains the bill and its necessity and defends it giving a long speech. Some member from the Opposition criticizes and attacks it and moves that the second reading should not be proceeded with or that this bill be read a second time this day six months." Then a general debate follows in which members of both sides of the House participate. After the debate is over the motion is put. If the will of the opposition prevails, the bill perishes. But there is little chance of a government bill being defeated. It almost comes through. However, a private member's bill is likely to be killed at this stage unless supported by the government. The important thing to be noted is that there is no detailed

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discussion of the bill at the second reading stage. The debate at this stage is confined to the aims, principles and larger provisions of the bill. No amendments are moved and no votes are taken upon the clauses. The aim is only to discuss the bill as a whole and in a general way. Discussion of individual clauses is out of order. The question before the House is whether it desires legislation of the proposed type or not.

(iv) Committee stage: Having passed its second reading the bill enters the committee stage. It goes to one of the five standing committees as directed by the Speaker unless the House directs it to be sent to a committee of the whole on grounds of its exceptional importance or highly

controversial nature. Sometimes, a bill may be referred to a select committee which does not replace, however, the reference to a standing committee but is a step added to the normal procedure, because after being returned by the select committee the bill goes to the committee of the whole or to one of the standing committees. In the committee the bill is discussed in all its details. Every clause is separately taken, discussed, amended, accepted or rejected. Discussion is generally of a very restrained character. The government maintains with persistence its guiding hand through the committee stage. The minister "must guide the bill through committee with tactful and, if necessary, forthright firmness in respect of principles, and with the appearance of amiable resignation and broad-mindedness in connection with unimportant detail." The procedure before the committee is informal. A member may speak any number of times on the same clause. Even a clause voted upon may be reopened for discussion. After the committee has examined the bill in all its thoroughness, it prepares its report which is submitted to the House by the chairman of the committee.

(v) Report stage: In the report stage the House discusses the bill as reported by the committee. The amendments proposed by the committee are debated and alternative amendments offered. The Bill is read clause-wise, the report of the committee on every clause is taken up and if the committee has proposed any amendment to a clause that amendment is discussed. The members may propose their own amendments. The report stage is a lengthy one as every clause is discussed and voted. If the government considers the bill of an urgent nature, it may resort to motions for closure. Closure may take one of the following forms:

Simple Closure: Under this closure the member may move the motion that "the question be now put." The Speaker may accept or

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refuse the motion if he feels that any rule of the House has been violated or the opposition has not been given a fair chance to express itself over the bill. If the Speaker accepts the motion and if the motion is carried by not fewer than a hundred votes, the debate is closed and the matter under discussion is voted upon.

Guillotine: This is a closure when the various parts of the bill are put to vote on the expiry of the allotted time for those parts. This kind of closure involves allotting a certain amount of time to various parts of a measure or to its several stages and taking votes at the appointed time even if the important aspects of the bill have not been discussed.

Kangaroo Closure: Under this form of closure the Speaker is empowered to select those clauses and amendments which he thinks most appropriate for discussion. The Speaker has the power to decide which amendments at the Report Stage may be debated when several have been submitted to the same clause. The practice of missing some amendments is called the Kangaroo Closure since the Speaker leaps over some amendments. Kangaroo may be used separately or in conjunction with Guillotine.

(vi) Third reading: When all the clauses of the bill have been voted upon in the report stage, the bill enters the third reading stage. This is the final stage in the House of Commons. At this stage

there is again a general debate on the bill. The idea that the bill "having been approved in principle on the second reading, having been liked into shape in detail on the committee stage, the House should take one more look at the bill as amended before it finally gives its approval." At this stage no amendments other than purely verbal ones are in order. If it is desired to change the substance of a clause, even slightly, the bill must go back to the committee. After the debate is over, the bill is put for final voting of the House which must reject or accept it as it stands. Rejections at the third reading are not common. "The third reading," remarks Dr. Finer, "is a political mastering: the Government expresses its thankfulness that it has been able to do the country some good, in spite of the opposition; and the opposition replies by claiming that it has made a bad bill better than the Government first presented it, and that, even so, it has doubts for the future of the country's prosperity."18 When the third reading is passed the action of the House of Commons ends and the bill goes to the House of Lords for concurrence.

Procedure in the House of Lords: The procedure in the House of Lords is not materially different from that in the Commons. All bills in the Lords are given first two readings, considered in the committee of

the whole or referred to a Standing Committee, reported back with or without amendments, debated and then adopted or rejected. If the Lords pass the bill in the form it emerged out of the Commons it is sent to the King for assent and on receiving the royal assent it becomes an Act. If the Lords make some amendments in the Bill, the amendments have to be approved by the House of Commons. On the appointed day the Speaker puts the amendments for the consideration of House. As each amendment is put, the minister-in-charge of the bill rises and moves, "that this House doth agree with Lords in the said amendment" or "Not this House doth disagree with the Lords in the said amendment." In case of disagreement an exchange of written messages takes place between the two Houses. If no agreement is reached through exchange of messages and the House of Commons insists on having its way, it may invoke the provisions of the Parliament Act of 1911, as amended in 1949. Under that Act as revised in 1949 a deadlock between the two Houses could last until the Commons passed the controversial bill at two successive sessions with an interval of at least one year between the first and second reading. The final voice thus rests with the House of Commons.

After the bill is passed by the Parliament it is sent for the royal assent. The King may convey his assent in person, but now-a-days it is usually given by Lords commissioners who represent the King and declare and notify royal assent. On receiving royal assent the bill becomes a law and is then published into the statute Book.

Private Members' Bills: The procedure for private members' bills is the same as that for the government bills with a slight difference in the method of introduction. What actually happens is that at an appointed hour private members who desire to introduce public bills are required to put their cards in a box at the clerk's table. The clerk then draws the lots and the member whose name is first drawn gets the opportunity to introduce his bill on the first available Friday of the session: the second member gets the next available Friday and so on till the opportunities are exhausted. Having had the good fortune to get his bill on the notice paper, the member moves

that it be read a first time and secures it a second reading: it then goes to one of the Standing Committees and follows the same procedure as other public bills.

The private members' bill suffer from certain disadvantages. Firstly, the time allotted to them is insufficient, ten days in the session. Secondly, the private member lies under a heavy disadvantage in the drafting of the bill. Finally, un less the government supports the bill,

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there is little hope of its being passed. "If a member is lucky in his lottery and can introduce a bill which is generally popular and which neither the ministers nor any of his fellow members dislikes and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session."19 But few members can hope to run this gauntlet successfully.

Private Bills: A private bill is one whose subject is "to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons." Thus a private bill applies to a special class of persons defined by locality. Its purpose is to deal with a special situation or a limited locality. It affects specific private interests as opposed to the general classes of the community. There is a different form of procedure for private bills.

The private bills are presented in the form of petitions attached to the bills. They cannot be introduced by merely giving notice. The introducer has to certify in the petition that the government department having most to do with the matters of the kind involved and also all persons directly affected have been duly informed. The petitions are submitted to an official of each House known as "examiner of petitions for private bills" together with a description of the proposed undertaking and an estimate of its cost. After the examiner of petitions has certified that all of the requirements have been complied with, the petition may be introduced in the chamber.20 It may be noted that the promoters of the private bills are not the members of parliament but outside persons acting through parliamentary agents.

On introduction the private bill is read a first time and ordered to be read a second time. After second reading the bill goes to one of the private bills committees. Each committee on private bills consists of four members in the House of Lords. It is in the committee that real hearing takes place over the bill. The members sit as judges; they hear evidence as presented by the promoters and opponents as judges; they hear evidence of rival counsel and finally adjudicate upon the merits of the undertaking. The committee first decides whether the object of the bill is considered in detail, and at the end the committee reports it back to the House with or without amendments. The report of the Committee is normally accepted by the House. The report and third reading stages are, therefore, mere formalities. After the third reading, the bill goes to the other House where it follows the same procedure.

The important points of difference between the procedure for public bills and procedure for private bills are the following:

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(i) The private bills are promoted by private interests whereas public bills are introduced either by the government or a private member promoting general interest.

(ii) The private bills have to fulfil certain formalities like giving notice to all the parties likely to be affected by the Bills before they can be introduced in the House; whereas the public bills need not fulfil such formalities.

(iii) The private bills before being introduced in the House are examined by "examiner of petitions for private bills"; the public bills are not so examined.

(iv) The private bills go to a committee on private bills. The procedure before this committee is quasi-judicial; the procedure of the committee on public bill is not quasi-judicial; paid counsels do not appear before it, whereas they appear before the committee on private bills.

Provisional Order Bills: The quest for private acts of parliament has been considerably slackened by the use of provisional orders. These orders are issued by government departments that are authorized by the parliament to issue certain orders whenever proper cause for such action can be shown. So, when a local body desires to have some power not already conferred over it, it applies to the department which has jurisdiction in the matter and the department, if authorized by the parliament, issues an order granting the power. This order may be provisional in which case it requires for its validity the subsequent ratification of parliament. The practice is to lump several provisional orders into a confirmation bill which is known as Provisional Orders Confirmation Bill, and present it for enactment into law. Confirmation is usually never refused.

Budgetary Procedure in England

The principal means by which Parliament arose to supremacy was through the control of the nation's purse. No taxes may be levied without express parliamentary approval, and no public money may be spent without similar authority. In this section now we shall study the procedure of financial legislation.

Preparation of the Estimates: The first step in the financial legislation is the preparation of the estimates. The work of preparing the estimates is begun in the autumn of each year when a circular from the treasury is sent to all departments asking them to furnish figures concerning their probable requirements for the next financial year. When the estimates are all received by the treasury, it checks them with

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the figures of the preceding year. The treasury officials may meet the officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile the departments prepare the estimates of revenues and so the need is either to reduce the expenditure or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the budget before the cabinet. The cabinet after hearing him on the

main provisions of the budget gives it a final shape and authorizes the chancellor to lay the budget before the parliament.

The Budget Speech: The chancellor of the exchequer presents the estimates of expenditure to the House of Commons sometime in the second or third week of February. A little later he makes an elaborate budget speech to the House sitting in committee of the whole in which he reviews the finances of the past year and enunciates the policy for the next year.

The House in Supply: After the estimates of expenditure are presented to the House it converts itself into the Committee of Supply (colloquially known as House in Supply) and takes up the consideration of the estimates. The estimates are considered in separate groups termed "votes" corresponding to distinct services. The "votes" are presented by the heads of departments individually, thus the Secretary of State for air brings in the air force estimates; the first lord of admiralty presents the naval estimates; the financial Secretary of the Treasury presents the civil estimates. The "votes" are debated but the debates are seldom devoted to financial matters. These debates are general and extend to the government policy. The opposition criticises the general policy of the Government. The members may propose to strike out or reduce any items of expenditure, but they have no right to add or increase any amount. In practice the proposal to strike out or reduce the expenditure on any item is not carried because the ministers decline to accept a reduction. The result is that the estimates are passed without any drastic alteration. The debates on the estimates must be concluded within twenty-six days. All votes become subject to the closure at the expiration of this time limit.

Committees of Ways and Means: When providing revenue, the House sits in a committee of the Whole House in Ways and Means. The committee functions throughout the same period of time as the Committee of Supply. The proposals of revenue are detailed serially and after adoption are reported to the House in the form of resolution. The members cannot move any new taxation although they may move

to reduce taxes or to repeal them altogether. But the government usually declines to accept any proposal of reducing or repealing any tax.

Revenue and Appropriation Bills: After the estimates of expenditure have all been voted by the House in Supply and the various revenue proposals have been approved by the House in Ways and Means, the whole is then embodied in a Finance Bill and an Appropriation Bill. The Finance Bill based upon resolutions reported from the Committee of Ways and Means deals with new taxes or changes in the rates of old ones. The appropriation Bill based upon the grants that have been passed by the House in Supply deals with expenditures. Both these bills, which are termed money bills, are put before the House and therein they pass through the usual stages.

After the House of Commons has passed both these bills, they are sent to the House of Lords which has no alternative but pass them without amendment. Under the Act of 1911; if the Lords receive money bills at least one month before the end of the session, they are sent for royal assent irrespective of whether the Lords concur with them or not.

The whole budgetary procedure takes a long time to be finished. Generally it is not before July or August that the Appropriation Bill and Finance Bill are passed by the parliament. Therefore, to carry on the government from April 1, until the budget is passed, the House of Commons passes various "votes on account." These votes on account are lumped together in a bill which is enacted early in the session.

Home Rule for Scotland : The most far reaching constitutional changes were contemplated in July, 1997. Scotland was to have its first Parliament after 300 years by 2000 A.D. The Scottish parliament would consist of 129 members. The electors will have two votes—one for a constituency M.P. and one for a party list. The number of Scottish M.P s at Westminster will be cut down to 12. Parliament will be able to increase or decrease tax by 3 per cent. It would be able to make laws on most domestic issues. Sovereignty will continue to rest with the British Parliament and the Queen would remain the head of State. The Westminster would be responsible for crucial matters like foreign policy, national security and defence. Education, health, law, local government and environment are to be devolved. The proposals for the devolution of powers to Wales and Scotland were displayed by the Labour Party in their Election manifesto. The Conservatives opposed it vehemently but the Labour were victorious at the hustings in May, 1997 Elections. The devolution as proposed is the most amicable way out for the English. In fact the Blair Government did its best to keep the Scots

happy and within the reach of Westminster. These Plans for Home Rule were subject to Referendum in September 19972. Scotland voted for Home Rule on September 11, 1997. The Voters opted for a separate parliament where elections will be held in May, 1999 and new members will take their seats for the first time in 2000 A. D. They empowered the parliament to raise taxes as well.

References

1. The voting age has now been reduced to eighteen.

2. Dicey, A.V., Introduction to the Law of the Constitution, pp. 39-40.

3. Ivon Jennings: The British Constitution p. 86 (1965 ed).

4. Jennings, W.I., Parliament, p. 2.

5. Barker, E., Britain and the British People, pp. 24-25.

6. Low, Sidney, Governance of England, p. 213.

7. Walpole, Spencer, Electorate and Legislature, p. 48.

8. The Hindustan Times, June, 10, 1983.

9. Morrison: Government and Parliament (1954 ed) pp. 204-5.

10. Kangaroo is an animal who walks by jumping.

11. Morrison, Herbert, op. cit., p. 73.

12. Finer, Government of Great European Powers, p. 107.

13. Scottish Committee composed of 72 members of the House from Scotland and not more than 15 other members.

14. Welsh Committee consists of 38 members from the Province and not more than 25 from others.

15. Albert, C, Parliament, pp. 113-114.

16. Lowell, A.L., Government of England, p. 332.

17. Finer, Government of Great European Powers, p. 162.

18. Finer, Governments of the Great European Powers, p. 119.

19. Master man, C.F.G., How England is Governed, p. 248.

20. It may be noted that the private bills which are to be introduced at a given session are in advance divided into two equal lots, one to go first to the House of Commons and the other to the House of Lords. The division is made in conference between the ways and means Chairman of the Commons and the Chairman of the Committee of the Lords.

21. Hindustan Times, July 26, 1977.

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7 THE BRITISH PARLIAMENT: HOUSE OF LORDS

"The House of Lords is a political anachronism in a land of democracy."

—Webbs

The House of Lords is the oldest second chamber in the world. It has been in continuous existence in one form or another for more than a thousand years. It grew out of the Great Council which was the successor of the Saxon Witan. In 1295, when Edward I called his Model Parliament, all the different classes of people summoned to attend met in one single assembly. But afterwards they split up into three groups -Nobles, Clergy and Commons. Later on the greater clergy found its interests in common with the nobles and they associated together into one body which came to be called House of Lords.

Composition of the House of Lords

The membership of the House of Lords is not fixed. At present the House of Lords consists of over 1100 members. These members fall into seven distinct categories:

(i) Princes of the royal blood;

(ii) Hereditary peers;

(iii) Representative peers of Scotland;

(iv) Representative peers of Ireland;

(v) Lords of Appeal;

(vi) Lords Spiritual;

(vii) Life peers.

(i) Princes of the royal blood: In this category are included all such male members of the royal family who have attained maturity and are within specified degrees of relationship and are conferred the title of Duke. The eldest son is Duke of Cornwall and second son Duke of

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York If another son is born he will be entitled as Duke and made a member of House of Lords. Such members are rarely two or three at a given time. Their membership has little practical importance because the princes do not attend the sittings of the House of Lords except on rare occasions.

(ii) Hereditary peers: This category consists of the largest number of members. About nine-tenths of the members belong to this category. A great majority of people hold their seats in the Lords because they per chance happen to be the eldest grandsons of an ancestor who was first created a peer. They are the "accident of an accident," as Bage hot has called them. There is no limit to the number in this category. The power of the Crown to create peers is unlimited and as many people can be created peers as the sovereign likes. There is no limit upon the number that may be created. Certain classes of persons are, however, ineligible for peerage. These are: (1) persons under eighteen years of age, (2) aliens, (3) bankrupts,1 (4) persons serving a sentence on conviction of felony or treason, and (5) women. However since 1963 peeresses have been given the right to sit in the House of Lords. If a peer dies leaving no son the eldest daughter will inherit the peerage and a seat in the House of Lords.

(iii) Representative peers of Scotland: Their number was sixteen and were elected by the Scottish peers in accordance with the provisions of the Treaty of Union, 1707, until 1963. The Peerage Act of 1963 has done away with the election and all Scottish peers have been admitted lo the House on hereditary basis.

(iv) Representative peers of Ireland: A fourth group was of the Irish representative peers. By the Act of Union of the Great Britain and Ireland of 1801, the Irish peers were entitled to elect 28 representatives, but since 1922 when Ireland was declared a free state no new peers have been created. Consequently the number of Irish representatives has been dwindled and now not a single Irish peer remains the member of the Lords.

(v) Lords of Appeal in ordinary (Law Lords): In this category there were nine law lords but since 1990 there are 21 law lords, who are appointed by the Crown under the provisions of the Appellate Jurisdiction Act 1876, to assist the House in the performance of its judicial functions. They hold their seats for life. They are chosen from among distinguished jurists.

(vi) Lords Spiritual: They are twenty-six in number. Two are archbishops of York and Canterbury and twenty-four are senior bishops

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of the Church of England. Out of 24 Bishops of London, Durhem and Winchester are positively there according to seniority. When a sitting bishop dies or resigns, the one next on the list, in the order of seniority, becomes the member.

(vii) Life peers: They are created under the provisions of the Life Peerages Act, 1958. They are the persons who have held high offices in the state and have since retired, e.g., ministers, speakers etc. Their successors are not ipso facto entitled to the membership of the Lords. Over 200 peers have been so created. Most of them are active participants in the business of the House. 4 are women peers since 19582.

In the composition of the House of Lords it may be noted that it is partly hereditary and partly democratic in composition. Till 1957 the membership of the House of Lords was entirely male. But since 1958 women were allowed admission to the House if they were created life peeresses. Its composition prompted Munro to call the House as "Westminster Abbey of living celebrities?"

Lord Chancellor: The Lord Chancellor is the presiding officer of the House of Lords who sits on a large couch or diwan known as the woolsack. He is a member of the cabinet. He is appointed by the Queen on the advice of the Prime Minister and holds office during the pleasure of the crown which means the Prime Minister. His powers as presiding officer are insignificant as compared with those of the Speaker. He does not even enjoy the powers commonly enjoyed by the chairmen of the Standing Committees. He does not even have the power to recognise members who wish to speak. If two or more members rise simultaneously to speak, the House and not the Lord Chancellor decides who shall have the floor. He does not have even the common disciplinary powers. The proceedings of the House are orderly but if order in the House is to be enforced, it is done by the House itself. The members do not address the chair but "My Lords." The Lord Chancellor does not even have a casting vote, though as a peer he may speak and vote. In a word, his role as presiding officer is almost entirely formal.

But the Lord Chancellor is also the chairman of the Judicial Committee and the legal adviser to the crown. As such he enjoys the following powers:

(a) The judges of the High Courts are appointed by the Crown on his recommendation.

(b) He appoints the judges of the County Courts and also has the responsibility for the appointment of Justice of Peace.

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(c) He can remove the judges of the County Courts and Justice of Peace.

(d) He holds the great seal of the Realm which he affixes on behalf of the Crown on all agreements, declarations and treaties.

(e) He presides over the House when it sits as the Highest Court of Appeal.

(f) He is the Chairman of the Council.

(g) He controls and supervises the organisation of judiciary under the Act of 1925.

(h) He reads over the address of the crown before the House.

The lord chancellor gets £ 10,000 a year as his salary and on retirement gets a pension of £ 5,000 per annum.3

Committee System: The Committee System in the House of Lords is broadly similar to that found in the House of Commons, and hence need not be described in detail. Besides the Committee of the whole, large use is made of sessional and selected committees; and there is a standing committee for textual revision made up at the beginning of each session, to which every bill, after passing through the committee of the whole, is referred, unless the House otherwise directs. The most important sessional committees are: (1) the Committee of Privileges; (2) the Appeal Committee; (3) the Standing Orders Committee; and (4) the Committee of Selection.

Powers and Functions of the House of Lords

Before the passage of the Parliament Act of 1911 the House of Lords was in all respects co-ordinate in powers with the House of Commons. In legislation the Lords were on a footing of perfect equality with the Commons. Any bill could originate in either of the two Houses and no bill could become a law unless passed by both the Houses in the same form. In financial matters there was a well established convention that the money bill could not originate in the House of Lords but it could reject or amend such a bill. In judicial matters the House of Lords had both appellate and original jurisdiction. It acted as the highest court of appeal for the United Kingdom and besides that it had the power to try the case of its own members if they refused to be tried by the ordinary courts. Finally, it had the power to hear impeachment brought by the House of Commons against the high officials of the State. It may, however, be noted that trial of Lords and impeachment of officers has fallen into disuse.

The Parliament Act of 1911

After the passage of Parliament Act of 1911 the position underwent a change and the House of Lords was reduced to a mere shadow of its

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former self. This Act sealed the victory of the House of Commons statutorily. In order to understand properly the Act of 1911, we would briefly trace the history of the relations between the Commons and the Lords and the necessity of the Act. Before 1832 the relations between the two chambers were quite cordial because the predominant elements in both the Houses were conservative and many members of the House of Commons were personal defendants of the House of Lords. But a great change came with the Reform Acts of 1832, 1867 and 1884 whereby the House of Commons became democratic. Now it began to appear that a conflict between the two Houses was inevitable, sooner or later. So long as the conservatives were in power there was harmony but when the liberals obtained majority in the Commons they had to reckon an entirely hostile House of Lords. During the Liberal administration of 1892-1905 the House of Lords rejected Gladstone's second Home Rule Bill and defeated or mutilated several other measures. Gladstone said that the differences between the two Houses were fundamental. The Liberals declared that the House of Lords must be mended or ended.

The climax came in 1909 when the House of Lords rejected the Finance Bill of that year. Lloyd George had introduced a budget which proposed certain taxes particularly affecting adversely the landed aristocrats. The Liberal Party popularised it as the people's budget. Upon its rejection an uproar was raised in the House of Commons that this action of the House of Lords was unconstitutional. In fact, a resolution was passed to the effect by the Commons but the Lords did not yield. Then the Liberal Party appealed to the country and was returned to the House of Commons with a still greater majority. In April, 1910 the Liberal Government introduced the bill to curtail the powers of the Lords. It was very unlikely that the House of Lords would pass the suicidal bill. The government threatened that in case of rejection they could use the old procedure of swamping the House of Lords by creation of a sufficient number of new peers. The House of Lords dared not reject the Bill but delayed it. Again a general election took place over the same issue and again the liberals came victorious in it. The Bill was reintroduced and the Lords gave way under the threat of being swamped. Thus, the Bill, after a long battle, won the victory and became the famous Parliamentary Act of 1911.

The main provisions of the Act are the following:

(1) If a money bill having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that House, the Bill shall, unless

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the House of Commons directs to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified, notwithstanding that the House of Lords have not assented to the Bill.

(2) If any Public Bill (other than a Money Bill or a Bill to extend the maximum duration of parliament) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not) and having been sent up to the House at least one month before the end of the session, is rejected by the House of Lords in each of these sessions, the bill shall on its rejection for the third time by the House of Lords, unless the House of Commons directs to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of these sessions of the Bill in the House of Commons and date on which it passes in the House of Commons in the third of these sessions.

The general effect of the Parliament Act of 1911 was to terminate the co-ordinate and independent authority which the House of Lords had enjoyed before. Under this act, a money bill can be presented to the King for his assent even if the Lords do not assent to it provided it was sent to the House of Lords one month before the end of its session. In the case of non-money bills, if a non-money bill is passed three times by the Commons in successive sessions and each time it is rejected by the Lords, it may be presented to the King for his assent provided two years have passed between the initial proceeding of the Bill and its final passing in that House in the third session. It may also be mentioned that the Act reduced the life of Parliament from seven to five years.

Act of 1949

Though the Parliament Act of 1911 greatly curtailed the authority of the House of Lords, yet to further curtail its authority an Amending Act was passed in 1949, which reduced the period of two years to one year and the number of sessions from three to two. Now the position is that a bill may become an Act despite its having been rejected by the House of Lords if it has been passed by the House of Commons in two successive sessions (instead of three as provided in the Act of 1911), and if one year (instead of two) has elapsed between the date of the second reading in the first session in the House of Commons and the final date on which the bill is passed by the House of Commons for the second time.

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Present Powers

After having studied the Parliament Act of 1911 as amended in 1949 we may briefly enumerate the present powers of the House of Lords:

(i) Legislative Powers: Legislative powers can be discussed in two phases - control over money bills and non-money bills. As regards control over financial bills the House of Lords is practically ineffective. If the House of Lords with holds their assent to a money bill for more than a month it would be presented to the King and become a law on receiving the Royal assent despite the fact that the Lords did not concur with it The money bills cannot be introduced in the Lords. Thus it does not control the purse.

So far as non-money bills are concerned the same may be introduced in the Lords but usually ninety per cent bills are introduced in the Commons. A non-money bill passed by the House of Commons in two successive sessions with an interval of at least one year between its first reading in the first session and its last reading in the second session will become a law after having received the Royal assent irrespective of its having been rejected by the Lords. Thus in both the financial and non-financial fields the final authority rests with the Commons and the House of Lords has now lost all its effectiveness in these fields.

(ii) Executive Powers: The Lords have the power to ask questions from the government and have a full right to debate its policies. It enjoys a share in the cabinet membership. Some Lords are included in the cabinet. It may be noted that the Lords have no power to pass a censure against the ministry. The cabinet is not responsible to the House of Lords. The latter can only cross-examine the ministers.

(iii) Judicial Powers: The House of Lords enjoys original powers to try peers in case they are involved in any treason or felony against national interest. It is also authorized to hear impeachments sent to it by the House of Commons. But now a days this original jurisdiction has lost all its importance.

The House of Lords also acts as the highest court of appeal in Great Britain. So far as theory is concerned, the ordinary members have the right to attend the meetings of the House at the time of trial and can decide the judgment by a division of vote but actually they never do so. At present only the Law Lords hear appeals. The whole House never meets as a Court of Appeal.

From the above accounts of the present powers of the House of Lords it is evident that it has become a shadow of its former self. What it was already in practice it has also become in theory and law. It is now

not only a second chamber but for all intents and purposes it is a secondary chamber. Even all possible allowance being made, it is nowadays possible both actually and legally for legislation of every description to be enacted without the assent of the House of Lords. It has been reduced to a mere glamorous upper chamber. Hence, Dr. Munro described the House of Lords as "Westminster Abbey of living celebrities." The top ranking politicians, sagacious statesmen having no interest in active politics find place in this House of Lords. Hence the remarks of Dr. Munro.

Reforming the House of Lords

The House of Lords as presently constituted has been the subject of severe criticism. The criticism runs chiefly on three lines; (i) its predominantly hereditary character; (ii) its association with certain groups and interests; and (iii) its having become wedded to the principles and policies of the Conservative Party. Briefly considered, these criticisms run as follows:

(i) Political Anachronism: The House of Lords has been called a "political anachronism" in a land of democracy. The House cannot be called popular in any sense of the term. While during the nineteenth and twentieth centuries the House of Commons underwent the process of democratization, the House of Lords stood still. It remained inherently a hereditary body representing mainly the interests of landed property and the established order. It identified itself with all those forces that tended to perpetuate aristocracy. By standing still while other institutions became progressively democraticized, the House of Lords became more and more an assembly of men who are law-makers by mere accident of birth. The peers are responsible to nobody except themselves. Webbs has aptly remarked, "Its (House of Lords) decisions are vitiated by its composition."4

(ii) Fortress of Wealth: Secondly, the House of Lords represents the interests only of the landed aristocracy. In the words of Ramsay Muir it is the "fortress of wealth." In fact, property is the basis of the House of Lords. "Over one-third of them are directors (some multiple) of the staple industries of the nation. One-third of them also run very large estates. Many of them are related by marriage, birth and business connections with the conservative members of the House of Commons."5 Naturally therefore, it looks to the interests only of the higher classes. Hence Webbs calls it "the worst representative assembly ever created." Another writer has called it "the directory of Directors." According to Laski, there is no large industry where capitalist leaders

do not have representation in this House. Lord Acton wrote to Gladstone's daughter in 1881 when the Lord opposed the Irish Land Bill, "But a Corporation according to a profound saying has neither body to kick nor soul to save. The principle of self-interest is sure to tell upon it. The House of Lords feels a stronger duty towards its eldest sons than towards the masses of ignorant, vulgar and greedy people. Therefore, except under very perceptible pressure, it always resists measures aimed at doing good to the poor. It has almost always been in the wrong-sometimes from the prejudice and fear and miscalculation, still oftener from instinct and self-preservation."6

(iii) Bipartisan: Thirdly, the House of Lords has converted itself into a bipartisan body composed of men of a single political party. After 1886 the House of Lords has remained overwhelmingly conservative. Thus the Conservative party remains in unchallenged mastery of the House of Lords. No Bill promoted by a Conservative Government has been rejected by the House of Lords since 1832 and "for the last fifty years at least, no Conservative Bill has been amended against firm Government opposition."7 According to Laski, "It is not an impartial useful institution which goes by public opinion. It has always supported the interest of only one party. The conservative party may be in power or not, but in the House of Lords it has always been in majority."

(iv) Irregular Attendance: Fourthly, the thin attendance in the House of Lords has also given a cause of complaint to its critics. Normally, only eighty or ninety peers participate in decisions of the House of Lords. Some peers seldom show their faces in the House. One-half of its members have never spoken at all and about one hundred peers have not taken the Oath as yet. Some peers are not even recognised by the Servants of the House. The quorum for conduct of ordinary business is only three. In the words of Lord Samuel, the House of Lords is "the only institution in

the world which was kept efficient by the consistence of the absenteeism of the great majority of its members."

(v) Obstructionist: Lastly, as one critic writes, "A study of its records reveals that the House of Lords, by its very nature, has placed great obstacles in the way of legislative programmes of those governments only that were liberal or non-conservative; that it has frequently accepted legislation from the Conservative Government which it has rejected from Liberals; that instead of being an independent house, it acts as one wing of the Conservative party - looking after the interests of Conservatives when out of power, as one of its members put

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if and that in the course of years, it has worked out an effective technique of legislative obstruction by which it has been able always to delay and often to destroy the legislation of governments it did not like, wearing them down by a process of attrition, so that they lost their popularity and were replaced at the polls by governments it did not like, when it could relapse once more into a state of dignified and secure quiescence."8 Dr. Finer also is of the view that the House of Lords "retarded the forces of progress" hence its existence was an anomaly - a gross anomaly "without justification in this era."

On the basis of the above criticism of the House of Lords some thinkers have suggested that it should be abolished. The House of Lords, they say, is so utterly out of keeping with democratic government that it ought to be suppressed root and branch. A resolution moved in the House of Commons by the Labour group in 1907 reads: "That the Upper House, being an irresponsible part of the legislature and of necessity representative only of interests opposed to the general well-being, is a hindrance to national progress, and ought to be abolished."

Utility of the House of Lords

Despite scathing criticism the House still exists. It is due to its utility which can be hardly minimized. The following are the main points of its usefulness:

(1) A historical institution: Though the utility of the House of Lords has been seriously questioned, nevertheless, the general body of British opinion is undoubtedly favourable to a second chamber. In addition to the usual uses of a second chamber, British opinion finds something more in the House of Lords which it does not like to forego. It is a historic institution which represents the British way of life. It has worked well. "The very irrationality of composition of the House of Lords and its quaintness," says Herbert Morrison, "are safeguards for our modern British democracy."9 Had the House of Lords been made democratic in composition and equal in powers with the House of Commons, the results would have been undemocratic. It is not the British temperament to abolish root and branch what has been preserved for centuries. They have not even abolished monarchy, in this age of democracy, and why should they, when its retention does not make them the least democratic than the people of non-monarchical nations. Similar is the case with the House of Lords.

(2) Commons' time saved: The Lords save the time of the House of Commons by initiating non-controversial Private Bills.

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(3) Public opinion crystallized: Inter-position of delay is made possible. That enables the public to express its opinion. Accordingly the Bill is amended.

(4) Bicameralism—a universality: Bicameralism is the order of the day and England like other countries cannot do away with its second chamber.

(5) Full and free discussion: The House of Lords, as at present constituted, has its own advantages. When radicalism of the House of Commons is injected with conservatism of the House of Lords law becomes reason. The debates in the House of Lords are full and free which "can, and at times do stir public opinion, or they may ventilate true public grievance." "Indeed," as Ogg observes, "on the ground that Britain has none of the safeguards offered by a rigid constitution, by referendum procedure like that of Switzerland, or by judicial review like that in the United States, it is sometimes contended that she, beyond most other States, has need of a second chamber with full deliberative and revisory powers."10

(6) Able membership: Although the attendance in the Lords is thin, yet it hardly means that its members are of ordinary calibre. Its members belong to the aristocratic section of the society. They are either rich people or retired Prime Ministers, Judges, Speakers, Ambassadors, Governors-General, Ministers, etc. They are men of fame. Lord Salisbury, Lousdonne, Asquith, Reading, Tennyson, Brickon head, Bryce, Curzon have been its members. They have helped in maintaining the high standard of its debates. As Ogg remarks, "It is doubtful whether by and large, the actual working of the House of Lords is surpassed in its resource of intelligence, integrity and public spirit by the House of Commons...." The country is served from the red leather benches by men who have built up its prosperity, administered its great dependencies, risen to its highest positions in law, diplomacy, war, state-craft and learning."11

(7) Highest court of appeal: The House of Lords has well performed its judicial functions. Another Supreme Court would have to be established in case the House of Lords is abolished. No other second chamber has performed so important judicial function as admirably as the House of Lords.

(8) Revisory chamber: It usefully does the examination and the revision of the Bills after they have been passed through all stages in the House of Commons. Thus defects and technical flaws of the Bill are removed in the House of Lords.

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(9) Revolution unlikely: The House of Lords symbolises the fact that there is no likelihood of a revolution in Great Britain. So long as it possesses any power, England will not face a revolution. It acts as a saucer where the passions are cooled.

Thus the House of Lords has established itself firmly on the British soil. It has become an essential part of British culture. It has gone a long way in the national life of the country. Its complete abolition may invite trouble. Its impotence does not prove its futility. In the opinion of Munro it appears to be doing its job well. It "examines and revises non-financial measures. It insists, when the occasion rises, that ample time be given for a public discussion of such bills before they become parts of the law of the land. It compels sober second thought and gives opportunity for passions to subside."12 Ogg writes, "No student of English History needs to be told that upon a good many occasion the Upper House has interpreted the will of the nation, or the actualities of a political situation, more correctly than the lower, and that more than once it has saved the country from hasty and ill-considered legislation. It is not altogether the sort of a second chamber that Englishmen would construct today if they were confronted with necessity of creating one de novo. But since it exists, and is so deeply woven into the texture of the national life, the proper procedure would be to simply reconstruct it on lines of the best twentieth century thought."13

Proposals for Reform

With the passage of the Act of 1949, the question of abolishing the House of Lords root and branch has been now finally decided for all times to come. The Labour Party has reconciled itself to its existence. The question now is in what way to reform the House of Lords in respect of its composition and function. In fact since the passage of the Parliament Act of 1911, a number of schemes for reforming the House of Lords have been proposed.

A brief reference to these schemes is as under:

Bryce Proposals, 1918

The Parliamentary Act of 1911, announced the intention of its authors to "substitute for the House of Lords, as it at present exists, a second chamber constituted on a popular instead of an hereditary basis." In pursuance to this announcement a conference on the Reform of the Second Chamber was appointed in August, 1917, with Lord Bryce as its Chairman. This conference consisted of 30 persons representing all shades of opinion. It submitted that "in so far as possible, continuity

ought to be preserved between the historic House of Lords and future Second Chamber, which obviously would mean that a certain portion of the existing peerage should be included in the "new body." The Committee made the following proposals:

(a) The membership of the House of Lords should consist of 327. Out of this three-fourth, i.e., 246 members, should be elected by the House of Commons by means of proportional representation. For this purpose the House of Commons should be grouped into thirteen divisions. The remaining one-fourth members should be elected from among the peers by a joint Standing Committee of the two houses.

(b) The members of the Upper House are to be elected for twelve years, one-third retiring after every four years.

(c) The House was to have no power over money bills. The question whether a measure is a money bill or not should be decided by a joint committee of 7 members from each House.

(d) Disagreement over ordinary bills should be referred to a joint conference of 30 members from each House.

The Bryce proposals were not accepted either by the conservatives or the progressives. In 1922, the coalition government of Lloyd George submitted five resolutions embodying several features of the Bryce Plan, with one or two notable additions. These are known as Cabinet Committee Proposals.

Cabinet Committee Proposals

(i) The membership of the House of Lords should be about 350.

(ii) In addition to the peers of royal blood, Lords spiritual and law-lords the House should contain: (a) members elected directly or indirectly, (b) hereditary peers elected by their own order from outside their own ranks, and (c) members nominated by the Crown. The number of each element was to be fixed by law as also their term.

(iii) The House of Lords should not amend or reject money bills,

(iv) The provisions of the Act of 1911 should not apply to any bill changing the constitution or power of the House of Lords as reconstituted.

Nothing came out of these resolutions as the coalition government which had formulated them had to resign shortly afterwards.

Clarendon's Scheme of 1929

In December, 1929 Lord Clarendon introduced a scheme in the House of Lords to establish greater co-operation between the two Houses. The scheme was that

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(i) 150 peers should be chosen by the body of peers;

(ii) another 150 peers were to be nominated by the Crown for the duration of each parliament;

(iii) a few life peers were to be created.

But this scheme did not receive the support of the House and failed.

Salisbury Reform Plan of 1933

In December, 1933, Lord Salisbury introduced a bill in the Lords for its reform whose main provisions were as under:

(i) the House of Lords should consist of 320 members;

(ii) out of this, the peers were to elect 150 members from among themselves;

(iii) another 150 members were to be elected from outside, the method of election to be decided by the resolution of both Houses;

(iv) the rest of the members were to include the royal peers, law lords and a few ecclesiastics;

(v) the money bills were to be interpreted by a joint committee of both the Houses under the chairmanship of the Speaker. This Bill was passed by the House of Lords in both its first and second readings. But Baldwin brought about the discontinuance of the discussion.

Reform by the Labour Government

In July 1934, the Labour Party openly proclaimed in a pamphlet 'For socialism and few other Labour Party's programme of action' that it would abolish the House of Lords if it continued to wreck the essential measures of the commons.

The Labour Party came in power in 1946 and in 1947, introduced a Bill amending the Parliament Act of 1911. When the Bill was being discussed by the House of Commons, it was decided by the Labour Government to convene an all party round Table Conference to consider the relationship of the composition of a second chamber to its powers. The conference proposed the following general principles:

(i) The second chamber should be complementary to and not rival to the Lower House, and reform should be based on a modification of the House of Lords, existing constitution as opposed to the establishment of a second chamber of a completely new type based on some system of election,

(ii) The revised constitution should secure that a permanent majority is not assured for any one party.

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(iii) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission,

(iv) Members should be styled "Lords of Parliament" and would be appointed on grounds of personal distinction or public service,

(v) Women should be capable of being appointed Lords of Parliament in the same way as men.

The conference, however, failed. The Government proceeded with its bill of reform against the will of the Lords. On June 9,1948 the Lords rejected the Bill. It was introduced for the second time on September 20, 1948 and was carried through under the Parliament Act of 1949.

Life Peerage Act, 1958 and Peerage Act, 1963

The Life Peerage Act, 1958 empowered Her Majesty to appoint Lords of Appeal in ordinary and confer on any person a peerage for life. The Act made women eligible for life peerage. The Act of 1963 enables any hereditary peer to disclaim his peerage and thereby become eligible for election to the House of Commons.

In 1967 the Labour Government proposed changes in the composition of House of Lords and also reduction in its powers but nothing came out of it.

Future of the House of Lords

Thus from time to time several plans have been proposed to reform the House of Lords; but none of the above mentioned plans was accepted. The House of Lords continues to be a hereditary chamber of over 1100 members, of course, with power curtailed by the Parliament Act of 1911. It may be noted that none of the proposals referred advocates the abolition of the House of Lords. They suggest certain reforms in respect of its composition and functions. These proposals agreed on three things: (i) that the membership of the Lords should be reduced to about 300, (ii) that some elective element should be introduced in the composition of the House, and (iii) the powers of the House of Lords and its relations with the House of Commons should be more or less fixed by the Parliament Act of 1911. In fact, the dilemma is that no proper substitute has yet been found out for the House of Lords. As we have already pointed out, none of the parties wants its abolition. What the Labour Party wants is a second chamber strong enough for revision and weak enough to be rival to the Commons. Herbert Morrison writes, "While willing to respect the House of Lords for the value and standard of its debates, and for its capacity as a chamber of legislative revision, we would not tolerate from such an institution any undue interference with the will of the House of Commons or of the people."14 In February,

1958 Prime Minister Winston Churchill wrote to Attlee that the question of the House of Lords might be taken up at an inter-party conference. To this suggestion, Attlee replied that "in view of the fundamental cleavage of opinion in 1948 on what is the proper part to be played by the House of Lords as second chamber under the constitution, we have come to the conclusion that no useful purpose would be served by our entering into such a discussion."15

The question of reform of the House of Lords, therefore, is still perplexing. What powers should a second chamber have and how should it be composed?- are debatable questions to which no satisfactory answer is possible and "given the difficulty of finding an answer is not the present House of Lords, with its powers reduced as in 1949, destined to serve for many decades?"

Since the passage of the Act of 1949, no vociferous demands for its reform have been made. Laski remarks, "The House of Lords is quite safe from rough destruction but it is not safe against inward decay. Its danger is not in assassination but atrophy, not abolition but decline."

References

1. The disqualification on this ground is waved if bankruptcy is annulled or if a certificate is issued that bankruptcy was due to misfortune and not misconduct.

2. The disability regarding hereditary peeresses was removed in 1963.

3. Before 1971 members of the Lords were not paid any salary or allowances. However since 1971 each lord got allowance of £ 8.82 per day for attending the sessions. The Law lords get regular salary.

4. Webbs, A Constitution for Socialist Commonwealth of Great Britain, p. 63.

5. Finer, Theory and Practice of Modern Government, p. 407.

6. Quoted, Ibid, p. 48.

7. Jennings, The British Constitution, p. 90.

8. Rowse, A.L., The House of Lords and Legislation, Poli. Quar,. July-Sept. 1963, p. 385.

9. Morrison, Government and Parliament, p. 194.

10. Ogg, English Government and Politics, p. 338.

11. Ibid, p. 357.

12. Munro, Government of Europe, p. 134.

13. Ogg, op. cit., p. 358.

14. Morrison, Government of Parliament, p. 194.

15. Finer, Governments of Great European Powers, p. 200.

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8 THE BRITISH JUDICIARY

"No man is punishable... except for a distinct breach of law established in the ordinary courts of the land."

—A.V. Dicey

The present-day organisation of the English Courts is relatively modern. Though the courts themselves are much older, they were entirely reconstituted by the Judicature Acts of 1873-1876, as amended by the Act of 1925. Prior to 1873 the judicial organisation of England was in a state of chaos, with numerous courts possessing special functions, archaic procedures and overlapping jurisdictions. The Acts of 1873 systematized and recognized the courts and simplified the judicial procedure.

Features of British Judicial System

The judiciary occupies an important place in the actual administration of England. English justice has been the pride of Englishmen for centuries together. This is all due to the various qualities and outstanding features which the British judiciary possesses today. These features may be briefly enumerated as follows:

(i) No single form of organisation

There is no single form of judicial system that prevails throughout the entire United Kingdom. There is one arrangement of courts for England and Wales, another for Scotland and still another for Northern Ireland. The law of Scotland differs both in principle and procedure and accordingly the organisation of courts is also different. The judicial system of Northern Ireland also is unlike the English system.

(ii) No separate administrative courts

Secondly, there is no separate set of administrative courts in England as there are in France and other continental countries. In these countries

there are two distinct types of law, ordinary and administrative, and two distinct types of courts. In administrative courts administrative law is applied, whereas in the ordinary courts ordinary law is applied. In England there is a rule of law which implies absence of administrative law. The English common law recognises no distinction between the acts of government officials and ordinary citizens. All are amenable to the same ordinary courts and to the same law, though the system of administrative adjudication is inevitably developing.

(iii) Integration of courts in England and Wales

The third main feature of the British judicial system is the unity which prevails in the organisation of courts. The judicial system is more integrated than it was three generations before. Furthermore, it is very much simple and more unified. Formerly, there were in England civil courts, criminal courts, courts of equity, courts of common law, probate courts, divorce courts and ecclesiastical courts. Very often it was difficult to determine which court had jurisdiction: each type of court had its peculiar forms of procedure. This undesirable state of

affairs was reformed between 1873 and 1876 when the entire judicial establishment was reconstructed on simple and mono logical lines. Now practically all the courts have been brought together in a single centralised system under the direction of the Lord Chancellor.

(iv) Absence of judicial review

In England there is no system of judicial review. No act of the Parliament can be declared ultra vires by any court of law. Parliament is supreme and the courts have to apply whatever law has been made by it. They have no authority to examine its validity. In short unlike the United States there is no court in England which can sit upon the Parliament and examine the validity of its laws.

(v) High quality of justice

England can be proud of the high quality of justice dispensed by her courts. The British courts operate under salutory principles and follow simple procedure. Cases move far more rapidly in British than in American or Indian courts. The rules of procedure are made in England not by the parliament composed of laymen but by a special "rule committee" consisting of the Lord Chancellor and ten other persons trained in law. The rules repose solidly on the principle that every action should proceed promptly to a decision on its merits, and that the parties ought never to be turned out of court because of some error in procedure which does not involve the merits of the controversy. There is no

manhandling of witnesses. Cases are heard and decided with fairness and speed. The calenders of the courts do not become closed. The judges are in general of a high order of ability, independence and integrity. They are appointed for life and removal can be made only on joint address of both the Houses of Parliament. The salaries of the judges are attractive. Further, dignity and distinction are conferred by the practice of knighting judges upon their appointment. All this helps secure and retain brain, character and energy, and is largely responsible for the favour able reputation which the British courts enjoy, both at home and abroad.

(vi) Jury system

England is the ancestral home of the jury system. It was there that the grand jury and trial by jury first became regular agencies of enquiry and adjudication. In the trial of all serious crimes a trial by jury may be demanded by an accused in all English courts except the lowest and highest. The charge is framed by the judicial clerk with the aid of the presenting solicitor and the trial is held by the judge with the assistance of the jury. Moreover, the jury in England has not been overburdened by extending it to the trial of unimportant trial disputes. In the United States the jury system has been overworked and overburdened.

(vii) The guardian of human liberties

As we have seen earlier in England the liberties of citizens. are guaranteed not by any parliamentary statute but by the common law of the land. The civil rights, e.g., freedom of speech, freedom of press, freedom of worship, etc., guaranteed by the usages and traditions are enforced by the courts. These usages are in reality more effective than any written constitutional guarantees.

Organisation of British Judiciary

The present day organisation of law courts in England flows from the judicature acts of 1872, as amended by the Act of 1925. There are two kinds of courts: Criminal and Civil.

A. Criminal Courts

(i) Justices of the Peace (J.P. s): The lowest rung of criminal courts is the Justices of the Peace. In England when a person is charged with a crime he is brought before one or more Justices of the Peace or, in the large towns, before a stipendiary magistrate. The stipendiary magistrates receive regular salaries and are appointed by the Home Secretary in the name of the Crown from among the barristers of seven years standing.

The Justices of Peace are honorary and are appointed by the Lord Chancellor. They have no legal training and are laymen taken from all social classes and professions. The magistrates have jurisdiction over the same classes of cases as Justices of the Peace.

The jurisdiction of the Justices of the Peace and magistrates extends over minor misdemeanours which are punishable by a fine up to £ 9 and simple imprisonment of not more than fourteen days. More serious cases are tried by a court called the Court of Summary Jurisdiction consisting of two Justices of the Peace or stipendiary magistrates. In the former it is known as the Court of Petty Sessions. This court can impose a fine of not more than £ 100 or in certain specified cases £ 500 or a sentence of imprisonment up to six months and in certain cases a year. The accused can demand a trial by jury if the offence is punishable by imprisonment for more than three months. These courts function without jury.

(ii) Court of Quarter Sessions: Appeals from the Lower Courts may be taken to the Court of Quarter Sessions which consists of all the Justices of the Peace in the country meeting four times a year and it is for this reason that it is called "Quarter Sessions." It also exercises original jurisdiction in serious criminal cases but not serious enough to warrant holding the accused for the Assizes. Serious cases like those of murder treason etc., do not originate in this court. Appeals are ordinarily taken to the court of criminal appeals. This is, in fact, the court in which the majority of other grave crimes are tried.

(iii) Court of Assizes: In the hierarchy, above the Justices of the Peace are the Assizes Courts. They are branches of the High Court of Justice. They are held in the county towns and in certain cities three times a year. Each such court is presided by a judge or sometimes two judges of the High Court of Justice who go around on circuits. The court of Assizes functioning in London is

called "Central Criminal Court" and in popular parlance it is known as "Old Baley". The jurisdiction of the Assizes includes all the grave offences, for example, armed robbery, kidnapping, murder. The Assizes Court is assisted by a jury of twelve county men. Juries are chosen out of persons under 60 years of age owning property worth at least £ 10 p.a. or those owning houses worth at least £ 20 per year of rental value. The Jury gives its verdict on facts, i.e., whether the accused is guilty or not. If the Jury finds the accused not guilty he is forthwith discharged. If he is, on the other hand, found guilty the judge pronounces the sentence. If the Jury cannot agree, a new trial may be held with a different set of juries. Criminals are

committed to the Assizes by the J.P. s or by the Public Prosecutor after preliminary examination. The system of grand jury has been abolished ' in England.

The Court of Criminal Appeal was set up by an Act of 1907 to hear appeals from the verdict of a jury in a criminal trial. Formerly no such appeal could be preferred, but now a convicted person may, as a matter of right, appeal to the Court of Criminal Appeal. The court is composed of three judges at the minimum drawn from the jury and is presided over by the Lord Chief Justice. If the Court thinks that there has been a serious miscarriage of justice, it can modify the sentence or even quash the conviction altogether. The judgment of the Court of Criminal Appeal is final except in rare instances when an appeal can be taken to the House of Lords upon a point of law which the Attorney General certifies to be of public importance. Under no circumstances can the prosecutor appeal.

B. Civil Courts

(i) County Courts: The County Courts are the lowest courts in civil matters which decide disputes in which the amount involved is not more than £ 400 (£ 500 if trusts, partnerships or mortgages are involved. There are about 500 county courts in England and Wales. They function in 75 circuits, and justice is administered in them by county court judges t who are appointed by the Lord Chancellor from among barristers of at least seven years' standing. The procedure in a county court is simple: many cases are decided out of court. In every 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 affecting compromises, without even referring them to the judge at all. A case involving not more than £ 30 may be settled by the Registrar of the county court. It may be noted that the county courts are not a part of any county organisation, and the area of their jurisdiction is a district which not only is smaller than a county but bears no relation to it. The county court of the present day were established by a parliamentary statute of 1846 which replaced the ancient courts of the hundred and county. The judges and registrars of the county courts are paid 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. It is divided into two branches:

(a) High Court of Justice, and

(b) Court of Appeal.

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(a) The High Court of Justice has three divisions:

(i) The Queen's Bench Division,

(ii) The Chancery Division, and

(iii) The Probate, Divorce and Admiralty Division.

In each of these three divisions judgment is administered by a bench of judges, sometimes singly, sometimes in trios. The Queen's Bench is presided over by the Lord Chief Justice of England and consists of seventeen other judges. It hears Common Law cases and handles majority of the cases coming to the High Court viz. election petitions, applications for the writs of habeas corpus, debts and damages of unlimited amount.

The chancery division is presided over by the Lord High Chancellor and is served by eight other judges. It hears the cases which formerly belonged to the Courts of Equity. In other words, it deals with such cases in which the remedy or law is inadequate. Cases under company law, appeals in income tax cases, bankruptcies, execution of trusts for deceased persons come to it.

The Probate, Divorce and Admiralty division is presided over by a President and is served by ten other judges. They hear particular types of cases as the name itself shows. It is said this Division deals with wills, wives and wrecks.

Any of the judges mentioned above may sit in any division and all may apply the common law or equity, in spite of their usual specialisation.

(b) The Court of Appeal receives appeals from both the county courts and the three divisions of the High Court. Appeals can be taken only on question of law. There is no appeal on question of fact, though an application may be made to the Court of Appeal to order a new trial. This court is composed of the Master of the Rolls and seventeen other puisne judges. The Court of Appeal is an appellate court which receives appeals both from the county courts and the High Court of Justice. In the Court of Appeal no witnesses are heard, and there is no jury. The Court of appeals sits in London.

It may be noted that the High Court has both original and appellate jurisdiction. On its original side it has jurisdiction in cases in which the amount involved is sufficiently large. On its appellate side it entertains appeals from the county courts.

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From the Court of Appeals, the dissatisfied litigant can prefer an appeal on questions of law to the House of Lords. The hierarchical order of the civil courts runs as county court, high court, court of appeal and

House of Lords, whereas that of criminal courts is — court of summary jurisdiction, quarter session court, assizes, court of criminal appeal and House of Lords.

The House of Lords as a Court

In the preceding chapter we had the occasion to remark that the House of Lords is not only a law-making body but is also a judicial body. From what has been said above of the judicial organisation in England it is clear that both civil and criminal cases end only in the House of Lords which is the last body to say the last word in these cases. It is, therefore, appropriate to say a few words about the House of Lords as a court.

The House of Lords, as we have seen, is unwieldy house consisting of over 1100 members but all the members of the House do not take part in its judicial business. The appeals which come to the House of Lords are heard by Lords, namely, the Lord Chancellor and twenty one since 1990 Lords of appeal in ordinary. Generally 3 Lords constitute a bench though in some cases even five lords may sit as a bench. These law lords need not be hereditary peers. The Lord Chancellor is the presiding officer of the House of Lords and a member of the cabinet. The law lords are men of high judicial distinction who are made life peers so that they may exercise judicial functions which belong to the House as a whole. These law lords, it may be noted, constitute for judicial purpose the whole House of Lords and not just a committee of it. They give judgment in the name of the House of Lords and sit and pronounce judgment at any time, regardless of whether parliament is in session. It is the only common court for the entire country which decides appeals against the decisions of the highest court of Scotland and Northern Ireland.

The Judicial Committee of the Privy Council

We may conclude our discussion of British Judicial System by describing one other court the Judicial Committee of the Privy Council. It 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. Formally, it is an administrative body to advise the Crown on the use of its prerogatives regarding appeals from the courts of the colonies, and the Commonwealth. It, as it stands today, was constituted by a Parliamentary Statute of 1833. It consists of the Lord Chancellor and former incumbents of his office, the 21 law lords already mentioned, the Lord President of the Privy Council, the privy councillors who hold or have held high judicial positions, and varying number of judicial persons connected with overseas superior

courts. Altogether the council consists of about thirty jurists in all, but the work of the judicial committee is actually performed by the Lord Chancellor and the 21 law lords and one or two judges from the overseas.

The judicial committee of the Privy Council is not a court in the usual sense of the term but only a body to advise the Crown and so it does not render judgments but only gives advice to the Crown. It inherits its authority from the right of British subjects abroad to appeal to the king in council to disallow the decisions of the supreme courts in the colonies. The appeal goes straight to the Judicial Committee which recommends to the Crown that the appeal be accepted or rejected. The committee's recommendations are invariably accepted by the Crown through an order-in-council in which the recommendation is given validity as a judgment. There is no appeal from the decisions of the judicial committee, hence it is a Supreme Court within its own field of jurisdiction. And this field is one of more geographical extent than that of any other judicial or quasi-judicial body in the world.

The Privy Council differs from the House of Lords in the following respects:

(i) The Privy Council includes some judges from the colonies or dominions but no such judge is included in the House of Lords silting as a Court.

(ii) The Privy Council does not pronounce its judgments, it only advises the King. In other words, it is an advisory body, and not a judicial body. The House of Lords is a Court for all intents and purposes.

(iii) The House of Lords is bound by its former judgment, but the Privy Council is not. It may change its opinion.

(iv) The Privy Council gives a unanimous advice. It does not make any mention of minority advice. The House of Lords in its judgment may refer to the minority judgment.

It may be noted, however, that not all cases arising in the colonies or dominions can be brought to the Privy Council on appeal. Under the Statute of Westminster, 1931 any dominion may shut off such appeals. Moreover, no appeal can be brought unless leave to appeal has been first obtained from the judicial committee itself. Such leave is hardly given in criminal cases; in civil cases it depends on the character and importance of the issues involved.

The Coroner's Court

It is a relic of the past. The Coroner was designated as 'Crowner' in Shakespearian times. He is appointed by the county or Borough council.

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He is equipped with legal or medical qualifications. He orders postmortem and holds an inquest if the cause of the death is not natural. An inquest is conducted by him with the assistance of jury of 7 to 11 persons. If 'prima facie' case is established the accused is sent for trial. Even cases of suicidal death are dealt with by him. He can examine witnesses to come to conclusion. In London he investigates into the cases of fire and arson. Besides, if treasure is found hidden underground; he conducts inquest and if no owner is found he assumes charge of the treasure on

behalf of the Crown. In fact Coroner's Court is an innovation. No such court exists in India for instance.

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9 LOCAL GOVERNMENT IN ENGLAND

"The Local Assemblies of citizens constitute the strength of free nations."

—De Tocqueville

Democracy is said to be a government by the people. It is in the arena of local politics that people must easily team their first lessons in the art of governing. Until we learn to govern, or be governed by, our own neighbours, we cannot successfully govern people at a far off distance. "The local assemblies of citizens," wrote De Tocqueville, "constitute the strength of free nations. Town meetings are to liberty what primary schools are to science, they bring it within the people's reach, they teach them how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institution it cannot have the spirit of liberty." Local government is a school for democracy. Besides being a school for democracy, the local government lightens the burden of the central government. There is no denying the fact that the functions of the modern State have increased manifold. It now not only protects the country from foreign aggression and maintains peace and order but also performs varied functions for social welfare. It is said that the state not only protects and restrains but also fosters and promotes. Hence decentralisation of power is necessary for administrative efficiency and proper discharge of these functions.

History of Local Government in England

We shall make only a brief survey of the evolution of English local government. The English system of local government is the result of long evolution, mostly unguided and unplanned. Until recent times its machinery was not organised in accordance with any particular theory or plan. During the Anglo-Saxon times the country was covered with shires, hundreds, townships and boroughs. Each of these enjoyed large

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local independence, for monarchy being weak the central control was not strong. The Norman conquest changed the things considerably. The shires became counties, the hundreds disappeared, the townships for the most part became feudal manors while the boroughs became chartered municipalities. New units known as parishes made their appearance taking the place of the old townships. The Norman kings brought the local bodies under considerable closer control by the national government. These three principal areas of local government—the county, the borough and the parish which assumed their shape during the Norman rule, continued to exist during the Tudor, Stuart and Hanoverian periods. For hundreds of years, changes were relatively few. Central control was at times stronger, and at times weaker. The administrative work of the county was entrusted to Justices of the Peace who were appointed by the Crown. The boroughs

were governed by corporations. The parish, which was formerly an eccelesiastical unit, became in course of time the unit of local administration. In days of Tudor and Stuart autocracy, when Parliament was never called into sessions for long stretches of time and no parliamentary elections were held, the local bodies continued to function and local elections continued to be held. In short, though much of the local democracy was sapped away but the spirit of local self-government was never wholly extinguished, during the course of this long interval between Norman times and the eighteenth century.

At the beginning of the nineteenth century, the face of England changed with the coming of the Industrial Revolution. The coming of the factory system rendered the old scheme of local government obsolete. New industrial centres grew up which demanded better police protection, better roads and better sanitation. The old existing local bodies were unable to meet the demands of the new times. The parliament created new administrative bodies adding to the existing ones. The result was that there was a chaos of local areas, authorities and jurisdiction since the new administrative bodies were created without any plan. This practice of multiplying local bodies was the most significant feature in the evolution of English local government during the early years of the nineteenth century. "There were justices of peace, overseers, guardians, vestry men, church wardens, mayors, aldermen, councillors, and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates - all levied periodically upon the bewildered tax payers. At one time it was estimated that there were more than 27,000 different local authorities in England and that

eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdiction had become so dense that nobody could find his way through it."1

With the democratization of the House of Commons started in 1832, the work of the reform and democratization of the organs of local government could not be held back longer. As it was in the democratization of the House of Commons, similarly, in the field of local government reform was cautious, gradual and piecemeal. A start was made in 1835 when the parliament enacted the Municipal Corporations Act which fixed the basis for all the organisations of the Borough, they retain to this day. The Act applied to a total of 178 boroughs and the new arrangements were a great improvement upon those previously existing. A uniform style of organisation was given to the boroughs sweeping away thereby all charters, privileges, customs, usages and rights inconsistent with the Act Municipal oligarchy was replaced by municipal democracy, the sphere of municipal autonomy was defined a new giving increased powers of supervision and control to the government at London.

However, no other significant legislation on local government was passed during the first half of the nineteenth century. County government too was aristocratic2 and antiquated but its reform was not undertaken along with the reform of borough administration. It was the Local Government Act of 1888 which reorganised county administration in England. It transferred the administrative powers heretofore exercised by the justices of the peace to elective county councils. In each county and county borough, a council elected by the people was to have broad powers of government. "The last entrenchment of class government had been stormed; the

principles of representative democracy had now been extended over the whole field of English administration."

Then, in 1894, came the District and Parish Councils Act which swept away most of the multifarious special districts and provided for the creation of new, unified local areas in their place. This Act divided every county into urban and rural districts and every district into parishes. To the parish councils were transferred all of the civil functions of the vestries; while to the district councils, whether rural or urban, was given control of sanitation, highway and various other matters.

The Acts of 1888 and 1894 put the local affairs of England in the hands of popularly elected bodies and secondly, they contributed to the

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progressive simplification of the local government system by gradually abolishing a number of local government authorities. In 1929, a comprehensive local Government Act was passed which made it possible to combine or abolish a large number of county districts. The Act also made new arrangement for granting the local bodies financial assistance from the national exchequer. Finally, in 1933, a Local Government Act was passed which consolidated into a single status the powers and functions of the various local authorities. The many over lappings and anomalies which had accumulated during the preceding 100 years were eliminated and the local administration in England was put on a firm basis. However Jackson opines that local government as applied to England is hardly capable of precise definition. The term, according to him, has certain implications. It is concerned with localities and not with the country as a whole, it must for this reason be subordinate to the national government. The term further implies some jurisdiction or activity of a public nature, it implies also the existence of authorities empowered to exercise that jurisdiction and authority.

Local Areas in England

As a result of the consolidating process that culminated in the Local Government Act of 1933, there arc five principal areas of local government in England today, namely, the county, the borough, the urban district, the rural district, and the parish. The whole country is first divided into counties. The counties are divided into urban and rural districts. The rural districts are divided into parishes. A borough is any area which has received a municipal charier. London has a special government of its own. A brief description of these areas is as follows: The County: The county is territorially the largest area of local government. There are fifty-two historic counties and sixty-two administrative counties. It is necessary to differentiate between the historic counties and administrative counties. The historic counties, originating from Saxon Shires, serve as constituencies for parliamentary elections and as areas of judicial administration with their justices of the peace. Along with the justices are found in each historic county a lord lieutenant and also a sheriff. Both are appointed by the Crown. The sheriff serves as chief returning officer in carrying out the election of county members to the parliament. The lord lieutenant, formerly commander of the county militia, now has little to do except maintain

county records and recommend nominations of the persons qualified as justices of peace to the lord chancellor. From the

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viewpoint of administration, the historic counties have no value. They neither have any council nor are they used as units of local administration.

The administrative counties are the areas of genuine local self-government which were created by the Act of 1888. In many instances they are identical in area with historical counties, but in some they are not. Within most of the administrative counties is an incorporated area endowed with a legal personality. It can sue and be sued in its own name.

The governing authority of an administrative county is a county council which consists of a chairman, aldermen and councillors. The councillors are elected in single-member districts, for a term of three years. The suffrage qualifications are the same as those for parliamentary elections. The strength of councillors varies according to the population of the county. The councillors elect one-third of their number as aldermen who may be elected either from amongst the councillors or from outside. If councillors are elected to be the aldermen, special elections are held to fill in the vacancies caused by their selection. The aldermen and councillors together elect the county chairman from their own number or from outside.

The county council carries numerous functions. Mainly its functions are:

(i) to decide the policy and make bye-laws for the county;

(ii) to supervise the work of rural district councils;

(iii) to pass the budget of the county;

(iv) to maintain county buildings;

(v) to provide asylums and reformatories;

(vi) to protect streams from pollution;

(vii) to grant licences (except liquor licences);

(viii) to manage elementary and secondary education;

(ix) to administer poor-law;

(x) to appoint administrative officials;

(xi) to standardise the units of local weights and measurements;

(xii) to prevent epidemics among animals;

(xiii) to construct houses and see that the rules are observed in this regard; and

(xiv) to construct and repair the bridges and roads.

The council meets regularly four times a year, but may meet oftener if urgency requires. Most of its work is done through committees on education, on public health, on finance and on old age

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pensions. Every county is staffed with permanent officials such as county clerk, treasurer, health officer, surveyor, and various other functionaries who are chosen on non-political basis by the county council.

The Borough: The borough is a special unit of local government which is simply a town with a charter. Any urban or rural district which desires to become a borough makes a petition to the king which goes to a committee of the privy council, which institutes an inquiry, and upon finding favour ably, tentatively publishes the charter in the London Gazette. If within a month of its publication no protests are received either by a local authority or by one-twentieth of the owners of rate payers of the area affected, an order in-council is issued granting the charter and fixing the boundaries of the new borough. If protest comes forth, the borough can be created only by an Act of Parliament

The borough is governed by a borough council constituted like a county council. The Borough council consists of councillors, aldermen and a mayor. The councillors are elected directly by the people for a term of three years, one-third of whom retire each year. The councillors choose one-third of their members to be aldermen who may be elected from amongst the councillors or from outside persons qualified to be councillors. The term is six years, and one-third retire after every two years. The councillors and aldermen together elect the Mayor for one year. He is the presiding officer of the borough council and its official representative on ceremonial occasions. He has no power to appoint or remove the borough officials, or to veto the borough ordinances. He does not get any salary. Naturally he must be a man of wealth and leisure.

The borough council is, in the fullest sense of the term, the government of the borough. Its functions include making bye-laws or ordinances relating to all sorts of matters; acting as custodian of the borough fund; levying borough rates on the rental value of real property; drawing up and adopting the annual budget; and exercising control over all branches of strictly municipal administration. It can borrow money with the previous consent of the central government

The council meets monthly, fortnightly or weekly, as business requires. Much of its work is done through committees. Practically all matters brought up in the council are referred to some committee. The council usually adopts the recommendations of the committee. The routine work of administration is carried by permanent staff consisting of expert, professional heads of departments and subordinate

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employees. The officials are chosen by the council, but the subordinate employees are appointed by the head of the department concerned.

As soon as any borough attains a population of 75,000, it may ask the Ministry of Health for a provisional order giving it a county borough status. A county borough differs from a Municipal borough described above not in fundamental function or structure, but only in that whereas the latter is a part of the administrative county in which it lies, the former is practically exempt from county jurisdiction and is given most or all of the powers of a county. Not all the municipal boroughs choose to become county boroughs. Nevertheless, the number of county boroughs has arisen from 61 in 1888 to 83 today. The largest county borough is Birmingham which has a population of 1,118,500; the smallest is Canterbury with a population of 28,000.

Besides Municipal Boroughs and county Boroughs, there are also Parliamentary Boroughs. The Parliamentary Boroughs are the constituencies demarcated for election to the House of Commons. Like the Historic Counties, they have no value from the viewpoint of local administration. They are not units of administration.

The Districts: The Districts are of two types—Urban Districts and Rural Districts. Urban districts are the thickly populated areas which are created by the county council with a view to enable the areas to get better water supply, adequate fire protection and improved sanitation. Whenever any part of an administrative county becomes thickly populated, the county council may organise that area into an urban district to adequately satisfy the special needs of that area. An urban district may in time become a borough. As a district it has no charter but has certain special powers over sanitation, housing, licensing and other matters of particular importance. There is an urban district council consisting of at least one councillor from each parish in the district. There are no aldermen in the district council. The council elects its own chairman.

The rural district is a group of old rural parishes. There are in England and Wales 638 rural districts in all. Each district has a council consisting of elected councillors and a chairman. The term of the councillors is three years, one-third retiring every year. The chairman is given the powers of a justice of Peace. The council is responsible for matters like sanitation, water supply and public health. It has the power to levy rates and set up committees. It also appoints permanent salaried officials to carry on the routine administrative work. The importance of the rural district has diminished as England has ceased to be a rural country.

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Parish: Parish is a sub-division of the rural district. It is the smallest unit in the hierarchy of local government in England. Where the population of a parish is less than 300, the local affairs are managed by a primary assembly in which all persons on parliamentary register are entitled to be present. If the population is more than 300, the parish also has a parish council consisting of five to fifteen members elected for three years. The duties of the parish council or primary assembly are not very prominent. The council or assembly appoints the "managers" of public elementary schools, the clerk, the treasurer and such other minor functionaries as are needed. It also provides

for public works, recreation grounds and public libraries. The higher authorities may hand over to them the care of water supply, the lighting of the village and the repairing of footpaths.

The Government of London: The Local administration of the States' Capitals usually has to be unlike that of the other cities of the State. Just as the local administration of New Delhi is not similar to that of Bombay or Calcutta, likewise the administration of London is different from that of other cities of England. For the purpose of local administration London may be divided into three parts : city of London, county of London and Metropolitan London.

City of London: The city of London is an area of about one square mile located in the heart of London. It is primarily a business and financial centre. It is governed by a corporation made up of the freemen of the city. The corporation governs the city through a mayor and three councils or courts, namely, the court of aldermen, the court of common council and the court of common ball. The court of common council is the real governing body. It consists of 206 councillors, 26 aldermen and one lord mayor. The aldermen and councillors are elected directly by the citizens of the city. For the purpose of election the city is divided into twenty-six wards, each ward returning according to its size, a number of councillors. The councillors are elected annually whereas the aldermen are elected for life. The senior-most among the aldermen becomes the Lord Mayor. The aldermen along with the Lord Mayor form the court of aldermen. The court of Common Hall is, in effect, a primary assembly of the freemen, liverymen and municipal officers, and charged with duties of an elective nature only. The court of common council is the really important governing authority and looks to the sanitation, health, water supply, electricity, roads, etc., of the city. It carries its administrative work through standing committees and permanent officials.

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The County of London: The county of London covers an area of over 100 square miles and is divided into 28 metropolitan boroughs, each having a council, a limited range of local self-government but under a good deal of control of the administrative county of London. The London county council bears a general resemblance to other county councils. It consists of 124 councillors and 20 aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections. The aldermen are chosen by the councillors for six years. Together they elect each year a chairman of the council.

The powers of the London County Council are extensive. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries and bridges. It looks to the street improvements which are metropolitan in character. It also makes public health regulations. It has also the power with respect to the construction of and operation of tramways. It has undertaken several housing schemes involving the demolition of slum areas and the erection of workmen dwellings. It is responsible for the maintenance of larger London parks and for providing public recreation. It has also comprehensive functions in the matter of education, elementary, secondary, and technical.

The Council appoints committees to do the executive work which devolves a large part of the work on permanent officials.

Metropolitan London: Flanking the city of London on all sides there are 28 metropolitan boroughs which in organisation and powers cross between ordinary boroughs and urban districts. The metropolitan boroughs are very unequal in size. Each borough has a borough council consisting of councillors, aldermen and a mayor. The councillors are elected by the residents of the borough whose names appear on the parliamentary electoral list for a period of three years. The councillors choose the aldermen to one-sixth of their number for a period of six years, one-half retiring every three years. The Mayor is chosen as in a Municipal Borough. The borough council has charge of local street-building, paving, lighting and cleaning. It also undertakes construction and maintenance of subsidiary sewers, the enforcement of health regulations, and the building of workmen's residences. It has various other functions subject to the supervision of the authorities.

Central Control over Local Government in England

In England there is no single central department whose business is to control the local authorities. There are as many as six central

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departments which deal with local authorities, namely, the Ministry of Health, the Home Department, the Board of Education, the Ministry of Transport, the Board of Trade and the Electricity Commissioners. The Ministry of Health has general control over water supply, sanitation and overall public health including the new national health service and the approval of local borrowings. The Home Department has control over police administration. The Board of Education oversees the local education authorities. The Ministry of Transport has supervisory authority over tramways, ferries, docks and harbours. The Board of Trade supervises the development of water power. The Electricity Commissioners supervise electric lighting. Of all these, the Ministry of Health has got the widest amount of control. Thus the local authorities in England have to deal not with one central department but with many. And in some cases the control may be overlapping as the extent of supervisory jurisdiction which these departments possess is not in all cases precisely defined.

The central Government controls the local government through the following methods:

(i) By making laws: The local government derives all its powers from the parliament which may, at any time, reduce or increase' these powers.

(ii) Judicial action: If any local authority does an act which is violative of any rule or exceeds its powers, such an act may be declared ultra vires by the courts. The courts can even fine the local authority.

(iii) Through orders: The controlling departments of the central government may issue orders to the local authorities. Many of the appointments are approved by the relative department

(iv) Grant-in-aid: The Central Government issues charter to a local body before it comes into existence and lays down its powers.

(iv) Stopping Grants: If a local body does not perform its functions satisfactorily, the central government may stop its grants. Sometimes, it may take over the administration of the local body in case it is not running well.

Broadly speaking on the basis of central-local relations the local government system of the world is classified into three categories. Firstly, there is the American type under which the local authorities are almost completely autonomous, there being hardly any control or supervision from the centre. Secondly, there is the continental type prevailing in France and other continental countries where the local

authorities are subject to strict central supervision and control even in the exercise of those powers which have been delegated to them. Thirdly, there is the English type which occupies a middle position between the above two systems.

The powers of the English local authorities are defined and limited by the Acts of Parliament. If the local authorities go beyond these powers, their action becomes illegal and the central government may obtain a writ requiring any legal duty neglected to be repaired. The central government may also invalidate local ordinances. But the central government intervenes only if the local authorities act beyond their powers. So long as they remain within their proper sphere, they are left free to manage their affairs as they like. No central sanction is necessary for their budget or any other resolution. The only thing that the central government demands is that they should observe a minimum standard of efficiency.

In recent years, however, the central control over local authorities has increased considerably. This control has come about gradually and slowly in deference to no theory and according to no fixed plan. The central government has posted its control now in one direction and now in another, without correlating this control under a single department. As we have seen above, the central administrative authorities that deal with local bodies are many, and naturally, therefore, the amount of control exercised by these authorities not only varies widely but often is confusing. The Ministry of Health supervises vaccination, sanitation, water supply, and poor relief. It audits local accounts and handles most applications from local units for permission to borrow money. But the Home Office administers the police system and decides whether the standards laid down by it have been so complied with as to entitle the local body to receive half of the cost out of national funds. The Board of Education supervises the management of elementary, secondary and technical schools supported in whole or in part by national subsidy. The Ministry of Transport has supervisory jurisdiction over roads, tramways, harbours and docks. This dispersion of central supervision and control among so many agencies causes confusion to the administrator.

Through grants-in-aid the English Government has extended its control over local bodies. The grant-in-aid "becomes a prelude to inspection, then it leads to the imposition of uniform national standards upon the local authorities." The central government gives grant on the condition that it shall be spent in a particular way and for purposes

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specified by the central government. Once the local authorities have accepted the grant, they have to subject themselves to central supervision and control so that the central government might satisfy itself that the grant made by it was being properly spent. Otherwise too it is said one who pays the piper calls the tune. This tendency of increasing control through financial help is getting impetus every day with the result that the independence of local government is being seriously impaired in England—the land of its birth. Half a century ago, England was the classic land of local self-determination, but today the traditional interest of the English in the government of his own community has declined.

During the last few years it has been felt that the local government needs re organisation. In 1945, the Parliament appointed a Local Government Boundary Commission. The commission has proposed three instead of the present six local bodies, these three being the county, county Borough and county District. But its recommendations were not accepted and the commission was dissolved.

In conclusion, it may be said, however, that the record of English local government has been splendid. In no case does the national government undertake control of the local administration. It merely advises, inspects, regulates, accords or withholds approval. If the local authorities fail in their end, they are not superseded or dissolved. The central government extends them guidance, renders assistance and helps them acquire a requisite standard of efficiency. Thus the Central Government functions more as a senior partner rather than a boss, in a joint enterprise leading to the welfare and prosperity of the people. It guides rather than impedes. If, however, local authorities do not act on the advice of the central government the latter is not to blame.

References

1. Munro : Governments of Europe, p. 274.

2. Jackson, W.E. The Structure of Local Government in England and Wales (1960) p. xi.

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10 POLITICAL PARTIES IN ENGLAND

"The Prime Minister of England knows more the leader of the opposition than his own wife."

—Dr. Jennings

Political parties are said to be essential for the successful working of democracy. Democracy needs them for two reasons; firstly, to educate the citizens on political affairs and secondly, to give the citizens an opportunity to elect their rulers. English government is called party government and this is true to a great extent. The growth of cabinet dictatorship and the consequent decline of parliament is the inevitable result of the growth of the party system there.

The party system has weakened the king while strengthening the Prime Minister. In this chapter we shall study the organisation and programmes of English political parties.

Main Features of British Parties

(1) A Two Party System: A great characteristic of the English party system is the existence of two well organised parties since the seventeenth century when the political parties can be said to have come into existence. The original line of cleavage was between the Cavaliers and Roundheads. The former were the supporters of Charles I, whereas the latter were opposed to the prerogatives of the Crown and the established Church. But Cavaliers and Round heads is were not parties in the modern sense of the term. They were, rather, mere factions. During the later seventeenth century the Tories came to represent what the Cavaliers had stood for, while the Whigs came to represent the Roundheads. Thus the Cavaliers and Roundheads of the early seventeenth century became Tories and Whigs during the later part of the same century. The Tories were associated with the established Church of England, whereas the Whigs were associated with the

Dissenters. The Tories supported the prerogatives of the Crown. They represented the interests of the upper strata of society. The Whigs, on the other hand, wanted to protect the interests of the poor class of society. They stood for curtailing the powers of the king. The Whigs and Tories may be said to constitute the first English political parties in the real sense of the term. After the enactment of the Reforms Act, 1832, the Whigs changed their name to "Liberals" and the Tories changed into "Conservatives." The "Liberals" and "Conservatives" dominated the political scene and competed with each other for power till the rise of the Labour party to power in the second decade of the twentieth century. The rise of the Labour party seemed, for a time, to threaten, the two party system in England, but the simultaneous decline of the Liberal Party helped to maintain the traditional two-party system. In 1924 the first Labour Government was formed and, thereafter, the liberals never came to power - their ranks continued to dwindle. From 397 seats which they had in the House of Commons in 1906, the number fell to six seats in 1959 and 19 as per elections in June 1987. Today two parties - Labour and Conservative - hold the field, the Liberal party having become comparatively insignificant. Occasionally a couple of communists manage to find a place in the House of Commons.

The two-party system arising incidentally in England has become deeply embedded in the political structure of England. It has a profound effect on the character of the British constitutional system. It ensures stable and strong government. "England does not love coalitions" is an old but a widely accepted maxim. In fact, party leaders have always striven for the two-party system. Even the constitution itself was developed under the two-party system and "does its best to compel it." The British people have become so accustomed to the two party system that an election for them is really a choice of the government. The seating in the House of Commons symbolises as well as presupposes two parties. In the Parliament crossing of floor is exceedingly rare. The Parliamentary procedure has the effect of strengthening the two-party system. There can be little exaggeration in saying that the success of British democracy lies in its two-party system.

A decade back development needs a special mention. In 1981 the fight wing of Labour Party caused a split in the Party and framed Social Democratic Party. It could win a few seats in 1983 elections. In 1985 it established an alliance with the Liberal Party who are ideologically close to their views. It posed a threat to Biparty system. In May 1988 the SDP had 8 seats in the House of Commons.

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(2) High Centralisation: The British political parties are characterised by high centralisation. Each of the major parties has a strong organisation both at the national and local levels. The real power rests with the central organs of the parties. There is a direct chain of connection between the headquarters and the local units. Every party has evolved a high degree of leadership and the members of the party follow the party leaders. There is a firm and vigilant control of the party over its members in the Parliament. Inevitable consequence of the high degree of control by the party over the members is that it is highly disciplined. The candidates for election are nominated by the central rather than local units. Rigid discipline inside the parliament is necessary to keep the party's government in power. The member exercises the vote for his party only in the parliament even if he does not personally agree with it on a particular question. If he votes against his party, he is likely to be expelled from the party.

(3) Continuity of Operations: The political parties in England have to be continually in operation. After one election is over, they start preparations for the next. They do not go to slumber or even doze between elections. They continue their publicity and education work. They issue literature, hold meetings, conduct week-end and summer schools, organise local efforts, participate in local elections and keep themselves into contact with the members of the parliament and cabinet. Though the effort in between the elections is not so intense as during the three weeks preceding the election, but it is incessant. As it is said, "British parties are always present, everywhere present and vocally present."

(4) Moderation and Compromise: The British political parties are characterised by the tradition of moderation and compromise. The conservatives have not always been conservative nor have the liberals been liberal in their attitude. The conservatives have often championed reform which liberals have opposed. The Labour party with its avowed programme of socialism is not wholesale socialist and labourite. It does not propose to nationalise all the industries. Thus the conservatives have liberalised their conservatism while the labourites have moderated their socialism. Moreover, all the members of the conservative party do not come from the propertied class - the class of landlords, industrialists, financiers and businessmen; nor the labour party is the party entirely of the workers. All workers do not vote for labour, nor all businessmen vote for the conservative party. As Neumann puts it, "the conservatives have to be mindful of the working men and the labour cannot

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completely disregard business."1 The conservative party has accepted as permanent a large part of the nationalisation introduced by the Labour when in power. The middle class people have

their sympathies on both the sides. The whole of it is neither with the conservative nor with the Labour Party.

The tradition of moderation and compromise is visible not only outside the parliament but also inside it. The Government realises the value of the role played by Her Majesty's opposition and makes no attempt to suppress it. The opposition too makes a constructive criticism and normally does not obstruct the working of the Government. It does not make extravagant and wild promises to turn public opinion against the Government. In short, moderation and compromise have become well-known traits of the British Party System.

Party Organisation

The Conservative Party

The Conservative Party is the successor to the Tories of the eighteenth century. It is the party of the wealthy, the aristocratic and upper class gentry. The university graduates, the middle class as well as working class patriots, disgruntled workers and highly skilled workers whose pride aligns them with the party also support it. Geographically the South of England inclines towards conservatism.

At the top of the Party there is the National Union of conservatives and Unionist Associations or the N.U.C.U.A. There are separate Unionist Associations for Scotland and Northern Ireland. It is a federation of local and central associations. Its membership runs into about thirty lacs. Its purposes are to promote party associations everywhere; to foster thinking and effort to further the principles and aims of the party and to be a centre of united action. It has a central council and an Executive Committee. The central council consists of fifteen categories of members, such as university graduates, constituency associations, central associations, provincial areas. It elects a president, a chairman and three vice-chairmen at its annual meeting. It also chooses an executive committee which meets once a month. Like the central council, the executive committee is primarily advisory in character. The administrative and disciplinary work of the party is carried by the central office headed by the chairman of the party who is nominated by the party leader. The central office controls the nomination of party candidates and manages the party's financial affairs. It gets prepared and circulated, the different types of reports,

bulletins, books, brochures, pamphlets, journals dealing with the policy and programmes of the party. It assists the local organs and establishes the new ones. It has today become the actual seat of authority in the party organisation; "If the cabinet has become a dictator in the domain of parliamentary life, the central office has equally become such in that of party politics."2

It may, however, be noted that real authority in the party is possessed by the party leader. It is he who nominates the chairman of the central office and is responsible for the elaboration and statements of party policy. The central office conveys to him from time to time the feeling in the constituencies. He is not elected every year. Once elected he continues to hold the office for life. He may, of course, resign. He himself nominates his successor. Churchill nominated Anthony

Eden as his successor. The entire party obeys his commands. He is usually the leader of his party in the House of Commons. The chairman of the party summed up the authority of the party's leader in these words; "His authority is based on free election, and the confidence of his supporters. Resolutions passed by the National Union are sent to him for his information and guidance, but no resolution, however emphatic, binds him on the questions of policy. This method suits us and has suited the succession of great men we have been proud to have as our leaders." The Party's manifesto in 1945 was entitled, "Churchill's Declaration of Policy to the Electors." Similarly in 1951 the manifesto was signed by Churchill and began with the word "I".

The Conservative Party holds the reins of Government at present. In December 1988 (figures based on general election of 1987) the Conservative Party captured 387 seals. In the elections held in April 1992 it suffered set back though much against expectations it could capture 336 seats in House of Commons of 651 members. The party has won four times consecutively. The credit for conservative victory despite odds goes to John Major's dynamic leadership.3

The basic philosophy of the conservative party is that of Burke, Hume and Adam Smith. It supports the institutions of kingship, church and property. It does not want to diminish the influence and prerogatives of the king. It lays emphasis on the people's loyalty to their king. It showers praises on the royal family. It wants all the citizens to be members of the church. It believes in the policy of Laissez-faire. The conservatives try to perpetuate the British Empire and have very little sympathy with the aspirations of dependent nations. They firmly believe in imperialism. For instance, a die hard conservative Churchill

always opposed freedom to India. They uphold the interests of the peerage and favour education in church schools. They always favoured retention of the House of Lords. Throughout the nineteenth century they were bitter opponents of political rights and education of the lower middle and working classes. In the economic sphere up to the Great War of 1914-18 they were protectionists and now they have dropped their strict adherence to the theory but advocate the safeguarding of British industries. They have been in general opposed to nationalisation but now they have become reconciled to it and have allowed perpetuation of the nationalisation introduced by the Labour Party. In short, the conservative party values traditions and precedents. Its sense of nationality is strong and it has faith in the superiority of English to all other races. In social matters the party advocates some refrom.

Labour Party

The Labour Party is of recent origin and was set up in 1906. It is a product of two chief principal forces—trade unionism and socialism. Trade Unions appeared in England in the early stages of the Industrial Revolution and grew steadily in numbers in the nineteenth century. They began to make their demands against the governing class. Sooner the Labour saw that it must have its own party and should no longer look back to the candidates of other parties to fight its battles. Consequently, in 1893 an independent Labour Party was formed in Scotland with the object not only of propagating socialism but of giving labour a political alliance, distinct from the existing parties. In 1899 the Trade Union Congress projected a new organisation which took form as the

Labour Representation Committee with the avowed object of forming a Labour group in Parliament. In 1906, the Committee dropped its title and assumed the name of "Labour Party" and adopted a new constitution. Since that date the party has grown rapidly and emerged in the General Election of 1922 as the second largest party in England.

The organisation of the Labour Party is more elaborate than that of the Conservative Party. Prior to 1918, the Party was not a national organisation having branches open to individual members in every constituency, rather it was a federation of trade unions, trade councils, socialist societies and one could become its member only by joining one of these component groups. After the war the party adopted a new constitution and threw open its gates for old and new voters alike, and especially for women. The membership clause of the new frame of party read as follows: "The Labour Party shall consist of all its affiliated organisations together with those men and women who are individual

members of local labour party and who subscribe to the constitution and programme of the party." The constitution also made it clear that "workers by brain" were no less welcome than "workers by hand" and any or all individuals who were prepared to endorse the principles of the party were to be encouraged to identify themselves with the party. This departure made the party truly national. Not only workers but people from all walks of life, teachers, businessmen, journalists, workers, military men, engineers, officers, bishops, shopkeepers, and agriculturists are now enrolled as members of Labour Party.

The supreme governing authority of the Labour Party is the conference. It is composed of delegates from all member organisations who send one delegate for every 1,000 members; an additional woman delegate may be sent from any constituency in which the number of individual women members exceeds 500. All members of the National Executive, and of the parliamentary Labour Party, and all duly sanctioned parliamentary labour candidates are ex-officio members of the conference with no right to vote unless sent as delegates. It meets annually and directs and controls the work of the party. It may amend the constitution by ordinary majority. During the periods between conference the work of the party is carried by the National Executive of the party.

There are 28 members of the Executive Committee of whom twelve are nominated and voted for by the trade unions, by socialist, the professional and co-operative delegations together; 8 by the constituency organisations; 5 women nominated by any organisation and elected by the conference as a whole. To these 25 mentioned are to be added 3 ex-offico members; the leader of the party and the deputy leader and treasurer. The chairman is elected annually by the conference. The functions of the Executive Committee are: to see and ensure the establishment and keep in active operation a party in every constituency, to give effect to the decisions and orders of the conference, to interpret the constitution and standing orders in cases of dispute; to expel persons from membership and disaffiliate organisations which have violated the constitution or bye-laws; to supervise the multifarious work carried on through party headquarters and to approve candidates for the Parliament. The Committee meets for two or three days each month, and sub-committees are set up for special purposes.

The Central office of the party is under the immediate direction of the Secretary who is elected by the party conference. The office directs

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the party activities throughout the country and has established and maintained regional organisations. It recommends candidates like the other parties, provides a Speaker, apportions funds, distributes campaign literature, helps to support the party newspapers and other routine work which is performed at the headquarters of the party. The office works under the direction of the Executive Committee.

The members of parliament who belong to the labour party constitute the Parliamentary Labour Party. They elect their leader in the parliament, who, if the party is in power, becomes the Prime Minister and if the party is in opposition becomes the leader of the opposition. The Parliamentary Labour Party consults the National Executive and is guided generally by the policy formulated by the Conference.

A Coordinating Agency termed as National Council of Labour also exists. It consists of 21 members—7 represent Trade Union Congress, 5 Labour Pary executive, 4 Parliamentary Labour Party and 5 Cooperative Union. The Council meets once a month and coordinates the party activities and policies in the various fields.4

The programme of the Labour Party is rigidly socialistic in character. It proposes to abolish the capitalistic system by degrees. Land and capital, according to the party's manifesto, should be owned by the nation and all economic activities should be controlled by the State. Wealth should be more equitably distributed. It believes in the nationalisation of all industries. It does not believe in privileges for a particular class. Its ultimate goal is full-fledged socialistic regime. The party wants taxation to be graduated. It, in short, strives to achieve political, social and economic emancipation of all people and more particularly of those who directly depend upon their labour, manual or mental. Its programme is the programme of a welfare State. "It seeks to light Britain forward into a new era of equality with less of a zest, perhaps, for the technique of social change, and less of concern for the question whether or not that technique involves a policy of socialism and more, far more of a passion, for the reality of social change and the actual coming of equality." The party is genuinely socialistic and-liberal. While in office during the period 1945-1951 it carried through substantial nationalisation of industries.

In political matters the party always stood for self-government for the colonies and dependencies of the British Empire. It was during the rule of Labour Party that India attained Independence. The party at one time advocated the abolition of House of Lords but now it has reconciled itself to its existence. It stands for strengthening the hands of

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the United Nations and close co-operation with the United States. In December 1988 it could win only 227 seats but in the 1992 elections it improved its position and won 271 seats. In May 1997

Elections the party captured 419 seats decimating the conservatives with the worst ever defeat since 1830.

The Liberal Party

The Liberal party was born of the mentality and interests of John Locke and the Liberal Whig elements. At one time it was one of the major parties in England but, as mentioned earlier, its strength has now dwindled and it has become a minor party. However, in 1977 the Labour Party could keep itself in power with the support of the Liberals.

The Liberal Party is a party of reform. It has always stood for liberty and has championed the cause of religious liberty. It has also championed the cause of political liberty, the right of every citizen to an equal share of the suffrage, and the right of the House of Commons, elected popularly, to a sovereign voice. It may be remembered that the Parliament Act of 1911 curtailing the powers of the Lords was pressed to statute by the Liberal Government after great and continuous fight with the conservatives inside and outside the Parliament for three years. The liberals believed in free trade and laissez-faire. While some liberals still adhere to their belief in free trade, the Liberal Party has given up its allegiance to the doctrines of "free-trade and laissez-faire". The party no longer caters to the view that free competition is a panacea for the nation's ills. It believes now "neither in a refine of private enterprise, nor in one of pure socialism, but in a mixed regime which combines features and elements of both, according to the needs of the nation, and progressively changes the proportion of the elements with the movement of national needs." It stands for individualism for the rich and collectivism for the poor. It claims that it represents not a single class but the whole nation. It is not tied to any theory, but considers every proposal on its merits. While rejecting socialism, it advocates considerable reforms in capitalism. It does not regard nationalisation essential for the proper arrangement in industrial affairs. Private ownership would remain but the workers would have a stake in the business through profit-sharing schemes and their representative councils. The party aims at building a Liberals commonwealth in which everybody will possess liberty and property and enjoy security. The party is supported by those of moderate income and by a few rich and also the poor.

One of the reasons for the decline of the Liberal Party during the past five decades may be found in its lack of a forthright and distinctive

programme. It has fallen between the two stools of Labour and Conservatism. Like the Labour Party, it favours the welfare State, as do many Conservatives, and like the latter it opposes State capitalism. Much former Left-Liberals strength has gone to Labour. Likewise Right-Liberals (the old style Gladstonian liberals) have joined the Conservative Party. Thus during the last three decades or so the party is gradually on the decline. In 1945 it captured only 12 seats, in 1950 only 9 seats. In 1955 and 1959 they could win only six seats. In 1964, it improved its position slightly as it captured 9 seats. In 1966, it improved its position and got 12 seats. In the March 1974 elections, it won 14 seats. It joined Labour in April, 1977 in forming a coalition Government. In 1987 General Elections the Liberals and Social Democratic Party in an alliance captured 19 seals. In April 1992 it won 20 seats.

The Communist Party

Besides there exists a small group of Marxists who aim at the abolition of capitalist rule and establishment of communist society. It could elect its representation in the British Parliament. But it has no prospects in England where worker is not disgruntled and the Labour Party looks after his interests.

The Social Democratic Party 1981 (S.D.P.)

The rightists of the Labour Party broke away to form the Social Democratic Party in 1981. The rightists in toto did not, however, leave the party, only a group of them opted out. The split occurred on account of Labour Party's commitment to the Electoral college for according the trade unions a dominant voice in the election of the party leader. The SDP advocates mixed economy, the NATO alliance, and membership of European Common market.

The SDP stood for the policies of Gaitskell - the leader of the opposition. According to Gaitskell, equality was attainable without wholesale public ownership and that state should effect large scale purchases of shares in private companies. The SDP did not indulge in trade union activities and did not believe in class conflict. Vemon Bogdanor opines "The SDP is a party of individual membership which claims to represent all classes or rather it denies that economic relationship alone shapes society. Political authority derives not from social groups possessing corporate unity but from individuals who combine together united by a common interest"5

The SDP and Liberals formed an alliance based on a considerable degree of ideological convergence between the policies of the two

parties. However, in the elections of 1987 the conservatives under the dynamic leadership of Mrs. Thatcher stole march upon all parties. The liberals under the leadership of David Steel and SDP led by David Owen had hoped to hold a-balance in a hung parliament but 1987 elections dashed their hopes to the ground. In March 1988 Liberal Party and SDP got merged and set up a new Social and Liberal Democratic Party. In April 1992 the Party's combined strength emerged only to be 19 in a House of 651 members. A section of SDP retained separate identity and could have 3 seats as per June 1987 elections.

Concluding our survey of the organisation and programme of the British Political parties it may be remarked that between the three main parties Labour, Liberals and Conservatives there is a general agreement on fundamentals. They favour the continuance of monarchy and accept the Commonwealth of Nations as an aggregation to be defended and preserved. As stated, in "social, imperial and international affairs the professed immediate policies of all parties are very similar; the elector has to judge whether capitalism or socialism is more likely to produce the desired results, and perhaps which party is by its nature, personnel and record the more capable of progress." With the decline of the Liberal Party the British politics has more or less now reverted to the two-party system, with an alignment of right against left, and of more free enterprise versus more socialisation. The two major parties are either left or right. The importance of

centrist elements can not be minimised who exercise an extremely important moderating influence on both parties."5

In April 1992 elections the position of the main political parties was as follows:

Total members: 651

1. Conservatives 336

2. Labour 271

3. Liberal Democrats 20

4. Scottish National Party 3

The remaining seats were won by regional and nationalist parties of mean significance. This was the fourth successive victory for the conservative though the party lost 44 more seats to the Labour. In May 1997 Elections the labour party swept the pulls capturing 419 seats in a House of 659 members.

Her Majesty's opposition

No account of the British constitutional system would be complete without describing the role of Her Majesty's opposition which is an integral and indispensable part of the British Constitution. The

opposition in England is as organised as the Government itself. It is officially recognised. The leader of the opposition gets an annual salary charged on the consolidated funds. He has a room in the same corridor as those of the Ministers. He stands side by side with the Prime Minister when the monarch opens the Parliament. He is justly described as Her Majesty's Opposition. He is the alternative Prime Minister. The existence of an organised and officially recognised opposition is almost peculiar to Great Britain. In the United States there is no officially recognised opposition. In India there is an opposition but on account of the multi-party system it is not so strong and united as in Britain though opposition and its leaders are duly recognised. The Leader of the Opposition in India also enjoys status of Cabinet Minister.

Her Majesty's Opposition in England plays an important role in the actual administration of the Government. It keeps the Government always on toes and thus on the right track. The Government learns more from the criticism by the opposition than by the members on the Treasury benches. The Government does not go off the rails due to the constructive and sound criticism of the opposition in the Parliament. In the absence of opposition the party in power is likely to become dictatorial and democracy may fail. The opposition criticises the arbitrary acts of the British Government and exposes its infirmities. Quintin and Hogg observed: "It is not a long step, from the absence of an organised opposition to a complete dictatorship."7

The opposition in Britain is responsible opposition. It is not only Her Majesty's opposition but is also Her Majesty's alternative Government. It is not a mere faction or caucus but is a responsible part of the Government machinery. It has been rightly said that the Prime Minister knows the leader of the opposition more than his wife. The leader of the opposition is paid a salary of £ 44100 per year from the public funds. Besides, like other members of the House he draws £ 13875 as Constituency allowance. He enjoys the status of a Cabinet Minister. The leader of the proposition has to function on the presumption that at any time he may be called to run the reins of administration and so he should not indulge in loose or irresponsible talk or make false promises. That is why the opposition in Britain is seldom destructive and obstructive. In times of national crisis it always co-operates with the Government because the parties are agreed on fundamentals. Laski opines the party system in UK depends for its success on the fulfilment by each side of certain understandings which they must not violate if the system itself is to endure".8 Formation of

national government by Churchill during world war stands witness to this fact of agreement on fundamentals.

Pressure Group

Political parties constitute the very soul of democracy. Democracy without a political party is said to be a ship without pilot or a boat without rudder. Besides these parties every political system is influenced by several organised groups which are interested in the affairs of the state for some specific purpose, mainly selfish. Hitchner and Levine prefer the word 'interest group' which according to him is a collection of individuals who try to realise their common objectives by influencing public policy'9 Almond and Powell define interest group as "a group of individuals who are linked by particular bonds of concern or advantage and who have some awareness of these bonds.10 Evidently, the pressure groups constitute the agencies for safeguarding the interests of a group of people. Hence they pressurise or affect the working of every political system by contacting the political parties, exerting pressure on the government leaders including the bureaucracy. They operate through the political parties but they fundamentally differ from them. In the words of Duverger "Political parties strive to acquire power and to exercise it by electing. Pressure groups do not participate directly in the acquisition of power or in its exercise they act to influence power while remaining apart from it. They exert pressure on it. Pressure groups seek to influence the men who wield power."11 Thus a basic difference between the two lies in the fact that political parties aim at capturing power whereas the pressure groups exert pressure on the power and strive to derive maximum benefit for their members.

Pressure Groups in U.K.

Some of the prominent pressure groups in Great Britain are the National Farmers Union, the National Union of Mine Workers, the Transport and General Workers Union, the Electrical Traders Union, the Fabian Society etc. These groups stand for the protection of the economic

interests of their members. The trade union organisations strive for the amelioration of the wages of the working classes.

Besides these there are non-economic groups as well. For instance Royal Society for the prevention of cruelty to animals Lords' Day Observance Society, the Students Christian Movement, Council for the Protection of Rural England and Royal Institute of British Architects, Automobile Associations; Association of Metropolitan Authorities; the County Councils Association, the Magistrates Associations and scores

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of temporary associations which come into existence for achieving a particular purpose. Such Associations generally prescribe the legislation committees as they have got the right to express their opinion before them. The Government also utilise these pressure groups. The Ministry of Labour generally publishes the directory of the trade unions and employees associations. The Government Departments take them into confidence when matters concerning these bodies are being taken up.

It will not be out of plan to point out that pressure groups do not play as effective role in Great Britain as in USA on account of two different political systems prevailing there. In the words of Hitchner "The executive originates all important legislation; hence the Cabinet and ministers are generally the sensitive centres of power. British members of Parliament are more highly disciplined to party loyalty and are thus less susceptible to the pressure of groups. In certain cases, however, the British members of Parliament are agents of such groups and espouse their cause in the Parliament. Some of these groups are aligned to the Parties. Trade Union Congress is the potent wing of the Labour Party and Federation of British Industries is an ally of the Conservative Party.

How Pressure Groups function?

The Pressure Groups function in various ways: (a) They exercise influence on the legislation at the drafting and committee stage (b) They remain in touch with the officials who are instrumental in drafting the legislation and rendering advice to the ministers (c) They maintain rapport with the members of Parliament who support them at the Committee stage (d) They render assistance to the departments in the policy formulation and administration (e) They mobilise public opinion through the press and public meetings for and against a particular piece of legislation before the Parliament (f) Some of them promote socio-economic reforms whereas some others aim at political reforms. Capital punishment in England was abolished through the efforts of "National Campaign for the abolition of Capital punishment"-a pressure group. Likewise certain pressure groups were responsible for effecting of parity in franchise rights to women.

Evaluation

The critics opine that these pressure groups are tools in the hands of wealthy and effluent section of society. The latter encourages corruption. The retired bureaucrats or former parliamentarians are engaged by some of these groups to win over bureaucracy and the existing parliamentarians.

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It is also contended that the groups function in an undemocratic manner. The democratic process is distorted as 'part' is made to prevail over the whole. Moreover, these groups cannot be held accountable for their sinister policies or scrupulous functioning of their leaders.

The above criticism is rather wild. The pressure groups have become part and parcel of democratic political system in Great Britain. They are kept briddled by their own members, other political parties and vigilant government. National interests are never kept at stake. With the emergence of concept of welfare state and the impact of the Labour Party the interest or pressure groups have played very healthy role and their responsible political activity has contributed much to the realization of the common good.12

THE GOVERNMENT OF FRANCE

CHAPTER I The French Political Tradition

Democratic and Authoritarian Tendencies

French citizens created the Fourth Republic in 1946. They built it out of the ruins of the War and the ravages of four years of the German occupation of the Second World War. The fact that it is a Fifth Republic suggests that there had existed other governmental systems than that which prevails at present. During the century and a half following the French Revolution, France experienced three further revolutions,1 two coups d' etat 2 and three wars.3 She adopted and rejected, during this period, more than a dozen constitutions,4 three of them monarchic, two dictatorial, three imperial and four republicans. Besides these constitutional experiments, for a number of years she was governed by provisional systems, not based on any written text as the Comite de salut public, the provisional government of 1848, and the government of National Defence of 1870. "Each time a constitution was made," remarks Herman Finer, "large elements of the nation were resolved never to make it work, or to work within it, but to destroy and replace it by another that must equally outrage rival millions of the population."5

Several times, thus, in between the history of the four republics France has passed through many phases and tried many experiments. Among the countries in which popular government has prevailed France, according to James Bryce, is in two respects unique. "She adopted democracy by a swift and sudden stroke, without the long and gradual preparation through which the United States and Switzerland and

England passed, springing almost at one bound out of absolute monarchy into the complete equality of all citizens." And France did this not merely because "the rule of the people was deemed the completest remedy for pressing evils, not because other kinds of government had

been tried and wanting, but also in defence of general and abstract principles which were taken for self-evident truths."6 The democratic and authoritarian tendencies in France, therefore, form an indispensable background for the proper appreciation of the present political system there. No country can rid itself of its past, but past in France most conspicuously runs in the present and may go deep in the future as well.

Heritage of the Revolution

The "old Regime from which France extricated herself during the last decade of the eighteenth century was marked by the Declaration of the Rights of Man. Men, it was affirmed, were born free and remained free and equal in rights; the aim of all political associations was the preservation of the natural and impersceptible rights of man, namely, liberty, property, security and resistance to oppression. The Declaration of the Rights of Man was founded on the ideas of Voltaire, Montesquieu and Rousseau and the same declaration was made a part of the preambles of the Constitutions of Fourth and Fifth Republics.

During the next decade France experimented with four Constitutions. The Constitution of 1791 was the result of the labours of the National Assembly and it attempted to carry out the ideas which brought about the French

1. In 1830, 1848 and 1870.

2. In 1799 and 1851.

3. In 1793, 1870 and 1914.

4. One of them, the acte additionel, lasted only for twenty-one days.

5. Finer, Herman, Government of Greater European Powers, p. 272.

6. Bryce, J., Modem Democracies, Vol. II, p. 232.

Revolution. The Revolution which had started in 1789 as an attempt to reform ended in 1792 and 1793 by abolishing of the monarchy and executing the King.

The Convention was summoned by the extreme radicals and it prepared another Constitution to replace the Constitution of 1791. It established a collegiate executive composed of 24 men and established a legislative assembly on a broader popular basis. The draft Constitution could never be put into effect as a result of political circumstances and remained a dead letter. The Convention, then, set up another Constitution in 1795, the system of Directory.

The Constitution of 1795 established a plural executive or Directory, as it was called, composed of five members chosen by the legislature. It provided a bicameral legislature chosen by voters with property qualifications. The Directory failed to distinguish itself. Its members were men of

mediocre ability and were divided amongst themselves and they failed to control the situation. Anarchy again threatened the country and the Directory was replaced in 1799 by a Consulate, a system which derived its name from the fact that the executive authority was vested in the three consuls. Napoleon Bonaparte was the first consul.

The Constitution of 1799 was strictly authoritarian and its machinery was placed under the exacting control of the First Consul, Napoleon Bonaparte. He did not believe in the popular constitutions. To all intents and purposes, France had again become a monarchy and in 1804 Napoleon proclaimed himself Emperor of France and made the office hereditary in his family.

Napoleon abdicated in 1814 and in terms of the agreement with the victorious allied powers the Bouborns were restored to the throne in the person of Louis XVII. Louis was pledged to advance a limited monarchy patterned somewhat close to that of England. But the Frenchmen soon discovered that it was far easier to transplant the form than the spirit of the government. The monarchs, too, had never caught the spirit of the Constitution which they had sworn to uphold. Charles X violated certain provisions of the Constitution and, thus, the "July Revolution" of 1830. Charles X had to abdicate and France, once again, was faced with the problem of providing herself with a new government.

Most Frenchmen believed that the monarch was at fault and not the monarchy and, therefore, changed the line of Kings. Louis Philippe, of the House of Orleans, was put on the throne on a clear understanding that he would be a strict constitutional ruler. But the royal ineptness and partisan squabbles, owing to the multiplicity of political parties, made the parliamentary system unworkable. Gradually, the system of government lost all support and the sentiment in favour of a republic grew apace. Paris was once more flamed into revolution and on February 24, 1848 Louis Philippe abdicated and quitted the country. A provisional government was set up on May 4, 1848 and France was proclaimed a republic, known in history as the Second Republic.

The Constitution of the Second Republic was based on the American type of Presidency. But the people were in no mood to accept the new type of government. When the first National Assembly was elected, two-thirds of its members turned out to be avowed monarchists. On December 2, 1848 the French people went to the polls and, by overwhelming majority elected Louis Napoleon, nephew of Napoleon I, the first President of the Republic. Louis Napoleon was himself certainly no republican. He began manoeuvring and after three years in office, staged a coup d' etat and gave the country a new Constitution. On November 7, 1852 the Senate decreed the re-establishment of the Empire. It was submitted to the people for their approval and they gave an affirmative vote. The imperial power became as fully centralised under Napoleon III as it had been in the days preceding Waterloo, though some important changes were made in the plan of government.

For a decade things went reasonably well. In time, however, the original popularity of the Emperor was on the wane. Anticipating bad times, he initiated a number of reforms and a new Constitution of the Second Empire was drafted on May 21, 1870. But on July 19, the Emperor plunged the country in a hasty and ill-conceived war against Prussia. At the disastrous battle of Sedan Napoleon surrendered. He was subsequently released by his German captors and went to England where he died in 1875.

The period of 1870 to 1875, says Neumann, "not only gave rise to the Third Republic but also created the foundations of the Fourth, its nearly identical successor." The Government created in 1875, after experimenting with various make-shift arrangements, was

a Parliamentary Republic. It was nominally headed by the President of the Republic elected by majority of both Houses of the legislature for a term of seven years with eligibility for reelection. The President was seemingly equipped with vast powers, but the actual leadership of the government was in the hands of the Prime Minister, officially known as the President of the Council of Ministers. The role of the two "presidents" was the same under the Third Republic as it was under the Fourth, but not under the Fifth.

The legislature was bicameral. The Upper Chamber, the Senate, had 300 members indirectly elected by electoral colleges formed in each department. A tenure of nine years, one-third retiring every three years, and a minimum age of forty years were prescribed for Senators. The Chamber of Deputies, the Lower Chamber, was directly elected by universal suffrage, although women did not possess the right to vote, for a period of four years. In theory, it could be dissolved by the President of the Republic with the consent of the Senate, but since 1877 no attempt was made to dissolve it. The lack of dissolution proved a distressing feature of French politics; the short life of French Cabinet. There was no provision for resolving a deadlock between the two chambers and it placed the Senate in an advantageous position.

Vichy Interlude

The Third Republic did not live through World War II. It collapsed after eight weeks of fighting in 1940. The war time Premier, Paul Renaud, resigned and he was succeeded by Marshall Petain, a hero of World War I. Negotiations were promptly opened for an armistice. According to the terms of the armistice France was divided into an occupied and unoccupied zone. The French Government in Vichy, though in unoccupied zone, was in no way free from German influence.

The National Assembly in a joint session of the two chambers, which met to ratify the armistice, "voted all power to the Government of the Republic under the authority and signature of Marshal Petain," who was also authorised to frame a new constitution. Petian never promulgated a new constitution, but on the day after the National Assembly had given him full powers, he promulgated two Constitutional Acts. The first made him the chief of the State to serve indefinitely. The second Act essentially set up a dictatorship; making laws and to control the budget. He was also vested with emergency powers. As to the existence of emergency, Petain was the sole judge. It was, thus, at Vichy, under the guidance of Marshal Petain, that the Third Republic was finally killed.

The Provisional Government, 1944-45

The Vichy Government and the simultaneous occupation, first of part and then of all the country met with vigorous opposition, which came to be known as Resistance, from several groups at various points in the country. In 1943, a National Council of Resistance was formed together

with "the government in exile" which General De Gaulle had formed in London. With the liberation of France by the Allied troops, De Gaulle entered Paris on August 20, 1944 and shortly after as President of the provisional government formed his ministry known as Commissioners.

The first act of De Gaulle when he entered Paris was to issue a decree declaring the Vichy legislation null and void. In pursuance of this declaration the first national elections came on 21 October 1945, when the French people were called to elect a representative Constituent Assembly. In part, the election took the form of a referendum, in part, it was to designate the members of the Assembly. The first part included two questions : "(1) Do you wish that the Assembly to be elected at this time should be a Constituent Assembly?; (2) Do you approve of the public powers being organised, until the establishment of the new constitution, in conformity with the bill, the text of which was given on the other side of the ballot ?" If the electorate answered "yes" to the first question, it meant the election of the Constituent Assembly empowered to draw up a new constitution replacing one of the Third Republic. In case of a negative decision the members elected would constitute a Chamber of Deputies under the Third Republic and performed its functions accordingly.

The Voters repudiated by an overwhelming majority the Constitution of the Third Republic and indicated their desire for an entirely new constitution. The Drafting Committee of the Assembly set to work without delay on the constitution. The Drafting Committee submitted the new constitution to the Assembly on April 19, 1946. Its main features were a single

legislative Chamber; the Chamber was to elect the President of the Republic for a term of six years and he was not to serve for more than two terms; the powers and functions of the President in general, were less extensive than that of the President under the Third Republic; the Prime Minister was to be elected by the Assembly and he would form his own Council of Ministers responsible to the Assembly. The draft also contained a formidable array of rights-civil, economic and social.

The Assembly approved the Draft Constitution by a Communist-Socialist majority in spite of the determined opposition of the other moderate parties. When the Draft Constitution was submitted to a referendum for approval, it was rejected. The defeat of the Draft reflected the fear that the Communists would seize power through the all powerful unicameral legislature on which they had particularly insisted in the Constituent Assembly.

The Second Constituent Assembly was elected on June 2, 1946. The Assembly was able to produce a final draft within four months of its composition. On October 13, 1946, the people adopted the new constitution. The

Fourth Republic

The Constitution of the Fourth Republic came into effect on Christmas eve 1946. Commenting upon the nature of the new Constitution, Munro remarked: "What ultimately emerged from the Constituent Assembly in October 1946, was a considerably diluted form of parliamentary

government, with some hitherto untried features-a rather curious political mosaic with some provisions which are by no means certain to prove workable. In its essential features, notably the provision of a cabinet responsible to the Assembly but normally without the power to procure a dissolution, it is astonishingly similar to that of the repudiated Third Republic."

The Fourth Republic inherited all those problems which the Third Republic was powerless to solve. Ministries in France had risen and fallen almost as rapidly since 1946 as before. Prime Ministers came and went with disturbing frequency as the majorities shifted back and forth in the Assembly. The twelve years of the Fourth Republic saw 20 cabinets, an average of one every seven months.

The French Political Tradition

France is a classic land of revolutions and a continued revolutionary tradition is the major contribution of the French people to politics, from the bourgeois-democratic revolution of 1789, the second popular, liberal-democratic revolution of 1848, to the Paris Commune of 1871 and the New Left uprising of 1968. The central message of the French Revolution of 1789 that one may discern in the origins, evolution and effects of the violent annihiliation of the ancien regime was a crucial step of France on the long road toward democracy. Marx says: "The centralized State power with its ubiquitous organs of standing army, police, bureaucracy, clergy and judicature—organs wrought after the plan of a systematic and hierarchic divisions of labour-originates from the days of absolute monarchy.....Still, its development remained clogged by all manners—medieval rubbish, seignorial rights, local privileges, municipal and guild monopolies and provincial constitutions. The gigantic broom of the French Revolution.....swept away all of these relics of bygone times, thus clearing simultaneously the social soil of its last hindrances to the superstructure of the modern state edifice raised under the First Empire, itself the offspring of the coalition wars of old semi-feudal Europe against modem France."7

It is necessary to emphasize that the revolutionary violence was crucial for France's advance, where the obstacles democracy faced were different from those in England. French society did not "generate a parliament of landlords with bourgeois overtones, in the English manner. Previous trends in France had made the upper classes into an enemy of liberal democracy, not part of democracy's entering wedge. Hence, if democracy were to triumph in France, certain institutions would have to be gotten out of the way.... for this very reason, the Revolution was all the more decisive."8

Under absolute monarchy, the French landowners adapted to the generally gradual intrusion of capitalism by putting greater pressure on the peasants but left them in a condition of de facto ownership. Till the mid-eighteenth century the crown was the main agency of modernisation in France. This process brought about a fusion between nobility and bourgeoisie

7. Quoted in Theda Skocpol, States and Social Revolutions, (Cambridge University Press, 1984), p. 174.

8. Barrington Moore Jr., Social Origins of Dictatorship and Democracy, (Penguin University Books, 1973).

quite different from that in England. This resulted in the "feudalisation" of a large section of the French bourgeoisie while sections of the

English feudalists, through the law of primogeniture, were forced to adopt bourgeois ways of living. Without the Revolution, the ongoing feudalisation of the French middle class would have forced the French monarchy to carry out a form of conservative modernisation from above, similar in its main outlines to what happened in Germany and Japan.

But the Revolution did prevent this conservative, antidemocratic outcome for France. When the French bourgeoisie consummated its political revolution in 1789, it had not yet seized the commanding heights of economic power. In fact, the bourgeois class rose to state power by climbing on the backs of radical movements within the urban artisans and workers. These radical forces prevented the revolution from turning backward. The rich and middle peasants took advantage of the situation to force the dismantling of the seigniorial system, which was the main achievement of the Revolution.

The radical revolution was an integral part of the revolution on behalf of private property and the rights of man. The anticapitalist elements in the sans-culottes revolution and the protest of poor peasants were a reaction to hardship resulting from capitalist features of the prevailing economy. The radicals, however, cannot be regarded as an excrescence on the liberal and bourgeois revolution. The one was impossible without the other. The democratic revolution would not have gone as far as it did without pressure from the radicals. In short, Barrington Moore points out, "it is very difficult to deny that if France were to enter the modern world through the democratic door she had to pass through the fires of the Revolution, including its violent and radical aspects."9

Political scientists point to the gashes left by the French Revolution as a major cause of the instability of French political institutions. Nevertheless, it is true that social transformation brought by the Revolution was ultimately favourable to the development of parliamentary democracy in France. By destroying monarchy, landed aristocracy and feudal rights, it sanctified the right of bourgeois property and equality before the law. "To deny that the predominant thrust and chief consequences of the Revolution were bourgeois and capitalist is to engage in a trivial quibble.... Put this way, the thesis [of bourgeois revolution] overemphasises the independent influence of such interests."10

During the restoration, a Bourbon King reigned from 1815 to 1830. The failure to share regal power with haute-bourgeoise proved its undoing and the main cause of the revolution of 1830. At this point the old aristocracy vanished from the political arena as an effective social force. The Revolution of 1848, the establishment of the seond republic and later the rule of Nepoleon III paved the way for unquestionable ascendancy of the industrial and financial bourgeoisie in France. The war with Bismarck's Germany resulted in the defeat of Louis Bonaparte, the rise of the Paris Commune, signifying the formationn of first Workers' Republic in 1871, and finally the establishment of the Third Republic in 1875. Despite the succession of several constitutions in

France, two empires and five republics, the steady depelopment of parliamentary democracy was never halted by any counter-revolution.

France has been consistently, for the most part of its post-Revolutinary history from 1789 to the present day, an authentic capitalist democracy. But France also has been a land where different schools of socialism, from utopiamism of Fourierists and Saint-Simonians to revolutionary syndicalism and Marxism have flourished. The Communist and Socialist Parties have been two major political formations of the working class, the peasantry and the radical intelligentsia during the twentieth century. The workers and other oppressed strata have played a significant role in democratic revolutions of 1789, 1830 and 1848. The Paris Commune of 1871, antifascist struggles from 1936 to 1945, trade union struggles in general, and May-June mass movement of 1968 in particular against Charles de Gaulle.

It is this working class radicalism both in thought and action, which distinguishes the French political tradition from American and British conservatism. The explosion of May-June,1968, was largely the expression of the accumulated discontent of the French people after ten years of de Gaulle's rule. Half a million

9. Ibid.,p.1O5.

10. Ibid, pp.105-106.

workers had lost jobs; their wages were frozen by the government and the big corporations while prices and profits were soaring. Even the students in university campuses were rebellious. Police brutality against them on 10th May sparked off "the wave of protests that swept over France, culminating in the great strike of nine million workers and the massive factory occupations which tied up the whole country for several weeks."11

Waldeck Rochet, the general secretary of the French Communist Party, declared that the people "are fed up with being subjects. They want to be citizens."12 For ten years the French working-class had struggled against de Gaulle's precapitalist policies through strikes and mass campaigns through the General Confederation of Labour led by the Communist Party. When de Gaulle came to power in 1958, he secured 80% of the votes in the referendum for his Bonapartist Constitution. The Communist Party was the only party calling for its rejection and 20% voted against it. It was the Communist Party which had fought against de Gaulle's regime of personal dictatorship single-handed for the last ten years.

The increased support for Communist Party, especially among the workers, many towns and regions, enabled it to elect some 30,000 Communist Councilors and bring about a larger political unity of all left wing parties. The Left Bloc obtained 45% votes against de Gualle's 55% in 1965 presidential election and 47% votes against 53% for the Gaullists in the 1968 parliamentary election. That is why when the Communist Party and the CGT, along with other trade unions called for mass demonstrations and general strike on 13th May, in solidarity with the students, 800,000 marched in Paris, 60,000 in Lyons, 50,000 in Toulouse, Marseilles and Bordeaux, and

30,000 in Mans, and nine million joined the general strike throughout France. Contrary to hopes aroused by the nation-wide mass movement, "the balance of class forces made it impossible to put on the order of the day the instant establishment of socialist power. On the other hand, it was possible to oust the Gaullist power.... opening the path to socialism. What was lacking for putting this very real possibility into practice was unity of the workers and the democratic forces."13

SUGGESTED READINGS

Alfred Coblan : The Social Interpretation of the French Revolution.

Barrington Moore Jr : Social Origins of Dictatorship. Georges Lefebre : The French Revolution, 2 Vols.

Theda Sakocpol: States and Social Revolutions.

P. Abril: Politics in France.

D.W. Brogan : The Development of Modern France.

11. Jack Woddis, New Theories of Revolution, International Publishers, New York, 1974), p.348.

12. Quoted in Ibid, p. 349.

13. lbid.,p,105.

CHAPTER II The Fifth Republic

THE NATURE OF THE CONSTITUTION

Fall of the Fourth Republic

A story has often been told how a French book-seller when asked on one occasion for a copy of the French Constitution, replied that he did not deal in periodical literature. "This anecdote," remarks Gooch, 'embodies a reference to an important formal fact in French political history and, at the same time, indicates a prevalent attitude toward that fact." On June 1, 1958, the Fourth Republic came to an end. The change came about somewhat abruptly with a marked element of melodrama at the final stage. The Government was unable to meet the challenges of the time especially the Algerian crisis. In May 1958 President Rene Cory unequivocally and firmly told the National Assembly that he would resign if a government led toy General De Gaulle was not formed. The National Assembly submitted reluctantly, but the Assembly signed its own death warrant when it adjourned and handed over its law-making power to General De Gaulle's Government for six months. When the Deputies had agreed without argument to disperse until October, M. Andre Marlaux, the General's Minister for Information, remarked, "now one may be

able to govern." With no party and no programme, General De Gaulle had obtained dictatorial powers previously accorded by the French Parliament only to Marshal Petain under the menace of German tanks. De Gaulle promised that at the end of six months "order will have been re-established in the State, hope re-found in Algeria and union re-made in the nation, thus permitting the public powers to resume their normal functioning."

Among the powers that French Parliament had delegated to De Gaulle's Government was constitution-making. The General had categorically told the National Assembly that if he was not provided with the mandate and the means of reforming the Constitution, he would resign at once and retire again into private life. "My Government has been formed," he told the Assembly, "for the explicit purpose of making these changes. I have the impression that in voting for my investiture you indicated that you wanted these changes....If you cannot agree on the Bill submitted to you I imagine it will be up to some other government than my own to try, after so many other governments have tried in vain.

There was no other alternative but to submit to De Gaulle's challenge and accept his terms. The Reform Bill, proposed by the General, was approved by the National Assembly by 350 votes to 163. It sought to take away the existing power from the Assembly to change the Constitution and invest in the government the power to submit proposed constitutional changes directly to the electorate by referendum without going through Parliament. It also provided for a consultative committee of parliamentarians whose advice would be sought in drawing up the terms of the proposed reform, but without binding the government to accept their advice. The Universal Suffrage Commission had proposed to eliminate the consultative committee and to make it compulsory for the government to submit its reform proposals to the vote of Parliament, while nevertheless allowing the government subsequently to put its constitutional reform proposals to the people in any form it liked, even if the parliamentary vote was unfavourable. But General De Gaulle wasted no time in telling the Assembly that this would not do and unless the Deputies adopted the Bill as submitted to them, he would resign. "The attitude of this Assembly's Universal Suffrage Commission, " he said, " is in plain contradiction with the objects for which the Government was formed." He said that it was obvious that if the government were to submit the constitutional reform to the National Assembly before it was submitted to the nation by referendum, it would start a new constitutional debate and all precedents in France had shown that these debates could not get anywhere. "It was impossible to foresee the atmosphere three months hence in which such a debate would take place," he added.

The Proposed Constitutional Reform

What constitutional reforms General De

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Gaulle proposed to bring about could be predicated to a great extent. As President of the Provisional Government after the War, De Gaulle believed that France would never be an effective force in the world unless its political structure was overhauled. He called for a regime in which political power should not depend on the vagaries of party politics." He pleaded for a constitution which provided for a strong central government with a president elected by the

nation and invested with authority to act much on the lines of the United States system. Parliament should pass the legislation and supervise the government, but the president should appoint ministers, promulgate laws, issue decrees and preside at cabinet meetings. The instability and weakness of successive governments in post-war France-26 of them—had hardened the General's belief to give France a stable government, which multiple parties had hitherto denied it. On the eve of the recess of the National Assembly, the General told the Deputies that he dearly loved the republican institutions and that the Assembly elected by universal suffrage "would remain the principal Assembly in tomorrow's Parliament." This statement gave immense relief to those who had believed that De Gaulle would repudiate the French democratic tradition and set up an authoritarian regime. But the General's statement also emphasised that the dependence of the executive upon the legislature would be reduced through various means and to the minimum. If the new system of government was to be parliamentary, it would just be a semblance of it. Anyway, the new constitutional reforms were intended to end the Fourth Republic.

De Gaulle had opposed the Constitution of the Fourth Republic from the very start. He resigned the Premiership and retired from politics before the Constitution came into force. It was only natural that on his return to power 12 years latter he should have refused to accept institutions that he had already considered deplorable. "Besides by that time, many other Frenchmen, too, had come to treat the Constitution as the scapegoat for the failings of the Fourth Republic.1

The Constitution of the Fifth Republic emerged out of the Enabling Act of June 3, 1958, in which the National Assembly provided, by the requisite majority of the three- fifths, that the Constitution "will be revised by the government formed on June I, I958,"2 that is, General De Gaulle's Government. The draft was first drawn up by a small Cabinet Committee, headed by the Minister of Justice and later Prime Minister, Michel Debre. General De Gaulle himself was not a member of this Committee. But there is little doubt that the Committee had always kept in view the General's constitutional theories, particularly his emphasis on the need of a strong President. The most important landmark was the speech made by General De Gaulle at Bayeux on June 16, 1946, wherein he outlined the ideas that were to serve as the foundations of the new constitution. "The rivalry of parties," he said, 'in our country, is a fundamental character, which leaves everything in doubt and which very often wrecks its superior interest. This is an obvious fact that ...our institutions must take into consideration in order preserve our respect for laws, the cohesion of governments, the efficiency of the administration and the prestige and authority of the State. The difficulties of the State result in the inevitable inalienation of the citizen from his institutions.....All that is needed then is an occasion for the appearance of the menace of dictatorship." To avoid this menace, De Gaulle outlined that following institutional changes:

"1. The legislature, executive and judiciary must be clearly separated and balanced.

2.. Over and above political contingencies there must be a national 'mediation' (arbitrage).

3. The voting of the laws and the budget belonged to the Assembly elected by direct and universal suffrage":—-

4. A second Assembly elected in a different manner, was needed to examine carefully the decisions taken by the first, to suggest amendments and proposed bills.

5. The Executive power should not emanate from Parliament. Otherwise the cohesion and authority of the government would suffer, the balance between the two powers vitiated, and the members of the executive would be merely agents of the political parties.

6. A President of the Republic (chief d'

1. Dorothy Pickles, The Fifth French Republic, p. 14.

2. For a detailed study refer to Macridis, Ray, and Brown Bernard, The De Gaulle's Republic : Quest for Unity, Chap. X.

Etat), embodying the executive power above political parties, should be elected by a college, which included the Parliament, but is much broader than Parliament.....to direct and work the policy of the government, promulgate the laws and issue decrees, preside over the meetings of the Council of Ministers; serve as mediator above the political contingencies; invite the country to express its sovereign decisions in an election, be the custodian of national independence and treaties made by France and appoint a Prime Minister in accord with the political orientation of Parliament and the national interest."3

The Cabinet Committee prepared the Draft of the constitution in two months. The Draft was considered by the Constitutional Consultative Committee consisting of 39 members; 26 representatives of the National Assembly and the Council of the Republic, and 13 members of the Government. The Consultative Committee endorsed the new text of the constitution after suggesting minor modifications which the Government accepted. It was submitted to the people at a referendum held on September 28, 1958. France gave a triumphal vote of confidence to General De Gaulle and the constitution was ratified by a majority of 79.25 per cent votes.

SALIENT FEATURES OF THE CONSTITUTION

Reconstruction of Power

The Constitution of the Fifth Republic, though framed within a short period of time under the stress and strains of the Algerian war, introduced prominently the revisionist ideas that General De Gaulle had uttered and sternly advocated. Two major themes constitute the hub of the entire framework of the Constitution: first, the reconstitution of the authority of the State under the leadership of a strong executive, and, second, the establishment of a 'rationalized" Parliament, that is, Parlia- ment with limited political and legislative powers. The new Constitution established a parliamentary system, in accordance with the undertaking given by General De Gaulle's government on taking office to preserve Republican traditions, but in which Parliament was no longer in a position to dominate the Executive as it did in the period of the preceding Republics. Michael Debre, the Chairman of the Cabinet Committee, which drafted the

Constitution, and later became the Prime Minister, himself pointed out that the ' 'objects of constitutional reform was to reconstruct State power.' Thus, the crucial task of the constitution makers was to create a strong and stable government to succeed a Parliamentary system that could not produce stable majorities. The perennial dilemma of the French body politic had been multipartism, always shifting loyalties and manoeuvring for power.

Republican Traditions

The new Constitution respects the French Republican traditions. The Preamble solemnly affirms the attachment of the French people to the Declarations of the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and completed by the Preamble of the Constitution of 1946. Article 2 of the Constitution proclaims that "France is a Republic, indivisible, secular, democratic, and social." It ensures the rights of all citizens and respect for all beliefs. The national emblem remains the blue, white and red tricolour flag and the national anthem is the Marseillaise.4 The motto of the Republic is liberty, equality and fraternity. The government is that of the people, by the people and for the people, Article 3 affirms all sovereignty stems from the people. But this sovereignty is not to be exercised solely through the representatives of the people but also through referendum. The suffrage may be direct or indirect, but always "universal, equal and secret." Respect for political parties is reiterated in Article 4, where, however, it is stated that the parties "must respect the principles of national sovereignty and democracy." Many thought that this provision was aimed at the Communist Party, which had become powerful.

Constitution the Result of Compromise

The Constitution of the Fifth Republic is a compromise, an expression of two very different and probably conflicting principles. The first is the modified version of the traditional Parliamentary system and the second is the introduction of a strong President who would embody

3. As cited in Roy C. Macridis and Robert E. Ward (Eds.), Modern Political systems : Europe, p. 52.

4. The French Revolutionary hymn composed by Rought de Lisle in 1792, sung by volunteers of Marseilles as they entered Paris, 30th July.

the legitimacy of the nation, and could, in an emergency, prevent the disruption of the political system. There are the familiar organs of Parliamentary system, a politically irresponsible head of the State as distinct from the head of government; the Prime Minister appoints and dismisses his colleagues and he directs the policies of the government and is responsible to the lower Chamber of Parliament, the National assembly; the National Assembly has the right to censure and overthrow the Cabinet and the Prime Minister; the two Houses of Parliament are democratically elected; and the Judiciary is independent.

At the same time, the Constitution delegates broad powers to the Chief of the State, the President, and places serious limitations on Parliament. There is a new principle, the rule of incompatibility which makes parliamentary seat and a ministerial post incompatible to each other. This rule requires that a member of Parliament who becomes a Minister must quit his parliamentary seat and is replaced by the "substitute" who runs at the same ticket at the legislative election. The legislative and the executive powers are thus separated and this is clearly the negation of the Parliamentary system where the Cabinet is a hyphen that joins, a buckle that fastens the Executive and Legislative departments.

Thus, the Constitution of 1958 was the result of a compromise between the "republicans" belonging to the political parties of the Fourth Republic, generally in agreement about the case for some measure of change which would increase the stability and effectiveness of the executive, and De Gaulle and his followers, who wanted essentially to enhance the role of the President. In delegating its constituent powers to De Gaulle's Government on June 3, 1958, the National Assembly refused to let the new head of the government establish a Presidency on the American model. Perhaps, somewhat surprisingly, De Gaulle accepted this limitation to his freedom to shape the Constitution. The 1958 Constitution, accordingly, deems the President an "arbiter" not a "leader" or "guide." Article 5 of the Constitution reads, 'The President of the Republic shall see that the Constitution is respected. He shall ensure, by his arbitration, the regular functioning of the governmental authorities, as well as the continuance of the State. He shall be the guarantor of national independence, of the integrity of the territory, and treaties." Admittedly, arbitration, remark Jean Blondel and Drexel Godfrey, "is an ambiguous concept; one could vary the interpretation from the idea of a more positive role (clearly De Gaulle's view) to that of a neutral function (clearly the "correct" interpretation of the law of the Constitution)."5

With so many compromises in principles, it is not surprising that the Constitution should have been ambiguous in part and that efforts should have been made to modify both the letter and the spirit of the law. De Gaulle was the holder of the power and occupant of the Presidential office for near about two terms and from the inception of the Constitution,6 he had constantly made efforts to mould and re-mould "the original text in the direction he thought best, and he has been helped by circumstances." The Algerian war and the strain on the morale of the army led to various covert and overt attempts at overthrowing the Government were sufficient to endow the President with emergency powers and Article 16 of the Constitution provides for such powers. The President established the weight of his stewardship of the State at the time of the Algerian crisis. De Gaulle also benefited from the hitherto unprecedented fact of having the support of a majority of Deputies in the National Assembly belonging to his own Party which was disciplined and solidly behind him.7 He, therefore, intervened in a number of matters which were not clearly within the province of the President according to the Constitution. With Michel Debre as his first Prime Minister, the President did not find any difficulty in over-stepping the bounds set by the Constitution in the exercise of constitutional powers. His move for a change in the election of the President, from indirect to direct, and the first election of the President by universal suffrage, in December 1965, vindicated

5. Jean Blondel and E. Drexel Godfrey, The Government of France, p. 33.

6. 1958 to 1965 and 1965 to 1969. He resigned as a result of unfavourable verdict at the referendum in April 1969 on the reorganisation of the Senate and regional reforms.

7. The Gaullist Party, the U.N.R., was the largest party at the First General election of the Fifth Republic in 1958 and it obtained almost an overall majority at the subsequent election in 1962 after De Gaulle had dissolved the National Assembly when it overthrew the Government by a vote of censure. It is significant to note that censure dissolution and return of a majority had not taken place in France for over half a century.

De Gaulle's assertion that the popular election of the President would by itself increase the authority of the incumbent of that office.

'The popular election of the President." observe Jean Blondel and Godfrey, "may thus come to be a springboard in future moves towards presidential rule; it may equally be De Gaulle's last effort to bring the country round to his view of the political system. Only time will tell, but it is clear that the changes which have taken place between 1958 and 1965 have been at least as important (if not more important) for the shaping of the new regime as the test of the Constitution itself."8

Limited powers of Parliament

The new constitution establisheda "rationalized" Parliament—a Parliament with limited powers. Only two sessions of the National Assembly and the Senate take place in a year. The first session, the Constitution prescribes, begins on October 2 and lasts for eighty days, and the second on April 2, and it cannot last for more than 90 days, a maximum of five months and twenty days in all.9 Extraordinary sessions may take place at the request of the Prime Minister or of a majority of the members of the National Assembly "on a specific agenda." They are convened and closed by a decree of the President of the Republic.10 But De Gaulle was of the opinion that the President had the last word on whether to convene an extraordinary session or not, despite the terms of the Constitution.

Parliament can legislate only on matters defined in the Constitution. The Government can make laws on all other matter by simple decree. Articles 37 of the Constitution provides: "Matters other than those which are in the domain of law shall be subject to rule-making power." Laws to be voted by Parliament are enumerated in Article 34. The distinction between the law- making and rule-making authorities may not be incompatible with parliamentary government, but it certainly reverses the traditional relationship between the legislative and rule-making authorities in France and is in conflict with the Republican traditions of

the country. Hitherto Parliament was supreme and it could delegate legislative powers to the government. But there had, also been "special" powers granted and withdrawn at the will of Parliament. The supremacy of Parliament had, therefore, remained intact.. Henceforth, power to legislate is definitely limited by the Constitution, and, outside these limits, powers belong to the rule-making authority, the Government.

The Constitution also allows Parliament to delegate law-making power to the executive. Article 38 says : "The government may for the execution of its programme ask Parliament to authorize it to take by ordinances, within a limited period of time, measures which are normally reserved to the domain of law. " Such ordinances come into force as soon as they are promulgated, but they are null and void if a bill for their approval is not submitted by the government to Parliament within the prescribed period of time or if the approval of the bill is rejected.

It is not Parliament, but Government which fixes the order of business." The President of the National Assembly is now elected for the whole legislative term whereas the President of the Senate is elected for three years.12 Hitherto the President of the National Assembly was elected every year and this placed him at the merey of the various parliamentary groups. He could, under the circumstances, neither be independent nor impartial. Nor could he command the same dignity and prestige as his counterpart does enjoy in Britain.

Parliament is no longer free to establish its own Standing Orders. Such orders must be found to be in accord with the Constitution by the Constitutional Council, before they become operative..13 The number of the Parliamentary Committees-Standing Committees—has been fixed and their functions are strictly circumscribed.14 Now only the Government Bills and not the amendments made by the Committees and counter- proposals suggested by them come before Parliament for consideration. A Minister alone introduces, pilots and defends the Bill.

8. Blondel, J., and Godfrey, E.D., The Government of France, pp. 34-35.

9. Article 29.

10. Article 30.

11. Article 48.

12. Article 32.

13. Article 61.

14. Article 43.

Though not a member of Parliament, a minister is constitutionally empowered to appear in both the Chambers, introduce Bills and take part in debates. The Government has the right to reject all amendments and to demand a single vote on its own text with only those amendments that it accepts—the procedure as the 'blocked" vote.15

All these provisions are directed against government by Assembly and eliminate the practices which had hitherto plagued governments. Many of the Procedural Rules "reflect a genuine desire to check some of the more flagrant abuses of the past and are consistent with the strengthening of executives in modern democracies. Others, however, are designed to weaken Parliament."16

Parliament is Bicameral

Parliament is bicameral, composed of the Nation-al Assembly and the Senate. The Deputies are elected directly whereas the members of the Senate by indirect suffrage. The Senate assures representation of the territorial entities of the Republic and Frenchmen residing outside France are duly represented in the Senate. Depu ties are elected for a nine years term and one-third of its membership is renewed every three years. The Constitution increases somewhat the powers of the Senate. In the fourth Republic, the Council of the Republic, the upper chamber named then, had no overriding power to veto legislation. It could in practice only force the National Assembly to discuss for the second time the bills that it had passed. Though a reform had taken place in 1954, which had slightly increased the powers of the Council of the Republic, but the main limitation was not substantially removed. The makers of the Constitution of 1958 attempted to increase the authority of the Senate and magnify its position. The Senate was given an ironclad veto over legislation if the Prime Minister and the Government desired it. Article 35 ordains that all laws shall be voted by Parliament. Articles 45 empowers the Prime Minister to convene a joint conference of members equally drawn from both Chambers to iron out the differences, if any . It is, therefore, up to the Prime Minister to call a meeting of the joint conference, and if he does not do so, the Bill ipso-facto dies.

Ministerial Responsibility

The Government continues to be responsible, as in the previous Republics, to the National Assembly.17 An Assembly can overthrow the Government by half of the total of its membership plus one, that is, by an absolute majority. It means that Deputies who abstain from voting are counted as having voted for the Government.18 But signatories to the motion of censure or no confidence, if the motion is lost cannot move another one in the course of the same legislative session. There is, however, no such bar if the motion of censure is moved by the same signatories when the Prime Minister himself seeks a vote of confidence from the National Assembly on any general issue of policy or on any given legislative bill.

The power to dissolve Parliament, which is the prerogative of the Prime Minister in countries with Parliamentary system, belongs to the President of the Republic" in France under the Constitution of 1958. The President can dissolve the National Assembly at any time and for any reason solely at his discretion.19 There is only one limitation. He cannot dissolve it twice within the same year. The Constitution also enjoins another formality. The President is required to consult the Prime Minister and the Presidents of the two Chambers while announcing dissolution.

The Referendum

Another innovation of the 1958 Constitution is that the President of the Republic can bring certain issues before the people at a referendum. Article II provides that the President of the Republic "on the proposal of the government....or on joint resolution by the two legislative assemblies.....may submit to a referendum any bill dealing with the organisation of public powers, the approval of an agreement of the Community, or the authorization to ratify a treaty, that without being contrary to the Constitution would effect the functioning of existing institutions." Article 89 also provides for a referendum on amendment of the Constitution.

15. Article 44.

16. Macridis, R. C, and Ward, R. E. (Eds.), Modern Political Systems : Europe, p. 261.

17. Article 17.

18. Article 49.

19. Article 12.

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The President has, thus, the power to submit to a referendum the approval of a projected bill concerning the organisation of public institutions and an amendment of the Constitution. But the calling of a referendum is the personal act of the President. He may elicit or refuse it depending on the circumstances.

In the case of a constitutional amendment, the President may decide that constitutional amendment proposed by the Government to Parliament need not be submitted to a referendum after it has been adopted by Parliament. In this event the proposal is sent to a joint meeting of the two Chambers instead of going through the two Chambers separately and the proposed amendment becomes effective when approved by a three-fifths majority of votes. This provision was, perhaps, intended to accelerate the procedure in cases of rather technical amendments and was used in 1960, in order to make it possible for the Community to be transformed into a loose confederation of independent states, and in 1963, to change the timing of the sessions of Parliament.

The use of referendum under Article 11 is limited to three types of measures : those concerning the organization of the public authorities; approving an agreement with the Community; or authorizing ratification of a treaty which would effect the functioning of institutions. 'This Article,' observe Jean Blondel and Godfrey, "has led to the clearest cases of unconstitutional action on the part of the President, both in spirit and letter."20 The constitutional provision is that the President may, on the proposal of the government during parliamentary sessions or on the joint proposals of the two assemblies, submit to a referendum any bill dealing with any of the measures referred to above. This Article had been applied on three occasions, twice over Algeria, and on the last occasion over the method of election of the President, "the initiative clearly came from De Gaulle himself; the form of a 'proposal' by the Government was respected, admittedly, but no one doubted who the real originator of the proposal was."21 The second implication of Article 11 is, though it does not expressly state so, that the Bill be discussed and adopted by Parliament and, then, submitted to the people at a referendum for their approval. This is the only logical interpretation in view of the practice hitherto followed in France. Nor had there been any suggestion that a Bill might be adopted either by Parliament or by the people. In the absence of a specific provision to this effect, the only inference is that the President may refer a Bill to a referendum of the people only when it had, in the first instance, been adopted by Parliament. But the President in all these three cases—twice over Algeria, and, then, on the method of Presidential election-bypassed Parliament and submitted the projected Bills to a referendum.

Article 11 does nowhere specify that the procedure prescribed therein covers an amendment of the Constitution. The procedure for amending the Constitution has been clearly and definitely stated in Article 89, and provides for a referendum too. But De Gaulle utilised Article 11 to introduce the proposal that the President of the Republic be elected by universal suffrage. Any change or modification in the method of election of the President requires amendment of Article 6 of the Constitution. It was clearly an unconstitutional act of the President. But its validity was not questioned in the Constitutional Council.

The Constitutional Council

The Constitution establishes a Constitutional Council and it replaces the Constitutional Committee of the Fourth Republic. France had never in the past any judicial organisation to review legislation and determine its constitutionality or otherwise. The Constitution of the Fourth Republic provided for the Constitutional Committee to ensure that the proposed laws were in conformity with the Constitution and that any law of doubtful constitutionality could be put into effect only by amending the Constitution according to the prescribed procedure. The Constitutional Committee was a non-judicial body consisting of Presidents of the two Chambers, seven members chosen by the National Assembly from the beginning of each session from outside its own membership, and three members similarly chosen by the Council of the Republic (Senate of the Fifth Republic), a total of 12, sitting under the chairmanship of the President of the Republic. The function of the Committee was to examine any law passed by the National Assembly, prior to promulgation, whenever so requested by the President of the Republic and the Presiding officer of the

20. Blondel J., and Godfrey. E. D., The Government of France, pp. 44.45.

21. Ibid.

Council of the Republic. Whenever the Council of the Republic had doubts about constitutionality of a measure passed by the Assembly, it passed a resolution requesting its own presiding officer and the President of the Republic to refer the matter to the Constitutional Committee. The Committee would examine the disputed measure and endeavoured to iron out the differences between the two Chambers. If it could not succeed to bring about an agreement the Constitutional Committee would give its decision. If it decided that the objection raised by the Council of the Republic was not valid and the measure in dispute did not conflict with the Constitution, it was promulgated forthwith. If it decided that the measure was in conflict with the Constitution, it would be sent back to the National Assembly with a direction that the proposed legislation should be passed in conformity with the Constitution or the Constitution be duly amended. It was for the National Assembly to determine whether to abandon the measure or to proceed to amend the Constitution.

The Constitutional Council of the Fifth Republic is composed of nine members who serve for a period of nine years. Three are nominated by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. They are renewed

by a third every three years. In addition to these nine members, all former Presidents of the Republic are members ex-officio; General Charles De Gaulle refused the Council seat when he resigned as President in 1969. The President of the Council is appointed by the President of the Republic and he exercises a casting vote in case of a tie.

The Constitutional Council has four distinct functions. First, it supervises the regularity of the election of the President of the Republic, and the referendums and announces the result. The Council is responsible for declaring the office of the President vacant, if for any reason or cause the President of the Republic cannot carry out his duties. It decides cases in which the regularity of parliamentary elections is contested. Before 1958, contests arising out of parliamentary elections were decided by each House. The Constitutional Council has taken speedy decisions thus avoiding bitter and long controversies in the legislative assemblies in the past.

Second, the Constitutional Council must be consulted on the conformity with the Constitution of Organic laws and the Standing Orders of both the Houses of Parliament. The Council merely pronounces on the constitutionality, leaving the government or Parliament, as the case may be, to take the appropriate step to regularize the situation. Its decision is final. There had been a sharp conflict between Parliament and the Council with regard to the constitutionality of the Standing Orders. Parliament re-introduced various clauses in the Standing Orders along lines of pre-1958 arrangements, which the Constitutional Council felt were in conflict with the new Constitution and, accordingly, held them unconstitutional. One of these had allowed for the possibility of vote following debate on questions. This would have indirectly brought back, though in a limited way, the practice of interpellation if the Constitutional Council had not pronounced against it. Interpellations had been the bane of French politics during the preceding Republics.

Third, the Council acts as an advisory body to the President of the Republic if he is contemplating the assumption of emergency powers. Article 16 of the Constitution requires that the Constitutional Council must be consulted by the President, both with ragard to the existence of the emergency (on which its opinion, with reasons, must be published), and the measures that he proposes to deal with it. But the President is not constitutionally bound to accept its advice. It is just a consultation and it is for the President to accept the opinion of the Constitutional Council or not. It may be noted that whereas consultation with regard to threat to the integrity of the country, independence of the nation, or danger to the execution of international commitments, and interruption to regular functioning of the constitutional organs of government is mandatory with the Prime Minister, the Presidents of the Chambers and the Constitutional Council, consultation with the latter alone is necessary with regard to the measures which the President may deem necessary to meet the threat or to deal with it.

Finally, all bills (other than organic), including treaties, may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, or one of the Presidents of the two Chambers to seek its ruling. A declaration of unconstitutionality suspends the promulgation of the bill or the application of the treaty. It is

also the guardian of legislative-executive relations. It decides all claims made by the government whether Parliament has exceeded its legislative competence or not. The decisions of the Council are binding on the Executive and Parliament and on all judicial and administrative authorities.

"It is as yet too soon," observed Jean Blondle and Godfrey, "to state whether the Constitutional Council will remain a part of 'living' Constitution."22 But the process of constitutional review provided by the Constitution of the Fifth Republic essentially differs from the process of Judicial review obtainable in the United State of America. The Constitution of 1958 does not provide for anything that could be described as judicial review. It simply creates a body which, within certain specific and narrowly defined limits has the function of deciding on the constitutionality of governmental or Parliamentary acts. The Council has no general responsibility for ensuring respect for the Constitution. It can express its opinion only if consulted on matters enumerated above and on the initiative of the persons mentioned, it has no power to enforce its decisions. If the President of the Republic, the Prime Minister and Presidents of both Houses of Parliament were to agree among themselves to refrain from consulting the Constitutional Council on a matter where consultation is optional, there is no means by which the Council can make its views known. A citizen cannot appeal to it nor can any Court of Law. It is not competent to judge matters where individual rights are violated. The Constitutional Council is not, therefore, in any sense comparable to the United States Supreme Court.

Nevertheless, on matters on which the Constitutional Council must be consulted, it has served so far as a watchdog over Parliament. There was a sharp conflict of opinion between Parliament and Government on the question of taking votes on resolutions as provided in the original Standing Orders. The Constitutional Council, whose approval of Parliamentary Orders must be obtained according to the Constitution of 1958, decided that votes on resolutions were unconstitutional. In January 1982 the Council threw out the original nationalisation Bill (involving five major industrial groups, 39 banks and two financial holding companies) ruling that certain clauses—notably those dealing with compensation to stockholders—were unconstitutional. The Government subsequently improved compensation terms, revised other clauses and streamlined the revamped Bill through the Socialist controlled National Assembly. The Bill was promulgated after the Constitutional Council rejected objections by Opposition parties to parts of a revised version of the Government Bill. The Council has, on the whole, widely received approbation for its admirable work and all parties, except the Communists, appear anxious to expand its jurisdiction. The programme of all the major non-Communist organizations for the 1967 General Election included a section aiming at creating a "real" Supreme Court .

Emergency

When the institutions of the Republic the independence of the nation, the integrity of its territory, or the execution of international engagements are menaced in a grave and immediate manner and the regular functioning of the public powers is interrupted, the President of the Republic may take whatever measures are required by the circumstances. This is a personal and discretionary act of the President. The President needs only to inform the nation by a message, and to consult the Constitutional Council. The National Assembly, however, convenes automatically and cannot be dissolved during the period of emergency. We shall revert to this aspect of Presidential powers in the following Chapter.

Revision of the Constitution

Like the Constitution of the Fourth Republic, the Constitution of 1958 includes a special procedure for revision. It is relatively simple. There are two methods to amend. The right of initiative for the revision of the Constitution can come either from the President of the Republic on the proposal of the Prime Minister, or from private members of Parliament. A proposal for amendment must, to be effective, be voted first in identical terms by both Houses of Parliament and then ratified at a referendum. A proposal stemming from the President of the Republic and approved by the two Chambers by a simple majority in each House may go, at the President's discretion, either before the two Chambers meeting jointly in a congress and passed by a three-fifths majority, or

22. Blondel J., and Godfrey, E. D., The Government of France, p. 37

to the people at a referendum. Thus, an amendment emanating from the Government, may either go before the congress of two Houses or direct to the people at a referendum. A proposal stemming from a private member of either House must always be submitted to the people at a referendum. President De Gaulle, however, claimed, by invoking Article 11, that an amendment can also be submitted directly by the President to the people at a referendum, thus, bypassing Parliament.

There are two limitations on the right to amend the Constitution. The Republican form of government is not subject to revision, and the amendment procedure may not be initiated or pursued when the integrity of the country is at jeopardy.

The procedure for amending the Constitution gives to the Senate an effective veto as the first stage of revision is required, under Article 89, to be voted in identical terms, in both the Houses of Parliament. If the Senate does not agree to the amendment, it fails. Under the Fourth Republic the Council of the Republic had no power to initiate a resolution for amending the Constitution. It originated from the National Assembly and after having passed there from it was referred to the Council of the Republic. If it disagreed with the National Assembly, its consent was not necessary if the National Assembly could gather a two-thirds majority on the second reading of the Bill. If the requisite two-thirds majority could not be secured a referendum was held.

There are certain other ambiguities as well in the amending procedure. Article 89 does not say anything regarding the voting of a proposal for revision. Article 126 of the Standing Orders, however, makes it legal that the ordinary legislative procedure is to be used, that is, a simple majority is required for an amendment to pass in both the Houses of Parliament.

Appraisal of the Constitution

The Constitution which established the Fifth Republic, adopted by the people at a referendum by an unprecedented overwhelming majority, was a personal triumph of General De Gaulle. The Communists and others, including a section of the Socialists, Radicals and the Radical Socialists,

who opposed the Constitution, failed to rally the people to their side partly because they were in a mood to accept any reasonably alternative to a discredited Constitution of the Fourth Republic and partly because the voters knew that a negative vote would mean the dictatorship of the army. General De Gaulle came to power as it was thought that he alone was acceptable to the army which was threatening to seize power and subvert democratic institution.

The 1958 Constitution was designed to give France a stable and strong government by eliminating the pitfalls of the earlier Constitutions. The Fifth Republic retained the parliamentary system of government, but, at the same time, rendered the President of the Republic exceptionally strong and endowed him with emergency powers and others more extensive than even those possessed by the American President. But a powerful Head of the State is the negation of the theory and practice of a Parliamentary system that the 1958 Constitution established. The Cabinet still remains there, but its has been deprived of even its basic and essential functions and responsibility. The President of the Republic nominates the Prime Minister and other ministers are appointed on the recommendation of the Prime Minister. In the presence of the multiplicity of parties and in the absence of a constitutional provision or a convention that the President shall appoint a Prime Minister-designate after fullest consultation with the various party leaders, his choice significantly matters. Then, the rule of incompatibility, which makes it obligatory for a minister to relinquish on appointment his seat in Parliament, and the provision that even outsiders who had not contested election for a parliamentary seat can be appointed ministers, destroys the team spirit and cohesiveness of the Cabinet which is the sine qua non of ministerial responsibility that the Constitution specifically enjoins. The Head of the State in a Parliamentary system keeps aloof from politics and he does not preside over the Cabinet meetings where policy is formulated and decided. The 1958 Constitution provides that the President of the Republic presides over the Cabinet meetings. It is the prerogative of the Prime Minister, in Parliamentary system, to advise the Head of the State to dissolve Parliament and such an advice is generally accepted. But in France, the President dissolves Parliament in consultation with the Prime Minister and the presiding officers of the Senate and the National Assembly. It is a mere consultation and the decision is that of the President alone. The President makes

treaties and takes steps during emergency to combat it in order to safeguard the independence of the nation, territorial integrity of France and ensure execution of international agreements. What is an emergency and what measures are necessary to combat it is the sole determination and decision of the President. The President simply consults the Prime Minister and the presiding officers of the Senate and the National assembly, and the Constitutional Council without necessarily having their approval on the measures taken to meet emergency.

The Constitution of the Fifth Republic is neither Presidential nor Parliamentary. The responsibility of the government to Parliament is in conflict with the basic principles of the Presidential system which hinges upon the Separation of Powers and checks and balances. The powerful and independent position of the President of the Republic runs counter to the Parliamentary system. In the opinion of some, the French Constitution of 1958 is essentially a monarchical constitution in a republican disguise and its parallel existed in France during the

reign of Louis Phillips from 1830 to 1848. Under that system the monarch guaranteed the stability and continuity of government. He ruled rather than governed and left the day-today administration of the government to cabinet. But when a crisis arose he stepped in and decided with finality the measures to meet the crisis and resolve the problems arising there from.

The 1958 Constitution had a special mission which General De Gaulle was committed to fulfil and he designed the Constitution in that direction. France was in dire need of a stable and strong government and the General, under compulsion of circumstances to retain republican institutions, combined democracy with authority concentrated at a single point avoiding the vagaries of the elected representatives by cutting short the power and functions of Parliament. But the price of orderly, responsible and stable government is too high in terms of a Parliamentary system.

Parliamentary procedure, has been modified in order to rationalise Parliament to enable the Government to exercise effective control over legislative business. The downfall of the Ministry has been rendered much more difficult than before. The President has been vested with the power to refer back a Bill duly passed by Parliament within fifteen days of its approval by the latter to debate it all over again or in part and Parliament has no right to refuse re-consideration. The President can also submit to a referendum of the people a projected Bill concerning the public power. He can bypass Parliament, as De Gaulle did on three occasions, and directly submit to a referendum Bills amending the Constitution under the cover of Article 11. There is another significant provision in the 1958 Constitution which essentially curtails the legislative powers of Parliament. Parliament votes only essential and fundamental laws. On less important matters it has no vote. These will be decided by Government and enforced by decrees.

The Constitution, therefore, seeks to make the President and the Government very strong vis-a-vis Parliament. And in a bid to do so, it is ambiguous and confusing at very many places. It is the living specimen of compromise, and the Constitution of the Fifth Republic has been described as an "untidy constitution." This curious amalgam of irreconcilable principles must sooner or later lead to conflict between the President and the Cabinet or between the Executive and Parliament. Fortunately, nothing untoward happened during the life-time of De Gaulle and his continued occupation of the office of the President from 1958 to 1969, but portents are there. De Gaulle is dead and the habits of a nation seldom die as they do not with the individual. The conflict may end in the Presidency virtually becoming what it used to be under the Fourth Republic unless the voters back the President by giving him a Parliament which is amendable to his control, or decide to follow the pattern of Presidency as obtain- able in the United States of America. French democracy had not functioned smoothly and efficiently in the past and the same possibilities are in store for the future because of sharp divisions among the people which are reflected in her party system as also because of so much bitterness and violent antagonism among political elements. The nation has neither forgotten old conflicts nor taken steps to resolve new conflicts. French politics is more ideological rather than practical.

CHAPTER III The Presidency

Mode of Election

The framers of the 1958 Constitution endeavoured to make the President of the Republic the repository of prestige and prerogatives so that the office may provide for the continuity of the State, cement the bonds between France and her former colonies, and vigilantly supervise the decorous functioning of the Constitution. The President, in their opinion, was the "Keystone of the arch" of the Constitution to be established; both the symbol and the instrument of reinforced executive authority. In order to accomplish it, they modified the manner in which the President of the Republic was to be elected. Under the Fourth Republic he was elected at a joint session of both the Houses of Parliament for a term of seven years and was eligible for re-election for one term more. Originally, the Constitution of the Fifth Republic provided for an indirect election by an electoral college consisting of some 80,000 "grand electors" that included members of Parliament, of the General Councils and of the Assemblies of overseas Territories and elected municipal Councilors and supplementary delegates from the larger municipal councils. Representation in the electoral college was roughly proportionate to population, but the smaller rural communes were over-re-presented.

This system of Presidential election was widely criticised by many political leaders and constitutional lawyers "who saw in it the perpetuation of the old political forces of the Fourth Republic."1 In the middle of September 1962, General De Gaulle proposed to modify the mode of Presidential election and suggested that after the end of his own term of office early in 1966, or in the event of his death in office, the President should be elected by direct popular vote. In a message to Parliament in October 1962, he put the issue succinctly and said : "when my seven-year term is completed or something happens that makes it impossible for me to continue my functions,2 I am convinced, that a popular vote will be necessary in order to give.... to those who will succeed me the possibility and the duty to assume the supreme task...." In a broadcast message to the nation he announced that Articles 6 and 7 of the Constitution would be revised by a Bill to be voted on at a Referendum and by a procedure as laid down in Article 11, that is, the proposed amendment would be submitted directly to the people for their approval or rejection without being debated by the two Houses of Parliament as provided in Article 89 relating to amendment of the Constitution.

The Constitution amending Bill met with stout opposition. The President's decision to invoke the provisions of Article 11 was characterised as unconstitutional and for the first time the political parties joined hands to oppose it tooth and nail. They tabled a vote, of censure against the Government and the motion was carried by 280 votes. General De Gaulle thereupon dissolved the National Assembly and proceeded with his plans to hold the referendum on the proposed amendment. The legislative election was postponed till then.3 On October 28, 1962 the people endorsed De Gaulle's proposal4 and Articles 6 and 7 of the Constitution, thus, stood amended.

The President is now elected by universal direct suffrage, and by two ballots unless a candidate obtains an absolute majority of the votes cast at the first. If the requisite majority is not obtained at the first ballot, the second is held on the second Sunday after the first. At the second ballot only two candidates may stand—the two at the top of the poll or who had been left in

1. Macridis J., and Ward, A. E., Modern Political Systems : Europe, p. 255.

2. The President missed assassination the previous month at L Petit Clamart.

3. According to Article 12 a General Election takes place not less than twenty days nor more than forty days after the dissolution.

4. 12,808,600 voted "Yes", 8 million "No", and 6 million abstained from voting.

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that position by the withdrawal after the first ballot of candidates who polled more votes.

The President is elected for a term of seven years, as in the previous Republic. The Constitution is silent on the question of re-election. It is presumed that the President can offer himself and be elected for as many terms as he may like. There is no limit to his re-eligibility. The Constitution simply provides that the President shall be elected for seven years by universal suffrage5. No qualifications for the office are mentioned either. The sole disqualification mentioned in the Constitution of the Fourth Republic that the members of the families who had reigned over France could not be eligible for the post of Presidency has been dropped. Nor does the Constitution prescribe any minimum age limit for the Presidential office.

Succession to the Presidency

The supervision of the Presidential election, including the investigation of alleged irregularities at the election and the promulgation of result, the Constitution entrusts to the Constitutional Council.6 The election of the new President takes place not less than twenty and not more than thirty-five days before the expiry of the term of office of the retiring President. In case the Presidency falls vacant, for any reason, the President of the Senate replaces the President until the President resumes his functions. If the Constitutional Council declares, on petition of the Government, by an absolute majority of its members, the President to be permanently incapacitated the President of the Senate temporarily performs the functions of the President until the new incumbent is elected. The new President must be elected within not less than twenty and not more than thirty-five days from the date of the Constitutional Council's declaration of the vacancy or incapacity.7 In his capacity as Acting President of the Republic, the President of the Senate, is specifically prohibited by the Constitution8 from using Articles 11 and 12 (governing respectively the use of the referendum relating to any Government Bill dealing with organization of the political branches of government or ratification of a treaty, and dissolution of the National Assembly), and Articles 49, 50 and 89 (governing, respectively conditions in which a government may be defeated, its obligations in this eventuality, and the revision of the Constitution.

POWERS OF THE PRESIDENT

Traditional Functions

The Constitution of the Fifth Republic maintains the political irresponsibility of the President and as Head of the State he continues to enjoy the prerogatives or the traditional functions that

were vested in the office in the past. The President appoints the Prime Minister and accepts his resignation.9 On the proposal of the Prime Minister, the President appoints and dismisses the other members of the government.10 He presides over the meetings of the Council of Ministers,11 of Councils and Committees of National Defence12 and of the Superior Council of the Judiciary.13 The President is the Commander-in-Chief of the Armed Forces of the country.14 He negotiates and ratifies treaties,15 accredits ambassadors and Envoys Extraordinary to foreign powers and receives ambassadors and Envoys Extraordinary accredited to him16 and makes appointments to some civil and military posts of the State.17 He signs the Ordinances and decrees that have been considered in the Council of Ministers,18 sends messages to parliament,19 promulgates laws,20 and may ask for the re-examination of a Bill or some of its articles, which cannot be refused.21

5. Article 58.

6. Article 7.

7. Article 7.

8. Ibid.

9. Article 8.

10. Ibid.

11. Article 9.

12. Article 15.

13. Article 65.

14. Article 15.

15. Article 52.

16. Article 14.

17. Article 13.

18. Ibid.

19. Article 18.

20. Article 10.

21. Ibid.

He is kept informed of all negotiations leading to the conclusion of international agreements.22 The President has the right of pardon.23

In exercising these formal functions, the President, like his predecessors, acts with the concurrence of the Prime Minister, whose countersignature, together with that of any other responsible minister, is necessary.24 The most important exception to the countersignature of the Prime Minister is the appointment of the Prime Minister under Article 8 and it is understandable because the resigning government cannot take responsibility. But De Gaulle claimed, in his Press conference on January 31, 1964, that the President has the right to dismiss the Prime Minister. M. Pompidou implicitly accepted this view when he said (April 24, 1964) that it was inconceivable that a Prime Minister should remain in office if he had lost the President's confidence.25 When differences developed between General De Gaulle and Prime Minister Debre, he resigned. George Pompidou resigned in July, 1968, because of differences of opinion on the President's plan to institute a system of participation of workers and employees in the management and profits of enterprises.

The Constitution vests in the President the power of pardon and consults the Higher Council of the Judiciary under conditions determined by an organic law. The Higher Council of Judiciary also assists the President in the appointment of High Court Judges.

Personal or Discretionary Powers

Besides the traditional functions, the Constitution vests the President with personal or discretionary powers and in the exercise of which the countersignatures of the Prime minister are not required. They are truly and substantially Presidential acts and he exercises them solely in his discretion. The Constitution specifically mentions four of them. In the first place, the President can dissolve the National Assembly at any time, on any issue and for any reason. The Constitution imposes only one limitation on the President's power of dissolution. He cannot dissolve it twice within the same year.26 The other limitation that the President, before announcing dissolution of the National Assembly, should consult the Prime Minister and the Presiding officers of the two Houses of Parliament is a sheer formality. In Britain and other countries having parliamentary system, power of dissolution is the sole right of the Prime Minister and it is never refused by the Head of the State whenever it is asked. The Head of the State has no right to dissolve Parliament on his own initiative. In France, the initiative rests with the President of the Republic and he only consults the Prime Minister and the Presiding officers of the two Chambers. Consultation is not consent and, accordingly, it has no binding force. The ultimate decision is that of the President.

The President may refuse dissolution when asked by the Prime Minister. It was reported that Michel Debre had wanted a dissolution after the Algerian cease-fire agreement had been ratified by the people at a referendum, but President De Gaulle decided against dissolution. On the other hand, when the combined Opposition parties defeated the Government on a vote of censure in 1962, the President promptly dissolved the National Assembly although the Prime Minister had

submitted the resignation of his Government. But General De Gaulle decided not to accept the resignation of the Government and to dissolve the National Assembly instead.

The second personal power of the President relates to the submission of Bills to the people at a referendum. Calling of referendum is a personal act of the President and the Constitution specifically provides that it does not require the countersignature of the Prime Minister.27 It is his decision to elicit or refuse submission of a Bill of specified nature or a treaty to a referendum. The President may decide that a constitutional amendment proposed by the Government need not be approved at a referendum after it had been adopted by Parliament. In such an event, the proposal is sent to a joint meeting of the two Houses of Parliament and if adopted by a three-fifth majority of the votes cast, it becomes an amendment of the Constitution. Whatever be the exigencies of designing this procedure, it is a Presidential act no doubt and the President determines it in his discretion.

22. Article 52.

23. Article 17.

24. Article 19.

25. Dorothy Pickles, The Fifth French Republic, p. 133 fn.

26. Article 12.

27. Article 19.

On the other hand, the President is required to submit certain Government Bills to the referendum of the people. Such Bills relate to the organization of public authorities, carrying approval of a Community agreement, or proposing to authorize the ratification of a treaty which, without being contrary to the Constitution, would effect the functioning of institutions.28 Article 11 which contains these provisions categorically enjoins that the President on the proposal of the Government during (Parliamentary) sessions or on a joint motion of the National Assembly and the Senate may submit to referendum all measures enumerated above. But on all three occasions when the provision of this Article were invoked the initiative invariably came from the President and not from the Government of Parliament. In the second place, the President invoked this Article in 1962 and claimed that this Article empowered him to submit directly to the people amendments to the Constitution ignoring the procedure prescribed in Article 89. It means that the President did not give any opportunity to the representatives of the people, by bypassing Parliament to discuss or move amendments to the proposals emanating from government.

When the institutions of the Republic, the independence of the nation, the integrity of the territory of France, the execution of international engagements are menaced in a grave and immediate manner and the regular functioning of the public powers is interrupted, the President may take whatever measures he deems necessary to combat the menace.29 This is, again, a

personal act of the President exercised in his discretion. The President needs only to inform the nation by a message and to consult the Constitutional Council on the measures taken or contemplated to be taken. The National Assembly however, convenes automatically and it cannot be dissolved during the tenure of the emergency. Thus, the President alone is entitled to decide when an emergency, as defined by the Constitution, exists, and what measures should be taken. His obligations are merely to consult the Presidents of the two Houses and the Constitutional Council and to inform the nation. The provision that Parliament meets as of right and it cannot be dissolved during the period of emergency as also that the opinion of the Constitutional Council with regard to the measures taken or intended to be taken must be published, does not provide any real safeguard against the Presidential exercise of emergency powers. The President has the right to assume full powers even if he acts unconstitutionally.

The Constitution also vests explicitly in the President certain other powers that he can exercise in his discretion. He has the power to nominate persons to civil and military posts unless it is otherwise provided by an organic law (a law passed by an absolute majority of the Senate and the National Assembly separately).30 He signs all decrees and ordinances prepared by the Council of Ministers.31 He promulgates the laws passed by Parliament. The Constitution enjoins upon him to do so within a period of fifteen days following the transmission to the Government the laws so passed. But he may send back, before the expiration of the specified period, to Parliament and ask for reconsideration of the law or of certain of its articles (clauses). Parliament has no power to refuse such a reconsideration. The President can raise question of unconstitutionality on a bill or on a law before the Constitutional Council.32 He may send messages to Parliament and if not in session, it may be convened specially for that purpose.

The President as Mediator (Arbiter)

Article 5, which is the first in Title II of the Constitution and relates to the President of the Republic, explicitly charges the President to guarantee the functioning of the institutions of government. It reads: "The President of the Republic shall take care to see that the Constitution is respected. He shall ensure, by his arbitration, the regular functioning of the governmental authorities, as well as the continuity of the State. He shall be protector of the national independence of the nation, of its territorial integrity, and of respect for treaties and Community agreements." This is an all-embracing responsibility which the Constitution bestows upon the President. Mediation is a personal act involving the exercise of judgment. As a result, it gives to the President unlimited

28. Article 11.

29. Article 16.

30. Article 13.

31. Ibid.

32. Article 61.

field of action. His mediation spreads over almost every conceivable aspect of policy, domestic or foreign. He must see that the Constitution is duly respected and its commands unflinchingly obeyed. He devises means to ensure that by his arbitration the proper functioning of the institutions of the government is guaranteed and the continuity of the State is uninterruptedly preserved. He is the protector and, thus, the guardian of the national independence, of the integrity of the territory of the country, and of respect for Community agreements and treaties. The range of the President's responsibilities, in brief, extends to matters of war, foreign policy, the preservation of internal peace, and the functioning of governmental institutions. And above, all, the powers of the President are overriding, final and decisive. Speaking one week after his election to the Presidency in 1958, General de Gaulle reaffirmed his conception of the office and his own personal role. He said: "The national task that I have assumed, for the past 18 years is confirmed. Guide of France and chief of the republican State, I exercise supreme power to the full extent allowed and in accord with the new spirit to which 1 owe it."

The President rules as well as reigns. He is the custodian of the national unity. He may delegate his powers for the realization of national objectives to other organs of government, the Prime Minister, the Cabinet and Parliament, and they may take appropriate decisions thereon, but subject, in the case of conflict among Ministers or between the Cabinet and Parliament to the President's arbitration. This was at least De Gaulle's ideal and he ceaselessly strove for it. On three important occasions, he interpreted the Constitution in a manner which limited the powers of Parliament and on all three occasions President De Gaulle's decision was accepted. In the first instance, an absolute majority of the Deputies, which is the constitutional requirement under Article 29, demanded that Parliament should be convened in an extraordinary session, but the President asserted his right to decide whether it would be justifiable or not to convene an extraordinary session. He did not consider that the demand of the Deputies was cogent enough and refused to convene an extraordinary session.

On the second occasion in 1961, the emergency had been proclaimed and consequently Parliament was in session as required under Article 16. But when it adjourned for the summer vacation there had taken place fanners demonstrations in a number of Departments and parliamentarians decided to hold a special session of Parliament in order to introduce a bill dealing with the causes of agricultural discontentment and the remedial measures. Since Parliament was in session and it had only adjourned for a brief recess it was up to the Presiding officers to convene a special session. But De Gaulle intervened and opposed the convening of a special session on the ground that agricultural problems were totally unrelated to the exercise of his powers under Article 16, and for which purpose Parliament had been convened. He maintained that the special session, though constitutionally in order, was politically unnecessary, since the proposed legislation could be introduced a few weeks later during the regular autumn session.

The third was the familiar and now oft-repeated instance when De Gaulle decided to submit directly to the people on October 28, 1962, a bill modifying the constitutional provision relating to the election of the President of the Republic. This act of General De Gaulle has been held by an overwhelming majority of the French jurists as unconstitutional. A constitutional amendment

is governed by the provisions of Article 89, and before its submission to the people at a referendum it must pass through both the Houses of Parliament. But De Gaulle bypassed Parliament and this act of the President was a clear contravention of the Constitution, though the President had defended his action under Article 11 of the Constitution. This Article, as pointed out earlier, does not relate to constitutional amendments.

Extent of the Powers of the President

The President of the Republic under the Constitution of 1958 is meant to be the Head of the State and, according to the letter and spirit of the Constitution, he should in normal circumstances be no more than that. Though the reality of the Constitution had become more presidential during the tenure in office of General De Gaulle, the basis of the government is parliamentary. Michel Debre, the chief architect of the Constitution, had unequivocally maintained that the "parliamentary regime was the only one suitable for France. The system of government the constitution of 1958 establishes in France, has two basic features, which characterize

all the parliamentary systems of government in Great Britain, Canada, Australia, India and many others. First, the executive is divided in two organs, the Head of the State,33 and the government,34 which led by the Prime Minister, is responsible for policy-making and policy-implementation.35 Second the Government is collectively responsible to the National Assembly,36 the representative Chamber, which can, by censure, force its resignation.37

Like his predecessors, under the Third and Fourth Republics, the President is politically irresponsible, except in the case of high treason, for which he can be tried before the High Court of Justice.38 In few respects the Constitution of 1958 gives to the President, even where his traditional functions are concerned, a little more freedom and scope for action than his predecessors have had. For instance, the President negotiates treaties.39 Under the Constitution of 1946, the President was simply "kept informed" of the negotiations. Then, the list of offices to which the President has now the right to make appointments40 is far larger than that contained in the 1946 Constitution. The President of the Fifth Republic appoints the Prime Minister and Ministers proposed by him41 without going through the process of designation as provided in the Constitution of the Fourth Republic. But in one respect he has less opportunity to act independently than his predecessors. In the exercise of his right to pardon the President now requires a countersignature of the Prime Minister and a responsible Minister. The previous Constitution made no provision as such. The first President of the Fourth Republic, M. Auriol, no doubt, sought advice on matters of pardon, but he did not submit his orders for countersignature.

All the same, it does not mean that the 1958 Constitution, vesting the President with such powers, eliminates the basic elements of parliamentary democracy. They are there, yet the President is vested with some special powers, which the previous Constitution did not contain. These are: the power of dissolution,42 submission of Bills to the people at a referendum,43 reference of certain Government Bills to the people for their approval or rejection,44 and assumption of full powers in certain emergencies.45 These powers, by their very nature and the

restrictions that the Constitution imposes were intended to be exercised at rare intervals or in emergencies alone. But President De Gaulle made full use of these powers. His sole object in doing so was to strengthen and exalt his position. Accordingly, the Constitution of the Fifth Republic has been variously described. Some suggest that it was "tailor-made" for General De Gaulle, who was to become the first President of the Republic in December, 1958. But Jean Blondell and Drexel Godfrey remark, "This is, in fact, only partly true; it would be truer to say that the Constitution is becoming more and more tailor-made for De Gaulle, partly as a result of the constitutional amendment, partly as a result of customary change."46

General De Gaulle put the new conception of the office of the President under the Constitution tersely when he said in 1964 that the President "elected by the nation is the source and holder of the power of the State," the only man to "hold and to delegate the authority of the State." This assertion of the President meant, in the ultimate analysis, that the President can concentrate the powers of the State in his own hands, provided he holds his office as a result of the mandate of the people and as long as specific reforms, irrespective of the nature

33. Article 5 clearly establishes it, although it does not say so in clear and specific terms.

34. Article 20.

35. Article 21.

36. Article 20.

37. Article 49 and 50. In 1958, motion of censure against the government was carried in the National Assembly by 280 votes. The government resigned, though the President did not accept the resignation but dissolved the National Assembly.

38. Article 68.

39. Article 52.

40. Article 13.

41. Article 8.

42. Article 43.

43. Article 45 and 89.

44. Article 11.

45. Article 46.

46. Blondell, J., and Godfrey, E. D., The Government of France, p. 29.

and scope, are approved by the people by their own votes at a referendum.

The Constitution of the Fifth Republic as said earlier, is the result of compromise between two irreconcilable principles—principles which govern the parliamentary system in sharp contrast of a presidential system. The Algiers rebellion and the inability of the government of the Fourth Republic to deal with it effectively had abundantly proved that the strengthening of the Executive was an imperative need of the country. In fact, many political leaders had been suggesting, since more than a decade, various methods by which this could be achieved. General De Gaulle wanted that type of Executive wherein the President should have a much "higher" role and he should be concerned with the "permanent" interests of the nation. He had opposed the Constitution of the Fourth Republic from the start, resigned from the Premiership and retired from politics before it came into force. It was only natural that on his return to power twelve years later he should have refused to accept the institutions that he had already considered deplorable.

The compromise between the two diametrically opposed points of view was difficult to arrive at, because French "Republican" tradition was opposed to and suspicious of the presidential system of government. This suspicion goes back to the middle of the nineteenth century when the second Bonaparte overthrew the regime and established an Empire. At the same time, French people had not forgotten the failures of the Third Republic. The experiences of the Vichy regime, under the German occupation, were also living memories with them. The Algiers rebellion hardened their conviction that a parliamentary regime must be coupled with a strong and energetic Executive. The 1958 Constitution combined both, a strong Executive and a "rationalized" Parliament within the framework of a Parliamentary system.

Though General De Gaulle had agreed to the system of government with parliamentary institutions, but he saw potentialities in the various provisions of the Constitution, more especially in Articles 5 and 16 to nullify their impact. Gradually, from the conception of an arbiter, he assumed the role of the "Guide" of the nation and vested the office of the President with broad leadership functions. Presidency became the centre of policy-making not only in foreign affairs but also in domestic issues. He established specialised bureaus and offices where policy alternatives were thrashed. The Prime Minister and his government knew nothing what was happening at the Elysee, the Presidential palace. The President, thus, emerged as the key policy-making organ bypassing the Prime Minister and his Cabinet, who, in terms of the Constitution, are charged with the duty of determining and directing the national policy and are collectively responsible for that to Parliament. The President adopted the device of directly appealing to the nation to vote for his policies and programmes. In the second term of his office, which began in January 1966, he decided, without any consultation with Parliament and most probably without the full knowledge of the Prime Minister and his Cabinet, to ask for the withdrawal of the United States forces from France, and, in effect, withdrew from NATO. In his various trips abroad, De Gaulle advocated his own foreign policy which often took the Ministers at home by surprise. When he advocated the "liberation" and "independence" of Quebec in the summer of 1967, even his own foreign Minister was taken by surprise.

Besides the impressive powers that the Constitution conferred on the President, General De Gaulle added new dimensions to the Presidency by considering himself to be the "Saviour" of the nation who was destined to usher in an era of stability and prosperity not only for the generation of his own times but for the coming generations too. Before his second term election in December 1965, he reminded his countrymen the role he had played in the past and what the country expected him to do in the years ahead. He said: "seven years ago I believe it was my duty to return to her head in order to save her (France) from civil war, to spare her from financial and monetary bankruptcy and to build her institutions to meet the requirements of the modern times and world. Since that time I have believed it was my duty to exercise the powers of Head of State so that France might on behalf of all her children, make an unprecedented stride forward in her internal development, restore complete peace and acquire throughout the world a political and moral position worthy of her. Today, I believe it is my duty to hold myself ready to continue my task weighing, with full knowledge of the

facts, the effort involved, but convinced that at this time it is best in order to serve France."47

De Gaulle ruled supreme for more than a decade and throughout his tenure he regarded both government and Parliament "as being, in their different ways, mere agents of the President." Public interest was focussed in him and not in the Prime Minister. There were protests in Parliament and the President paid no heed to them. In Oral Questions addressed to the Prime Minister on April 24, 1964, two Deputies, M. M. Mitterand and Coste-Floret, criticised the President in general for taking decision without, consulting his Ministers and for ignoring both the Cabinet and Parliament "and also specifically for transferring to the President which should constitutionally be the Prime Minister's functions in the field of nuclear policy."48

On January 31, 1964, M. Coste-Floret addressing the Prime Minister observed, 'We were told that you did not exist. Why did you not resign immediately?" Prime Minister M. Pomipidou defended the President and his interpretation of the Constitution He admitted that there was a profound modification of Presidential functions, but explained that in the referendum of 1962, the people had clearly and definitely confirmed their approval of General De Gaulle's conception of his functions and the manner in which he carried them out. The Prime Minister expressed the view that the importance of both the Prime Minister and the Government was enhanced "by their responsibility—on the one hand to the President and on the other to the National Assembly. Immediately after his death in 1970, Pompidou paid handsome tribute to his mentor. He said, "General De Gaulle is dead, France is a widow."49 He appealed to his countrymen to follow the path he carved for the country and emulate the lesson he taught. "Let us gauge," he maintained, "the duties which gratitude imposes upon us. Let us promise to France not be unworthy of the lessons which have been dispensed to us and let De Gaulle live eternally in the national soul."50

De Gaulle relinquished Presidency in April 1969, when his proposals relating to the organization of the Senate, and regional reforms were rejected at a referendum. His successor M. Pompidou was not even a fragment of his mentor, although he tried to maintain glory of the Presidency that he had inherited. But the process of the "Presidentialisation" of the regime was reinforced by Valery Giscard d' Estaing, Pompidou's successor. Giscard won the 1974 Presidential election as

an apostle of unity—a reformer who promised change without convulsion, a healer who sought to melt the "icy antagonism between Right and Left into a vigorous convivial center." But he could not fulfil his promise because France's historic division not only persisted but had become sharp. His handling of the foreign policy was impressive and abroad he powerfully consolidated the President's influence and prestige. He took the initiative of supporting Zaire, Chad and Mauritania and enunciated a clear African policy for France. He put forward a plan for European monetary union and boldly came out in favour of the entry of Spain and Portugal into the European Economic Community despite the political and economic problems to rise in his own country.

Giscard established himself the real leader of the nation and he emulated the lesson De Gaulle had taught, whose Finance Minister he was from 1962 to 1966, about the role of the Presidency. He regarded all affairs of the State as his "reserved domain" as foreign policy and defence were called under General De Gaulle. Giscard even interfered in the small details of policy execution, like the nomination of officials that his predecessor had left to the jurisdiction of the Prime Minister. He used the powers at his disposal in a far more thoroughgoing manner than even De Gaulle did. He issued instructions direct to Ministers and interested himself in the tiniest details of administration. He had formed around him a team of about 40 able, mostly young officials, many of them the product, like Giscard himself, of the Ecole Nationale d' Administration. Many people believed that it was this team at the Elysee, not the elected representatives of the people, who really governed France.

47. French Affairs, 183 (New York : Embassy of France, Press and Information Service (November 4, 1965), pp. 1-2.

48. The decrees of July 10, 1962 and January 14, 1964, were held to constitute a transference to the President the responsibility for the general direction of defence and of the right to decide on the use of the nuclear deterrent, Dorothy Pickles, The Fifth French Republic, p. 156 fn.

49. The Tribune, Chandigarh, November 11, 1970.

50. Ibid.

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"The trouble with Giscard," General De Gaulle is supposed to have said, ' 'c 'est le peuple." He had no common touch with the people. The system of governning the country, he ventured, caused resentment and hostility among the intellectuals and political strata. "For the first time, France is being governed by technocrats", snapped Madame Marie-France Garraud, the only woman candidate for 1981 Presidential election; "there is now a gap between the governed and the governors," And a distinguished ex-official, who worked closely with De Gaulle at the Elysee, was in no doubt that "Giscard has deformed the Constitution."

The victory of the Socialist leader, Francois Mitterand, over Valery Giscard d' Estaing in the 1981 Presidential election was essentially an expression of the people's desire of a change of 23 years' conservative rule rather than their willingness to take the country to the Left. The other

factors that led to Mitterand's victory included Giscard's failure to cure the nation's ailing economy (rate of inflation running at 12.5 per cent and over a million and a half without jobs) and the unpopularity that he had gathered over the diamonds he had received from the deposed Emperor Bokassa.51 By and large, however, Mitterand's success was the backing he got from the youth who needed jobs and security and the Communists who wanted to oust Giscard at any cost.52

The Socialist Party's main priority was decentralisation—to take from Paris the control of the regions and give them to local councils by proportional representation. Other equally important pledges made by the President related to the nationalisation of banks, 11 big industries and a few insurance companies. The President started his job fairly well to the admiration of the masses. The measures he had taken made Mitterand popular with even his opponents. Mitterand's victory heralded a qualitative change in the Elysee and in the government. He was known to the French as the "quiet force" the serene father-figure who never talked too much. He carried this image with him in the Elysee. There had been no rush to the media to explain himself. He controlled his Ministers discreetly, with little of the direct meddling, badly suffered from president Giscard.

Mitterand's socialism is moral and patriotic. "Morality and national pride now combine in Mitterand's overiding determination that France should make up the ground it lost in the opportunistic, materialistic years of Gaulist and Giscardian economic progress." His foreign policy was distinguished for its leaning towards the third world countries rather than heavily tilted towards the advanced and capitalist countries. Nor had the President forgotten his relations with USSR despite the Communists unconditionally supported him in his election and were till 1983 participants in the government too.

In the March 1986 elections to the National Assembly the Socialist Party emerged as the single largest party and the right-wing headed alliance between the Gaullist Rally for the Republic (PRP) and the former President Giscard De Estaing's Union For French Democracy (UDF) won 291 seats in a 577-mem-ber House. It was the first time in the 28 years of the Fifth Republic that the Presidency and the Assembly were controlled by different parties. Prior to the poll, President Mitterrand had warned that he would order an early Presidential election (due in 1988) rather than be "a cut-rate" President. But immediatly after the poll he announced his decision to appoint a Prime Minister from the victorious right-wing coalition and, thus, put to rest that he would utilise his Presidential power to appoint a Prime Minister and thereby to foist an unrepresentative government on France. He appointed Jacques Chirac the Prime Minister.

The right-wing alliance was committed to the policy of 'privatization' of over-sweeping of nationalisation of banks and a dozen of France's powerful industrial groups. And Chirac wanted to do most of it by Presidential decrees meaning that President Mitterrand would have to undo under his own signatures what his socialist government had done five years before. On July 14, 1986 in an interview on French Television, the President cast his political decision in decorous moral terms. To sign the 'privatizatin' decree, he indicated, would be to sell off France's national interests to "foreign interests." It meant that the only option with the Prime Minister was to go slow with his

51. "If I was a cannibal," complained Bokassa, "he was a cannibal. For 10 years, I was with Giscard. If I stole diamonds, he should be punished, too, because he got his diamonds." The Sunday Standard, New Delhi, May 24,1981.

52. Georges Marchais, who himself was candidate for the Presidency and eliminated at the first round of election, pledged unconditional support for Mitterand at the second round.

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programme and refer all such changes, he intended to make, to Parliament and get its verdict thereon. If the President did not bend to his conservative Cabinet plan and the Prime Minister was not inclined to follow the parliamentary process, the resultant confrontation could prove fatal to, what had been widely described, "cohabitation" between strange bed-fellows.

The year 1987 opened with the French government of the Prime Minister, Jacques Chirac, under fire from at least three different counts: a disruptive rail strike; domestic-based terrorism; and Libyan aggression in Chad. A series of strikes called by the pro-Communist General Confederation of Labour in support of the railwaymen, bus, metro and electrical workers disrupted their respective services in a show

of labour opposition to the general economic policies of the conservative Prime Minister. The Chad problem and the persistent threat of hit-and-run terrorists strikes by Action Direct inevitably aggravated the "cohabitation" tensions between President Francois Mitterrand and Prime Minister Chirac. In their messages of New Year greetings to the nation, the two leaders exchanged thinly shielded barbs in an effort to pin the blame for the prevailing turmoil. One French commentator on television characterised the situation as "a guerrilla struggle at the summit." The conservative government also stepped up its charges that the railway strike had become primarily "political", with the aim of undermining it. All this did not augur well for France with its historical background.

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CHAPTER IV The Government

The Cabinet

In the language of the Constitution, the Cabinet, composed of the Prime Minister and other Ministers, constitutes the Government which determines the policy of the nation and is responsible to Parliament.1 While the role of the President is to ensure a "guardianship" of the Nation,2 the role of the Government is to govern. The President of the Republic, no doubt, chairs the Council of Ministers,3 but it is the Government as a whole, and in particular its leader, the Prime Minister, who is responsible for the policy of the Nation.4 The Constitution accords special recognition to the office of the Prime Minister by custom known as the Premier.

The office of the Premier, before the 1946 Constitution, had always been precarious in authority and in tenure because of Ministries necessarily being formed from heterogeneous parliamentary

groups. The framers of the Constitution of 1946 were fully alive to the defects inherent in the French political system and they attempted to stabilise the position of Premier, as much as they could. In fact, the position of the Premier, as Phillip William pointed out, "was the keystone of the constitutional settlement of October 1946."5 The Reporter of the Constitution to the Second Constituent Assembly in 1946, could boast that the President of the Council of Ministers "has become a Prime Minister in the English sense." Actually, wrote F. Ogg, he had be- come "more than that—a head of the government, with powers at some points considerably transcending those of the British ministerial chief." But it was clearly not so. The Constitution prescribed that he exercised some of his powers with the countersignatures of one of the relevant Ministers. The most important limitation in the exercise of his powers was political. In the absence of a coherent Ministry, the Premier could not become an effective leader and was never in a position to form a stable, strong and effective government.

The Constitution of the Fifth Republic creates the office of the Prime Minister and retains in essence some of the provisions of the 1946 Constitution which establish his supremacy and leadership as much as is compatible with the position of the President of the Republic and the collective character of the Government. He '"directs" the operation of the Government and is "responsible" for national defence. He "ensures" the execution of the laws and exercises the rule-making power subject to the condition that all decress and ordinances are signed by the President of the Republic.

The Prime Minister determines the composition of the Cabinet,6 presides over its meetings, and directs the administrative services. He defends his policy before Parliament, answers questions addressed to him by members of Parliament, states the overall programme of the Government in special declarations and puts the question of confidence before the National Assembly.7 He makes appointments to the posts which the President of the Republic is not specifically designated to appoint.8 He presides over the councils and committees of the defence establishment in place of the President of the Republic when the occasion arises.9 The Prime Minister may, in exceptional circumstances, take his place as chairman of a meeting of the Council of Ministers by virtue of an express delegation of authority and for specific agenda.10

The Prime Minister exercises legislative

1. Article 20.

2. Article 5.

3. Article 9.

4. Article 21.

5. Phillip Wiliam, Modern Foreign Governments, p.540.

6. Article 8.

7. Article 49.

8. Article 21 as read with Article 13.

9. Article 21 as read with Article 15,

10. Article 21 as read with Article 9.

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initiative concurrently with the other members of Parliament.11 Parliament assembles in an extraordinary session at the request of the Prime Minister or of the majority of the members composing the National Assembly, for a specific agenda. Only the Prime Minister may ask for a new session before the end of the month following the decree of closure of Parliament after the completion of the agenda for which it had been convened in extraordinary session.12 Moreover, throughout the Constitution the Prime Minister is called for advice as specifically in cases of dissolution of the National Assembly13 and in the use of emergency powers by the President of the Republic under Article 16.

The Cabinet and Collective Responsibility

The Government in France, like other parliamentary democracies, remains legally a collective organ and the decisions of the Government are the decision of all its members. Collective decision-making is implicit in Articles 13 and 20 of the Constitution. Article 13 provides that the President of the Republic shall sign the Ordinances and decrees that have been considered by the Council of Ministers. This nature of collective decision making is supported by Article 38 which provides : "The Government may, in order to implement its programme, request of Parliament authorization to take by ordinance, during a limited period of time, measures which are normally in the domain of law. Ordinances shall be enacted in the Council of Ministers after consultation with the Council of State." But Article 20 makes it abundantly explicit when it says that Government shall determine and direct national policy.

Article 20 associates collective decision-making with the collective responsibility of the Government After stating that the Government determines and directs the policy of the nation, it also provides that the Government shall be responsible to Parliament. The Constitution prescribes three methods of enforcing Government's responsibility to Parliament. The first method is found in Article 49. It states: "The Prime Minister after discussion by the Council of Ministers shall commit the Government before the National Assembly to responsibility for its programme or possibly, for a general policy declaration." The National Assembly can defeat the Government either on its programme or on a declaration of general policy and in such an eventuality the Government as a whole resigns and quits office.

Second, the National Assembly can defeat the Government by passing a vote of censure. The Constitution prescribes a definite procedure for moving a vote of censure and its consequential effects.14 A motion of censure is required to be signed by at least one-tenth of the members of the National Assembly and the vote thereupon takes place not less than forty-eight hours after the motion had been introduced. Only those votes are counted that are favourable to the motion and the motion is considered adopted only if it is supported by a majority of all the membership

of the Assembly. If the motion is defeated the signatories to the motion of censure which had been defeated cannot propose another motion censuring the Government for the rest of the session. But others, who had not been signatories to the defeated motion may propose such a motion of censure.

Third, the Prime Minister may, after discussion in the Council of Ministers, make an issue a matter of confidence. If he does so, confidence is presumed to heave been accorded, and the proposal in question is presumed to have been carried without a vote being taken, if a motion of censure has not been moved within twenty-four hours. Such a motion of censure is subject to the same conditons as a motion of censure on the Government's policy. If the motion is lost, the proposal is carried. There is no limit to the number of censure motions that may be presented by the same members of the National Assembly on matters on which the Government has made questions of confidence.

There is one important difference between the two kinds of vote of confidence. If the Government seeks a vote of confidence, a simple majority of the members present and voting is sufficient to bring down the Government. If a vote of cencusre is moved against the Government an absolute majority of the total membership of the National Assembly is necessary to carry a vote of censure. The absolute majority

11. Article 39.

12. Article 29.

13. Article 12.

14. Article 49.

of the total membership of the Assembly renders the adoption of the vote of censure extremely difficult followed by a deterrent action that the signatories to the lost motion cannot move another vote of censure for the rest of the Assembly session.

When the" National Assembly passes a motion of censure or rejects the programme or a general policy of the Government, the Prime Minister must submit to the President of the Republic the resignation of the Government.15

Functions of the Cabinet

Whatever be the provisions of the Constitution with regard to collective decision-making and the responsibility of the Government as a whole to the National Assembly, the functions of the Cabinet became drastically modified under General De Gaulle as well as Giscard. Three reasons can be assignel for it. The first is the rule of incompatibility as provided in Article 23 of the Constitution. It states, "Membership in the Government shall be incompatible with the exercise of any parliamentary mandate, with the performance of any national function in a trade or

professional organization, with public employment, or with any professional activity. An organic law shall determine the conditions in which the holders of such mandates, functions, or employment shall be replaced. Members of Parliament shall be replaced in a manner conforming to the provisions of Article 25." This Article was introduced in the Constitution at specific request of De Gaulle in his bid "to reduce the temperature of politics."16 It forbids ministers to remain members of Parliament after they had been appointed to the Government. Whatever be the merits of this provision, it is, indeed, incongruous in the context of a parliamentary democracy. Government, in a parliamentary system, emanates from the majority Party in the representative Chamber and it remains in office so long as it can retain its confidence. It defends its policies and programmes on that basis of majority. It is true that members of the French Government do attend the meetings of both Houses of Parliament and participate in, their deliberations without the right to vote,17 but their simple participation is not enough for a parliamentary democracy if the representative Chamber is really to be the barometer of public opinion. The representatives carry with them the mandate of the electorate expressed at the time of the General Election and they pursue their programme in accordance with that mandate. But the Constitution of the Fifth Republic prohibits it. De Gaulle had hoped that the rule of incompatibility would force Ministers to abandon their "politician's outlook and take a ministerial," presumably "statesmanlike", attitude on becoming members of the Government. This hope of De Gaulle, however, has not been realized. The procedure does not appear to have led to considerable variations in the attitude of the Ministers. For, though a Minister ceases to be a member of the Assembly or the Senate after his appointment, he does not eschew his membership of the Party to which he belonged. He has to fight election again after the expiry of his term of office as a Minister and for that he has to depend upon the Party if his reelection is to be ensured. He contests election on the ticket of a party, supports its programme and participates in party campaigns.

Then the Government is-no longer composed of parliamentarians who simply resign their electoral mandate. Since 1958, more than one third of the Cabinet members have been civil servants, technicians, professors and intellectuals who had never been in Parliament and who had never desired to do so. De Gaulle attempted it to effect a "depoliticization" of the Government in order to bring about a change partly on the ground that the Government should in some sense be "above the daily turmoil of political life," and partly because the General conceived of politics "as an activity which somehow can be divorced from state policy-making." On coming back to power, in May 1958, and before the new Constitution was drafted, De Gaulle appointed to his Cabinet members of the civil, foreign and colonial services, a practice which had been abandoned, except in time of war, for over half a century, and placed these men in key positions. It had two effects. First, it vitiated the basic principle of a parliamentary system and, secondly, it was against the traditional, but universally recognized, maxim that the representative Chamber is the authentic expression of popular sovereignty. Cabinet cohesion and collective responsibility have no political utility in this context.

15. Article 50.

16. Blondell, Jean and Godfrey, E.D., The Government of France, p. 51.

17. Article 31.

In fact, both the non- parliamentarians and parliamentarians, as Macridis and Ward maintain, "who renounce their parliamentary mandate are therefore presumed to be independent of immediate politica' and electoral consideration, only, however, to become increasingly dependent upon the President, from whom they hold their ministerial position."18

The Cabinet is a deliberative and policy-making body. It discusses and decides all sorts of national and international problems confronting the country and thereby an attempt is made to reach unanimous agreements embodying Government's policy. It must present to Parliament and to the world unified policy of action if collective responsibility is to be fully realized. Meetings of the Council of Ministers under President De Gaulle were frequent and prolonged. Reports prepared by the Ministers or their aides were debated, but generally the discussion revolved "around the suggestions and directives of the President."19 In contrast, the Cabinet meetings under the Prime Minister, wherein national policy would have been determined and for which the Constitution holds it responsible to Parliament,20 had become rare. Instead, several inter-ministerial committees were set up "to implement the decisions reached in the Council of Ministers by President De Gaulle or at the Elysee."21 The Cabinet had, thus, become a mere instrument for the execution of policy and in some matters, especially defence and foreign policy, it was "simply bypassed." Giscared followed his mentor, whose finace Minister he was. Mitterand, who inherited the Gaullist presidential system, tailor-made for his opponents, which he himself opposed because it gave the President too much power, has controlled his Ministers discreetly, with little of the direct meddling.

The only redeeming feature of the constitutional provisions is that ministerial instability that had plagued France throughout its parliamentary career has sharply decreased. The rule of incompatibility was designed to remove any temptation to overthrow the government and manipulate another. In the earlier Republics every Deputy was a prospective minister and every minister aspired to become a Prime Minister without any qualm of conscience. Under the rule of incompatibility there is no possibility of a former minister, who had been ousted from office, again resuming his old seat in Parliament because that had been occupied by a substitute who had to be designated under the 1958 electoral law. It can, therefore, be said that the threat of losing a parliamentary position as a price of membership of government is real and effective. Moreover, the incompatibility of ministerial position with function of professional representation on a national level yields to the result that office-bearers of the labour unions or employers' federations or chambers of commerce or agricultural associations cannot become ministers. They have to resign their positions before joining the government in order to assume the role of statesmen.

In the first seven years of the Fifth Republic, France had only two Prime Ministers, Michel Debre (1959-62) and Georges Pompidou (1962—1968). Maurice Couve de Murville came in July 1968. In contrast, only two Premiers of the fourth Republic lasted for over a year and no Prime Minister since 1875 lasted continuously in office as long as Pompidou. The cabinet has shown also a corresponding stability. Only on three occasions there have been important reorganizations. Maurice Couve de Murville remained in charge of Foreign Affairs for about ten years to become Prime Minister in 1968. The Ministry of the Interior and Army were each

headed by the same one Minister, respectively, for over six years. This is a "remarkable stability," observe Macridis and Ward, "that compares favourably, if not better, with the stability of the British or the American cabinet."22

Parliamentary Control

Parliament supervises the work of the Government in three main ways. During sessions of Parliament, opportunity is provided for exchanges of opinions during debates. It is here that the Government comes under close scrutiny and its lapses or achievements come into limelight. Parliament is a place where matters are debated and society, writes Harold Laski, ' 'that is able to discuss does not need to fight; and the greater the capacity to maintain interest

18. Macridis, Roy C, and Ward, Robert E., Modern Political System : Europe, p. 260.

19. Ibid.

20. Article 19.

21. Elysee is the official residence of the President of the Republic.

22. Macridis, Roy C, and Ward, Robert E., Modern Political Systems : Europe, p. 260.

in discussion, the less degree there is of an inability to effect the compromises that maintain social peace."23 The most important function of the Opposition is to discuss and criticize matters of administration and policy-making and thereby to make the Government obliged to defend its intentions and practices. It must, however, be said that there must be a well-organised and strong Opposition to create an effective stir in the Government by its criticism.

But the main method of supervision in France is during the first stage of legislative procedure, by the examination of Bills in Commissions. All members of recognised parliamentary groups are members of a Commission, though not of more than one. The Commissions are parliamentary committees empowered to examine, discuss and report Bills before they can be debated in the Assembly and they have even been powerful engines of supervision and control very often leading the Government to wilderness. The Commissions can summon both the Ministers and the Civil Servants, examine them on matter being discussed before it and ask them to provide explanation and justification thereto.

In addition to the permanent Commissions, there are special Commissions too. A special Commission consists of thirty members, of whom not more than fifteen may be drawn from the same permanent Commission and a Bill may be sent to it for examination and report instead of one of the permanent Commissions. The Chamber may itself ask for this procedure to be adopted, and this has become the rule rather than the exception. There are also Commissions of Inquiry, similar to the Select Committees of the House of Commons, and Supervisory

Commissions, which supervise the management and finances of the nationalised industries and public services.

Information about the transaction and affairs of the Government may be obtained by the members of Parliament through the medium of either written or oral questions to the relevant Minister. Questions on general policy of the Government are addressed to the Prime Minister. Written questions are printed in the Journal Officiel. Ministers are required to reply to the questions addressed to them within a period of one month and their replies are printed in the Journal Officiel. They may, however, delay their replies for one month, and sometimes two, and may even refuse to reply on the ground that it would not be in the public interest to divulge the required information. If the reply to a written question is unduly delayed the Presiding officer of the Chamber may ask the member concerned whether he would prefer to put his question orally.

Oral questions are replied once a week at a sitting reserved for this purpose, and in the National Assembly it is on Fridays, Oral questions may be with or without debate. Questions without debate are called by the President of the Chamber and the member who is the author of the question is allowed to speak for five minutes and it is followed by the Minister's reply. No other speeches are allowed. Questions with debate are put by their authors in the course of a speech the duration of which may last up to half an hour. After the Minister concerned has given its reply, the President of the Chamber may allow other members to speak for a period not exceeding fifteen minutes in each case. The minister may give a final reply, if he so desired.

Finally, the motion of censure is really a potential device of controlling the Government. It the motion is accepted the Government resigns. But the framers of the Constitution of 1958 invented the technique of censuring the Government, as contained in Article 49, which is not only drastic but clumsy too, as pointed out earlier. Control of the Assembly and even discussion of policy is very limited indeed.

SUGGESTED READINGS

1. Blondel and Godfrey, The Government of France

2. Finer, S.E. Comparative Government, Chap. 7.

3. Macridis and Ward, Modern Political Systems in Europe.

4. Pickles, Dorothy, The Fifth French Republic

23. Laski, H. J., Parliamentary Government in England, p. 149.

CHAPTER V Parliament

Parliament in Retrospect

The Parliament of Fifth Republic is, as in the past, bicameral, consisting of the National Assembly and the Senate. The Upper House, the Senate, has regained its title, which it had lost in the 1946 Constituttion, but not all the powers, which it had under the Third Republic. The Lower House, the National Assembly, has kept its name which the Constitution of 1946 had given it. Bicameralism has a chequered history in France. During the three-quarters of century after the Revolution, France had a series of Constitutions, some Of which provided for a single chamber legislature and some for two chambers. "There was no fixed tradition", as Munro observed, "but, in general, the monarchists preferred the bicameral system while the republicans felt that one chamber was enough."1 Hence the Third Republic began its career with a single chamber legislature, called the National Assembly.

But the National Assembly was not merely a legislative body, it was also a Constituent Assembly. The National Assembly was sharply divided whether the new constitution should provide for one legislative chamber or for two. The anti-republicans, the monarchists, the imperialists and other conservatives, who formed an influential majority in the Assembly, were by no means reconciled to the republican form of government. They entertained a fear that a single elective chamber "might too easily be stampeded" and in order to check the turbulence of democracy they desired to set up a conservative Senate with effective powers, the same motives which, inter alia, swayed the framers of the American Constitution. They ultimately triumphed and the National Assembly agreed to provide for a bicameral legislature in the Constitution of the Third Republic. Because of the lengthy term of office (elected for nine years, one-third retiring every three years), the tradition of reelecting outgoing members, and the higher average age of the Senators, the Senate proved to be a sober and dignified body and as it was natural influence went with seniority.

It attracted the ablest politicians and seasoned statesmen which increased its authority and attractiveness at the cost of the representative chamber, the Chamber of Deputies.

The Senate possessed co-equal powers with the Chamber of Deputies. But it rarely rejected Bills outright. Those it disliked were simply buried in committees from which they never emerged. In the beginning, the Senate did not challenge Governments. The provisions of the Constitution were vague regarding the responsibility of the Government. Custom rather than the law, however, became the decisive factor and the Senate was responsible for dismissing two Ministries before 1914 and a third in 1925. In the last ten years of the Third Republic it dismissed four.

When the collapse of 1940 occurred, the two chambers sitting together as a National Assembly voted themselves out of authority and abdicated their powers in the hands of Marshal Petain thereby signing the death warrant of the Third Republic. After the liberation, provisional government was set up in Paris with General De Gaulle at its head, aided by a ministry and a consultative assembly. The first constitution, which was submitted to a referendum of the people in May 1946, and rejected, contained no second chamber at all. The Socialists and the Communists combined together and refused to compromise in this matter. While no considerable group desired a restoration of the old Senate, as it had functioned under the Third Republic, there was nevertheless a widespread feeling that some kind of upper chamber was desirable.

In the Second Constituent Assembly the battle was fought out between the Radicals and their supporters who fovoured a virtual return of the old Senate. M. R. P., like De Gaulle, wanted a broadly corporate chamber, representing colonial and professional interests as well as local authorities. The Communists and the Socialists preferred no second chamber at all, but recognizing that there must be one if the constitution was to be accepted at the poll, it

1. Munro, W. B., The Government of Europe, p. 397.

must be feeble and submissive. The Constitution of 1946, therefore, provided for two chambers, the national Assembly and the Council of the Republic, a shadowy bicameralism indeed. The framers of the constitution had intended the Council of the Republic to act simply as "a council of reflection", and not a "council of action" M. Paul Coste-Flbret, General Report-ter on the Constitution, while summing up the legislative structure established for the Fourth Republic, maintained that it was one of "incomplete bicameralism" or of "tampered mono cameralism."

The Senate under the 1958 Constitution is indirectly elected for a term of nine years, one-third retiring after every three years. Except for age, which is 35 years for the Senators, other qualifications are the same for candidates seeking election to this Chamber as those required for election to the National Assembly, including the obligation to name a substitute. The National Assembly is a representative chamber elected for a term of five years by universal suffrage. General De Gaulle conceived the Senate as the Chamber whose detachment and wisdom would provide for a balance against the National Assembly. While deprived of the right to overthrow the Cabinet, the Senators were given an ironclad vote over legislation if the Prime Minister and the Government desired it.2 The two Chambers have equal powers, except that the budget originates in the National Assembly. The Senate cannot introduce a vote of censure, the cabinet is responsible only to the National Assembly. In case of persistent disagreement between the two Chambers, which had not been resolved even at their joint conference, the Prime Minister may ask the National Assembly to rule "definitivly.

Unlike the British monarch and the President of India, the French President under the Fifth Republic is not a component part of Parliament. Article 24 of the Constitution states that Parliament "shall comprise the National Assembly and the Senate." This provision is comparable to the Constitution of the United States. Article I provides, ' 'All legislative powers, herein granted, shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." But unlike the American President, the Constitution of France vests in its President significant legislative powers.

A "Rationalised" Parliament

In order to bring about a change in the behaviour of parliamentarians, the framers of the 1958 Constitution created a "rationalised" Parliament in an effort to enhance the position of the Government and remove the defects of "Assembly Government" as experienced during the previous two Republics. Their object was to limit Parliament to the performance of its proper functions of deliberation- and supervision and not of blocking executive action, that is, to protect

the executive from "legislative encroachments."3 The Constitution, accordingly, deals with legislative procedure in much more details than previous Constitutions had done. "A number of matters traditionally left for Parliament to decide are now constitutional-ized."4 Parliamentary Standing Orders, for example, must be found in accord with the Constitution by the Constitutional Council before they become effective. Only two sessions of each Parliament are to be held on dates specified in the Constitution and their duration has also been determined by the Fundamental law5 Extraordinary sessions may take place on the request of the Prime Minister or of the majority of the members of the National Assembly "on a specific agenda."6 They are convened and closed by a decree of the President of the Republic,7 who, it appears now, seems to have the last word on whether to convene an extraordinary session or not, despite the terms of the Constitution. The number of Parliamentary Commissions has been reduced and their functions are carefully curtailed.8 The Government now determines the order of business in a Chamber,9 and Parliament can legislate on matters defined in the Constitution.10 Matters

2. Chap. III ante.

3. Macridts, Roy C. and Ward, Robert E., Modern Political Systems : Europe, p. 261.

4. Pickles, Dorothy, The Fifth French Republic, p. 89.

5. Article 28.

6. Article 29.

7. Article 30.

8. Article 43.

9. Article 48.

10. Article 34.

other than those defined in the Constitution are subject to the rule-making power of the Government.11 Annual election of the President of the National Assembly has been changed into the whole legislative term and the Senate elects its President every three years. Both the Presidents, therefore, no longer depend upon the mercy of the Chambers every year. This provision has enhanced the prestige and authority of the presiding officers and ensures their independence and impartiality. The Government is empowered to reject all amendments and to demand a single vote on its own text with only those amendments that it accepts.12

By constitutionalizing the procedural rules, the framers of the Constitution made a genuine effort to correct some of the more flagrant abuses of the past, to diminish the opportunities of conflict in the general organization of Parliament, and to reduce possibilities of "guerrilla and open warfare" during the debates over general legislation. The process and operation of censure

motions have been severely restricted13 and the classic procedure of the "interpellation" abolished. The extended power of dissolution'4 given to the President of the Republic makes the members of the National Assembly less disposed to show vindictiveness against the Government "if they know that they might rock their own boat trying to sink the executive ship."15 Finally an overall control of parliamentary activity is provided by the possible intervention of the Constitutional Council.16

Thus, the constitutional provisions and Parliamentary Standing Orders are designed to weaken the Parliament and to strengthen and enhance the influence and prestige of the Executive. The powers of the National Assembly have, in the last analysis, diminished in relation to the Government and its prestige has suffered in relation to the Senate. In the Fourth Republic, the Senate, renamed the Council of the Republic, had no overriding power to legislation. The framers of the 1958 Constitution increased the powers of the Senate and magnified its position especially by giving the authority to veto all Bills if the Government so desired.

Restrictions on Parliament

The Constitution of 1958, like its predecessor Republican Constitution, establishes a secular, democratic and social Republic"17 and proclaims that sovereignty belongs to the people "who shall exercise it through their representatives and by way of referendum."18 The authentic expression of popular channels are, therefore, the institutions of Parliament and the referendum. The Parliament is not the only institution to express it and its will can be negatived by the people themselves at a referendum. Referendum, accordingly, cancels the proposition that the Parliament is the manifestation of the will of the people and mirror of their sovereign power. But the most important innovation of the Constitution of the Fifth Republic is the restrictions imposed on the jurisdiction and scope of activity of the Parliament. Through the device of a "rationalised" parliament, a deliberate attempt was made by the framers of the Constitution to diminish the powers of the National Assembly in relation to the Government and undermine its prestige in relation to the Senate, not a popularly elected Chamber.

Functions of Parliament

The Constitution describes and defines the functions of Parliament and they are distinctly three in number. Its legislative functions are defined in Article 34 and extend to:

"the rules concerning civil rights and the fundamental guarantees accorded to citizens for the exercise of civil liberties; the obligations imposed for national defence on the persons and property of citizens; nationality, status and legal capacity of persons; marriage agreements; inheritance and gifts: determination of crimes and misdemeanours as well as the penalties applicable to them: criminal procedure; amnesty; the creation of new types of jurisdiction and the status of the judiciary;

the basis, rate and method of collecting taxes of all kinds; the currency system:

the electoral systems for the Houses of Parliament and the local assemblies;

11. Article 37.

12. Article 44.

13. Article 49, Chap. IV ante.

14. Article 12.

15. Blondell, Jean, and Godfrey, E. D., The Government of France, p. 60.

16. Article 61. Chap. II ante.

17. Article 2.

18. Article 3.

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the creation of categories of public corporations;

the fundamental guarantees accorded to the civil and military personnel of the State:

the nationalization of enterprises and the transfer of the property of enterprises from the public to the private sector;

(and the) fundamental principles of:

the general organization of national defence: the free administration of local entities, the extent of their jurisdiction and of their resources;

education;

property rights, civil and commercial obligations;

legislation pertaining to employment, unions and social security."

After enumerating the legislative scope of Parliament Article 34 provides: "The provisions of the present article may be elaborated and completed by an organic law." It means that this enumeration of legislative power cannot be enlarged except by an organic law, that is, a law passed by an absolute majority of members of both Houses of Parliament. Organic laws are promulgated only when the Constitutional Council has declared that they are in conformity with the Constitution. Article 37 makes this point clear. It states. "Matters other than those which are in the domain of law shall be subject to the rule-making power." It goes even further and adds, "Documents in the form of laws, but dealing with matters falling within the rule-making field, may be modified by decrees issued after consultation with the Council of State." Thus, laws enacted under the Fourth Republic dealing with matters that are declared by the Constitution of

1958 to be beyond the competence of Parliament can be modified by a decree. They are, therefore, "delegalized."

Apart from the rule-making power of the executive, the Government may also with the permission of Parliament, take over, for a limited period, responsibility for dealing with matters defined by the Constitution in Article 34 as properly belonging to Parliament. Article 38 prescribes: "The Government may, in order to implement its programme, request of Parliament authorization to take by ordinance, during a limited period of time, measures which are normally within the domain of law."

There is nothing exceptional or extraordinary in authorizing the executive to make rules and regulations in pursuance of authority delegated to it, or to issue decrees or promulgate ordinances. Such had been the practice in the Third and Fourth Republics. But all such decrees or ordinances were temporary measures devised for exceptional circumstances or to meet exceptional conditions. All the same, supremacy of Parliament was kept intact. Parliament remained the final judge of the extent and duration of special powers accorded to Governments to legislate by decrees. And to crown this, such decrees were subject to ratification by Parliament. But under the Constitution of the Fifth Republic the legislative scope is neatly defined and beyond that the Government deals by executive action and may even take over, for a limited period, with the permission of Parliament responsibility for dealing with matters defined by the Constitution as properly belonging to the domain of law and, accordingly, within the competence of Parliament itself. This is, really, uprcedented. Moreover, to define a 'legislative sphere' is really the first serious attempt in French Republican history. "The legislative domain," as Dorothy Pickles remarks, "was, up to 1958, anything claimed by Parliament as such."19 There may be a reasonable justification in the arguments that by curtailing the legislative sphere the intention was to remove the disabilities of the Third and Fourth Republics when the Government had to fight inch by an inch to survive, but this is no answer to the question. By strictly limiting its legislative sphere Parliament has lost its incentive to efficiency and reduced its capacity to adequately control and supervise the executive.

With regard to budget and financial bills the 1958 Constitution "consecrates the 'executive budget'," as Macridis and Ward remark.20 The procedure for voting finance bills is designed to prevent the National Assembly from using delaying tactics as it did under the Fourth Republic. The finance bill is submitted by Government to Parliament. Proposals emanating from members of Parliament are out of order if their adoption entails either a reduction in public revenues or an increase in public expenditure.21 Article 47 prescribes the procedure for enacting the finance bill. If the National Assembly

19. Dorothy Pickles, The Fifth French Republic, p. 101.

20. Macridis, Roy C, and Ward, Robert E., Modern Political Systems : Europe, p. 263.

21. Article 40.

does not complete the first reading of the Finance Bill within forty days, the Government sends the Bill to the Senate to be read within two weeks. If the Senate does not vote it within seventy days the Government may promulgate and put into effect its provisions by ordinance. If the Government has failed to introduce the Finance Bill in time to be promulgated before the beginning of the financial year, it may ask Parliament to authorize taxation by decree and to authorize expenditure in respect of any estimates previously accepted by the National Assembly.

Whatever be the merits of procedure prescribed for voting Finance Bills, it is really unimaginable to think of "executive budget" in a Republican Government and by-passing Parliament in case its two Houses fail to reach an agreement.22 And agreement between two Houses on fiscal matters is as undemocratic as an "executive budget.' A representative Chamber in all democratic countries is the embodiment of popular sovereignty and an arbiter of financial matters. The origin of Parliament can, indeed, be found in the old but ever resplendent democratic axiom: no taxation without representation and that had been the course of history in every democratic country.

The Constitutional Council limits the authority of Parliament in three ways. Firstly, the Constitutional Council "regulates the regularity" of election of the Deputies and the Senators and ensures the regularity of referendum procedure and declares results thereof23. Both these cases fall within the traditional domain of the Parliament and, as such, diminish the authority of that body. Secondly, Parliamentary Standing Orders, which determine the legislative procedure and are the legitimate right of legislative assemblies, are required to be submitted to the Constitutional Council, before they become operative, and decision obtained there from about their conformity to the Constitution.24 Finally, my Deputies and Senators have questioned the impartiality of the Constitutional Council, particularly on matters relating to specific disputes arising between Government and Parliament with a view to ensure that each organ of Government keeps within the sphere of its own jurisdiction. All this in effect have further added to the restrictions imposed by the Constitution on the powers and jurisdiction of Parliament. The decisions of the Constitutional Council, remarks Dorothy Pickles, "during the first years of the regime were, in fact, always restrictive of what parliament held to be its rights. The Constitutional Council played a not unimportant part in bringing about the worsening of relations between Government and Parliament which became one of the most characteristic features of the regime."25

Privileges of Members

Members of Parliament enjoy certain privileges. No member of Parliament can be prosecuted, sought out, arrested, retained or tried on account of opinions expressed or votes cast by him in the performance of his functions. No member of Parliament may be prosecuted or arrested on criminal or misdemeanour charges during sessions of Parliament without authorization of the House of which he is a member, except in case of flagrante delicto (in the very act).26 In the latter cases (when caught flagrante delicto) he may be arrested, though the House is still free to stop proceedings. When Parliament is not in session, a member can be arrested only with the authorization of the bureau of the House to which he belongs, except in cases where the arrest is flagrante delicto, or where a court has made a final finding, or where arrest had been authorized in a previous session. .

Obligations of the Members

The Constitution also prescribes certain obligations of the members of Parliament. Certain occupations are incompatible with membership of Parliament. Most of such incompatibilities were also present in the Third and Fourth Republics. The Constitution of the Fifth Republic has added to this list and, among others, include directorship of nationalised and State subsidised concerns, or of concerns carrying out public-works contracts, legal representation of concerns involved in actions against the State. In all these cases the member's resignation is followed by a by-election.

Article 27 prohibits mandatory instructions to members of Parliament. The same Article

22. Article 59.

23. Article 60.

24. Article 61.

25. Dorothy Pickles, The Fifth French Republic, p. 107.

26. Article 26.

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also prohibits members from voting by proxy. The voting right of members of Parliament, it says, is personal. Under the Fourth Republic absenteeism was a regular feature and proxy voting used to be general. Either one member of the group cast the votes for whole group, or members of a group handed over their signed voting papers to one or more proxies, who voted on their behalf. "One result of this system was that debates which were in actual fact conducted before almost empty benches could be followed by votes including upwards of 75 per cent of the membership of the House."27 The Constitution of the Fifth Republic has attempted to change all this. A member of Parliament may now delegate his vote for five reasons, duly notified in writing in advance.28 They are: absence from a sitting on grounds of illness, accident or family circumstances; absence on a Government mission or on military service; absence from France on the occasion of a special session of Parliament; or due to representation of the Senate or Assembly at a meeting of an international Assembly. No single member can cast more than one proxy vote at a time.

The Constitution also requires that members must vote regularly. The salary of the members is now divided into two parts: the basic salary, and an 'attendance bonus'. The exact nature of determining the 'attendance bonus' and the manner by which members are to be penalized for non-attendance is decided by each House itself. The Standing Orders of the National Assembly provide that absence from three consecutive Commission sittings without valid reasons entails the resignation of the member concerned from the Commission and a loss of a third of the attendance bonus, until the opening of the following session of the Assembly in October. Absence without valid reasons from more than a third of the votes by ballot in any month entails

the loss of one-third of the monthly attendance bonus. If a member absents himself from exercising votes personally, he forfeits two thirds of his attendance bonus.

GENERAL ORGANIZATION OF PARLIAMENTARY BUSINESS

Sessions of Parliament

Parliament now meets on fixed dates and for a fixed duration. Article 28, as amended in December 1963, provides for two regular sessions, the first beginning from October 2 and it lasts for 80 days. The second session opens on April 2 and its duration is not to exceed ninety days. Parliament, therefore, now sits for a maximum of less than six months in a year whereas under the Fourth Republic it sat for a minimum of seven months. The first session beginning in October deals mainly with the budget and the second with the legislative programme. Extraordinary session is held at the request by the President of the Republic, or the Prime Minister or of a majority of the members of the National Assembly, for a specific agenda. If the extraordinary session is held at the request of a majority of members of the Assembly, the session must be closed as soon as the specific agenda has been completed and, in any case after a period not exceeding twelve days.29 In addition, Parliament meets on two occasions, after an election, for a special session of up to a fortnight, and during a period of application of Article 16, when it is entitled to sit for the duration of the emergency.

Presiding Officer

Each House elects its bureau, at the beginning of the October session, consisting of its President, Vice-Presidents (six for the Assembly, and four for the Senate), Secretaries (twelve for the Assembly and eight for the Senate) and the Questeurs (three for each House). The Secretaries supervise the production of the official records and check the votes. The Questeurs are responsible for administrative and financial arrangements. The functions of the bureau as a collective body are to organize and supervise the different services in the House, and if required to assist the Presiding officer on a number of points, particularly on disciplinary matters and the admissibility of Bills or resolutions.

The Presiding officer (President) of each House is elected at the first meeting of the session, Formerly elected annually, the President of the National Assembly is now elected for the duration of the House. The President of the Senate is, however, elected after each partial reelection of the House; after every three years. The President of the Senate now performs the

27. Dorothy Pickles, The Fifth French Republic, p. 91.

28. Article 27 provides, "Organic law may, in exceptional circumstances, authorize proxy voting. In that case no one may exercise more than one proxy."

29. Article 29.

functions of the President of the Republic if incapacitated, and not the President of the National Assembly as heretofore.

In the main, functions of the two Presidents are similar. But neither of the two approximates the Speaker of the House of Commons. They resemble the Speaker of the House of Representatives more or less. Though of necessity impartial in the actual conduct of debate, "they do attempt to influence, by informally talking to members, the conduct of business."30 Before 1958, these offices were stepping stones to the Presidency. Vincent Auriol was the President of the National Assembly when he was elected President of the Republic.

The 1958 Constitution vests in both the Presidents certain specific powers. The Presidents of the National Assembly and the Senate must be consulted by the President of the Republic as to the existence of an emergency as defined in Article 16. A private member's Bill, resolution or amendment which the President of the House holds to be constitutional, but the Government challenges it as unconstitutional, must be either submitted by him to the Constitutional Council or ruled out of order."31 Under the Standing Orders of the Assembly and the Senate the Presidents of both the Houses enjoy somewhat more discretion than their predecessors under the Third and Fourth Republics, particularly in calling members to order, and in calling for the closure of the debates.

The Parliamentary timetable is drawn up every week by la Conference des Presidents, a meeting of the President and Vice-Presidents of the Assembly, and of heads of Parliamentary groups, Presidents of Commissions, and the rapporteur general (Reporter General) of the Finance Commission. Voting in this body is weighed in proportion to party strength. Previously, the prestige of the Government and the extent of its persuasiveness influenced its decisions. The Constitution of 1958 now gives the Government effective control over the timetable by giving priority to Government Bills and to those Private Members' Bills acceptable to the Government.32

In France there exist quite a number of Parliamentary groups not always classified as belonging definitely to Government or to Opposition side. French Parliamentary procedure has been taking into account the existence of such Parliamentary groups. But only organized groups, that is, groups with membership of 30 or more are now represented at the Conference des Presidents and on the Parliamentary Commissions into which each House is divided for purposes of legislation. The traditional method of evading the regulations of minimum membership, by tacking on a number of isolated members or small groups for administrative purposes, is now prohibited. Groups are now represented on Commissions in proportion to their strength in the House, including affiliates (apparentes-affiliated members or groups). If there remain any more vacancies after seats have been allotted to groups, isolated members can become members of Commissions provided they are elected by the whole House.

LEGISLATIVE PROCEDURE

How a Bill Becomes Law

Bills may be introduced in either of the two Houses of Parliament and have their first reading in the House where they originate, except for finance Bills which must be submitted and read first in the National Assembly.33 The legislative initiative is exercised concurrently by the Prime Minister and by the members of Parliament.34 Private members' Bills are not in order if they involve a decrease in public revenues or the creation or increase of public expenditure.35 If it appears in the course of legislative process that a Private member's Bill, or amendment thereto is not constitutional, the Government may request the President of the House to rule it out. In case of disagreement between the Government and the President of the House concerned, the Constitutional Council, at the request of either the Government or President of the House, gives a ruling thereupon within one week from the date of its reference.

Immediately after the introduction of the bill, it is sent to one of the six Commissions (committees) of the House, or, on the request of

30. Blondell, J., and Godfrey, E. D., The Government of France, p. 63.

31. Articled.

32. Article 48.

33. Article 39.

34. Ibid.

35. Article 40.

either Government or the House itself, to an ad hoc Commission. The Commission discusses the bill, may adopt it, dismiss or amend it. Each Bill has a Rapporteur from the Commission who reports it to the House, which discusses the Bill first in general, then article by article and votes on each article. There is then a final vote on the Bill as a whole, as amended. This completes what is called the first reading. It then goes to the other House, which follows the same procedure. If both Houses agree on the same text, the Bill is sent to the President of the Republic within fifteen days of its transmission to the Government. The President has no veto power, but he possesses a sort of suspensive veto. Article 10 provides, "He may, before the expiration of this limit (fifteen days), ask Parliament for a reconsideration of the law or of certain of its articles. This reconsideration may not be refused." It is, however, very rare that the President asks for reconsideration of the Bill by Parliament, but if asked for it is normally on the ground of technical errors which had been overlooked by Parliament.

In case of disagreement between the two Houses of Parliament, the Bill is read for the second time in each House. If the disagreement still continues, a joint committee of the two Houses, comprising an equal number of members of each House, is set up with a view to proposing a common text for the provisions on which disagreement remains. The text prepared by the joint

committee may be submitted by the Government for approval of the two Houses. No amendments are in order unless the Government agrees thereto.

If the joint committee does not adopt a joint version, the Government may, after a new reading by the National Assembly and the Senate, ask the National Assembly to rule definitely. In that case, the National Assembly may take either the version prepared by the joint committee, or the last version passed by the Assembly, modified as appropriate by one or more of the amendments adopted by the Senate.36 If the Government does not intervene and ask the Assembly to rule definitely, the Bill dies. The Senate, thus, possesses a veto power over the National Assembly, if the Government so desires.

Financial Procedure

The voting of finance is subject to special procedure laid down in the Constitution. The procedure is designed to prevent the Assembly from using delaying tactics. Before 1958, French Parliaments were notorious for their delaying action in respect to the budget. As Jean Blondell and Godfrey point out, "....; indeed, the budget was customarily one of the hurdles which few Governments passed safely, and this in turn increased delays, as a new Government had to be formed and rethink the budget before the finance bill could be approved,"37 In order to redress this situation, the Constitution of 1958 consecrates the "executive budget." The budget is submitted by the Government first to the National Assembly. Proposals stemming from members of Parliament "are not receivable if their adoption would result in a reduction in public revenues or the creation or increase of public expenditures."38

The Constitution of 1958 prescribes a limit of forty days within which the National Assembly must complete the first reading of the Finance Bill. If it does not vote within the specified period, the Government sends the Bill to the Senate to be read within two weeks. If the Bill has not been voted after seventy days, the Government becomes entitled to promulgate the Finance Bill by Ordinance.39 If the Government has not submitted the Finance Bill in time to be promulgated before the beginning of the fiscal year,40 it may ask Parliament to authorize taxation by decree and to authorize expenditure in respect of any estimates previously accepted by the National Assembly.41

It may be noted that the Finance Bill is voted by both the Houses of Parliament. The Constitution only requires that it should be voted first by the National Assembly.42 There is no law in France, fundamental or organic, which empowers the National Assembly to override the Senate, as the House of Commons can do in-Britain. If the National Assembly and

36. Article 45.

37. Blondell, J., and Godfrey, E. D., The Government of France, p. 71.

38. Article 40.

39. Article 47.

40. Financial year ends on 31st December in France.

41. Article 47.

42. Article 39.

the Senate disagree, the procedure for resolving the difference between the two Houses is the same as governing disagreement on an ordinary Bill.43

The Committee system

Until the Constitution of the Fifth Republic became operative in 1958 the legislative committees in France were engines of power and control and were often in conflict with the Government. They decided the fate of virtually any Bill by amending it, pigeonholing it, or failing to report it. Only the amended text of a Bill could come from the Committee to the floor of the Assembly. And when it reached there, the Rapporteur (reporter) of the Commission piloted the Bill and took the lead in the debate and was usually the first on the tribune. He intervened at any time in debate and would make his chief contribution at a point favourable to the success of the debate and the work of the Committee. It would very often even mean vigorous criticism of the Government, for Committee Chairmen and Rapporteurs were potential candidates for ministerial office. "The leaders of the committees," observed Philips Williams, "had an evident interest in opposing the Government: and the greater the prestige and solidarity of their committee, the liklier they were to succeed."45

This situation has drastically been altered by the Constitution of 1958. Article 43 limits to six the number of permanent Committees in each House.46 They formerly numbered 19, each having 44 members. The purpose sought in reducing the number of Committees is twofold. First, to reduce the authority of the Committees, whose Presidents when the field of activity of the Committees coincided with that of a Ministry, tended to become shadow Ministers. Secondly, in pre 1958 Parliaments a Bill, whose scope was such as to interest more than one Ministry, was submitted to many Committees and it was a time consuming process. For instance, the bill to ratify the E.D.C. Treaty in 1954 was submitted to the Foreign Affairs Committee to report, and also to four other Committees for their opinion. The reduction in the number of the Committees now aims to prevent the time-wasting process, although the Standing Orders also provide for the practice of submitting Bills to more than one Committee.

The composition of the six regular Committees varies from 60 to 120 members, nominated to represent proportionately the political parties. Only organized groups, with thirty members or more, are now represented on the Committees. Isolated members can become members of Committees only if elected by the whole House to any vacancies remaining after the seats have been allotted to group members. The composition of the Committees has, thus, become more compact and responsible. They no longer remain subject to the vagaries of the unaffiliated groups and isolated members.

The Committees receive the Bills, examine them, hear the Minister, and suggest changes. But the Government has the last word on bringing the Bills on the floor of the House and on accepting or rejecting the amendments made. Article 42 states that the discussion on the floor of the House has to take place on the Government's text. The procedure followed is that debate on a Government Bill begins with a ministerial declaration and, then Committee's report is presented. Formerly, the debate took place on the basis of the Committee's amended text and not on the Government's Bill, and the Rapporteur, not the Minister, was responsible for piloting the Bill through the House. The 1958 Constitution has changed all that and the result is that the legislative work has been expedited and improved in many respects, while the Government no longer remains at the mercy of Committees that were often inspired by parochial considerations.

Relations between the two Houses

Both the Houses possess identical powers, except that the Finance Bill has its first reading in the National Assembly. The 1958 Constitution does not permit the Assembly to override the Senate, as it could under the Constitution of the Fourth Republic, unless the Government decides to intervene on the side of the Assembly. In other words, the Senate has been given veto over legislation if Government so desires. If the Government does not intervene, a Bill on which both the Houses disagree can shuttle between the national Assembly and the Senate indefinitely. Moreover, Article 45 does not provide for putting an end to persistent disagreement

43. Article 45.

44. Philip Williams, Politics in Post-War France, p. 238.

45. They are : Foreign Affairs; Finance; National Defence; Constitutional Laws, Legislation, and General Administration; Production and Trade; and Cultural, Social, and Family Affairs.

between the two Houses. The Joint Committee of the two Houses set up at the request of the Prime Minister in case of disagreement deals only with articles on which agreement has still not been reached, that is, provisions on which disagreement remains.

If the Government intervenes, "it may do either passively or actively." In the former case, the Prime Minister may, after the Bill has been read twice in each House, ask for setting up a joint committee composed of equal number of members from each House. If the joint committee reaches an agreement the version prepared by it is then submitted by the Government for approval by the two Houses. No amendment is in order without the Government's agreement. If the Joint Committee does not agree, or if the version of the Committee is rejected by either House, the two Houses may make further efforts to agree or drop the Bill, or shelve it But if the government intervenes actively, the Government may ask the National Assembly to rule definitely thereon; if the disagreement still persists. In order to override the Senate the Assembly requires only an ordinary majority vote on the Bill, unless it is organic.

All this means that in case the Government is not interested in the enactment of a legislative measure, the Senate can effectively block legislation. The relationship between the two Houses, then, assumes the same form as it existed between the two Houses under the Constitution of 1875, that is, both Houses of Parliament possessing co-ordinate powers, independent and equal to each other.

The Senate does not control the executive and the Government is responsible to the National Assembly alone. Obviously a subordinate chamber, it really possesses co-equal legislative powers with the National Assembly and exercises an effective right of veto over any change in its status. In fact, the Senate's position has considerably been improved and its authority increased by the 1958 Constitution. The President of the Senate replaces the President of the Republic, if incapacitated, until the new President is elected. It is the constitutional duty of the President of the Republic to consult the President of the Senate before the application of emergency measures under Article 16, and on the desirability of dissolution. The President has the right to submit certain Bills in certain circumstances to the Constitutional Council, and, like the President of the National Assembly, to nominate three members to the Constitutional Council. The Senate has the right to equal representation with the Assembly in the High Court of Justice. The National Assembly needs the concurrence of the Senate before requesting a referendum. Finally, the Senate has the right to receive Presidential messages from the President. Article 18 provides: "The President of the Republic shall communicate with the two Assemblies of Parliament by means of messages, which he shall cause to be read and which shall not be an occasion for any debate."

SUGGESTED READINGS

Ambler, J.S., The French Army in Politics.

Ardagh, J., The New French Revolution.

Aron, Raymond, France, Steadfast and Changing.

Avril, P. Politics in France.

Campbell, P. French Electoral Systems.

Crawley, A. De Gaulle.

Ehrmann, H.W. Politics in France.

MacRae, D., Parliament, Parties and Society in France.

Pickles, Dorothy, The Fifth French Republic. Thombon. D., Democracy in France. Williams, P.M. The French Parliament.

CHAPTER VI French Law and Law Courts

Sources and Nature of French Law

In the main French law is built solidly upon Roman Law. The Romans held Gaul for a longer time than they occupied Britain and left upon it permanent impress of their culture and their laws. The law of Rome, once planted, was never uprooted and has persisted as a basic influence throughout all later times. And when the country "arrived at a single, uniform legal system, the Roman heritage supplied much of the foundation, framework and ornamentation of the structure."1

During the Middle Ages the field was largely taken by the customary law. France became the classic land of feudalism. But there the feudal kings had never been able to extend their actual jurisdiction beyond their own dominions. The dukes and counts were too powerful in their own dominions to be controlled by their king. Hence there grew up in every local area its own system of customary law, its own Coutume, as it was called. These in due course of time were put into written form and administered by the local courts. No attempt was ever made to weld these customary laws into a single nation-wide system comparable to the English common law. As late as the middle of the eighteenth century Voltaire remarked that a traveller in his country had to change laws almost as often as he changed horses. Added to this complexity and confusion were an increasing number of royal decrees, ordinances or edicts applying sometimes to the entire country, sometimes to specified sections only. Before such edicts could take effect, they were required to be registered by the variousregional courts, known as parliaments. Some parliaments, one like that of Paris, even refused to register certain edicts. But this did not create any serious impediment, because the king could force such parliament to register the edict.

The leaders of the French Revolution were fully seized of the weakness of such a confused and overlapping legal system. They knew that the legal decentralisation as it prevailed in France constituted a barrier to the creation of national unity and impeded the growth of fraternity (fraternite) which the Revolution was seeking to establish. They also felt that the coutumes were mediaeval in spirit and, accordingly, incompatible with the new political and social order. The revolutionists, therefore, set to the task of abolishing customary law and overhauling or rescinding the ordinances. New and uniform laws, in the form of statutes, were enacted, and old and new laws were consolidated and codified. In 1791 and 1795, the first Penal Code and Code of Criminal Procedure were enacted.

But it was not until Napoleon Bonaparte came into power, as first Consul, that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the project with characteristic energy, and completed it within a few years. The Civil Code which was published in 1804 was the first of a series followed in 1807 by a Code of Civil Procedure. Other Codes were enacted subsequently. In all of them, the predominant influence of Roman Law was paramount. These Codes have been revised and amended, but the fundamentals remain unchanged and are the living law of France as also that of numerous other countries which have since adopted them.

Characteristics of French Law

The law of France today consists primarily of the Napoleonic Code as amended, revised and-extended at intervals to meet the new conditions and needs of the country, especially those flowing from increasing industrialization and other economic changes. This brings in four outstanding characteristics of French law. France has, in the first place, a uniform system of law throughout the country. There is unity and symmetry in it and the law, as embodied in the codes, is clear and easily available. In the second place, it is a written law and, as such, essentially differs from the law of English-speaking countries. There is no doubt, much of the written law in England and America, but in

1. Ogg, F., and Zink, H., Major Foreign Governments, p. 563.

both countries, that great mass of jurisprudence as the common law is largely unwritten and uncodified. In France, there is virtually no law that is not codified and cannot be read in the books.

In the third place, French law is enacted or statutory, although at many points it may be rooted in customs. In England and in the United States the law is being constantly developed, expanded and even altered by judicial decisions and both these countries have built up great bodies of judge-made law. It is true that according to the theory of Anglo-American Jurisprudence the judges cannot make law. They only interpret and apply it, but they do in fact make changes and often far-reaching changes. A judicial decision rendered sets a precedent and there is a traditional respect with the courts to a doctrine of stare decisis, that is, a court will always be guided by a previous decision unless there is a compelling reason for reversal. The result is that "one judicial decision advances little upon another, and so on year after year, until there exists a wide gulf between the law as it is and the law as it was. Simple words and phrases receive new shades of meaning, and ultimately acquire new meaning altogether." In this way, the doctrine of stare decisis gives a definite drift and direction. In France there is no such doctrine. The judges decide every case independently on its merits in conformity with the statutory law aiming at justice in the particular case and not in conformity with the precedent. No court is under any obligation to be guided by its own previous decisions or even by the decisions of a higher court. Precedents are cited in French courts, but no great reliance is placed upon them and the judges "are free to disregard even the weightiest precedents if they feel so inclined."

Finally, distinction is made in France between the ordinary law and administrative law and, consequently, there are two separate systems of courts, ordinary tribunals and administrative tribunals. In case of conflict on the jurisdiction of courts, there is a Tribunal of conflicts which decides whether a case falls within the competence of one set of courts or the other.

JUDGES AND JUDICIAL PROCEDURE

With regard to organisation of Ordinary courts there are certain important general features:

1. The first is the unity of civil and criminal justice. That is, unlike England and the United States where there are separate civil and criminal courts, civil and criminal actions in France are for the

most part handled by the same court. The same judges sit in both courts. The practice is some judges sit in the civil courts and they are drawn for the trial, when necessary, of criminal cases. Similarly, the public prosecutors, known as the parquet, are occupied with civil as well as criminal cases, though attached to the civil courts. There is, however, a separation between the two in the higher courts and they are divided into civil and criminal sections.

2. There is in France no system of circuit courts except in the case of Assize Courts. The courts are stationary and litigants go to the judges rather than judges going to the litigants. The English and American system of circuit judges has never been adopted in France.

3. French courts are collegial. No French court is allowed to give judgment, as in England, with only one judge making the court, and no judgment is valid unless concurred in by at least three of the judges constituting the bench. The principle of collegiality is insisted by the French to rule out prejudice and, thus, as a condition of justice.

4. Trial by jury is not ubiquitous in France and one of the reasons for it is that courts are manned by a collegial arrangement. The tendency of the juries to be swayed by passionate pleadings does not commend their spread beyond the courts in which they are employed. One well-known French jurist declared that in many cases the courts might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." Others have stigmatised the French jury, "as a sacrifice of common sense to an Anglo-Saxon superstition, and one that merely works havoc with the orderly administration of justice."

In the courts where jury continues to be employed, it consists of twelve persons chosen by lot from a panel of citizens. The decisions are reached by majority vote. When votes stand six to six, or seven to five, for conviction, the three judges, if they are unanimous, may render a verdict of acquittal.

Appointment of Judges

During the Third Republic judges were appointed by the Minister of Justice. This method of appointment was severely criticised

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as it interfered with the independence of judges and very often politically unpopular judges could be denied promotion. The Constitution of the Fourth Republic attempted to remedy this by creating the Higher Council of the Magistracy. This Council consisting of 14 members including the President of the Republic as chairman and the Minister of Justice, evaluated the qualifications and merits of the judge-candidates and recommended a panel of names to the President of the Republic and selection was made therefrom. The Constitution of the Fifth Republic retains the Higher Council of Judiciary but with restricted functions and somewhat different methods of appointment. It consists of the President of the Republic (chairman), the Minister of Justice (ex-officio chairman), and nine members appointed by the President of the Republic. The Council nominates judges to the higher judicial posts and rules on matters involving the judicary.2 The magistrature, the magistracy, in which there are clearly defined

ranks and schedules of promotions, and which is entered through a specialised school, the Centre National d" Etudes Judiciaries, is open to law graduates successful in a competitive examination. The judiciary at the lower level is a career service.

Independence of the Judiciary

"By and large," say Ogg and Zink, "French courts and Judges compare favourably in capacity, integrity, independence and impartiality, with those of any other country." Article 64 of the 1958 Constitution specifies that judges shall be irremovable. The Constitution of the Fourth Republic had made a similar provision. The Constitution of 1948 declared irremovability incompatible with the responsibility of officials in the Republican system of government and the judiciary in France had always been considered as a public service. The Third Republic's constitutional law did not even mention judiciary. According to the Constitution of 1958 judges can be removed from office on charges of gross misconduct only and that too on the recommendation of the Higher Council of Judiciary, which has been entrusted with the constitutional duty of acting as disciplinary council of the judges. The President consults the Higher Council of Judiciary on questions of pardon under conditions determined by an organic law.

Procedure is Judge-animated

In the law courts in the United States and Britain criminal cases are initiated by an attorney who prosecutes on behalf of the public. It is his business to make a case. The prisoner is defended by an attorney paid by himself, or, provided he is too poor, by the public funds. The judge is an impartial arbiter between the two rival parties, prosecution and defence. He may ask questions to counsels and witnesses and the accused is tried in an open court. But he is not an interrogator. Nor is there any previous inquisition, except in cases where a grand jury is required for an indictment. The position is different in France. Before the case comes before the judges in court, there is preliminary investigation and this is done by the juges d' instruction. Juges d' instruction has the power to order arrest of the suspects and hold them until his investigation is complete. He interrogates them and seizes all documents material to the case. Juges d' instruction are attached only to courts of first instance and do not form part of the higher judiciary. They are under the supervision of the parquet. "Such a man's ambitions," remarks Finer, "are extremely pointed toward promotion. It is a sensitive point in the course of justice, especially since it is connected with the problem of arrest and detention."3 Finer further adds, "the judge is more than the English judge, a kind of party, to the issue : he seeks the facts, whether there is jury or not."

A famous feature of the French courts is the institution of the parquet, otherwise known as the ministere public or men who act for the public weal. To each court is attached & parquet headed by a procureur, or state attorney, and composed of a number of assistants to him. In the courts of first instance they are called sub-stiuts; in the courts of appeal they are called arocats-generaux or substiuts generaux. The parquet represents the State in courts and conducts prosecutions. For the due performance of his duties the services of the detective are loaned to him. "It embodies the dual interest of securing a conviction, yet also ensuring justice or fairplay for the prisoner." The members of the parquet are irremovable and move upward in their own hierarchy. Their main business is in criminal cases, but they may also act in civil cases which are of interest to the State. They

2. Article 65.

3. Finer, H., Governments of Greater European Powers, p. 516.

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see that the judgments and petty decrees are executed.

Absence of Habeas Corpus

Nothing resembling habeas corpus exists in France. It was tried to be remedied in the Constitution of 1946 which was rejected at the polls. It provided that "No one may be detained unless within forty-eight hours he has appeared before a judge called to rule upon the legality of his arrest and unless this judge confirms the detention each month by motivated decision." The Constitution of the Fourth Republic did not contain any such provision. Article 65 of the 1958 Constitution briefly provided that no person may be detained arbitrarily. It is further provided that judicial authority, "guardian of the liberty, shall assure respect for this principle in conditions to be determined by law." This may be described as a provision for a writ of habeas corpus, but there is no express mention thereof.

THE ORDINARY COURT SYSTEM

Justice of Peace

France was covered with a network of numerous courts in order that justice might be easily accessible to all. The organisation of the courts was simple enough. At the bottom was the justice of the peace (juge de paix), who was a salaried official with some judicial experience though not ordinarily a law degree. There was one such court at each canton. In some cases, however, the jurisdiction of a justice would extend to two or more cantons. There were in all more than 3,000 such courts. They had a limited and summary jurisdiction over minor offence and civil disputes. A major reform in the number of courts, both civil and criminal, took place in 1958, and as a result of that the 3,000 or so Justice of the Peace courts were abolished. The lowest court is now the tribunal a" instance and there are some 454 such courts in France. For most important cases litigants go to the tribunal de grande instance. There are 172 such tribunals, less than two on an average per departement. These tribunals hear appeals especialy from the judgments of some of the specialized courts, such as tribunaux de commerce which deals with commercial cases. Another important set of courts of this kind are the con-seils de prud' hommes, which deal with disputes between employers and employees over the implementation of labour contracts. Tribunal de' instance consists of only one judge, who in addition of his more formal powers also acts much as the Justice of the Peace did in the past. The tribunal de' grande instance have three or more judges.

Simple criminal cases are dealt in the Police courts, which function in almost all localities of any importance. More serious cases are brought before the tribunaux correctionnels where judges (the same as those of the tribunaux de' grande instance) decide cases without juries. Finally, the

more serious cases are decided by cours de assises (one per department) which consists of three judges and nine jurors.

Appeals on matters of facts are generally allowed in civil cases, unless they are not trivial, but not in criminal cases. Appeals on interpretation of laws are always allowed. Both on these counts appeals go to courts of Appeal; twenty three in number.

Court of Cassation

The highest court in France is the Court of Cassation. It is called Cassation because it may "break" the law of the lower court, not the judgment. Cases are brought from any court of last resort for the proper interpretation of law. It accepts the facts determined by previous courts and interprets law remanding the case to another court having the same jurisdiction as that from which the case was brought.

ADMINISTRATIVE COURTS

Administrative Courts

The French courts, fall into a dual hierarchy : the Ordinary Courts dealing with the statutory law, and the Administrative Courts, from the Conseil de prefecture (renamed tribunaux administratif in 1952) up to the Conseil d' Etat. The Ordinary Courts are concerned with the litigation among citizens themselves, and the application of law to citizens. The Administrative Courts are concerned with the acts of the administrative authorities in conflict among themselves, local or central, and the grievances that citizens may have against these authorities.

The reason for this distinction is to be found in the determination of the Revolutionary leaders that the judiciary should have no interference in administration. In their law reforms of August 1790, they declared, "Judicial functions are distinct and shall always remain separated from administrative functions." With the lapse of time it was found that administration could abuse its powers and needed a corrective. Yet the rigid adherence to the theory of separation

of powers did not permit the corrective to be administered by the ordinary courts. The Constitution of 1799 established administrative courts and since then administrative courts have become the most lasting institution of France.

Jurisdiction of Administrative Courts

State officials and the municipalities as corporate bodies are responsible for their actions and consequently can be sued in the administrative courts and pay damages for any prejudice to life and property caused by defective action. Defective action means the action of the official which is the result of bad judgment or is arbitrary, that is, the result of the violation of the prescribed forms, violation of a law, misuse of power. Maurice Houriou, the eminent authority on administrative jurisprudence, defines defective action as "the negligences, the omissions, the

errors among the habits of administration when those habits are bad." The rules which are applied in deciding such cases are called the administrative law. Dicey defines administrative law as that "body of rules which regulate the relations of administration of the administrative authority towards private citizens." The administrative law is not embodied in a code, like the civil law. Some of the rules have been established by the issue of executive decrees, but in large part they have been accumulated by the decisions of the administrative courts, especially by the decisions of the Council of State, Counsel d' Etat. Administrative law, thus, somewhat resembles the common law in England which has been slowly built up in the regular courts by one decision after another.

Such a nature of the French system of administrative law covers a wide range. It deals not only with the liability of the State and the municipal bodies for the wrong done to private individuals or their property, but with the rule relating to the validity of the administrative decrees, the methods of granting redress when public officials exceed the authority vested in them by law, the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between official and personal acts on the part of public officers, and many other allied matters. In sum, if "gives redress in many cases, where none would be available in the United States" and in England where there are no duly constituted administrative courts.

The French system of administrative courts essentially differs from the system of justice obtainable in Britain. In Britain all men and women, officials or not, are amenable to one set of courts—the ordinary courts and the same judges—and are under one system of law. This is the essence of the classic doctrine of the Rule of Law as enunciated by Dicey. Suits against the State and its officials do not form an extensive and separate branch of jurisprudence, though there may exist special courts and commissions for the purpose of adjudicating claims brought by private individuals against the government. The ordinary courts can quash the orders of administration and issue writs commanding action or cessation of action, its correction, or the payment of damages. But in France the ordinary courts can do nothing of the kind. Recourse in such cases must be had to the administrative law courts.

The immunity of public officials from the jurisdiction of the ordinary courts does not extend to anything done by them in a personal or non-official capacity. It does not even extend to acts performed in an official capacity, if the injury results from the personal fault or personal negligence of the officer concerned. The State is suable and will pay where the official acts in good faith for the public. If he does something in office which is not truly in pursuance of its purpose, the official himself is responsible and not the State. He will be sued personally before the ordinary courts for damages and it is the Tribunal des conflicts (The Court of Conflicts) which decides whether it is a personal fault or not. For example, an official posts an electoral list, but may make some error in this. This may lead to an administrative case suable in the administrative court. But if the official concerned makes public the view that one of the electors has been excluded because of bankruptcy, this becomes a personal fault, not done in good faith for the public, and the officer is suable by the bankrupt for damages in ordinary courts, not Administrative Courts.

ORGANISATION OF THE ADMINISTRATIVE COURTS

Tribunaux Administratifs

The principal administrative courts in France are the Tribunaux Administratifs and the Counseil d' Etat, the Council of State. At the lower level, the ninety-odd Counsels de Prefecture of Napoleon were reduced to

twenty-three in 1926 and were renamed tribunaux, administratifs in 1952. All these twenty-three tribunals are full-fledged courts of first instance in administrative cases. In general, these tribunals hear complaints made by the individuals against the actions of administrative officials. The most prolific source of such complaints is the tax assessments. Other matters over which they have jurisdiction are those relating to public works, especially highways and the conduct of local elections. Each Administrative Tribunal consists of a President and four members appointed by the Minister of the Interior from among persons who hold, or had held, public administrative positions.

Conseil d' Etat

At the upper level an appeal court in many cases, but directly competent for the more important problems, is the Conseil d' Etat. It is composed of 150 members who are almost entirely recruited through the School of Administration. The Council is divided into several sections, the main distinction being between four advisory sections and a judicial section. The judicial section, in its turn, is divided into a number of chambers in which normally five Councilors (conseillers) decide cases on the report of more junior members. More important cases may be decided by as many as ten or fifteen Councilors. The Council of State has, thus not only a wide original jurisdiction, but it has also the power of cassation in some cases and appellate authority in others. It has attempted to curb the actions that are inherent in a centralized administrative system and to protect the individual in all the cases where he has no redress befor

e the civil courts.

The Council of the State is an impressive body enjoying the public esteem and confidence. Its litigation section devotes the whole of its time hearing appeals that come before it from the regional courts, hearing also the large number of cases that come to it as a court of first instance, annulling decrees, even of the Council of Ministers as being ultra vires, irregular in form, or flowing from the misuse of power, and generally safeguarding the rights and interests of the people. Access to the court is easy, convenient and cheap. Appeals may be lodged in the Council through mail and need include only an official form, on which the complaint is described, and the necessary supporting documents. Even the small fee that the appellant pays is refunded to him if a decision is given in his favour.

French system of administrative law and administrative courts have been the subject of severe criticism in countries which base their legal system on Anglo Saxon law. The critics maintain that justice cannot be expected from and obtained in the administrative courts when administrative branch of the government is made the sole judge of its own actions. When

administration is both the offender and the judge of the offence, there can be neither impartiality in the decisions nor the authorities rendering the decisions can act independently. This is a pure and simple encroachment on the essential liberties and fundamental rights of the people. It is further contended that the distinction between contentions administratives and contentions civiles, the former within the sphere of the administrative courts and the latter within the sphere of the civil courts, is only a subtlety and no harm would come from sending administrative cases to ordinary courts on the Anglo-American plan as this system provides a strict adherence to law. The fact that the ordinary courts deal with cases effecting the administration side by side with other cases makes the officers of the government more responsible and they are kept aware of the necessity of adhering to the regular laws of the land. Finally, advocates of the Anglo-Saxon system point out that the Anglo-Saxon notion of personal liability for abuse of power, regardless of the fact whether the act is committed under orders or not, "places the weight of personal responsibility, directly on every official and prevents him from 'passing the buck' to his superior."

But in the light of French experience, it is not true to say that administrative law and the administrative courts jeopardise the rights and liberties of the people. On the contrary, Frenchmen consider it the corner-stone of their liberties. Duguit, the eminent French jurist, affirmed that the great body of case law worked out by the Council of the State affords the individual, "almost perfect protection against administrative action" Professor Garner, in his famous article on "French Administrative Law" asserted that "without fear of contradiction in no other country of the world are the rights of individuals so well protected against administrative abuses and the people so sure of receiving reparation for injuries sustained from such abuses."

There is no justification for suspecting the administrative courts for partiality in favour of the officials. The Council of the State, as the highest administrative tribunal, has established admirable traditions of impartiality. "Personal acquaintance with a number of counseillers, younger and older," observes Finer, "and an insight into the preparation at the Ecole Nation-ale d' Administration (the National School of Administration), warrants the judgment that they have a superb grasp of the law, the doctrine, the nature of the society served by their administration, and an assurance of their probity. They are not bureaucratic tyrants, but men of just and comprehending mind."

In the context of the Welfare State and consequently the ever-expanding State activity embracing the entire life of the nation involves complicated and technical issues which the lawyer-judges cannot properly appreciate and render judicious decisions. Administrative courts consist of experts on the administrative side who understand the technicalities involved and are in a position to thrash all issues thead-bare in order to arrive at the truth and dispense justice. There is always greater possibility of a right judgment when decision is rendered by experts. Moreover, citizens get better and real redress for the injuries sustained, for litigation in the administrative courts is cheap and it is executed repidly. The procedure is simple and there exists decentralized administrative jurisdiction in the twenty-six regional courts, which are courts of first instance, and it cannot be said the justice delayed is justice denied.

Finally, the French system of administrative courts protects public officials against "vexatious and absurd obstacle such as are often interposed by English and American courts on grounds of mere technicality; in particular by substituting State for personal liability it gives them greater assurance for independence in making decisions and enforcing laws." Berthelemy's opinion about the nature of administrative justice is important to cite here. He says, "Let one be guarded against considering administrative justice as 'exceptional' justice....Administrative justice is not a dismemberment of the justice of the law courts. It is the judicial organ by which the executive power imposes on the active administration the respect for law. The administrative courts have not taken their role from the judicial authority; they are one of the forms by which the administrative authority is exercised. To put the mater even more precisely, it may be said that the administrative tribunals are, towards the acts and decisions of administration, what the courts of appeal are to decisions of inferior courts."

To sum up, the administrative law and the administrative courts do not invade liberties of private citizens. On the other hand, they provide positive and effective restraint, more particularly the Council of the State "to which all Frenchmen look with high approval as the Argus-eyed defender against official arbitrariness and oppression." The critics of administrative jurisprudence, notably in England and America, have in the recent years grown more sympathetic towards the French system. They have felt that the operations of the State in the sphere of business necessitate the building of an administrative edifice in which law and administrative courts must have their due place. Wherever there is administration there is administrative law and both England and America have themselves developed agencies having all the essential characteristics of administrative courts.

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CHAPTER VII French Political Parties

Main Tendencies of Party Divisions

Political parties as definite organisations based on a precise political programme, there were none in France until the end of the nineteenth century. It took a hundred years of political activity, and fifty of universal suffrage for the conflict of ideas inseparable from politics to find channels of expression. And yet the French political parties have not even now attained what may be regarded as the essentials of a true party system: internal discipline and cohesion and an exact correspondence between divisions outside Parliament and the grouping of the members within. At the root of all this is the traditional multiplicity of parties. In the Fourth, as in the Third, Republic, "French government," remarks Finer, "is bedevilled by the existence and passionateness of many parties."1 Their number usually exceeds a dozen.

Various reasons can be ascribed to the multiplicity of parties and, consequently, a source of political confusion in France.

The first is the lack of political continuity. "In French political life," says M. Goguel, "the past has as great an influence, if not more influence, than the present."2 France has seen many political upheavals and experimented with different forms of government each time beginning

anew. Beginning from 1775, she had been republic on three different occasions, an absolute monarchy, a constitutional monarchy and twice an empire. "And every form of government," rightly says Lowell, "that has existed in France has its partisans, who are irreconcilable under every other; while the great mass of the middle classes and the peasants have no strong political convictions, and are ready to support any government that maintains order." Political parties cannot exist and develop unless there is something approaching a consensus on the general nature of the political structure of the State. It is only with the beginning of the present century that the French, as a nation, have reconciled themselves to the republican form of government as a permanent institution. Even in the years immediately preceding the Second World War there were groups of Royalist and Fascist extremists who would have liked the republic to do away. The same attitude continued to prevail under the Fourth Republic and there were many who merely paid lip ser-vice to republicanism. The Communists now constitute a powerful and well organised party in France and they, too, avow their adherence to a republican form of government. But their methods are not what a republican system demands and their programme envisages a dictatorship. The differences between the Communists and the Socialists are vital and they do not make the forces of the Left, though the former helped the victory of the Socialist Mitterand in the 1981 Presidential election and were, till 1983 participants in the Government. The result is, as Ogg and Zink observe, on many broad and fundamental issues, "individuals and groups assume the most varied and irreconcilable positions. Political disagreement is no more a matter of Right and Left, otherwise we might look for a gradual shaking down of two opposing sets of political elements into two great parties. Clash of attitudes on all of the issues....releases crosscurrents of opinion that keep the scene perpetually agitated and frustrate nearly every tendency toward compromise and coagulation."3

In the second place, multiplicity of political parties and parliamentary groups is due in part to certain traits in the general temperament of the French people. "French politics," remarks Siegfried, "are often both unrealistic and passionately ideological."4 A Frenchman is by temperament more a philosopher with idealistic conceptions of life. He thinks of politics in intellectual rather than in practical terms and holds steadfast to his views no matter what

1. Governments of Greater European Powers, p. 336,

2. France under the Fourth Republic, p. 140.

3. Modern Foreign Governments, p. 548.

4. Modern France ; Problems of the Third and Fourth Republics, p. 13.

those views are and their practical repercussion. Such an attitude of mind creates political fanatics and it is difficult for such fanatics to reconcile in practical politics where compromise is needed for realizing the common end. Lowell remarked that a Frenchman "is inclined to pursue an ideal, striving to realize his conception of a perfect form of society and is reluctant to give up any part of it for the sake of attaining so much as lies within his reach. Such a tendency naturally

gives rise to a number of groups, each with a separate ideal, and each unwilling to make the sacrifice that is necessary for a fusion into a great party."

There is in France what Lord Bryce calls a legacy of revolutionary habits and this anarchical tendency leads to resentment of authority; to reluctance to work as one of a team and to sink one's personality into an anonymous unit, the party, An average voter does not allow others to think for himself. He does not relish the idea of being yoked to the programme and policy of any party. He disdains party discipline in order to maintain his personality. Any attempt to control and to regulate his political conduct is deemed as an invasion on his liberties. He accordingly, makes at elections his own choice of personalities who appeal to his own way of thinking. Politicians, too, are emotionally enthusiastic. They are subject to strong personal likes and dislikes and are easily swayed to extremes in one direction or the other. For the Frenchman "politics," as Ogg puts it, "is a battle rather than a game." The minority does not trust the majority for fair treatment and each party sees in its tenure of power an opportunity for revenge for previous persecution.

A Frenchman, at the same time, is deeply religious. Religion is a part of the individual's life in France and it has influenced her social political and economic structure. The French political life is, accordingly, divided both vertically and horizontally. Prolonged and bitter relations between the Church and the State produced different parties espousing one cause or the other and adherents to the State cause pursuing different means for realizing it and they still continue with the same old track.

No less important a factor to help to perpetuate their political attitudes is French economic stability, or as some would say, economic stagnation. The traditional economy of France is one of small enterprise in both agriculture and industry. It is a country of small towns and villages, of scattered farms and small one-man or family business. Small town economics have encouraged small-town politics and the ordinary Frenchman's way of life is less visibly affected by the activities of governments and parliaments. They think of politics in terms of symbols and doctrine rather than of concrete policies. The result is as Phillip Williams sums up: "strictly, France is not, as is sometimes claimed, a peasant country—the peasants are not a majority of the population though they are a large and very influential segment of it. But her atomised, small-scale structure promotes political individualism, strong local loyalties, and a political psychology more adapted to resistance than to positive construction. It reinforces the old tendency to incivisme, the lack of civic consciousness which makes so many Frenchmen regard the state as an enemy personified in the tax collector and the recruiting sergeant."5

The nature of the French parliamentary system itself had helped the growth of political groups. The success of parliamentary system of government in France inevitably depended upon the consolidation of existing party organizations and groups in such a way as to afford the ministry a reasonable assurance of stable support. But the system of second election, the method of organizing committees 'in parliament, the device of interpellation, the practice of putting government measures in charge of reporters, and the lack of dissolution had considerably contributed in the Third Republic and before to the political confusion. The Constitution of the Fourth Republic in a way sought to remedy these defects, but without any change in the situation. The second election encouraged small party groups to enter their candidates in the first

election with the hope that they could lend their support to some one else in the second for a suitable consideration. The interpellation procedure had also helped to keep the groups in flux. Dissolution did not hang on the head of a deputy in France like a big stick as it does in England. He had nothing to lose by deserting his party. He might, indeed, profit, by changeover necessitating reshuffling of offices.

Parties under the Fifth Republic

Since the beginning of the Fifth Republic

5. Politics in Post-War France, p. 3.

party system in France has undergone a transformation. Some parties almost disappeared, others became just skeletons of their former selves, others were in the process of combining under a single name and on the verge of amalgamating their organizations into one. The result is that in the General Election of 1967, there were only four major parties which confronted each other. A number of factors account for this trend.

In the first place the Gaullists Party ' 'has managed to swallow (but not digest) many of the Conservative and Centre groups. The overwhelming majority which General De Gaulle's party commanded forced the Left both to unite and cooperate. Two of the oldest parties-the Socialists and the Radicals-formed a federation, the Federation of the Socialist and Democratic Left. The Democratic Centre was a combination of some four of five different political parties or groups.

Apart from electoral considerations, there were institutional reasons, too, to support this trend. The direct election of the President of the Republic by universal suffrage, and the requirement that only two candidates confront each other on the second ballot was another important factor to encourage combining and co-operating process. Presidential elections also brought into the field of contest new leadership and disciplined parties to challenge De Gaulle's unprecedented majority.

The Constitution of 1958 empowers the President to dissolve Parliament. De Gaulle during his tenure of office threatened many a time the National Assembly to use the big stick the Constitution had given him and thereby attempted to curb opposition. It gave an impetus to the opposition parties and groups to combine and co-operate. New Rules in the National Assembly also helped to develop unity. A party now needs 30 Deputies to form a Parliamentary group and it helped the splinter groups to affiliate and cooperate. Only a Parliamentary group can secure representation on the legislative committees. The new electoral law stipulates that a candidate who fails to receive ten per cent of the registered votes in his constituency has to withdraw from the second balloting or lose his deposit unless he receives five per cent of the votes.

Another important factor is the modernization of France and diminution of peasantry in size, thus, the base of undisciplined parties or of the undisciplined factions tends to shrink. Localism has disappeared to a great extent and a new national consciousness has appeared in the French

politics. The invasion of the Gaullist Party, first in 1958, but more so in 1962, in places where the traditional Right used to be strong demolished the traditional beliefs and behaviours. "For the first time, national feelings replaced sectional behaviour; men voted for candidates whom they did not know, simply because they were Gaullists; and the 'notables' of the countryside suffered astounding defeats where they had been assumed to be, up to then, almost unchallengeable."6

The process of simplification of the party system in France, thus, started. Whether the trend of combination and co-operation, is a permanent trend it is yet to be seen. It was apprehended that with the exit of De Gaulle from the political scene the Gaullist party itself might disintegrate into a number of formations, making the unity for the Centre and for the Left less compelling. But nothing tangible has happened so far and one may hope that multipartism may finally lead to a three or four-party system with party leadership and discipline.

The Communist Party

The French Communist Party dates from 1920 and it came into being when a split in the Socialist Party occurred. At the Tours Congress the majority of the delegates voted for affiliation to the Third International whereupon the minority seceded. The majority established its separate entity and adopted the name of the Communist Party. It accepted Marx-Lenin programme and the Communists aimed at overthrowing capitalism, and socialisation of the means of production, distribution and exchange.

But the initial success of the movement was not followed up. The internal feuds within the Party and the resentment of revolutionary Frenchmen at receiving instructions from Moscow contributed to a sharp decline in its membership. Between 1924 and 1928 Communist membership fell from 88,000 to 52,000 and its electoral support came mainly from the traditional voters from the Left. Bitter personal and political rivalries plagued the Party for some years, but expulsions, reorganisations and

6. Blondell, J., and Godfrey, E. D., The Government of France , pp. 84-85.

changes in line gradually built the Party into a compact and thoroughly disciplined movement. When the Party joined with Leon and the Radicals in the Popular Front, it assumed the role of a national party and its membership rose to 350,000. There was again a decline in its membership with the Hitler and Stalin pact and at the outbreak of the Second World War the Party was legally banned and went underground. All the 72 Deputies of the Communist Party in the Chamber and two Senators were excluded from Parliament. Similar, exclusion of the Communists was made from local governments. On the invasion of France by Hitler, the Communists remerged and they became stout members of the Resistance. When the War was over the party grew in numbers and capitalizing on its services to the country during Vichy regime and the German occupation, it was able to capture 159 and 150 seats in the First and Second Constituent Assemblies respectively. Its record was still more impressive in local elections. In combination with minor affiliated groups, the Parry held in 1946 a total of 182 seats in the National Assembly and constituted the largest bloc. In 1951, its strength was reduced to

103 seats though its popular vote fell only about 10 per cent. Under the Fifth Republic, despite electoral setbacks, the Communists found themselves in a good tactical position. They had led the opposition to General De Gaulle's return and together with some splinter groups and individual leaders had taken a firm stand against the 1958 Constitution. Speaking against the Gaullist system of Government, Waldeck Rochet, the Party leader, said that it was a personal Bonapartist system that should be reformed and it represented the interests of the monopolists and the capitalists that should be done away with.

The Communist Party is the best organised political party in France. The basic unit of the Party is the cell, composed of from three to thirty members who work in the same establishment. The cell meets at least weekly, but when the unit is based on the place of work there is infact continuous contact between them. Other members, not working in large establishments, are organised in local cells based on the street, ward or cmmune. Each cell elects a secretary or Bureau or the executive committee. The higher level above the cell is a territorial unit called the section, manned by delegates from the cell secretaries and bureau. Above the sections are departmentale federations (departmental federations), again consisting of delegates from the sections, meeting every six months. The federation secretaries are chosen by the regular bureau selected by the sectional delegates in consulation with national leadership.

The highest authority in the Communist Party is the National Congress, composed of delegates by the conference in each department. Once in two years, or more often if necessary, a national Congress is convoked. But this is in theory only and "the Congress misses beats" as Finer remarks. The National Congress elects a Central Committee of sixty to eighty members, meeting at least every two months and acting as a consultative assembly of the Party. This Committee chooses at the Congress,several other bodies, like the political bureau, the Secretariat, a Central Committee. The Political Bureau, like the Presidium of the Central Committee (Politbureau before the organisation of the party) in the estwhile Soviet Russia there is the iron hand of the party organisation and the principle of democratic centralism is rigidly applied. In the Assembly the Deputies elected on the Communist Party ticket vote unitedly as a solid bloc and according to the Party executive whip. "The discipline de vote operates absolutely only in this party of all the parties in this French system."

The clientele of the party is nationwide. Its main strength is in the Northern Industrial area, the rural departments on the northern and western edge of the massif central, and the predominantly agricultural Mediterranean Coast, together with part of hinterland. In the south and centre almost all the Departments where communism is strongest have been on the Left since the beginning of the Third Republic and in the northern industrial areas the Party owes its position primarily to a working class appeal. The influence of Communism on the peasantry is a "remarkable phenomenon, not confined to the poor metayers of the centre but extending to prosperous southern farmers and vine growers, owning their own land and voting to express a political rather than a social choice."

It is, thus, essentially a working-class party, though many middle class intellectuals have gained positions of power as cadres. Of all the Communist voters, only half are industrial workers, some 8 per cent are agricultural workers, another 18 per cent are salaried employees,

5 per cent are civil servants, 5 per cent farmers, and the rest are members of the middle class, and of the professions, and intellectuals, teachers, artisans, merchants, etc.

As a Marxist workers' party, the Communists stand for the State control of the means of production and handing over of the land to the peasants. In day-to-day politics, the Communists have consistently supported claims for increase in wages. In matters of foreign policy the Party used to take its cue from the former Soviet Union.

The Birth of Euro-Communism in the mid Seventies as a revolt against Soviet hegemony inflicted a real danger to Marxism. The French, the Italians and the Spanish emerged as the three key partners in Euro-Communism. In 1975 Enrico Berlinguer and Georges Marchais, leaders of the Italian and French Communist parties signed a joint statement in Rome committing the two parties "for the plurality of political parties, for the right of existence and activity of the opposition parties, and for democratic alternative between the majority and the minority." The eventual building of a Socialist Society in Italy and France, the statement added, would be characterised by a "continued democratization of economic, social and political life" and the existing "bourgeois" liberties would "be guaranteed and developed." Realising that there was a remote possibility of revolution, as envisaged by Marx, in Western Europe, the Euro-Communists placed added emphasis on electoralism, on seeking popular support through calls for gradual reforms, on winning the co-operation of other left-wing parties even at the cost of doctrinal and political concessions and on the building of party's image as a progressive and responsible organisation within the existing political system whose creed was not to everthrow the prevailing social and political structure but to preserve and transform it.

The French Communist Party formed an alliance with the French Socialists in a bid for left unity, but it ended in a fiasco amidst mutual bickerings. As a consequence in the 1978 General Election the Communists lost heavily as compared with the Socialists; 86 seats as compared with 104 seats won by the Socialists, in the National Assembly with a total membership of 491. The French Communists afterwards drifted back to Moscow for guidance and initiative.

But the Party suffered a further setback in the 1981 Presidential election and elections to the National Assembly. M. George Marchais, the Communist Party leader got only 15.3 per cent of the total vote in the Presidential election and the Communist candidates could secure 44 seats, just half of 1978, in June 1981 General Election. Several leading spokesmen of the Party disappeared from the New Assembly, In the Presidential election after his elimination in the first round Marchais pledged unconditionally his support to Mitterand the Socialist candidate, and this support helped Mitterand to enter Elysee. After the General Election the Socialist President gave four cabinet posts to the Communists after a series of negotiations at which Communists modified their declared stand on Afghanistan and Poland as the price for a share in the Socialist Government. But this cooperation ended in 1983, and the four ministers withdrew from the Government.

In the March 1986 General Election the Communist Party won 34 seats securing 9.8 per cent of the votes, as compared -with 22 per cent in 1981. Since then there had been a growing pressure

on Georges Marchais to step down and the Party should shed its doctrinaire approach which had become an electoral liability. With the anuoncement of Marchais that he would not be the Party's candidate in the next Presidential election, due in 1988, and even with relative liberalisation and greater acceptance of social democracy, the Communist Party was unlikely to be able to retain its lost ground. With the resignation of the top functionaries Charles Popreu and Marcel Rigout, January 1987, who were dubbed by Marchias as "renovators" and "liquidators" of the Party, the French Communist Party faced a grave crisis worsened by the reforms, peresstroika and galsnost, initiated by Mikhail Grobachev in the USSR. With the liquidation of Communism in East European countries and the collapse of Soviet Russia and the disbandment of the Communist Party the future of Communism is bleak in France as also in other countries of the world. Even Marx and Lenin have been degraded and denounced.

The Socialist Party

The Socialist Party was originally formed in 1879, but it took real inspiration from Jean Jaures and was firmly established in 1905, It is referred to officially by the initials of S. F. I. O., meaning section francaise de l' Mentationale

ouvriere, the French section of the Second International. The Socialist Party pursued the programme of evolutionary socialism till 1915, when extremist elements reasserted the traditional pacific and international tenets of the party. The extremist movement gradually gained strength being especially influenced by the Russian Revolution which found eventual expression in the split at Tours when the Communist Party came into being.

The old socialist Party had not by 1924 retrieved its electoral position, but had the advantage of an alliance with the Radicals and formed the left wing of M. Herriot's parliamentary majority. But Socialists and Radicals differed too deeply over economic policy and the alliance could not prove enduring. The Radicals joined hands with the Conservatives. In 1928, the electoral alliance with the Radicals was restored. In 1936, the Socialist Party was the largest group in the new Assembly and for the first time it took over the leadership of the government. This short-lived victory, however, did not put an end to the dissensions within the party. The deterioration international situation caused a serious division, which grew more acute as Nazi power increased. With the outbreak of hostilities, followed by the debacle of June 1940, and the establishment of the Vichy regime; the socialists were badly split up. Some of its leaders, like Leon Blum and Vincent Auriol, never swerved in their loyalty to France and the Republic and they took an active and creditable part in the Resistance. Others opposed the war against the Nazis and in many cases, accepted or collaborated with the Vichy regime. Its policy of social services, welfare, nationalisation, a reformed constitution, democratic freedom and civil rights, and true internationalism brought the Socialists the promise of a bright political future at the Liberation, "but the evolution of political parties," remarks Finer, "worked grindingly against Socialist, strength." The elections of 1945 showed that the Socialists were only the third largest party.

In post-war as in pre-war France, the Socialist Party has been handicapped by the incongruity of its position and following. Though it stands for Socialism, yet it has never been representative of the working class. Few of the active members of the Party are industrial workers and except in northern regions, the industrial and mining departments of Nord and Pasde-Calais, the S. F. I. O. has never satisfied the deeply felt class consciousness of the French workers on which the Communists have capitalized so successfully. French workers mistrust the bourgeoisie and those who are actively associated with the Party are teachers, professional and other white-collar workers and lower grade civil servants. At the same time, the rank and file of the Party is slowly becoming less proletarian. Then, the Socialist appeal to youth, and in general to new elements outside its traditional ranks, has proved de-cidely ineffective. The Socialist Party constitution requires five years membership as a qualification for becoming a delegate to the Party Congress or National Council, for election to the executive committee, for editorship of the party newspaper, or for adoption as a parliamentary candidate. This does not make it easier to recruit new leaders or to maintain rapid promotion.

S. F. I. O. is the defender of the democratic Republic and is, accordingly, anti-revolutionary. It is the party of the Welfare State, planned economic investment, public housing, industrialization, educational opportunity, a more equal tax structure service. The Socialists follow the western foreign policy leading to the Brussel Treaty, NATO, the Schuman Plan, the Western Union Pact, the Council of Europe. The Party, as a whole, is the foe of old type of authoritarian French colonialism and an advocate of extended self-government of the colonies.

The Socialists opposed De Gaulle and objected to his economic and political policies at home. They opposed his personal government and disputed on a number of points the interpretation he gave to the Constitution of the Fifth Republic. They vehemently criticised and opposed the device of referendum which undermined Parliament and reinforced personal government. Together with all other parties, the Socialists voted against the reform of the Constitution allowing for the direct election of the President of the Republic.

The Presidential election by direct vote again caught the party in internal rivalries and contradiction. Mitterrand, who assumed the leadership of the non-Communist Left, gradually brought the Socialists into a co-operative frame-work of the Federation of the Democratic and Socialist Left. The Socialists contested the 1967 election as candidates of the Federation and for the first time in the present

century they did not form a Parliamentary group. But the Socialists still jealously guarded their independence within the Federation, and resisted all effort to allow it to become a genuine party with its own independent organization and leadership.'

Mitterrand made his third try for the Presidency and defeated President Giscard d' Estaing in May 1981 election by 35 per cent of the vote, thus, avenging the socalist's loss in the 1974 election. Eleven days after assuming office Mitterrand dissolved the 491 member National Assembly and called for new elections. The Socialists and the Communists agreed to a mutual support for the Assembly elections. In the 1978 elections the Socialists had won 104 Assembly

seats but in June 1981 it was a landslide victory for them capturing 284 seats, with a comfortable majority in the National Assembly and the first socialist occupant of the Elysee, the Socialist Party moved ahead with their wide-ranging plans to establish what Mitterrand said in his election campaign a more just social order.

Early measures—raising the minimum wage, family allowances, pensions and rate rebates-taken by the Socialist Government were only palliatives to reduce increasing inequalities. The linchpins of the new policy were reflation combined with social and institutional reform. Twelve financial holding companies were nationalised. Small business, on the other hand, were helped by cheap credit and rebates of social security payments for new employees. The death penalty, the special Security Court and the army's special courts were abolished and the Napoleonic highly centralised administration was decentralised. Prefects were abolished, while electoral bodies were taken over by executive power in the regions, departments and town and villages. The country returned to the system of proportional representation.

These were the salient achievements of the Socialist Government. It was an impressive start to entrench the Socialist in the mass support. But the course of politics has never run smooth, more so in France. After the Parliamentary elections the Socialists were eclipsed by the Chirac Gaullists to make a strong base in the country side. As a consequence in the General Election in March 1986, the Socialist Party secured 32 per cent of vote. The alliance of Centre-Right parties, the Rally for Republic (RPR) led by a former Prime Minister, Jacques Chirac, and the Union for French Democracy (UDF) led by the former President of the Republic, Varley Giscard d' Eastaing, and their supporters won 291 seats in the 577-member Assembly—a majority of just seven. The Socialists remained the largest single Party with 216 seats which was more than President Mitterrand had expected. The latent divisions and dissensions within the Party gave a set back to the Socialists. Mitterrand was re-elected in 1988 for the second term by a reduced margin. Disputes that were largely silenced for the sake of national unity during the Gulf War reappeared as the Party prepared to discuss its concept of a new World Order. The cease-fire in the Gulf tiggered a resumption of feuding between the leaders, Mitterrand and his Prime Minister Michel Rocarrd, who ultimately had to quit.

The Radicals

The Radical Party, whose full title is the Parti republican radical et radical socialiste (the Radical Republican and Socialist Radical Party) is the oldest of all French parties, having been founded in 1901. As the most important party of the Third Republic, "the governmental par excellence, the radical party was associated in French minds at the end of the War with all that they disliked in pre-war French politics."

The Party had been compared to a radish, red outside and white inside—with "its heart on the Left and its pocket book on the Right." It throve on the single-member constituencies and was the leading party of the Third and Fourth Republics. It promised all things to all men, nothing to anyone in particular, and steadily against any substantial welfare for the industrial workers. Its clientele were small farmers, rural doctors, shopkeepers, school-teachers and the lawyers. The party's contribution to the Resistance movement was not impressive.

The Radical Party was not only itself more loosely organised but, since 1946, had been allied with a number of smaller groupings to form the R. G. R., "a coalition whose character and organization nobody has found it easy to define with any degree of precision." The R. G. R. had been described as a body of men of the Right, seated in the centre. Radical Party membership has never exceeded 2,000,000. Today it is doubtful it there are more than 10,000 members.

The Party is more or less extinct now. Severe

conflicts within it have ended in its disintegration. With the waning of the significance of anti-clericalism and the general acceptance of economic planning and State social and economic controls, the Radicals found themselves not only without men, but also without ideas. Some moved to the Gaullist Party, others to the Left, while a third group went to the centre. A group of its leaders joined the Federation of the Democratic and Socialist Left as one of its constituent units. It is in the name of the Federation that they are represented in Parliament, not more than 25. Those who remained in the centre became part of the Democratic Centre. The Radical Party is, thus, virtually dead.

The Convention of Republican Institutions

A notable development of the Fifth Republic is the flowering of "political clubs" consisting of students, intellectuals and leaders of student and professional organizations for the purpose of debating the future of the country. These clubs discuss and examine critically the policies of the Government and institutions of the country, and take a stand against the Gaullists. Six such clubs, located in different cities, took steps to bring them all together in a common meeting.

The Convention des Institutions Republicaines was, thus, established in 1964, in an effort to bring the non-Communist-Left together against General De Gaulle. The Convention was explicitly dedicated to economic and social planning, a democratic government clearly opposed to the personal rule of De gaulle, and to European unity. The Convention held its Congress and it decided to exercise influence on the political parties of the Left. These youngmen, who commanded sufficient influence, offered "to act as a catalyst in the constant dialogue among the Radicals, the Socialists, the P.S.U., and even the Liberal Catholics and the Communists, in order to set the foundations from which a coherent opposition to De Gaulle would emerge and a coherent democratic force would develop." They played an important role in setting up one common candidate of the Left for the Presidential election, and simultaneously worked hard to create a Federation. In this way they became a part of the Federation of the Democratic and Socialist Left. The Convention has negligible political strength.

The Democratic Centre

Many political parties in France claim to be Centrist, but no political party has deliberately called itself a Centrist party. The Centre has, all through, consisted of splinter groups: Moderates, unaffiliated Independents, Peasants, Republicans, etc. Only in the years following Liberation one political party, M.R.P. (The Movement Republicain Populaire), managed to form a political

formation, formulated a programme and attracted more than 25 per cent votes. All others changed their names very often and shifted their alliance in an unpredictable manner—sometimes to the Left and sometimes to the Right. From 1945 to 1962, for example, the Centre consisted of the M.R.P., the Left Republicans, some of the Moderates and Peasants, dissident Radicals, and Left-Centre groups. Since 1962 none of these parties has been able to elect an adequate number of Deputies so as to form a group in the National Assembly.

But the direct election of the President in 1965 forced the Centre groups to unite behind a single candidate and the formation contrived as such was given the name of Democratic Centre. The support this combination received in the legislative elections of 1967 gave little hope of its continuity. As long as the Left is represented by a co-operative arrangement between the Communists and the Federation, there is very little hope for the Democratic Centre to survive.

Parties of the Right

The Right is composed in the post-war, as it was in the pre-war France, of a number of small groups, whose membership and names changed frequently. But in the post-war period two groups emerged which distinctly advocated the outright overthrow of the Republic and its substitution with an authoritarian regime. Those two formations may be described as anti Republican Right: The Poujadist movement and the Activists. The former emerged in 1954 from groups that had been traditionally most loyal to the Republic and to Parliamentary government. Shopkeepers, artisans, small farmers, and many small political leaders, who supported this movement, were called Poujadists, after the name of the movement's leader, Pierre Poujade. Beginning as a strong pressure block called the Uniion for the Defence of Merchants and Artisans, whose aim was to lighten the tax burdens on small businessmen, the movement later became a party, the Union and French Fraternity. It demanded the complete overhaul of the political

institutions, Parliament to be replaced by the Estates General and the leaders of the Fourth Republic tried before a "High Court."

By 1955, Poujade, the leader of the movement, organized local and departmental federation throughout France. His slogan was: "throw out the rascals" the Deputies of the National Assembly. Poujade nominated candidates in many Departments, refused to ally himself with any other political party or group, and appealed for a big support. He was able to capture 25 seats in the National Assembly. With the return of De Gaulle in 1958, the Poujadist movement collapsed.

The second anti-republican formation was the "Activists." Some Army officers attempted in the course of the war in Algeria to rise against the Fifth Republic and General De Gaulle. They were supported in Algeria by the French settled there, and in France proper by small secret groups—a few of the remaining disciples of authoritarian ideology, and some outright Fascists and Extremists. They formed a formation called O.A.S., the Organization de L' Armee Secrete and indulged in indiscriminate acts of terrorism and assassination. It also conspired to assassinate De

Gualle, and proclaimed its determination to keep Algeria French. It was in 1961 that the leaders of O.A.S., including two Generals were arrested and the organization was smashed.

The Republican Right

In this group of political division are included the independents and the Gaullists. The first, like the Radicals and the M.R.P., appeared to be on the way out while the Gaullist constituted a well-knit organisation and was the well-organized political party of France.

The Independents have had virtually no organization and membership, except for an alliance among departmental and political leaders. They supported the Fifth Republic and by extending their support to the Gaullists did well in the 1958 elections securing 20 seats. They became the conservative party in the Assembly in matters of economic and social reform, and in regard to Algeria. This resulted into De Gaulle's displeasure and divided them sharply amongst themselves. The election of the President by direct vote and later the legislative election of 1962 sharply divided them and a group called the Independent Republicans joined hands with the Gaullists. The residue joined hands with other Centrist groups.

The Gaullists

General De Gaulle returned to France in 1944 at the head of the Provisional Government. He advocated the establishment of a strong Presidential government, the overhauling of the stagnant economy of the country and broad social welfare measures. But within eighteen months of his regime he resigned. He re-entered politics as the head of a large political movement, the Rally of the French People, with the avowed object of establishing a new Constitution by replacing the Constitution of the Fourth Republic which suffered from the same defects as the Constitution of the Third Republic. By the end of 1947 the R.P.F. had a membership of 800,000 and it won a sweeping victory in the municipal elections of 1947. It subsequently gained more than one-third of the seats in the upper chamber of Parliament. The Gaullists, then, pressed for dissolution of Parliament and new elections.

But in the elections of 1951, the Centre parties with the support of Socialists to the Left and Independents to the Right checkmated their intentions. They could secure only, 117 seats in the National Assembly, the Parliamentary group of the P.R.F. showed signs of disintegration soon. De Gaulle freed his followers from the pledge to follow him and himself withdrew from politics. In the elections of 1956, the Gaullists were reduced to just a handful of Deputies—the Social Republicans. Yet the devout and select group of De Gaulle remained active and awaited for the opportunity enabling their leader to return.

It did not take long. The deterioration of the war in Algeria and the inability of the Government of the Fourth Republic to keep an effective control over the Army provided the requisite opportunity for De Gaulle to return first as the Prime Minister and then after the Constitution of 1958 became operative as the first President of the Fifth Republic. A strenuous effort was made to revive the Gaullist Party. In the election of 1958, the Gaullist contested elections under the label of U.N.R—the Union of the New Republic. They captured 189 seats and with the help of

their Deputies who joined them the Gaullists mustered a strength of 210 and became the largest Parliamentary group. In the elections of 1962, they won 275 seats out of a total of 482.

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The Gaullists drew their strength from the Right and the Centre, especially the Catholic votes. It is a party which is supported by more women than men and it is a party that failed to appeal to the young. Thirteen per cent of the voters for the party are farmers and about twenty-seven per cent are workers. Employed and managerial groups. Executives, industrialists and merchants vote for the Gaullists.

The future of the Gaullists eclipsed after General Charles De Gaulle's resignation in 1969 from the Presidency. There was no dynamic leader to keep them together and make them a force to count. With the Gaullist era ending began the Giscardian era. In 1978, the Centre-Right coalition won the general election but Chiracs' Gaullist predominance in the coalition was reduced by 20 seats. Chirac had by then acquired a kind of charisma among the Gaullists. Although he had been Giscard's Prime Minister for two years (1974-76) but he never acted subserviently.

Jacques Chirac waged his own campaign for 1981 Presidency and seriously splitted right forces. He, however, earned the enmity of many conservative leaders when, after finishing third in the first ballot of Presidential election, he withheld his wholehearte support from his voters for Giscard in the second round. He declared that he would give his vote in favour of Giscard, but left it to his followers to vote as they pleased. It went in favour of the Socialist leader Mitterrand and he was elected. The Socialists also secured an absolute majority in June 1981 elections to the National Assembly. In March 1986 elections Chirac-Giscard alliance secured 291 seats in the National Assembly, a water-thin majority, no doubt, but France, once again, went to the Right. Chirac considered it a good stepping for the next Presidential election in 1988. But the Socialists succeeded in taking over the Presidency.

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CHAPTER VIII The French Political System

Revolutionary Legacy

Every great revolution, says Franz Borkenau, "has destroyed the State apparatus which it found. After much vacillation and experimentation, every revolution has set another apparatus in its place, in most cases of quite a different character from the one destroyed; for the changes in the state order which a revolution produces are no less important than the changes in the social order."1 Social revolutionary crises in France in 1789, 1793, 1830 and 1848 set in motion political and economic conflicts that culminated in fundamental structural transformations. Bourgeois, peasant and working class revolts transformed social and economic relations. Autocratic and 'feudalistic' monarchies were overthrown and constitutional, bureaucratic and bourgeois, democratic national-states came into existence after each of these successive revolutions in France.2

The pre-revolutionary landowning classes lost their exclusive privileges in social and political spheres and were largely deprived of their shares of the agrarian surpluses through regional and local quasi-political institutions. The emergent political elites were, however, obstructed, by counter-revolutionary attempts at home and military interventions from abroad in building new state organisation to consolidate the Revolutions. The new State structures, nevertheless, were more centralized and rationalised than those of the ancien regime. The outcomes of the various French Revolutions favoured the bourgeoisie. The French revolutionary upheavals created and consolidated "a professional-bureaucratic state that coexisted sysmbiotically with, and indeed guaranteed the full emergence of, national markets and capitalist private property..... And despite the massive presence in society of the French state as a uniform and centralized administrative framework, further, national economic development and social differentiation remained primarily market-guided and outside the direct control of the government." One reason for a focus on state building as a legacy of the French Revolution is in the words of Samuel P. Huntington: "A complete revolution involves.....the creation and institutionalization of a new political order."

The course of the ongoing French revolutions and counter-revolutions was shaped by social and political crises in which liberal stabilization proved very difficult, and by the emergence of centralized state bureaucracy that paved the way for Bonapartist regimes, As a prelude to this analysis, let us first consider the social character of the revolutionary break in France. Of course, Alexis de Tocqueville placed the state at the centre of his analysis in The Old Regime and the French Revolution. In this book, he made a penetrating analysis of the French Revolution, emphasizing the elements of continuity between the monarchy which it overthrew and the Republic which it established: "The despot fell; but the most substantial portion of his work remained; his administrative system survived his government."4

Unlike Marx, de Tocqueville believed that the democratic revolution was not entirely the achievement of the bourgeoisie but the crowning result of multiclass effort, not excluding a section of the nobles. It was ideological revolution in which the principle of social equality and spirit of Christianity prevailed. He thus implicitly refutes some of the propositions of both liberal and Marxist historiography. He did not think that "discrepancy between political equality and economic inequality, would be indefinitely accepted by a democratic people. He saw that the first phase of the democratic world revolution,

1. Quoted in Theda Skocpol, States and Social Revolutions, p. 161.

2. Theda Skocpol, "States and Social Revolutions," p. 162.

3. Samuel P. Huntington, Political Order in Changing Societies,, p.266.

4. Quoted in W. Ebenstein: Great Political Thinkers, p.523.

political in nature would inevitably lead to a second phase, which would be primarily social and economic.....The July Revolution of 1830 was the last purely political revolution in France.... and he foresaw that the next upheaval would result from economic grievances."5

The February Revolution of 1848 was the first in which the French working class played a crucial role. Even before the revolutin began, de Tocqueville predicted, "Before long, the political struggle will be restricted to those who have and those who have not; property will form the great field of battle." After the Revolution, he told the Chamber of Deputies that the passions of the working class have turned from political to social questions and that they were forming ideas aiming "not only to upset this", or that law, ministry or even form of government, but society itself, until it totters upon the foundations on which it rests today."6 De Tocqueville, however, hated this revolutionary spirit of the workers not merely because he opposed socialism but also because it might provoke the property-owning classes to opt for an absolute government, that Marx later called Bonapartism. De Tocqueville said, "The insane fear of socialism throws the bourgeois headlong into the arms of despotism. As in Prussia, Hungary, Austria and Italy, so in France the democrats have served the cause of the absolutists. But now that the weakness of the Red party has been proved, people will regret the price at which their enemy has been put down."7

But this was not the end of the social revolution process which, de Tocqueville believed, would continue to refashion social and political institutions in future.

In 'Recollections', he explained the legacy of the French Revolutions in the following words, "will socialism remain buried in the contempt that so justly covers the socialists of 1848?..... I am sure that in the long run the constituent laws of our modern society will be drasticlly modified; many of the main parts of them have already been substantially modified."8 An abortive socialist revolution occurred in France in 1871 known in history as the Paris

Commune. Marx lent his public support to this revolutionary event despite the fact that it took place in a not yet fully industrialized society, with a poorly organised working class and a leadership consisting of largely petty-bourgeois groups.

Marx even predicted that the Commune could never succeed. In his essay entitled 'The Civil War in France' he explained the accidental circumstances which enabled the workers of Paris to liberate themselves from the capitalist government of France. Explaining the role of accidents in a revolution, Marx said, "World history would indeed be very easy to make, if the sruggle were taken only on condition of infallible favourable chances. It would, on the other hand, be of a mystical nature, if 'accidents' played no part."9 For Marx, the Revolutions of 1789 and 1848, were partial, political revolutions of the bourgeoisie lacking a social content. The proletariat alone could represent the interests of society as a whole through a social revolution. Thus for Marx, the Paris Commune was the "political form of social emancipation".

Bonapartist Heritage

From Nepoleon Bonaparte to Louis Bonaparte to General de Gaulle, Bonapartism has been a recurrent feature of the French political system. The reason for this is to be located in the fact

that the French dominant class, from the beginning, had less capacity than the English to make an effective liberal political revolution against the monarchy. The English Parliament was a functioning national institution for a century, at least, before the English Revolution and it brought together prosperous landlords and the rising bourgeoise class in the English system of government. In France things were quite different. The dominant class was divided internally from the very beginning as to what kind of representative institutions it wanted vis-a-vis monarchy. In the early phases of the Revolution there was great distrust of any centralized executive power arid so no workable system could be created to replace the monarchical one. As testified by Alfred Cobban, the fundamental reality was "that before

5. Quoted in Ibid,. pp522-523.

6. Quoted in Ibid., p.529.

7. Alexie de Tocquerville, The European Revolution and Correspondence with Gobineau, 22.

8. Alexie de Tocqueville, Recollections,, pp; xiv-xv

9. Karl Marx, The Civil War in France, p. 86.

1789....there was not a single truly elected assembly in the country, but only government officials, in 1790 there was no longer a single official, but only elected bodies."10

This kind of pervasive anarchy first led to revolutionary dictatorship of the Jacobins. After the fall of Robespierre, the Thermidorean Convention dismantled the judicial apparatus of the Terror and the centralized controls of the revolutionary government. Once again an attempt was made to consolidate the Revolution in a conservative liberal form. But the liberal republican Directory was no more successful than the pre-1792 constitutional monarchy, as it faced similar problems and chaotic conditions. However, it retained most civil servants and expanded central administrative structures. "The central bureaucracy was thus given a renewed stability which paved the way for the vital role it was to play in the new state moulded by Napoleon and bequeathed by him to later generations,"11

In these circumstances, Napoleon Bonaparte seized power in a coup d'etat, who established himself, step by step, first as de facto dictator, then as First Consul for life, and finally as full-fledged crowned emperor, significant institutional developments took place under Napoleon. He legalised the social and economic accomplishments of the Revolution and reintroduced administrative centralisation. "The Directory owed its fall partly to the narrowness of its political foundations. Bonaparte, well aware of that fact, looked for allies on the Right as well as on the Left, and his most successful method of winning sympathy was to appoint men from all sections of the political world to the new posts which were opening.... Some had been terrorists, others belonged to the nobility."12

He dispensed with mass mobilisations and expressions of ideological commitment and weilded the symbols, rituals, and propaganda of a highly generalized French patriotism. He embellished his essentially authoritarian regime with symbolic concessions to the inherited factions: plebiscitary and patriotic rituals for the radicals: "consultative councils with restricted franchise for the liberals, and a Concordat with the Catholic Church for conservatives."13 The destruction of the old regime and the gaining of fundamental rights by all citizens made possible the creation of truly national army. France had many political regimes since Napoleon's dictatorship, which lasted only until 1814. It was followed by a restored Bourbon monarchy, then a 'bourgeois' monarcly, a Second Republic followed by a Second Empire of Louis Bonaparte, then an ephemeral, socialist Paris Commune, drowned in blood by the Theirs dictatorship, followed by a Third Republic, destroyed by the Nazi conquest and the creation of a fascistic Vichy regime. It was replaced by a Fourth Republic, set up after liberation, only to be overthrown by a Bonapartist regime of Charles de Gaulle in 1958.

Thus three Bonapartist regimes have ruled over France from 1804 to 1814 by Nepoleon, from 1852 to 1870 by Louis, and from 1858 to 1969 by Gaulle. All of them became necessary because of some inherent weaknesses of the civilian, liberal Republican governments which they had to replace. Yet as Herbert Leuthy correctly points out, an observer who concentrates only on the periodically changing constitutional forms cannot comprehend the real basis and enduring power of French government. He says: "If one looks at a constitutional handbook one will find no mention of.... any of the great institutions on which the permanence of the state depends..... No mention is made of the Ministries which remain after the Minister of the day has departed. No mention is made of the Council of State which, because of its jurisdiction over the administrative machine, rules supreme over the instruments of state power, is indispensable to an executive incapable of carrying out its will without it, interprets according to its own code the true content of laws passed by Parliament or quietly buries them, and as the universal advisor of, Government usually gets its own way even in the formulation of government policy, because it has authority and permanence, and the Government has not."14

Herbert Leuthy goes on to describe the

10. Afred Cobban, "Local Government during the French Revolution," in Aspects of the French Revolution, p. l 18.

11. Theda Skocpol, States and Social Revolution p. 193.

12. Quoted in Ibid, p. 195.

13. Ibid, p. 195, See Leo Gorshoy, The French Revolution and Napoleon pp. 375-381, 451-467.

14. Herbert Leuthy, France Against Herself, trans. Eric Mosbacher, p.p. 18.

Bonapartist contribution to the French political system with the same passion: "No mention is made of the general staff of the financial administration, which is able to modify and interpret

the budget passed by Parliament as autocratically as the Council of State is able to modify and interpret its laws, and by its control over state revenue and expenditure is able to exercise a decisive influence over the life and death of governments.... Not one of these institutions is derived 'from the people'. They represent the state apparatus of the absolute monarchy, perfected and brought to its logical conclusion under the First Empire. When the crowned heads fell, the real sovereignty was transferred to this apparatus. But it works in the background, unobtrusively, anonymously, remote from all publicity and almost in secret.... It is not so much a state within a state as the real state behind the facade of the democratic state." Crystallization of this Bonapartist state in the womb of revolutionary democracy, which began with Napoleon and was consolidated by Louis, was later given a modernized appearance by Charles de Galulle in the twentieth century. Thus Bonapartism and now Gaullism are as much authentic elements of the French state structures as liberal parliamentarism. In fact, Bonapartist heritage is integrated with the functioning of democracy in France.

Advanced Capitalist Democracy

Despite travelling different trajectories, in their ascent towards modern constitutionalism, Great Britain, France and the United States today are equally developed members of the international league of advanced capilatist democracies. They may have different histories, traditions, cultures and political institutions, but they also have in common two crucial characteristics: the first is that they are all very highly industrialised societies; and the second is that their means of production, trade and finance are under capitalist ownership and management. As A. Schonfield says, "There are big differences between the key institutions and economic methods of one country and another. The differences are often the subject of sharp ideological cleavages. Yet when the total picture is examined, there is a certain uniformity in the texture of their societies. In terms of what they do, rather than of what they say about it, and even more markedly in terms of their behaviour over the period of years, the similarities are striking."16

Notwithstanding all levelling proclamations, there continue to exist in France wealthy economic elites who own large amounts of property in one form or another, and who also receive large incomes, derived wholly or partially from their ownership or control of that property. On the other hand, France also contains a very large class of people who own very little property and whose income is derived from the sale of their labour. Poverty is a fluid concept but the 'affluent society' of France has failed to eradicate it. There is enough evidence to show that it is not a marginal or residual phenomenon but an endemic condition affecting a substantial part of its population.

Managerialism represents an important phenomenon in the development of French capitalism too. Along with the owners, these managers who also are part-owners constitute self-perpetuating oligarchies in the French corporations. As Baran and Sweezy explain, "profits, even though not the ultimate goal, are the necessary means to all ultimate goals. As such, they become the immediate, unique, unifying, quantitative aim of corporate policies, the touchstone of corporate rationality, the measure of corporate sucess."17 In fact, the modern manager can pursue profit more vigorously than the old-style entrepreneur, with the aid of market analysts, economic consultants, and other specialists. In both, the work-process remains one of domination and subjection.

In a sense, the spread of managerialism reinforces the advantage of what Harold Laski used to call the 'careful selection of parents'. Access to the upper layers of capitalist enterprise requires high university qualifications available only to the sons of the rich. Two French authors have pointed out., "An approximate calculation of chances of access to university according to the father's profession shows that these are of the order of less than one per cent for the sons of agricultural wage earners to nearly 70 per cent for the sons of businessmen and to more than 80 per cent for members of the liberal professions. These statistics clearly demonstrate

16. A Schonfield, Modern Capitalism, p.65.

17. Baran and Sweezy : Monopoly Capital, p. 40.

that the educational system operates, objectively, a process of elimination which is more thorough as one reaches the most unprivileged classes."18 Those who fear a 'meritocratic' society in which every one will be judged on 'merit' alone, need not be unduly alarmed, as the race is still rigged, against the working-class.

Raymond Aron laments the fact that he found the capitalists of France, those acursed 'monopolists', without any 'hegemonic virtue' as they did not have "a definite and unanimous opinion, either on the policy to be followed in Indo-China or on the policy to be followed in Algeria." They had in fact "most often no political conceptions."19 This is a superficial view because differences "among the French economic elites about Indo-China or Algeria occurred inside a field of Conservative options, and severely excluded any other. There may have been some among the members of these elites who wished for rapid decolonisation but history, somehow, does not record a massive degree of pressure on the part of any segment of the French bourgeoise on behalf of the Vietnamese and Algerian liberation struggles-or for the nationalisation of private enterprise, or for a major redistribution of wealth, or for a radical extension of social benefits, or for an extension of trade union rights; and so forth."20 This elite pluralism does not prevent the separate economic elites in France's capitalist society from constituting a dominant, political class with a high degree of cohesion and solidarity.

The administrative class in France also contributes directly and substantially to the exercise of state power. If the regime is weak and plagued with cabinet instability as happened under the third and fourth Republics, bureaucrats would step into the vacuum to play a dominant role in decision-making. But even when political executive is strong, as is the case in the Fifth Republic from 1958 onwards, top civil servants have succeeded in influencing the policies of successive Presidents from Charles de Gaulle to Jacques Chirac. State intervention has assumed more elaborate institutional forms in France than anywhere else in the capitalist world. As Schonfield points out, "in some ways, the development of French planning....can be viewed as an act of collusion between senior civil servants and the senior managers of big business. The politicians and the representatives of organised labour were both passed by."21

In France, the main channel of entry to top administrative positions is the Ecole Rationale d' Administration. The same is also true of the high military and judicial parts in the French State.

Two French authors point out that social origin is important not only for selection but also for promotion, "If a student of modest origin has successfully negotiated his university course, the entrance examination of the E.N.A. and.... the final examination where the cultural sifting is perhaps more severe than on entry, he will not, nevertheless, be on the same level as the offspring of great bourgeois families or of high officials: the spirit of caste and personal family relations will constantly work against him when promotions are made."22

The state elite in France does not view its commitment to capitalism as involving any element of class partiality. It subscribes to Hegel's exalted view of the state as an embodiment of reason and national unity, particularly reflected in the statement of its charismatic leader, General de Gaulle, when he said, "I belong to everyone and I belong to no one." He thus visualised himself, far above the interests of the lesser men, whether they were capitalists or workers, farmers or businessmen, the young or the old. De Gaulle's perception of his political role is similar to the historical role attributed to the two Bonapartes in the French politics of their own times. Yet his conduct of affairs showed that he protected economic and political arrangements in which large-scale capitalist enterprise played a crucial role. But that is, more or less true of other Presidents of the fifth Republic, including the Socialist Mitterand, from 1969 to the present day.

The evidence conclusively suggests that in terms of social origin, education and class situation, the persons who have occupied command positions in the French state system have been mostly drawn from the world of business property or from the professional middle classes.

18. P.Bourdieu and J.C. Passeon, Las Heritiers, pp. 13-14.

19. R. Aron, Sociologic des Societes Industrielles, Esquis\se d' une Theorie d'es Regimes Politiques, p. 81.

20. R. Miliband, The Stale in Capitalist Society, p. 43.

21. A Schonfield, Modern Capitalism, p. 128.

22. Bon and Bu mier, Les Noveaux Intellectuals, p. 165.

But the men and women born into the subordinate classes, which form the vast majority of the French population have fared badly not only in administration, the judiciary and the military, the non-elected segments of the state system but also in the legislatures and the cabinets which are exposed to competitive party politics on the basis of universal adult franchise, "In an epoch when so much is made of democracy, equality, social mobility, classnessness and the rest, it has remained a basic fact of life in advanced capitalist countries that the vast majority of men and women in these countries has been governed, represented, administered, judged and commanded in war by people drawn from other, economically and socially superior and relatively distant classes."23 This applies equally to advanced capitalist democracy as practised in France.

Left Wing Governments in France

The first such government to require consideration is the Popular Front government of Leon Blum, brought to power in 1936 which had won 376 seats with 147 seats for the Socialist Party, 106 to the bourgeois Radical-Socialist Party, and 72 to the Communist Party, the rest being shared by smaller parties of the Left. The opposition had 222 seats dispersed over a number of Rightwing parties. This victory of the Left was quite clear and decisive, thus constituting its biggest electoral success in the inter-war years. It signalled a grand show of radical, left wing and democratic strength against the internal and external threat of fascism. The victory of the Popular Front was immediately given a new dimension by the massive wave of strikes, with the occupation of factories by the workers. These strikes swept the whole country. This revolution of 1936 was a dramatic working-class uprising, although mainly peaceful, against capilatist oppression along with forceful demands for improvement in living conditions.

The Popular Front government was formed on 4 June, one month after the elections, with Leon Blum becoming its Prime Minister. It was composed of Socialists and Radicals, with Communists giving issue-based support from outside. In this potentially dangerous conflict between labour and capital, relief came to the besieged fortress of capital from the new left wing government itself. Roger Salengro, the new socialist minister of the interior, had promised on the eve of his appointment, "Let those whose task is to lead the trade union movement do their duty. Let them hasten to put an end to this unjustified agitation. For myself, my choice is made between order and anarchy. Against whosoever it may be, I shall maintain order."24

The Popular Front government did not try to establish industrial peace by using coercive power of the state. It brought the representatives of capital and labour on a negotiating table and made them sign the famous Matignon agreement. It endorsed the 40 "hour week, a general increase in wages and enlarged trade union rights. J. Bannier remarks, "the economic and social measures of the Popular Front, which were thought at the time to be quite revolutionary, seem now extraordinarily timid when compared to what has been achieved since then in France and abroad, not only by governments of the left, but also by governments making no profession whatever of radicalism."25

This assessment underestimates the difficulties and the opposition which the Blum government faced. The point is also relevant to the foreign policy of the government, especially its attitude to the Spanish Civil War. It adopted a policy of neutrality and non-intervention towards it. This failed to appease the Right, but helped to divide and demoralise the Left. Once relieved of its immediate fears, the opposition regained into confidence and began, with ever greater strength, to challenge the lift-wing regime, which then began a process of retreat. It resulted in the resignation of the Blum cabinet in June 1937. Leon Blum had made absolutely clear, after the elections, that he wanted merely to "administer the bourgeois state and, therefore, to "put into effect the Popular Front programme, not to transform the social system,"26 So the fact is that the short-lived Blum regime did even try to overcome the political, financial and international obstacles in its path. Blum had no wish to transform the exercise of power into its conquest.21 Thus the impact of the Popular Front 'experiment' upon the French social system

24. Quoted in Ibid., p. 94.

25. J. Bannier, Les Grandes Affaires Francaieses, p. 35

26. Dorothy M. Pickles, The French Political Scene, p. 130.

27. G. Lefranc, Histoire du Front Populaire, p. 141. For a perspective discussion of this distinction in Leon Blum's thought, see C. Audry, Leon Blum on la Politique du Juste.

was very limited because it did not fundamentally influence the distribution of political and economic power in French society.

Another case of a left-wing regime in France occurred at the time of its liberation in 1944, when traditional elites were massively discredited by their wartime record of collaboration with the Nazis. They were bereft of political influence when a resurgent and armed Left appeared on the verge of capturing state power in post-liberation France. But here also the reality was much less dramatic. There were two main reasons why appearance belied reality. The first was the status of General de Gaulle as the recognised leader of all Resistance movements in France including the Communists and consequently the potential leader of the post-liberation French government. But the general was determinded to deprive the left, especially the Communists, from an important role in the post-liberation settlement. In this de Gaulle was eminently successful.

But that achievement was facilitated "by a second factor in the political situation of France at the time of the Liberation, namely that the French Communist Party, though bent upon major economic and social reforms, was in no sense committed to anything resembling a revolutionary bid for power."28 The Communist Party, therefore, was satisfied with a marginal role in the reconstructed Provisional Government which de Gaulle formed on 9 September, 1944. It included two Communists, with minor ministries of public health and air, and four right wing socialists and the rest of his Cabinet consisted of conservatives. Some acts of nationalisation followed but they did not intend to transform the French economic and social order, whose continued capitalist character was taken for granted both by de Gaulle and socialist ministers of his Cabinet. As the Socialist Minister of Production put it at the time, "a wide free sector remains the fundamental condition of French activity and economic recovery."29

A year after the Liberation, on 21 October, 1945, general elections gave the Communist and Socialist Parties an absolute majority in the new Constituent Assembly, and also in the country. The 'classical Right' had been utterly defeated at the polls. But the Movement Republican Populaire (M.R.P.) regrouped the Right, gaining 141 seats, against 148 for the Communists and 134 for the Socialists. The M.R.P., as a crucially important instrument of conservatism, could play a role in governance because the Socialist Party insisted on its participation in a tripartite government that included the Communists. The M.R.P. and the Socialists also desired de Gaulle to continue as President, who insisted on the exclusion of the Communists from strategic ministries, such as defence, interior or foreign affairs. Instead, the Communists got four 'economic' ministries and their leader was given a portfolio signifying more rank than power.

In accepting so many insults and compromises, the Communists were trying to project their 'nationalist' image. Probably they believed that their participation in a clearly non-socialist and even anti-socialist government led by de-Gaulle, may ultimately lead to a socialist conquest of

power, with their own party at the head of affairs. This proved to be a miscalculation. Communist participation actually 'deradical-ised' the government by subduing the militant elements of the working class movement. This was what de Gaulle had hoped for when he took Communists into his government. He said later, "At least for a certain time, their participation under my leadership would help to assure social peace, of which the country had such great need."30

The situation did not undergo much change when de Gaulle suddenly tendered his resignation on 20 January 1946. Maurice Thorez became vice-premier with the Socialist Felix Gouin as Prime Minister. Inspired by the spirit of Yalta the French Communist Party proudly described itself as 'the Party of Reconstruction'. "But the 'reconstruction' in which it played so notable a part was that of a predominantly capitalist economy, and the renovation which occurred was that of a regime whose main beneficiaries were not the working classes but those capitalist and other traditional elites whose situation had at the time of liberation seemed so perilous.... it can at any rate hardly be doubted that the Communist presence in the government between 1944 and 1947, when the Communist

28. R. Miliband, The State in Capitalist Society, p. 103.

29. Quoted in B.D. Graham, The French Socialists and Tripartisme - 1944-47, p. 48.

30. Charles de Gaulle, Memoreis de Guerre, p. 276.

ministers were forced out, entailed no threat to the French dominant class, and was in fact of quite considerable advantage to it."31

The Gaullist Republic

The French politics during the Fourth Republic from 1946 to 1958 was characterized by dissensus and deadlocks. In 1947, once the Communists had gone into opposition, there were 183 opposition deputies out of 635. In 1951 there were 221, made up of the Communists on the left and the Gaullist R.P.F. on the right. In 1956 there were still 201 although most of the Gaullists had left the Assembly and their place was taken by a neo-fascist group led by Poujade. Thus the fraction from which the government majority had to be structured was 452 in 1947 and 414 in 1951, needing 318 votes out of a possible 635. Besides, the ruling bloc itself was sundered by France's historic cleavages. For these reasons, cabinets were unstable and their average life was less than seven months.

The Assembly of 1956 contained few Gaullists. Under instructions from de Gaulle, the R.P.F had dissolved itself. But his friends in the Assembly, the Senate, the army and the bureaucracy did not give up their efforts to recall the General at a suitable opportunity. It came in 1958 over the war in Algeria. This polarised French public opinion. The Communists supported the cause of Algerian independence, the far right demanded total repression and the ruling parties all split down the middle. The defection of the army proved the final straw. A cabinet crisis followed.

The military officers in Algiers started an insurrection. France feared a civil war. On 15 May, the General declared his readiness "to assume the powers of the Republic."

The officers of the armed forces publicy demanded the return of de Gaulle and the members of Parliament echoed their call. Faced by an army threat to invade France from Algerian soil, the French government resigned. On 1 June 1958 the Assembly expressed confidence, by 329 votes to 224, in de Gaulle as new Prime Minister, with full powers of governance for the next six months, authority to revise the constitution, and an immediate adjournment of the Assembly. It was really a Bonapartist coup d'etat. In the words of S. F. Finer, "The General was back in the saddle again. This time he would ride." It was a "swing from parliamentary institutions to some kind of Bonapartism."32

The Gaullist constitution was drawn up rapidly and submitted to the French people on 28 September 1958 for their approval in a referendum. Only the Communist Party opposed it but 80% of the voters approved it. De Gaulle was chosen President by an electoral college consisting of regional and local councilors. "Superficially the Constitution looks much the same as before.....But there are four vital differences.

The parliamentary representation of the public has been deliberately distorted. The legislature has been muzzled. The executive has been given a much greater weight in decision-making; and, notably, the presidency has been exalted at the expense of the prime minister and the Cabinet."

But this exaltation is due "more to practice than to the letter of the Constitution. On paper the prevalent notion is of a 'two headed executive' with a division and balance between the president..... and the prime minister." But in terms of "the other constitutional innovations....the presidential usurpation of power is clearly displayed."33 To begin with, the Prime Minister is appointed by the President in his discretion. Next, the president has the right to dissolve the Assembly whenever he thinks fit. Thirdly, he has a qualified right to bypass the legislature by ordering a referendum. Fourthly, the President possesses an emergency power of great dimension under Article 16. Finally, he is the 'arbitrator' under Article 5. "In practice this clause has thrown the cloak of constitutionality around flagrant breaches of the Constitution and enabled Charles de Gaulle to make it mean what it suited him to mean."34

Through the connivance of his Prime Ministers the President used his referendum power both as a personal plebiscite and, in one flagrant case in 1962, to amend the constitution in flat contradiction of Article 89. From 1958 to 1969, De Gaulle could remove a recalcitrant Prime Minister and choose his successor; he could override unruly opposition in the Assembly by

31. Relph Mcliband, The State in Capitalist Society, pp. 105-106.

32. S.E. Finer, Comparative Government, p. 300.

33. Ibid, p. 302.

34. Ibid. p. 304.

using procedural rules; he could ignore the constitutional rules by invoking his power of arbitration.

How did this happen ? First, a new electoral law favoured the united Gaullists over a divided opposition, and discriminated particularly against the Communists. In the 1958 election, the Gaullists and their conservative allies got 320 seats with 49% votes. The opposition parties secured 51% votes but received only 144 seats. The Communists with 21% votes cast in their favour could get only 10 seats while the Gaullists with 28% could claim 188 seats. Though his party was in a minority, de Gaulle nominated Michel Debre from his own party as his first Prime Minister. Paradoxically, the minority status of the Gaullist party enabled de Guile to expand the role of the presidency. As he proceeded to conciliate the Aligerian rebels, he came into clash with the inflamed, chauvinists among the 'Moderates' on his right but in the process received the support of the left-wing parties. They even overlooked his usurpations of the constitutional authority.

The General climaxed these unconstitutional usurpations of his authority in September 1962 by putting his constitutional amendment, to provide for a direct election of the President, directly for a popular referendum, in violation of the procedures clearly laid down in Article 89. The entire non-Gaullist majority of the Assembly passed a vote of no- confidence in the Gaullist cabinet. The President then dissolved the Assembly and called for a general election. The outcome stupefied all the opposition parties, both left and right. For the Gaullists, the election was a landside.

S. E. Finer says, "In vain did the General's opponents claim that the moral victory was theirs since the parties which had opposed de Gaulle's unconstitutional referendum had won sixty per cent of the total popular vote. For the hard political fact was that, with his minority vote of forty per cent, de Gaulled had picked up 229 metropolitan seats—only thirteen short of an absolute majority in the Assembly's and since in this election the Independent Republicans of M. Giscard d'Estaing had fought as allies of the Gaullist party, and had won twenty seats, this ensured the General and his prime minister something no government had possessed since the beginning of the Third Republic, and something that Debre, who was the chief architect of the 1958 Constitution, had never envisaged when he pioneered its drafting: namely, an absolute governmental majority in the assembly."35

The opposition parties of centre and left began to take the lesson of the electoral system with its second ballot to heart. The new mode of election for the president, adopted in 1962, requiring an absolute majority of the electorate either at first ballot or the second between two leading candidates of the first ballot, facilitated polarisation of the parties into two opposing blocs. The Gaullist party formed the nucleus of one of these blocs and the Socialist Party gradually developed into the nucleus of a rival bloc after a decade of trial and error. The Communists on the left and the neo-fascist groups on the right were electorally and politically isolated and marginalised and were compelled to align with what they believed was the lesser evil. Consequently, in the 1965 presidential election De Gaulle and Mitterrand received 44.6% and

31.7% votes respectively in the first ballot, and 55.2% and 44.8% votes respectively in the second ballot. By this time the Fifth Republic began to institutionalise itself.

In the words of de Gaulle, "The keystone of our regime in the new institution of a president of the Republic, designated by the reason and feelings of the French people to be the head of state and the guide of France." Then follows an extra-ordinary catalogue of the president's powers, real and fanciful, related to administration, defence, foreign policy, public safety and "the outstanding responsibility for the destiny of France and of the Republic' (Broadcast, 20 December, 1962.) The General established this exalted conception of his office through four avenues. The first was the docility of his cabinet, which became almost a rubber stamp for his decisions. The General ruled his cabinet and through it the Assembly. The second avenue was an over-use of the government's decree powers. When the Gaullists lost their majority in 1967 in the Assembly, the President relied on decrees to enact laws under Article 38. In contrast to this, the president invoked the emergency powers under Article 16 only once at the time of the Four Generals' Revolt in Algeria

35. S.E. Finer, Comparative Government, p. 308.

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in April 1961. Finer argues that the proclamaion of emergency was unconstitutional as there was no interruption in "the regular functioning of the constitutional organs of government" as required by Article 16.

The third avenue was de Gaulle's usurpation of the right to interpret the Constitution under cover of article 5. Despite the provision of a Constitutional Council and the Counseil d'Etat to deal with such matters, the President preferred to impose his personal interpretations. In 1960 he disallowed the convening of a special session of Parliamant under Article 29 requested by a majority of deputies to discuss the farmers' grievances. A somewhat similar case arose in 1961, once again provoked by agricultural unrest. Again , unable to prevent the Parliament's meeting, the President simply refused to let it debate agricultural bills because his view was that it must confine its deliberation to issues related to emergency alone. This unexpected interpretation provoked widespread anger. The opposition immediately tabled a motion of censure at the President of the Assembly ruled the censure motion out of order on the strange grounds that in his view the General did have the right of interpreting the constitution under Article 5. As Finer says correctly, this bizarre logic defies analysis.

However, the classic utilization of the 'arbitration power' to violate the Constitution was the use of referendum to amend the Constitution in 1962; when the mode of Presidential election was changed from indirect to direct without the required approval of Parliament under Article 89. So the final avenue to presidential supremacy has been the abuse of referendum and debilitation of Parliament. His charismatic leadership transformed the Gaullist Republic into a plebiscitary dictatorship. The Genera! told the voters in his broadcasts, "Iam the country's guide. To succeed I must have the support of the nation. That is why I appeal to you over the heads of inter mediaries."36

Legitimation of the Fifth Republic

From a capitalistic point of view, Gaullism had given France political stability, public order, a booming economy, a vast gold hoard, peace in Algeria and a nationalist and seemingly anti-American but pro-European foreign policy. At this moment, the tranquility of the French social and political life was rudely disrupted and the entire fabric toppled and seemed to disintegrate. The very legitimacy of the Fifth Republic was in question. The government was paralysed by a month-long general strike often million workers. Finer says, "The way was clear for a coup d' etat It did not happen, because of a covert...complicity between the so called revolutionary party, the Communists, and the Gaullist government, Brought to the jump, the Communist race-horse 'refused', the government regained the initiative and in new general elections scored a momentous victory over all its opponents of the centre and the left."37

The immediate conclusions from this Gaullist crisis of legitimacy can be drawn as follows:(l)The tradition, nay the cult of insurrection and Revolution, was still alive in France; (2) the Communist Party of France at this occasion did not prove to be an extra-constitutional and insurrectionary force; (3) the concept of a unified 'opposition of all the lefts', symbolized in the 1968 common programme was credible so long as the combined left, led by the Communists, was kept away from state power, and (4) General de Gaulle took advantage of this fundamental cleavage within the ranks of the French Left to resurrect his authority and legitimise the Fifth Republic.

The revolutionary crisis of 1968 proved to be a five-act play. The first act began with the activities of the ultra-left student agitators leading to a general strike of the French workers on 13 May, the tenth anniversary of the Fifth Republic. The second act included occupation of factories by the workers and M. Pompidou's decision to negotiate a settlement with the trade unions on economic issues. The third act involved a harassed Charles de Gaulle offering a popular referendum on a concept called 'participation' but the effort failed. Then began the riots in capital leading to failure of all talks between the government and the workers and the number of strikers reaching ten million.

Finer describes the scenario, "This was the revolutionary climax. The government clearly bad no control over the situation and widespread demands were voiced for the resignation of the prime minister and for the retirement

36. Quoted in Finer, Comparative Government pp.324-325.

37. S.E. Finer, Comparative Government, p. 326.

of de Gaulle. The political parties staked their claims to the succession: Mitterrand, leader of the Federation of the Left, declared he would be a presidential candidate in the event of an election, the Communists stated that they would naturally expect to share in any government, and Mendes-France, the leader of the doctrinaire P.S.U., himself announced his willingness to head a

new government of 'all the lefts.' But nobody did anything to bring all this about. They sat, apparently expecting the government would quit."38

The fourth act in the drama was the General's broadcast. He told the nation that he was not resigning; that he had cancelled referendum on 'participation;' and that he was dissolving Parliament and calling for immediate elections. The moment for taking a revolutionary action had passed. The negotiations with the trade unions began to bear fruits. The Gaullists started counter-demonstrations against what they described as the Communist-totalitarian threat to the Republic. France slowly returned to work in mid-June. The police moved to eject students from the premises which they had occupied and met no resistance. Social peace had been re-established. That is how the fifth act of the drama came —the denouement. The result of the election was a land-slide victory of the Gaullists and their allies. It was a giant step in the direction of legitimisation of the Fifth Republic.

At this stage, we can make five hypotheses. (1) The most important element in the development of the Fifth Republic during its first decade was the personal charisma of General de Gaulle. (2) Leaving out the charismatic personality of the leader, the constitution provided no solution for the situation where a non-charismatic President faced an Assembly in which his party was in a minority, and was compelled to work with a Prime Minister of a different political complexion. (3) The French dis-sensus had perished and the designed polarisation had not occurred. (4) the General could not be defeated in an election by a fractured opposition but could lose a referendum, as he did in 1969, leading to his resignation. (5) Except the Communists, all other parties had given their acceptance to the Gaullist Constitution.

The General's plan to reform the Senate, to reshape it in the Gaullist image, and to acquire new powers through a constitutional amendment, were rejected in a referendum held on 27 April, 1969 with 47.58 per cent votes in favour and 52.41 per cent votes against the proposal. The General's ambition to alter, delete or replace no less than 23 of the 89 articles of the current Constitution was thwarted by the people. As Finer put it, "Having by the illegal use of Article 11, whipped the French electorate on its bare arse, the General was now inviting it to kiss the rod as well."39 This meant that one General's attempt to delegitimise his own constitution of the Fifth Republic by suggesting comprehensive amendments had failed and his resignation after this event was a correct step in the direction of its further legitimisation.

This next election brought M. Pompidou to Presidential office with 44 per cent votes in the first and 57.6 per cent votes in the second ballot. The election closed the de Gaulle chapter. It opened another. This had been a free, fair and open election. All parties had taken part in it, including the far left, and the Gaullist candidate had won. Now Mitterrand's complaint that the Gaullist clique was retaining power through force or fraud was no longer valid. For the first time, the credentials of the President were not suspicious. In 1974, the French people elected Valery Giscard d'Estaing, a non-Gaullist conservative, as their President. Both in 1981 and 1988, the electorate chose Socialist Mitterrand as their President. Jacques Chirac was elected to Presidency in 1995 as a Gaullist leader. The succession of these leaders belonging to different parties in the Presidential office demonstrated conclusively that the Fifth Republic had finally achieved full legitimacy.

In a sense, the strategy and tactics of the French Communist Party during the revolutionary crisis of 1968 also helped in the ultimate legitimisation of the Fifth Republic. Jack Woddis believes that by abstaining from any adventurist call for an insurrection: "It avoided another Indonesian catastrophe, in which at least half a million Communists and others were massacred in 1965 after abortive coup against the military leaders; it secured material and democratic gains for the workers; it increased the

38. Ibid. 328.

39. Ibid, p. 338

people's desire to have done with de Gaulle, who was compelled to resign within a year of the general strike."40

The most important test of the Fifth Republic came when the Socialist President had to appoint a Gaullist Prime Minister in 1986 but despite their different political complexions, the experiment in cohabitation proved successful. The same Gaullist Prime Minister Chirac, who coexisted with the Socialist President Mitterrand at that time is now at the Elysee as President and he has to coexist with the Socialist Prime Minister, Jospin. The Communists are occasionally represented in Socialist cabinets without causing any constitutional or political embarrassment. Capitalist democracy is not weakened by their presence in some governments led by the Socialist Party; this in fact strengthens it.

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA (CONSTITUTION OF 1982)

CHAPTER I The Chinese Political Tradition

People's Republic

There is a saying in the People's Republic of China: "Tsou, tsou; ts'ou, ta'ou, kai kai" (Act, act you will make mistakes; correct them, correct them). Forty centuries of slow change lay behind China when the Communists took over the country in 1949 and brought to an end, as the Preamble to the 1954 Constitution of the People's Republic of China declared: "a long history of oppression and enslavement." The new Republic set before it the fundamental task of bringing about, step by step, the socialist industrialisation of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and the capitalist industry and commerce. By 1954, it was claimed that the necessary condition had been created for planned economic construction and gradual transition to Socialism. On September 20, 1954, the First National People's Congress solemnly adopted at its first session, held in Peking, the Constitution of the People's Republic of China. The Constitution "consolidates the gains of the Chinese People's Revolution and the political and economic victories won since the founding of the People's

Republic of China; and, however, it reflects the basic needs of the State in the period of transition, as well as the general desire of the people as a whole to build a socialist society."1

In a few years of the establishment of a People's Democratic Dictatorship, Chinese Communists surprised the world by their success in boosting industrial production, by extending strong and effective government throughout the country, by building massive army, in fact, wholesale militarization, and by improving the living conditions of industrial workers. In the international affairs the Constitution pledged the People's Republic to a firm and consistent policy "for the noble cause of world peace and the progress of humanity." But within just three years of its career, China began itself indulging in expansionism. It pounced upon Tibet and subjugated it. After consolidating its conquest there, it penetrated in the Indian territory, repudiated the International frontier, the McMahon Line, and launched an undeclared war. The Constitution had unequivocally declared that China had already built an indestructible friendship "with the great Union of the Soviet Socialist Republics." But soon China's relations with Soviet Russia deteriorated verging on open hostility and ideological denunciation.

The People and the Country

China is the world's most populous country. The 1982 census counted 1,000 million people as compared with the 1972 census which counted a population of 723.07 million people. China has succeeded in its reducing birth rate by an impressive 34 per cent between 1965-70 and 1970-80. The Government has now introduced a system of incentives and disincentives to induce people to observe one-child family norm in order to achieve zero population growth rate by the turn of the century.

China's territorial boundary is spread over 3,800,000 square miles. On the north are Himalayan ranges and on the south and east is the

1. Preamble to the Constitution of the People's Republic of China, 1954.

erstwhile Soviet Union. The People's Republic of China consists of provinces, autonomous regions and municipalities directly under the Central Government. The capital is Beijing.

Only a few million Chinese work in industry. Nearabout 70.3 per cent of the population is rural and essentially depend upon agriculture. There is too little good arable land in China to meet the needs of the population. Much of the country consists of desolate plains, barren mountains and winding paths, with paddy fields filling every inch of arable land. A bad season leaves millions hungry. No Government of China has yet been able to control the gods of weather. Malcolm MacDonald, who arrived in Hongkong on November 3, 1962, after a four-week tour of China, said, "The people and Government of China are confident but not complacent. They know and admit they are still inexperienced in modern affairs and the task of turning their colossal teeming country into a modern industrial and agricultural State is gigantic." MacDonald predicted it would take "a considerable number of years" for China to be "independent agriculturally" and "many more years than that before it achieved industrially." The position is not radically bright

even today. Under the Sino-American agreement, China was committed to buy six million tons of foodgrains annually from 1981 to 1984. Such massive imports of foodgrains greatly worried the Chinese leadership, as the country was committed to attaining self-sufficiency in food under the four-point modernisation programme on which Deng-Xiaoping and his associates, including the Premier, had staked their reputation and future. But this was too optimistic a hope due to the woeful shortage of arable land in China, coupled with vagaries of nature.

There is a good deal of empirical evidence to suggest that the average growth rate of Chinese economy during 1950-78 was nearly 6 per cent and in per capita terms 4 per cent. More significantly industrial production had grown at the rate of 9.5 per cent. With the help of the population and growth rate strategy, China was able, in a brief period of little more than two decades, to eradicate the worst form of poverty. There is no affluence but there is no destitution. It achieved a high literacy percentage and managed to provide adequate health facilities for the entire population. The economy of the country during recent years has been restructured with clear incentive for private enterprise and invitation to foreign capital investment. Such a reorientation of economic policy is logical in the perspective of the four modernisation goals—modernisation of agriculture, industry, science and technology, set before the nation at the National People's Congress Session held in September 1980. The earlier Plan (1976-85) was consequently abandoned and the new formulated in the light of new economic policy and experience of the past few years.

China is inhabited by various races, but the Hans, that is the Chinese, constitute the vast majority, only six per cent of the total population is non-Chinese and there are 12 racial groups with over 100,000 persons each. Some of the important of such groups are the Chuang, Hui, Uighur, Tibetan, Korean, Thai, Mongolian and Manchu. Despite racial and other diversities, linguistic and cultural homogeneity makes Chinese a strong and united nation. Their literature, customs, traditions, beliefs and faiths have all been greatly influenced by Confucianism. Their language and common acceptance of ideas, customs, philosophies, as Winfield remarked, "created a basic unity and homogeneity which has been binding in spite of differences in topography, climate, even in spite of variations in spoken language brought about by the absorption of new racial groups,"2

The official language is Chinese, although there are more than 150 Chinese dialects and other languages. Before 1949, religion-wise break up of the people was : Taoist, Confucianist 75 per cent, Buddhist 16 per cent, Muslims 8 per cent and Christians 1 per cent. Although the Constitution guarantees freedom of conscience and religion, but it also provides that the people shall enjoy "freedom not to believe in religion and to propagate atheism." Like other Communist countries, China, too, promotes atheism and discredits all kinds of religion.

HISTORY OF THE CONSTITUTION

From the Ancient to Manchu Dynasty

The history of the development of the Chinese people covers different periods, the ancient period is older than the Greek and Roman civilisations. Till the emergence of the Tang dynasty (618-

907) A.D.) several dynasties had ruled over the different parts of the country. The Tang dynasty was followed by several others till the rise

2. Winfield, G. F., China—The Land and the People, p. 7.

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of Manchu dynasty towards the close of the sixteenth century. Twelve emperors of the Manchu dynasty ruled and during this period the empire was consolidated and it prospered and progressed.

The East India Company carried on its trade with China in 1664, and it destroyed the monopoly of the Portuguese that they had hitherto enjoyed. The British merchants were only concerned with the accumulation of huge profits to themselves and consequently they freely encouraged the trade in opium oblivious of its effect on the health and earning capacity of the Chinese. The trade in opium resulted into the First (1841) and Second (1858) opium wars. One of the important causes of the opium wars was the Government's opposition to the British carrying on trade with Chinese people in opium, which had been declared as a contraband. But the real fact leading to both the wars was the anxiety of the British to get special rights and privileges, including equality of status, in dealing with the Chinese Government in China. The War of 1841 ended with the treaty of Nanking which provided, inter alia, cession of the Island of Hongkong to Britain, payment of 15 million dollars to British merchants as compensation, opening of ports of Canton, Aninoy, Foochow, Ningpo and Shanghai to British trade and residence. The treaty also guaranteed equality of status to the British. These terms were deemed essentially humiliating and there spread a wave of resentment throughout the country. The Chinese Government later on granted similar concessions to the Americans too.

The second opium war started on the British taking side of the Americans and French in their conflict with the Chinese over the abuses of extra-territoriality and also for the reason that the British merchants smuggled into Chinese territory contraband and other goods. The end of the Second War gave significant rights to foreigners in China, particularly to British and French. Later, similar rights were conceded to Americans also. All told, the total effects of both these wars were the political humiliation and economic bankruptcy of the Chinese. All this was attributed to the weakness of Manchu Government. The enlightened class of Chinese succeeded in making the people to rise against the Government at various places. The uprising was, no doubt, crushed with the help of foreigners, but it created an upsurge in the country which set the ball rolling for supplanting the Manchu dynasty. In the meanwhile a war was fought between China and Japan over the Korean question. Japan insisted on the recognition of Korea as an independent State whereas China claimed Korea as its tributary. China was defeated and Korea was declared an independent State.

China had to pay an indemnity to Japan also. But the most important sequel of China-Japanese war was a threat to the integrity of China. The Western Powers took advantage of the miseries of China and offered to lend her money freely to enable to pay the indemnity to Japan for concessions of trade. Russia, France and Germany made their own demands to obtain spheres of influence and each one succeeded in getting its own price. But in these concessions Britain saw a

threat to her dominant position in China. As a result of the Spanish American War, 1898, the United States had annexed Philippines and she naturally became interested in the Western Pacific and in China itself. John Hay, the Secretary of State, then enunciated the "Open Door" policy, which should provide equal opportunity to all nations to trade with China. All these happenings aroused China's deep indignation and it gave birth to a new revolutionary nationalist movement pledged to free the country from foreign domination and to establish a republican government in the country after overthrowing the Manchu regime.

New Chinese Nationalism

Sun Yat-Sen was the moving force of this movement. So zealously did he plunge himself in it that in 1895, he had to flee from China with a price on his head. Boxer uprising is the most important phase of the revolutionary movement. A secret society of the Boxers, outwardly started with the object of training youngmen in gymnastics and boxing, had its avowed object of overthrowing the Manchu dynasty, which they held responsible for the surrender of China to foreign powers. The Boxers, accordingly, directed their activities on attacking the foreign legations and Chinese Christians and glorified their existence by killing a few of foreign diplomats. The foreign powers combined together and raised forces to combat the Boxers, but they did not succeed beyond protecting their legations. It was at this stage that the United States came forward with its policy of "seeking a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers

by treaty or international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire." Russia did not accept the policy enunciated by the United States and occupied Manchuria. The Allied armies reached Peking for the relief of the foreign legations placing China entirely at their mercy. The outcome was the Boxer Protocol signed on September 7, 1901.

The Boxer protocol was not a treaty as it did not require ratification. In fact, its terms had been fulfilled by the Chinese Government even before it could be signed. The terms provided for repatriations for the assassinated, punishment for the authors of the crime, payment of indemnity of four hundred and fifty taels with interest at four per cent to be paid in thirty-nine years, occupation by allied troops of twelve specified places for keeping open communications between Peking and the Sen, improvement of commercial relations by amending the commercial treaties, etc. The Boxer movement though apparently suppressed, but the revolutionary spirit of the Chinese remained unabated and soon there emerged the Reformist Movement. The Reformist Movement, like its predecessor Boxer Movement, was anti-foreign and it aimed at overthrowing the Manchu dynasty. It also aimed to reform the entire life of the Chinese people by improving their social, economic and political lot. The young Chinese trained in western methods of education and institutions spearheaded the movement which soon spread even in the remotest parts of the country. Province after province revolted and the six-year-old Manchu Emperor abdicated paving the way for the establishment of a republic in 1911.

Sun Yat-Sen after his flight from China had directed the revolutionary movement from abroad. When the Manchu Emperor abdicated and the peace conference convened by various participants in the Reformist Movement was in session, he came back home and was elected the provisional President of the Republic of China. But the revolutionaries were divided amongst themselves in different parts of the country. In the South, Yuan Shih-Kai was declared President of another republic. Sun Yat-Sen was anxious to maintain the unity of the country and, accordingly, he resigned from the provisional Presidentship in favour of Yuan. Trouble again brewed up when the most powerful group under Sun Yat-Sen organised itself as Kuomintang, the National People's Party in 1912. Yuan obtained huge debts from England, France, Germany, Russia and Japan and declared himself Emperor in 1915. The Kuomintang revolted against Yuan who was obliged to postpone his coronation and eventually to restore the republic. But he soon died early in June 1916 and the former Vice President Li Yuan Hung became the President of the Republic, thus, establishing once again the unity of the country under the leadership of the Kuomintang.

The First World War dragged the Chinese Republic in new difficulties. China sought help from the United States to preserve neutrality. But when Japan entered the war on the side of the Allies she presented China with twenty-one demands. The Japanese demands were heavily tilted against China, but there was no way out and she was forced to concede fifteen out of twenty- one demands. Japan's position was, thus, inconceivably strengthened in the Far East. The Treaty of 1921, signed by nine powers3 bound the signatory powers : (1) to respect the sovereignty, the independence and the territorial and administrative integrity of China; (2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government; (3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China; (4) to refrain from taking advantages of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from counteracting action inimical to the security of the State. By another treaty, China's right to enjoy tariff autonomy was also recognised.

The October Revolution in Russia and the establishment of the Soviet State in 1917, affected the politics of China too. A number of prominent Chinese nationalists thought that only a Socialist State of the Soviet pattern could remove the economic and political ills of China. The advocates of the Marxian thesis became the left-wing of the revolutionaries. The Kuomintang opposed the Communists, who were under the guidance of Joffe, the Russian Representative. But in 1923, Sun Yat-Sen entered into an alliance with the Communists. They were allowed to enter the Kuomintang while retaining their own party

3. Great Britain, France, Italy, Belgium, the Netherlands, Portugal, Japan, the United States and China.

organisation. The Russians, keen to help them in establishing their national independence, sent Borodin to Canton to organise a new revolutionary republic in China and General Blucher to train the revolutionary army. Chiang Kai-shek, who had been in Russia as Sun's emissary, was placed at the head of the Whampa Military Academy, which produced the new leaders of the

Chinese army. The intensive propaganda of the Communists and devoted indoctrinating of the youth created bright chances of China's becoming red. Sun Yat-Sen died in 1925, and the Kuomintang acknowledged Chiang Kai-shek as their chief leader. But Sun's death had removed the unifying factor and soon open conflict arose between the Communists and the Kuomintang.

Chiang Kai-shek was an able military general and his military successes resulted in the new unification of China. The old Republic came to an end as also the Nanking Constitution under which it had worked. After establishing his leadership and influence of the Kuomintang, Chiang Kai-shek resigned his military post and under the law of October 25, 1928, established a new national government at Canton and put himself at its head. A National People's Convention adopted on May 12, 1931, a provisional Constitution which aimed to put into action Sun's three principles of People's Government, People's Livelihood, and People's Nationalism, that is, freedom from foreign control.

The events, then, followed are swift to some extent. In 1931, Japan occupied Manchuria and set up there a puppet government with a new name "Manchukus." The League of Nations failed to prevent Japan from violating its covenant and the terms of the Nine Power Treaty of Washington in 1921, to which Japan herself was a signatory. Chiang Kai-shek was left smarting under humiliation. During the Second World War Japan threw her lot with the Axis powers and China seized the opportunity and joined the Allies. Japan had occupied some part of the territory of China during the War. With the active aid of the Allies, China succeeded in getting it back and strengthened its position to the extent that it was included amongst the five great powers to get a permanent seat in the Security Council. The American forces and money also helped Chiang to combat the Communists who had started a virulent propaganda against his government. But the Communists with Russia's unprecedented help were able to drive Chiang's Government in the Island of Formosa in 1947. It was triumph for Communism and China became red. A People's Republic of China was established.

The Provisional Constitution

When the Communists came to power they did not base their government on a formal constitution analysing the machinery of government. Nor did they attempt one for the first five years of their career. There existed alone the Chinese People's Political Consultative Conference, a numerous body of 662 delegates representing the various political parties including the Communist Party, the various regions, mass organisations, the People's Liberation Army and the overseas Chinese. It was a motley of delegates, but with a common programme set forth by Mao Tse-Tung, which hinged upon his thesis of People's Democratic Dictatorship. It really served the provisional constitution for half a decade. The Organic Law consisting of 31 Articles was promulgated and it outlined the machinery of government which was to bring forth the fulfillment of the Common Programme and the basis for drafting of the constitution.

Drafting of the Constitution

A Committee to draft the constitution for the People's Republic of China was appointed in January 1953, under the Chairmanship of Mao Tse-Tung. The draft of the constitution was made available to the Conference, which accepted it in March 1954. Like the Stalin Constitution, and in order to give it the complexion of the constitution ordained by the people themselves, it was

submitted for discussion to the selected people representing different democratic parties and groups, and people's organizations of all sections of society. The discussions lasted for two months and certain amendments were also suggested thereto. The draft of the constitution thus amended was published and circulated amongst the people for general discussion. It was estimated that about 150,000 million persons participated in the public discussions for over two months. Here, too, the procedure was identical to the one adopted in Russia in 1936. The draft of the constitution was further amended in the light of suggestions emerging from these public discussions, which were formally adopted by the Central People's Government Council on September 9, 1954. The final draft was, then, reported to the First National People's Congress at its first session on September 20, 1954. In pursuance of this Constitution new governmental

organisation was set up on November 4, 1954.

The 1954 Constitution

The 1954 Constitution of the People's Republic of China summed up the struggle of the Chinese people to overthrow colonialism, feudalism and capitalism and proclaimed that the newly formed State was a single-multi-national State wherein all nationalities in China were united in one family of free and equal nations. The Constitution, accordingly, guaranteed equal status to all nationalities, prohibited discrimination or oppression against any nationality and acts which undermined the unity of the nation. All nationalities enjoyed freedom to use and foster the use of their spoken and written languages, and to preserve and reform their own customs or ways of life. The Constitution also guaranteed regional autonomy to all those national minorities whose people lived in compact communities. National autonomous areas were the inalienable parts of the People's Republic of China.

The Constitution established a democratic State led by the working class and based on the alliance of workers and peasants. It established a people's democratic dictatorship in order to build a prosperous and happy socialist society. But the establishment of the People's Republic of China would not usher in all at once a socialist society. Till the socialist society was built, the fundamental task of the State, during the transition period, was step by step, to bring about the socialist industrialisation of the country, and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce.

The Constitution contained a separate Chapter on Fundamental Rights and Duties of citizens. It recognised seven basic freedoms, inviolability of home and privacy of correspondence. Women enjoyed and exercised equal rights with men in all spheres of political, economic, cultural and domestic life and the State protected marriage, the family, the mother and child. The right to elect and stand for election was extended to all citizens who had reached the age of eighteen years. The duties of the citizens were more or less the same as prescribed in the Soviet Constitution of 1936. The Constitution granted the right to asylum to any foreign national for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

The 1954 Constitution was a brief document. It was really a transitional instrument. The National People's Congress was the highest organ of State authority and the sole legislative instrument in the Republic. It was a unicameral legislature elected for a term of four years. If for some exceptional circumstances new elections could not be held, the term of the sitting members was prolonged until the first session of the succeeding Congress. The Constitution required that the Congress should be convened once a year by its Standing Committee. Elections to the Second and Third Congress were held in accordance with the provisions of the Constitution and their sessions were annually convened. But no elections to the Congress were held from 1964 to 1974 and not a single session of the Congress was convened during this span of a decade.

The Standing Committee was the highest functioning organ of State authority which acted on behalf of the Congress between its sessions. Even this body did not meet after 1966 without amending the Constitution. The work of the Government was carried on by the extra-constitutional authority of the Chinese Communist Party hierarchy. The Constitution did not contain any provision relating to the role of the Communist Party, except for a perfunctory reference to "democratic Centralism" in Article 2. Both the Preamble to the Constitution and Article 19 simply acclaimed the Party that led the people of China to finally achieve their great victory in the people's revolution against imperialism, feudalism and bureaucratic capitalism. But the Party itself was paralyzed as its highest organs were replaced by the "proletarian headquarters" of Mao Tse-tung, which consisted of a small group of functionaries loyal personally to Mao. The "proletarian headquarters" was proclaimed the "sole leading organ of the entire Party, the entire Army and the entire Country.

Constitution of 1975

On 18 January 1975, the official communique announced that the session of the Fourth People's Congress was held from 13 to 17 January and passed a resolution expressing the conviction that China could be built into a powerful modern socialist country in another twenty years or so. Nothing was said about the revision of the Constitution in the official communique, but in the news trickling out through diplomatic sources and the Soviet Press it was revealed that the New Constitution had been passed. The first authoritative comment on the new Constitution appeared

in Pravda on February 5, 1975 and it was reproduced in the Soviet Review.

The 1975 Constitution, it was pointed out, enhanced the role of the people and legalised the structure of the State set-up that functioned during the last decade. The Chairman of the Chinese Communist Party was to be the Commander-in-Chief of the Armed Forces, in- eluding the Militia, and that many State, Party and military posts could be simultaneously held by the same persons. The "revolutionary committees" were put on a constitutional basis and were invested with the functions of the common organs of the local people's assemblies. They were also given power to appoint the chairmen of courts and relieve them of their posts.

The Preamble to the Constitution of 1975 embodied the philosophy of the Constitution. It explicitly affirmed the principle of direct Party rule which had been paralysed during the Cultural

Revolution and the following years. It clearly defined the existing social order and made explicit its ideological principles. In the end, it appealed to the people of all nationalities "to unite to win still greater victories."

The 1975 Constitution itself recognised the leading role of the Communist Party and stated with unmistakable clarity that the Communist Party of China was the "core of the leadership of the whole Chinese people". The Constitution also declared that the working class "exercised leadership over the State through its vanguard, the Communist Party of China"; the National People's Congress was "the highest organ of State power under the leadership of the Communist Party, the National People's Congress appointed and removed the Premier of the State Council and the members of the State Council on the proposal of the Central Committee of the Communist Party of China. Thus, the 1975 Constitution explicity affirmed the principle of centralised and direct Party rule over the Government and the Armed Forces which included Militia as well. The Constitution abolished the office of the Chairman of the Republic.

The striking feature of the Fundamental Rights incorporated in Chapter IV was that the Constitution conceded to the people the freedom of procession and the freedom of strike. The Constitution also omitted certain duties earlier prescribed by the 1954 Constitution, for example, to uphold the discipline at work, to keep public order and to respect social ethics.

The Constitution of 1978

Within three years of the existence of 1975 Constitution the National People's Congress was presented on March 1, 1978 with the draft of the revised Constitution which made provision of China's ambitious modernization plans. The draft Constitution also called for "consolidating the socialist economic base",, and "developing the production forces at high speed". This process, it was claimed, necessitated changes in the Articles of the 1975 Constitution covering State organs and personnel, and in order to give full play to socialist democracy to arouse the "serial-ist enthusiasms of the people of all the nationalities to strive for the fulfilment of the central task for the new period."

The fifth National People's Congress adopted on 3 March, 1978, the new Constitution. The Preamble to the Constitution was a thesis in Mao Tse-tung's leadership and his achievements. The 1978 Constitution for the first time highlighted the role of the Army by providing (Article 19) that the Chinese Liberation Army "is the workers' and peasants' own armed force led by the Communist Party of China". It was "the pillar of the dictateorship of the proletariat" commanded by the Chairman of the Central Committee of the Communist Party. The State devoted major efforts to the revolutionization and modernization of the Chinese Liberation Army, and strengthening the building of militia. Article 58 imposed "The lofty duty" of every citizen to defend the Motherland and resist aggression. The fundamental task of the armed forces was to safeguard the socialist revolution and socialist construction, to defend the sovereignty, territorial integrity and security of the State and to guard against subversion and aggression "by social imperialism, imperialists and their lackeys."

The Bill of Rights embodied in the Constitution was impressive as it embraced the political, social, cultural and economic life of the citizens. The Constitution expressed these Rights in

absolute and unqualified terms. But the real position was different. All the Chinese people did not enjoy all the freedoms enshrined in the Constitution. There were categories of people who were "non- people. This point was elaborated by MaoTse-rung himself. He declared that there were certain categories of people, such as "the henchmen of imperialism, the landlord class, the bureaucratic capitalists as well as the reactionary

clique of the Kuomingtang" who were 'non-people'. The law clearly prohibited the imperialists, the feudalists and the bureaucrats to exercise the right to vote and stand for election.

Another striking feature of the Constitution was that citizens enjoyed freedom of procession, demonstration and the freedom to strike, and had the right to "speak out freely, air their views fully, hold great debates and write high-character posters." But neither of these freedoms could he exercised against the constitutionally established ideology of the socialist State based upon Marxism-Leninism-Maoism thought.

The Constitution precisely defined the ideological basis by upholding the leading position of the Marxism-Leninism-Mao Tse-tung thought in all spheres of ideology and cultures. Art and culture, the Constitution prescribed, must be socialist culture- oriented based upon Marxism-Leninism-Mao Tse-tung thought.

All organs of State were required to maintain close contact with the masses of the people, rely upon them, heed their opinions, be concerned with their weal and woe, streamline administration, practise economy, raise efficiency and combat bureaucracy. Article 16 of the Constitution set the norms, and prescribed that the personnel of organs of State should earnestly study Marxism-Leninism-Mao Tse-tung thought wholeheartedly; serve the people; endeavour to perfect their professional competence, take an active part in collective productive labour; accept supervision by the masses; be models in observing the Constitution and law; correctly implement the policies of the State; seek the truth from facts and must not have recourse to seek personal gain.

The National People's Congress was the highest organ of State power and all authority emanated from it. It was both a legislative and Constituent Assembly; supervised the enforcement of the Constitution and Laws; decided on the choice of the Premier on the recommendation of the Central Committee of the Communist Party and on the choice of members of the State Council on the recommendation of the Premier; elected the President of the Supreme Court and Chief Procurator; examined and approved the economic plans, the State budget and the final state accounts; decided the question of war and peace and exercised such other functions as the National People's Congress deemed necessary.

Since the Congress met in session only once in a year, the Constitution provided for a Standing Committee to act and function on its behalf. It was the permanent acting body of the Congress. The Chairman of the Standing Committee performed all those functions which prior to 1975 belonged to the Chairman of the Republic; the office since abolished. The State Council composed of the Premier, the Vice-Premiers, the Ministers and the Ministers heading the

Commissions, was the organ of state power. It was the highest organ of State administration entrusted with the duty to see the proper implementation of the policy decisions it determined through the administrative departments and agencies into which the central administration was divided.

The role of the judiciary was given minor significance and it took only three Articles to describe it including the People's procuratorates. For the whole Republic there was the Supreme People's Procuratorate entrusted with the duty of exercising procuratorial authority to ensure observance of the Constitution and law by all departments under the State Council, the local organs of the State at various levels, the personnel of the organs of the State and the citizens.

SUGGESTED READINGS

Endicott, John E. and Heaton, W.R., The Politics of East Asia: China. Japan, Korea.

Misra, Kalpana, From Post-Maoism to Post-Marxism.

Moore, Barrington, Jr., Social Origins of Dictatorship and Dictatorship.

Skocpoi, Theda, States and Social Revolutions.

Waller, Derek J., The Government and Politics of the People 's Republic of China.

CHAPTER II The Constitution of 1982

Change of Policy

The Third Session of the Fifth National People's Congress that concluded its deliberations in the first week of December 1980 was momentous as a process to streamline and strengthen the institutional framework that had begun after Mao's death. It strongly reflected the deep-felt concern of the present leadership to ensure that China would not in future be rocked by political eruptions of the kind that occurred under Mao, with disastrous consequences to the country's development and the Party's morals. Retreat from the Cultural Revolution of the sixties was presented to the outside world in soft and undazzling language, although by then mopping up of the movement was common knowledge and shifts in policies emerging from the deliberations of the Fifth National Congress were the culmination of that process.

The Central Committee of the Communist Party headed by Hua Guofeng, who was also the Prime Minister, determined "new political norms and principles," four in number: to separate Government and Party posts and thereby to end the concentration of too much power to individual leaders; to consolidate the concept of collective leadership; to induct relatively younger men into responsible positions to pave the way for orderly transition in future; and to end the practice of life-long political vocation for ageing leaders. In conformity with these norms and principles Hua announced in the National People's Congress his own resignation from the

post of the Prime Minister along with seven Vice-Premiers. He retained his Party post as its Chairman and the Chief of the Party's Military Commission. The seven Vice-Premiers, who too had resigned also retained their Party posts.

The emphasis on decentralisation and liberalisation of the economy was also evident in the deliberations of the National People's Congress. This was again an unmistakable departure from the past line. The pragmatic acceptance of the realities of commodity economy and "responding to the needs of the market" in Hua's speech would have been unthinkable in Mao's time. Two changes in this respect were significant. The first was the introduction of a systematic taxation scheme which covered not only joint ventures started with Chinese and foreign investment in the process of modernization, but also the individual citizens. The second was the new citizenship law which banned dual nationality, except in cases where (as in Vietnam) a person was forced to adopt foreign nationality. This change ran counter to the basic Chinese understanding of the status of those born to Chinese parents irrespective of the place of birth. Every overseas Chinese was entitled so far to keep Chinese nationality in addition to his local status.

China's new socialist economy was to have a big place for the private sector. This was indicated by Xue Muqiao, adviser to the State Planning Commission and Director of the Economic Research Institute. He said at a seminar attended by businessmen and diplomats from several countries that China needed "a multi-faceted economy which includes a private sector" and "joint- socialist-private enterprise in which public stock would be owned by workers." The private sector's role had so far been confined largely to small individual enterprises mostly ethnic overseas Chinese. Xue Muqiao explained that private capital should "cover the holes" in the socialist systems. He did not spell out the "holes," but it was made amply clear that large and small private sector and joint enterprises would help to spur China's modernisation.

In this process of modernization the problem of population figured prominently and in order to restrict its growth, the National People's Congress in 1980, passed a new marriage law raising the age of marriage to 22 for males and

20 for females from 20 and 18 respectively, and also made it a duty for the married to practise family planning. The law, however, was not binding on the minorities, and much younger marriages.

Draft of the 1982 Constitution

The National Constitutional Revision Committee adopted a new draft of the Constitution of the People's Republic of China on April 21, 1982. The Revision Committee, presided over by Peng Zhen, Vice-Chairman of the Committee, reviewed, for ten days, article by article a revised draft of the Constitution submitted by the Committee's Secretariat, held discussion and made changes therein. The session of the Committee adopted a proposal that the draft be submitted to the Standing Committee of the National People's Congress for deliberations and approval before it was made public for nationwide discussion.

The Standing Committee at its 23rd Session that opened on April 22, 1982 considered the revised draft of the Constitution consisting of a preamble and four chapters containing 140 articles. The greatest change in the draft constitution was the reinstatement of a Chairman of the People's Republic and the establishment of a Central Military Council of the People's Republic to lead the armed forces of the country. The draft constitution as approved by the Standing Committee was made public for nationwide discussion, a usual practice both in China and U.S.S.R. One cannot possibly say with certainty the extent of amendments to the draft constitution emerging out of the nationwide discussion and the number and nature of the suggested amendments that were finally accepted by the National People's Congress.

The New Constitution

The draft constitution was adopted on December 4, 1982 by the Fifth National People's Congress at its Fifth session. It is fourth in the series; three in 1954, 1975 and 1978 preceding it. With the lone exception of Thailand, China has had more Constitutions than any other Asian country. The 1954 Constitution wore a transitional outlook and was to be basically amended once China had fully moved from the period of people's democracy to socialism. China had not moved to socialism both in 1975 and 1978 when it had new Constitutions. Nor has the fourth adopted in 1982. It acknowledges its achievement. It firmly pronounces that in some respects China has to continue within the framework of people's democracy and cannot hastily advance on the socialist path. The Preamble made this important aspect amply clear. It stated that under the leadership of the Communist Party and the guidance of Marxism-Leninism and Mao Zedong thought, the people of all nationalities will adhere to the people's democratic dictatorship and follow the socialist road, "steadily improve socialist institutions, develop socialist democracy, and improve, socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defence and science and technology step by step to turn China into a socialist country with a high level of culture and democracy."

This is a sharp break with the Constitution of 1975 which had spelled out a radical framework for the socialist development. In fact, it is denunciation of Maoism as is evident from the speech of Peng Zhen, Vice-Chairman of the Constitutional Revision Committee that he made at the 23rd Session of the Standing Committee of the National People's Congress. While explaining the principal points of the revised drafts he said, "since the founding of the People's Republic, China has had three Constitutions: the 1954 document was comprehensive in content, while 1975 and 1978 documents, restricted by the historical conditions at that time, were undesirable."1

Constitution as a Document

The 1982 Constitution, unlike its predecessor constitutions, is quite comprehensive and contains 138 Articles. The Constitution of 1954 contained 106 Articles though it was a transitional constitution. The Constitution of 1975 was the briefest in the series with 30 Articles in all. The 1978 Constitution contained 60 Articles, besides a lengthy Preamble. The pattern of the 1982 document differs from its predecessors in another respect and it is important to mark a break with the past. The Chapter on Fundamental Rights and Duties of Citizens constituted the penultimate chapter in the Constitutions of 1954, 1975 and 1978 whereas in the 1982 Constitution it gets a

place of precedence as Chapter Two, before Chapter Three, describing the structure of the State and it is in consonance with the practice in the Western democratic countries.

The 1982 Constitution aimed at righting the

1. Preamble to the Constitution of the People's Republic of China, 1954, p. 134.

wrongs of the Cultural Revolution (1966-1976), setting the country on the path of stability and modernization, and granting the Chinese citizens extensive freedoms and rights which are positive in essence and favourably compare with the Bill of Rights in Western democracies. The Constitution legitimises the guidelines and principles formulated since 1978 to develop a socialist democracy and legal system and reverses the effect of the Cultural Revolution which was characterised by social turbulence, economic decline and violation of people's "democratic rights." The provisions of the Constitution promote an active, stable and unified political system. Peng Zhen, Vice Chairman of the Constitutional Revision Committee, in a report to the National People's Congress, which adopted the document on December 4, 1982, said that the new Constitution "sums up the historical experience of China's socialist development, reflects the common will and fundamental interests of all nationalities in the country, conforms to the situation in China and meets the needs of socialist modernization."

The needs of social modernization are stated in the Preamble to the Constitution: "The basic task of the nation in the years to come is to concentrate its efforts on socialist modernization. " The Chinese People, the Preamble adds, are determined to work hard and self-reliantly to modernize industry, agriculture, national defence, and science and technology "step by step to turn China into a socialist country with a high level of culture and democracy."

The Preamble also stresses that China follows an independent foreign policy based on mutual respect and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence through developing diplomatic relations and economic and cultural exchanges. "China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress."

General Principles

Following the introductory section, constituting the Preamble, is the first chapter—"General Principles"—whose Articles cover the stipulations on the nature of the State.

The first Article in the Constitution states: "The People's Republic of China is a socialist State under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants." A people's democratic dictatorship, Peng Zhen explained, "means that the State practises democracy among the greatest number of people while narrowing the target of

dictatorship to just a handful of people (forces and elements which are hostile to, and try to undermine the socialist system). Article 1, therefore, contains the provision that the socialist system is the basic system of the People's Republic of China and "sabotage of the socialist system by any organization or individual is prohibited."

Here is a break between the earlier Constitutions and the Constitution of 1982. The precise definition of the Chinese State had varied in each Constitution. All had included the phrase that the system was "led by the working class and based on the alliance of the peasants and workers," but in the 1954 Constitution the State was a "people's democratic State" and in the 1975 and 1978 Constitutions it was "the dictatorship of the proletariat." Another significant departure from the 1978 Constitution is on the role of the Communist Party of China. Article 2 of the 1978 Constitution stated: "The Communist Party is the core of leadership of the whole Chinese people. The working class exercises leadership over the State through its vanguard, the Communist Party." The 1982 Constitution omitted this provision altogether and there is no mention of the Party in the Constitution except in the Preamble.

Article 3 of the 1982 Constitution introduces a new element that did not exist in the earlier Constitutions. It provides that the National People's Congress and the local congresses at different levels are institute through democratic election. They are responsible to people and subject to their supervision. All administrative, judicial and procuratorial organs are created by the people's Congresses to which they are responsible and under whose supervision they operate. The division of functions and powers between the central and local organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the Central authorities.

The People's Republic of China is a single multinational State. There are 56 nationalities and Article 4 declares that all nationalities are equal.

Discrimination against and oppression of any nationality are prohibited. Any acts that undermine the unity of the nationalities or instigate their secession are legally banned. The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to reform their "own ways and customs."

On the reunification of China, the Chapter on General Principles contains an Article (31), stating: "The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The Preamble to the Constitution enjoins a "lofty duty of the entire Chinese people including our compatriots in Taiwan, to accomplish the great task of of reunifying the motherland." After reunification with the mainland, according to Peng Zhen, Taiwan can enjoy a high degree of self-government as a special administrative region. "This power of self-government means, among other things, that the present social and economic system in Taiwan, its way of life and its economic and cultural relations with foreign countries will remain unchanged."

The General Principles also codify the new economic policies formulated and practised since 1978 to promote socialist modernization. The Constitution re-affirms public ownership of the means of production as the basis of China's socialist economic system, and calls for the development of diverse economic forms—state, collective and individual—while upholding the authority of the state sector. Though the socialist ownership is stressed, the Constitution also allows for the coordinated growth of the national economy through a comprehensive balancing of a planned economy with the supplementary role played by market supply and demand. In views of the past excessive and rigid control over planning and administration, the Constitution sets forth varying decision-making powers to state and collective owned enterprises in operation and management.

In order to accelerate the process of modernization and consistent with the new socialist economy as stated by Xue Muqiao, Adviser to the State Planning Commission, private sector is to have a big place now. "We need," he declared "a multi-faceted economy which includes a private sector," and "joint- socialist-private enterprise in which public stock would be owned by workers." Article 18 of the General Principles provides that China permits foreign enterprises, other foreign economic organisations and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organisations in accordance with the law of China. All such foreign economic enterprises as well as joint ventures with Chinese and foreign investment located in China, shall abide the law of China and, at the same time, their lawful rights and interests shall be duly protected.

On the philosophical side, a salient feature of the 1982 Constitution, is the increase in Articles on "socialist spiritual civilization," which according, to Peng Zhen, is manifested in higher education, scientific and cultural level, and in higher ideological, political and moral standards. Article 24 specifies: "The State strengthens the building of socialist civilization through spreading education in higher ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas."

This Article stipulates that the State advocates the civic virtues of love of the motherland and it educates the people in patriotism, collectivism, internationalism and communism and in dialectical and historical materialism. The Article also stipulates opposition to "capitalism, feudalist and other decadent ideas."

Included, as well, in the Chapter on General Principles, is a section in Article 2 which stipulates that all power in China belongs to the people, and that the people will administer State affairs and manage economic, cultural and social affairs in accordance with the law. In the aftermath of the Cultural Revolution and in the light of experience, China has restored to the Constitution not only what was relevant on the fundamental rights of citizens in the 1954 Constitution (rights omitted in the next two constitutions of 1975 and 1978) but made these provisions more specific and comprehensive.

During the Cultural Revolution people were arrested at will, placed on secret trial and given arbitrary sentences. Since 1976 after Mao's death, and especially since 1978, China has

formulated new criminal and procedural laws and regulations to develop democratic processes and improve the legal system. All such measures are

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now enshrined in the Constitution and dignity of the Constitution and law is required to be preserved at all levels. No organisation or individual does enjoy the privilege of being above the Constitution and law. Article 5 states: "All State organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. "All acts in violation of the Constitution and the law must be looked into."

Article 9 of the 1978 Constitution provided that the State protected the right of citizens to own lawfully earned income, savings, houses and other means of livelihood. The 1982 Constitution inserts a new provision in the right to property. Article 13 guarantees "by law the right of citizens to inherit private property." Inheritance of property does not fit into the Marxian concept of socialism, but the People's Republic of China also permits existence of capitalist enterprises, and invites investment of foreign capital and protects both by law.

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CHAPTER III Fundamental Rights and Duties of Citizens

The 1982 Constitution incorporates in Chapter Two an impressive list of Fundamental Rights and quite a few of them do not exist even in the Constitutions of some democratic countries of the West. The Chapter on Fundamental Rights also presents a discernible difference from the previous Constitutions. Fundamental Rights, in the earlier Constitutions, were relegated to a secondary position and were incorporated in the penultimate Chapter. They were also scanty in their content. The number of Articles in the Chapter on Fundamental Rights and Duties in the 1982 Constitution is 24 as compared to 16 in the 1978 Constitution. The newly-added contents which stress citizens' fundamental rights include: all citizens are equal before the law; personal dignity of citizens is inviolable. Insult or slander against any form is prohibited; extra-legal detention of citizens, or extra-legal deprivation or restrictions of citizens' freedom of persons by other means, is prohibited; and the freedom and privacy of correspondence of citizens are protected by law.

For the first time, rights of citizens are constitutionally rendered inseparable from their duties. Every citizen enjoys the rights guaranteed by the Constitution and law and simultaneously it is his duty to abide by the Constitution and law and respect the rights of his fellow citizen. Another innovation included in the fundamental rights is the duty of the State and society to ensure the livelihood of the retired personnel. The State and society also help to make arrangements for the work, livelihood and education of the blind, deaf-mutes, and other handicapped persons. Marriage, the family and child are protected by the State. Both husband and wife have the duty to practise family planning. Whereas it is the duty of parents to rear and educate their children likewise it is the duty of children to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is also prohibited.

Right to Equality

Article 33 defines citizenship. All persons holding the nationality of the People's Republic of China are citizens of China and they are equal before the law without any discrimination of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence. Equally, all citizens who enjoy rights must perform the duties prescribed by the Constitution and the law. Rights and duties are, therefore, inseparable and they go together for all citizens of the People's Republic of China.

Political Rights

All citizens who have reached the age of 18 have the right to vote and seek election to any office of a State organ, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status or length of residence except persons deprived of political rights according to law. Article 18 of the 1978 Constitution specifically deprived of political rights, as prescribed by law, those landlords, rich peasants and reactionary capitalists who had not yet been reformed. Article 35 of the 1982 Constitution does not specify ineligibility of a particular category of persons. It is to be determined by law. A similar provision existed in Article 85 of the 1954 Constitution.

In addition to the basic freedoms deemed as the pillars of democracy, the 1978 Constitution conferred on the citizens the freedom "to strike" and "have the right to speak out freely, air their views fully, hold great debates and write big-character-posters". The Constitution of 1982 went a little ahead conferred on the citizens the freedom of speech, of the press, of assembly of the association and also the right to procession and demonstration.1

1. Article 87 of the 1954 Constitution also conferred the right to freedom of procession and freedom of demonstration.

But all these freedoms are not absolute, although there is no specific provision in Article 35 itself that may restrict the enjoyment of the basic freedoms. Article 51 of the Constitution, itself a fundamental right, however, imposes broad limitations on the enjoyment of all kinds of rights irrespective of their contents. It stipulates: "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." If the provisions of Article 51 are coupled with Article 28 of Chapter one—the General Principles—the precise position with respect to enjoyment of basic rights and freedom becomes self-evident. It states: "The state maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals." The phrase "criminal activities" is all-embracing and may take cognisance of any activity which may be deemed criminal in the context of expediency of circumstances. And when the State undertakes to reform criminals, they are essentially the persons who are deemed criminals according to the prevailing political climate in the country.

Nothing can, therefore, be said, spoken or demonstrated against the socialist state under the people's democratic dictatorship. The Preamble enjoins on the Chinese people of all nationalities that under the leadership of the Communist Party and the guidance of Marxism-Leninism and Mao Zedong Thought to continue to adhere to the people's democratic dictatorship and follow the socialist road. The Preamble ends by exhorting "The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country" to "take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation."

There was a democratic ferment in China when widespread students' demonstrations swept the country in the first week of December 1986. The students demanded more democratisation and more reforms. Deng Xiaoping regime was certainly more democratic than its predecessor and there was an awareness on the part of Chinese leadership of the need for democratisation. But the Chinese leadership was in no mood to accept and launch another revolutionary movement at that juncture when Deng's economic reforms had met with severe criticism from the conservative elements in the Communist Party of China. The Government, therefore, promulgated stringent regulations, banning 'inter alia' unannounced demonstrations and the putting up of unsigned posters in public places. The penalty for violation of the ban was a stiff five-year imprisonment. But the students not only succeeded in defying the ban, they also secured the release of demonstrators who were arrested. What made the movement significant was the fact that the students agitating for democracy and freedom, had succeeded in securing support from a section of the Chinese bureaucracy.

Freedom of Religious Belief

Citizens of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion. Nor may they discriminate against citizens who believe in, or do not believe in, any religion. The State protects normal religious activities of all denominations. But no one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination.

There is enough available evidence now that freedom of religious belief in China was sufficiently curtailed till recently. The wholesale persecution of Chinese Muslims evoked widespread resentment among Muslims of the world. Christians and Buddhists (or Lamaists), too had been subjected to more or less the same treatment. The campaign against counter-revolutionaries was linked in 1951 with an intensive programme to subordinate religion to the State. In March 1951 a ruthless drive against Taoist societies and Christian missionaries was launched. Since 1979, however, various religions have gained a measure of toleration for their religious practices. Temples and mosques have been re-opened after being closed since the start of the Cultural Revolution. The ethnic upheaval and simultaneous rise of fundamentalism culminating into the disintegration of the Soviet Socialist Republics has made a sea-change in the policy and attitude of the Chinese Communist rulers towards ethnic minorities, their religion and culture.

Inviolability of Person and Home

Articles 37 and 39 deal with the inviolability of the person and home of a citizen, Article 37 guarantees the freedom "of person of citizens." No citizen may be arrested except with the approval or by decision of a people's procuratorate, which is responsible for legal supervision, or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation of citizens' freedom of person by detention or other means is prohibited as also the unlawful search of the person of citizens. This extra-legal detention of citizens, or extra legal deprivation or restriction of citizens' freedom of person by other means is an improvement on Article 47 of the 1978 Constitution. It did not also provide for prohibition of unlawful search of the person of citizen.

Article 39 guarantees the inviolability of the home of citizens. Unlawful search of, or intrusion into, a citizen's home is prohibited.

Personal Dignity of Citizens

Another newly added Article in the Chapter oh Fundamental Rights is the personal dignity of citizens. Article 38 makes the personal dignity of citizens inviolable and prohibits insult, libel, false charge or "frame-up" directed against citizens by any means or form.

Privacy of Correspondence

The freedom and privacy of correspondence of citizens are protected and it is another newly added provision that did not exist in the earlier Constitutions. Article 40 provides that the freedom and privacy of correspondence of citizens are protected by law. No organisation or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence. But this right is not absolute. It is provided that public security or procuratorial organs are permitted to censor correspondence, in accordance with procedures prescribed by law, in order to meet the needs of State security or of investigation into criminal offences.

Right to Criticise

Citizens have the right to criticise and make suggestions to any State organs or functionary. They have also the right to make to relevant State organs complaints and charges against, or exposures of, any State organ or functionary for violation of the law or dereliction of duty. But fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

The State organ concerned must deal with complaints, charges or exposures made by citizens "in a responsible manner after ascertaining the facts." No one may suppress such complaints, charges and exposures or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law.

Right to Work

Article 48 of the 1978 Constitution provided that citizens had the right to work and to ensure that they enjoyed this right. The State would provide employment in accordance with the principle of overall consideration, and, on the basis of increased production, the State would gradually increase payment for labour, improve working conditions, strengthen labour protection and expand collective welfare. The 1982 Constitution renders work both the right as well as the duty. It places more emphasis on duty and holds work as "the glorious duty of every able bodied citizen." All working people in State enterprises and in urban and rural economic collectives are enjoined to perform their tasks with an attitude consonant with their status "as masters of the country." The State promotes socialist labour emulation, and commends and rewards model and advanced workers. The State also encourages citizens to take part in voluntary labour in order to inculcate in them the spirit of patriotism and dedication to the motherland.

In order to ensure the enjoyment of the right to work, the State provides necessary vocational training to citizens before they are employed and using various channels creates conditions for employment, strengthens labour protection, improves working conditions and, on the basis of expanded production, increases remuneration for work and social benefits.

The concept of socialist emulation was borrowed from the erstwhile USSR Constitution and it means the mass movement of working people for higher productivity. A socialist society, it is explained, cannot achieve the desired results unless labour is imbued with socialist ideas and a socialist mind. The workers must exhibit a sense of duty in their work and, therefore, it contradicts the right to procession and demonstration as provided in Article 35.

Right to Rest

Closely allied to the right and duty to work is the right to rest which is concomitant to socialist

labour discipline and achievement of high productivity. The State, accordingly, provides and expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

Right to Retirement

The State prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of State. The livelihood of retired personnel is ensured by the State and society. Earlier Constitutions did not provide for retirement and a guaranteed livelihood for retired personnel.

Right to Material Assistance

Citizens have the right to material assistance from the State and society when they are old, ill or disabled. The State develops the social insurance, social relief and medical and health services

that are required to enable citizens to enjoy the right to material assistance. The State and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel. Article 50 of the 1978 Constitution did not provide for the preferential treatment to families of military personnel. Similarly, it only ensured the livelihood for the families of martyrs. Article 45 of the 1982 Constitution provides for pensions to such families.

This Article also provides that the State and society help in making arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens. There was no similar provision in the earlier Constitutions.

Right to Education and Research

Citizens have the duty as well as the right to receive education and the State promotes the all-round moral, intellectual and physical development of children and young people. Article 51 of the 1978 Constitution simply provided that the citizen had the right to education and did not prescribe it a duty as well. Duty to receive education implies that parents must compulsorily send their children to schools to receive education.

Citizens also enjoy the freedom to engage themselves in scientific research, literary and artistic creation and other cultural pursuits. The State encourages and assists creative endeavour conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art and other cultural work. Equality of Women

Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. The State protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women.

Protection of Marriage and Family

Marriage, the family and mother and child are protected by the State. Both husband and wife have the duty to practise family planning. Article 53 of the Constitution of 1978, provided that the State advocates and encourages family planning. The 1982 Constitution makes it a constitutional duty both for husband and wife to practise family planning.

Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents. This guaranteed duty of parents and children is more or less identical to the provisions of the 1977 Constitution of the USSR. Citizens in Soviet Russia are obliged to concern themselves with the upbringing of children, to train them for socially useful work, and to raise them as worthy members of a socialist society. Likewise, it is the duty of children to care for their parents and help them.

Another innovation provided by Article 49 of the 1982 Constitution of the People's Republic of China is that it prohibits violation of freedom of marriage and maltreatment of old people,

women and children. Even the 1977 Constitution of the USSR did not provide for prohibiting the maltreatment of old people, women and children.

Rights of Chinese Nationals

Article 50 protects the legitimate rights and interests of Chinese nationals living abroad and lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad. The protection of the lawful rights and interests of returned overseas Chinese is in pursuance of the new citizenship law (1980) which bans dual nationality, except in cases where (as in Vietnam) a person is forced to adopt foreign nationality.

Interests of the State

The exercise by citizens of their freedoms and rights may not infringe upon the interests of the State, of society and of collective, or upon the

lawful freedoms and rights of other citizens. Such categorical prohibition did not exist in the earlier Constitutions.

FUNDAMENTAL DUTIES

Every right has a corresponding obligation or duty. Without duties there can be no rights. A valid claim is both a right and duty. Harold Laski aptly said, "He that will not perform functions cannot enjoy rights any more than he who will not work ought to enjoy work." Without corresponding obligations the whole concept of rights becomes meaningless. As the State, acting through the government, maintains and coordinates rights, it is the duty of every citizen to help the government in realizing the purpose of the State for which it exists. This means that a citizen owes a duty to the State as organised in government. That is the theory of rights.

The 1982 Constitution of the People's Republic of China constitutionalised the basic principle of rights by providing in Article 33 that every "citizen enjoys the rights and at the same time must perform the duties...." The earlier Constitutions simply carried a list of duties incorporated in the Chapter on the Fundamental Rights and Duties of Citizens but neither of them categorically spelt out that rights and duties are inseparable and that a citizen enjoys the rights and at the same time performs the duties.

Apart from the Articles relating to fundamental rights where duties are specifically stated along with a particular right—Article 42 (the right as well as the duty to work), Article 46 (duty as well as the right to receive education), Article 49 (the duty to practise family planning), and Article 51 (in the exercise of rights a citizen may not infringe upon the interests of the State, of society and of the collective, or upon the lawful freedoms and rights of other citizens)—the Constitution prescribes the following duties for citizens.

Unity of the Country

The foremost duty of every Chinese citizen is to safeguard the unity of the country and the unity of all its nationalities. The People's Republic of China is a multi-national State comprising fifty-six nationalities with their own distinct customs, beliefs, languages and mode of life. The people of all nationalities in China, says the Preamble to the Constitution, have jointly created "a splendid culture and have a glorious revolutionary tradition." Both the victory of China's new-democratic revolution and the success of its socialist cause have been achieved by the Chinese people of all nationalities. In the struggle to safeguard the unity of the nationalities and as such of the country," it is necessary," the Preamble adds, "to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local-national chauvinism." Discrimination against and oppression of any nationality and acts that undermine the unity of the nationalities or instigate their secession are prohibited2. The State, accordingly, suppresses treasonable and other counter-revolutionary activities, penalises actions that endanger public security and disrupt the socialist system.3

To Abide by the Constitution

Article 53 enjoins on all citizens to abide by the Constitution and the law, keep State secrets, protect public property and observe labour discipline and public order and respect social ethics. China is a socialist State under the people's democratic dictatorship and it is the basic system of the country as manifested in the Constitution. Sabotage of the socialist system by any organisation or individual is prohibited.4 All State organs, the armed forces, all political parties and public organisations and all enterprises and undertakings must abide by the Constitution. No organisation or individual is above the Constitution and the law.5 The Constitution is the fundamental law of the State and it commands supreme legal authority. The citizens have, therefore, as the Preamble says, "the duty to uphold the dignity of the Constitution and ensure its implementation."

To Safeguard the Honour of China

It is the duty of citizens of China to safeguard the security, honour and interests of the motherland. They must not commit acts detrimental to the security, honour and interests of the Motherland. The Preamble exhorts the Chinese people to fight against all forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.

2. Article 4.

3. Article 28.

4. Article 1.

5. Article 5.

Defence of the Motherland

It is the sacred duty of every citizen of the People's Republic of China to defend the Motherland and resist aggression. It is the honourable duty of all citizens to perform military service and join the militia in accordance with the law. All able-bodied persons who are young and within the range of specified age limit, as prescribed by law, have the constitutional duty to perform military service both during peace and war time in order to keep the country prepared to meet aggression of any kind.

To Pay Taxes

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law. Tax is a compulsory contribution by citizens to meet the expenditure of the State and there is no quid pro quo in it. It is the duty of every citizen to pay taxes, national and local, punctually and regularly to enable the government to perform its functions adequately, efficiently and effectively.

SUGGESTED READINGS

Bannerji, Shibnath- The Chinese Government and Politics

Waller, Derek J. The Government and Policies of the People 's Republic of China.

CHAPTER IV The National People's Congress

Highest Organ of State power

The National People's Congress is the highest organ of State power1 and all authority of the People's Republic of China flows from it. Till 1982, it was the sole legislative authority of the country and now, according to the Constitution of 1982, it is exercised both by the National People's Congress and its Standing Committee2 which is a permanently acting body. It amends the Constitution and supervises its implementation, elects the President and Vice-President of the Republic and recalls or removes them from office; decides on the choice of the Premier, Vice-Premiers, State Councillors, Ministers and the Auditor-General and Secretary-General of the State Council and recalls or removes them from office; elects the Chairman of the Military Commission and decides on the choice of other members of the Military Commission, elects the President of the Supreme Court, Procurator-General and recalls or removes from office all these incumbents; examines and approves national plans; examines and approves the State budget; alters or annuls improper decisions of the Standing Committee: approves the establishment of provinces, autonomous regions and municipalities directly under the Central Government; decides on the questions of war and peace, and exercises such other functions and powers as the highest organ of State power should exercise.3 The Constitution, thus, confers on the National People's Congress unlimited powers and authority.

A Unicameral Legislature

The National People's Congress is a unicameral legislature in a unitary multinational State. It is composed of deputies elected by provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces. All citizens of China who have reached the age of 18 years have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence except persons deprived of political rights according to law. The number of deputies and the manner of their election are prescribed by law.4 All the minority nationalities are entitled to appropriate representation.5 The total number of Deputies to the Fifth National People's Congress in 1983 approximated 3,300. In 1988 the membership approximated 2,700.6

Election of deputies is conducted by the Standing Committee of the National People's Congress for a term of five years. Two months before the expiration of the term of the Congress, the Standing Committee is required by the Constitution to ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent elections to the succeeding Congress, it may be postponed by a decision of more than two-thirds majority vote of the number of members of the Standing Committee of the current People's Congress and its term extended. But elections to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances. The Constitution is silent on the nature of those exceptional circumstances.7

The National People's Congress meets

1. Article 57.

2. Article 58.

3. Articles 62 and 63.

4. Article 34.

5. Article 59.

6. The Fourth Congress had a total membership of 2,835 deputies.

7. Article 60.

once in a year and is convened by its Standing Committee. A session may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies so propose.8 There is no provision in the 1982 Constitution, as it was in the earlier Constitutions, for advancement or postponement of a session.9 It means that session of the Congress must now be convened once every year. When the Congress meets, it elects a Presidium. The organisation and working procedure of the Congress and its Standing Committee are prescribed by law.

Privileges and Duties of Deputies

No deputy may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the Congress is not in session, with out the consent of its Standing Committee. Deputies may not be called to legal account for their speeches or votes at meeting of the People's National Congress.10

Article 76 provides that Deputies must play an exemplary role in abiding by the Constitution and the law and keeping State secrets and, in production and other work and their public activities, assist in the enforcement of the Constitution and the law. Deputies should maintain close contact with the units which selected them and with the people, listen to and convey to the appropriate organs the opinions and demands of the people and work hard to serve them. They are subject to the supervision of the units which elected them. The electoral units have the powers, through procedures prescribed by law, to recall deputies.

Functions and Powers

The National People's Congress exercises the following functions and powers:

(1) The Constitution amending power rests with the National People's Congress. Amendments to the Constitution may be proposed either by the Standing Committee of the National People's Congress or by more than one-fifth of the Deputies to the Congress. If the proposed amendment or amendments are adopted by two-thirds majority of all the Deputies, the Constitution stands amended.

The process of amendment has varied with each Constitution in the series. The Constitution of 1954 provided that a majority of two-thirds vote of all the Deputies was necessary for adopting a constitutional amendment. The 1975 Constitution substituted the two-thirds majority vote to a simple majority of the Deputies and the Constitution of 1978 even dropped this. It only provided that the Constitution would be amended by the National People's Congress. The 1982 Constitution restored the original majority of two-thirds as it existed in the 1954 Constitution. The National People's Congress supervises the enforcement of the Constitution. The duty of upholding the dignity of the Constitution is so vital that the Constitution makes every organ of State authority to ensure its implementation. All acts in violation of the Constitution "must be looked into." The Constitution defines the "basic system and basic tasks of the state in legal form", it is, accordingly, the fundamental law of the State and has supreme legal authority.

(2) The National People's Congress enacts and amends basic statutes relating to criminal offences, civil affairs, the State organs and other matters on which the Congress may deem necessary and expedient to legislate. The power to legislate on subjects other than those mentioned above is exercised by the Standing Committee of the Congress. In the earlier Constitutions the National People's Congress possessed the sole authority to enact statutes. The law-making process consequently suffered enormously, particularly since 1965. The National People's Congress, because of its huge number of members and a brief session once in the year, and that, too, often postponed, gave just formal approval to the bills already formulated and as a result the Standing Committee had been performing the real act of legislation. This process has been legitimised under the 1982 Constitution. Enactment of statutes, with the exception of those

which should be enacted by the National People's Congress, has been transferred to the Standing Committee of the Congress.

(3) The National People's Congress elects, the President and the Vice-President of the Republic for a term of five years each. The offices of the President and the Vice-President were abolished by the 1975 Constitution. The 1982 Constitution restored both these offices which had existed under the 1954 Constitution.

8. The earlier Constitutions had no such provision.

9. Under the 1954 Constitution no session of the Congress was convened from 1964 to 1974.

10. Article 74.

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(4) The Congress decides on the choice of the President of the Republic, and also decides on the choice of the Vice-Premiers, State Councillors, Ministers incharge of ministries or commissions. It has also the power to recall or remove from office all the aforesaid incumbents. The Standing Committee, however, decides, when the National People's Congress is not in session, on the choice of Ministers in charge of Ministries or Commissions upon nomination by the Premier.

(5) It elects the Chairman of the Central Military Commission and, upon the nomination by the Chairman, other members of the Commission. The Congress also recalls or removes from office all such incumbents. It also elects the President of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate and may recall or remove them from office.

(6) The Congress examines and approves the plan for the national and social development, and the State Budget, and the reports on their respective implementation. It alters or annuls inappropriate decisions of the Standing Committee of the Congress. The Congress also approves the establishment of provinces, autonomous regions, and municipalities directly under the Central Government, and decides on the establishment of special administrative regions and the systems to be instituted there.

(7) Decisions on questions of war and peace are taken by the National People's Congress. But when the Congress is not in session the Standing Committee decides on the proclamation of state of war into the event of an armed attack on the country or in fulfillment of international treaty obligations concerning defence against aggression.

(8) Finally, there is a general provision vesting the National People's Congress with authority "to exercise such other functions and powers as the highest organ of state power should exercise." This power of the Congress is not bound by any limitation and may embrace any subject or matter.

Deputies to the National People's Congress have the right, in accordance with procedure prescibed by law, to submit bills and proposals within the scope of its functions and powers. The Deputies have also the right to address questions, in accordance with procedure prescribed by law, during the sessions of the Congress to the State Council or the ministries and commissions, "which must answer the questions in a responsible manner."11

The Congress establishes a Nationalities Committee, a Law Committee, a Financial and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special Committees as are necessary. These special committees work under the direction of the Standing Committee when the Congress is not in session. The Special Committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the Congress and its Standing Committee. The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports. All organs of State, public organisations and citizens concerned are under a constitutional obligation to supply the necessary information to those Committees of inquiry when they conduct investigation.12

THE STANDING COMMITTEE

The Standing Committee of the National People's Congress is the permanent working organ of the Congress. As the Congress meets only once in a year and that too for a brief session, it appoints a committee to act on its behalf, during the interval preceding the next session of the Congress, in carrying out the powers and functions that the Constitution confers on it as the highest organ of State power. The Standing Committee, being the creature of the Congress that acts on its behalf, is constitutionally bound to submit a report to the Congress of all its actions and activities and is responsible to the Congress to all intents and purposes.13 The Congress also alters or annuls inappropriate decisions of the Standing Committee. Hitherto the Standing Committee did not exercise legislative functions. The 1982 Constitution empowers it to enact or amend statutes with the exception of those which should be enacted by the National People's Congress.14 This has been done to streamline administration and it was one of the significant innovations

11. Article 73.

12. Article 71.

13. Article 69.

14. Article 67(2).

that the framers of the 1982 Constitution had introduced. The other in this process is the provision that the National People's Congress must meet in session once in a year. No session of

the Congress was convened between 1964 to 1974. Till the Constitution of 1982 became operative the session of the Congress could be "advanced or postponed."

Composition and Organisation

The Standing Committee is composed of the Chairman, the Vice-Chairmen, the Secretary-General and the members,15 all told about 200 in number, and are elected by the Congress. Minority nationalities are entitled to appropriate representation on the Standing Committee. The term of the Standing Committee is five years, but the National People's Congress has the power to recall them from office. No one on the Standing Committee can hold any post in any of administrative, judicial or procuratorial organs of the State.

A significant feature of the 1982 Constitution is limiting the tenure of important State functionaries to two consecutive terms, thus, eliminating the de facto system of life-long tenures that had hitherto existed. Accordingly, the Chairman and the Vice-Chairmen of the Standing Committee can not serve for more than two consecutive terms.'6

The Chairman of the Standing Committee convenes its meetings and presides over them. The Vice-Chairmen and the Secretary-General assist the Chairman in the performance of his functions.17 Executive meetings of the Committee with the participation of the Chairman, the Vice-Chairmen and Secretary-General "handle the important day-to-day work" of the Committee.18 The Standing Committee exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.19 The organisation and working procedure of the Committee are prescribed by law.

The office of the President of the Republic was abolished by the 1975 Constitution and the dignified functions of that office were vested in the Chairman of the Standing Committee. He performed the functions of receiving foreign diplomatic envoys, promulgated law and decrees, ratified treaties concluded with the foreign States and other ceremonial functions. With the restoration of the office of the President of the Republic by the 1982 Constitution, those powers have been taken back from the Chairman of the Standing Committee.

Powers and Functions

In Western democracies the function of interpreting the constitution which is written rests with the judiciary and the process is known as the judicial review. In the United States there is no direct authority in the Constitution which empowers the Supreme Court to declare the constitutionality of any act, federal or State, and interpret the Constitution. But Chief Justice Marshall declared in Marbury v. Madison (1803) that judicial review is a part of the constitutional law of the country and it is inherent in a written constitution. In India, the Constitution specifically provides for judicial review.

But in Communist countries, though the Constitutions are written, the judiciary is specifically debarred from interpreting the Constitution. In the People's Republic of Chian the power to interpret the Constitution is vested in the Standing Committee of the National People's Congress. The theory of separation of powers has no relevance in a Communist polity.

The Standing Committee shares with the National People's Congress the power to legislate. The National People's Congress enacts and amends the basic statutes and the nature of these basic statutes is explained in Article 62 (3) of the Constitution. With the exception of those Statutes "which should be enacted by the National People's Congress," the Standing Committee is competent to enact or amend on residuary matters. All those persons who are members of the Standing Committee, together with Deputies to the National People's Congress, have the right, in accordance with the procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee. The Standing Committee can also propose amendments to the Constitution.

The Standing Committee enacts, when the National People's Congress is not in session,

15. Article 65.

16. Article 66.

17. Article 68.

18. Ibid.

19. Article 66.

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partial supplements, and amendments to statutes enacted by the Congress provided that such partial supplements and amendments do not contravene the basic principles of these statutes. The Committee also interprets these statutes. The Constitution is silent on the nature of the statutes that the Committee interprets. But the blanket provision that the Standing committee exercises the power "to interpret statutes" embraces the basic statutes that the National People's Congress had enacted as well as the statutes enacted by the Standing Committee itself.

The Committee also examines and approves, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the State budget that prove necessary in the course of their implementation.

Supervision of the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate is another important function of the Standing Committee. It annuls those administrative rules and regulations, decisions or orders of the State Council that in its judgment contravene the Constitution and the statutes. The Committee also annuls those local regulations or decisions of organs of State power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations of the State Council.

When the National People's Congress is not in session, the Standing Committee decides upon nominations made by the Premier, on the choice of Ministers in charge of ministries or

Commissions, the Auditor-General or the Secretary-General of the State Council; decides upon nomination by the Chairman of the Central Military Commission, choice of other members of the Commission; appoints and removes Vice-Presidents and Judges of the Supreme Court, members of the Judicial Committee and the President of the Military Court at the suggestion of the President of the Supreme Court; appoints and removes Deputy Procurator-General and procurators of the Supreme Procuratorate, members of the Procuratorial Committees and Chief Procurator of the Military Procuratorate at the suggestion of the Procurator-General of the Supreme Procuratorate, and approves the appointment and removal of the chief procurators of the people's procuratorate of provinces, autonomous regions and municipalities directly under the Central Government.

The Standing Committee decides on the appointment and recall of plenipotentiary representatives abroad. It decides on the ratification and abrogation of treaties and important agreements concluded with foreign States. This power of appointment and recall of ambassadors accredited to the foreign States, decision on the ratification and abrogation of treaties and important agreements concluded with foreign States is the exclusive power of the Standing Committee whether the National People's Congress is in session or not.

When the National People's Congress is not in session, the Standing Committee decides on the proclamation of a state of war in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression. The Committee decides on general mobilization or partial mobilization and decides on the enforcement of martial law throughout the country or in particular provinces, autonomous regions municipalities directly under the Central Government.

The Standing Committee institutes systems of titles and ranks for military and diplomatic personnel and other specific titles and ranks, and institutes State medals and titles of honour and decides on their conferment. The Committee also decides on the granting of special pardons.

Finally, the Standing Committee is empowered, to exercise such other functions and powers as the National People's Congress may assign to it.

Role of the Standing Committee

The Constitution holds the National People's Congress as the highest organ of State power and its jurisdiction extends to all subjects and matters and the Constitution empowers it "to exercise such other functions and powers as the highest organ of state power should exercise." It elects the members of the Standing Committee and has the power "to recall, all those on the Standing Committee." It can alter or annul inappropriate decisions of the Standing Committee. Though a creature of the National People's Congress to which body it is responsible and reports on its work, the Standing Committee eclipses the authority of the National People's Congress in practice. The actual functionary for the exercise of the powers and functions of the Congress is its

Standing Committee; the permanent and continuing working organ of State power in fact and law. The National People's Congress meets once in a year for a short period and with its colossal membership of approximately 2,700 and that, too, assembled in a unicameral legislative chamber, it has neither the time nor the means to deliberate and discuss on all those issues that come before the Congress for approval and adoption. It only puts formal approval over already formulated bills by the Standing Committee and endorses the decisions taken by the Committee during the period that intervened between one session of the Congress and the other. Even if the Congress can find time to examine any matter and action taken, it is only ex post facto attempt which has practically no utility. Before 1982 the National People's Congress was the sole Legislative Assembly and the Standing Committee formulated the legislative measures and resolutions and they were approved the the Congress as a matter of routine. The de facto system of legislation has been legitimised by the 1982 Constitution and the Standing Committee has been empowered to enact and amend statutes with the exception of basic statutes that the Congress can only enact or amend. But even basic statutes can be supplemented and enacted by the Standing Committee, when the Congress is not in session, provided that they do not contravene the basic principles of these statutes.

As an interpreter of the Constitution and the statutes, whether basic or enacted by itself, the authority of the Standing Committee is final and unquestionable. To give a phrase a new interpretation is to give it a new meaning, and to give it a new meaning is to change it. Though it is absolutely not possible that the interpretation given by the Standing Committee may even smack of a deviation from the Party line, yet in terms of Constitution the exclusive power of the Standing Committee to interpret the Constitution and the statutes makes its authority unique from all other organs of State power including the National People's Congress.

The Standing Committee is alone responsible for completing elections of the deputies to National People's Congress two months before the expiration of its five-year term. If, however, exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of at least two-thirds of the members of the Standing Committee. The election of deputies to the succeeding National People's Congress is required to be completed within one year after the termination of such exceptional circumstances. But who determines the existence of exceptional circumstances and their termination? All such decisions are taken by the inner circle of the Party and, then, there is inter- locking of government and the Party at all levels of the organs of State particularly at the top level and both the Party and the political system in China, as it was in the USSR, are based on the principle of democratic centralism, which has been sanctified by the Constitution in Article 3 of Chapter One—General Principles. All the same, the importance of the Standing Committee in the matter cannot be denied. Then, the Standing Committee convenes the annual session of the National People's Congress and it may be convened "at any time the Standing Committee deems this necessary." There was no such provision in the earlier Constitutions.

The Standing Committee supervises the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate. It is claimed that the supervision system provided by the 1982 Constitution has the same functions as "Constitutional Committees or courts of other countries. Our system conforms to the conditions of legal system of our country."20

The Standing Committee can also annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution and the statutes. It can also annul those local regulations or decisions of the provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations.

The Standing Committee exercises extensive power of appointment, in some instances when the National People's Congress is not in session, and in others under the jurisdiction assigned to the Standing Committee itself. Coupled with it is the Committee's power of removal of a category of functionaries from office on its own determination.

In the domain of foreign affairs the powers exercised by the Standing Committee are impressive and vital too. It alone decides the appointment and recall of envoys accredited to foreign States and decides on the ratification and abrogation

20. "Nobody is above Constitution and Law," excerpts from Renmin Ribao (People's Daily) circulated by the Embassy of People's Republic of China, New Delhi.

of treaties and important agreements concluded with foreign States. When the National People's Congress is not in session, the Standing Committee decides on the proclamation of a state of war and in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression. The Committee also decides on general mobilization or partial mobilization and on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities under the Central Government.

The Constitution also empowers Standing Committee, when the Congress is not in session, to enact partial supplements and amendments to statutes that have been enacted by the Congress and examines and approves partial adjustment of the plan for national economic and social development and the State budget that prove necessary in the course of their implementation.

Such is the extent of the authority of the Standing Committee that no other organ of State power can rival it. It, however, goes to the credit of the Standing Committee that it has exercised its powers judiciously, effectively and efficiently, though the centre of direction remains the inner circle of the Communist Party of China. Those who direct the Party find their due positions in the Standing Committee, the State Council and the National People's Congress. This fact of synchronisation of determination of policies and decisions at all higher levels of powers is the leading reason for the Standing Committee to become the real and actual centre of the exercise of State power. Peter S. Tang aptly said, "...like the Presidium (USSR), the Standing Committee serves as a small and manageable group for giving the necessary legal form and authority to acts of State which are essentially decided upon in higher councils of the Party."

SUGGESTED READINGS

Bannerjee Shibnath , The Chinese Government and Politics.

Kahin, George McT, Major Governments of Asia.

Walen, Derek J., The Government and Politics of the People's Republic of China.

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CHAPTER V The President of the Republic

The Constitution of 1982 restored the offices of the President and the Vice-President of the Republic1 that had existed under the Constitution of 1954, but ceased to exist with the enforcement of the 1975 Constitution. Liu Shaochi had succeeded Mao in this post of the President till the outbreak of the Cultural Revolution when he was removed from the office and disgraced. According to the 1975 and 1978 Constitutions the duties and functions of the President of the Republic, which were essentially dignified or ceremonial, were conferred on the Chairman of the Standing Committee. The Chairman of the Standing Committee presided over the work of the Standing Committee, received foreign diplomatic envoys and in accordance with the decisions of the National People's Congress or its Standing Committee promulgated laws and decrees, dispatched and recalled plenipotentiary representatives abroad, ratified treaties concluded with foreign States and conferred State titles. The Vice-Chairman of the Standing Committee assisted the Chairman of the Standing Committee in his work and could exercise part of the Chairman's functions and power on his behalf.

Election and Term of Office

The President of the Republic of China is elected by the National People's Congress for a term of five years, for the same term as that of the National People's Congress. Any citizen of the People's Republic of China who has the right to vote and to stand for election and has reached the age of 45 years2 is eligible for election as President of the Republic. The Constitution also provides for the office of the Vice-President of the Republic, who assists the President in his work. The Vice-President fulfils all the conditions of the President for his eligibility to the office and is elected in the same way and for the same term as the President. Both the incumbents of these two offices can not serve for more than two consecutive terms.

If the office of the President falls vacant, the Vice-President succeeds to the office of the President. In case the office of the Vice-President falls vacant, the National People's Congress elects a new Vice-President to fill the vacancy. In the event that the offices of both the President and the Vice-President fall vacant, the National People's Congress elects a new President and a new Vice-President. Prior to such elections, the Chairman of the Standing Committee temporarily acts as the President.

The Vice-President assists the President in his work. The Vice-President "may exercise such parts of the functions and powers of the President as may be deputed by the President.3 He is, thus, the agent or deputy of the President with no plenary powers. He exercises the power of the President only when he succeeds to the Presidency.

Functions of the President

The President, in pursuance of decisions of the National People's Congress and its Standing Committee, promulgates statutes; appoints and removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries and commissions and the Auditor-General and Secretary-General of the State Council. He confers State medals and titles of honour and issues orders of special pardons. The President proclaims martial law and a state of war and issues mobilization orders. Under the 1954 Constitution the Chairman of the Republic commanded the armed forces and was also the Chairman of the National

1. The incumbents of both these offices were designated as Chairman and Vice-Chairman of Republic by the 1954 Constitution.

2. Under the 1954 Constitution the age fixed for eligibility was 35 years.

3. Article 82.

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Defence Council.4 Whenever he deemed necessary, the Chairman convened a Supreme State Conference and acted as its chairman. He submitted the views of the State Supreme Conference to the National People's Congress, the Standing Committee, the State Council or other bodies concerned for their consideration. The 1982 Constitution did not revive these powers of the President.

THE STATE COUNCIL

The State Council is the Central Government of the People's Republic of China and it is the executive body of the highest organ of State power; it is the highest organ of State administration. Being the highest executive body of the highest organ of State power, it is but natural that the top Party political leaders are associated with this decision-making organ of the Government in order to ensure the proper implementation of such decisions through the administrative departments and agencies into which the central administration is divided.

Composition of the State Council

The State Council is composed of the Premier, the Vice-Premiers, the State Councillors, the Ministers in charge of ministries, the Ministers in charge of Commissions, the Auditor-General, and the Secretary-General. The organisation of the State Council is prescribed by law. The Premier has overall responsibility for the effective and efficient functioning of the State Council where- as the Ministers have overall responsibility for the ministries or commissions under their charge.

The choice of the Premier is decided by the National People's Congress upon nomination by the President of the Republic whereas the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or Commissions and the Auditor-General and the Secretary-General of

the State Council is decided upon the recommendation of the Premier.5 The term of office of the State Council is five years. The Premier, Vice-Premier and the State Councillors can serve only for two consecutive terms.6 The National People's Congress has the power to recall or remove from office the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions and the Auditor-General and the Secretary-General of the Council.7 The Standing Committee decides, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions or the Auditor-General and the Secretary-General of the State Council upon the nomination by the Premier.8

Working of the State Council

The Premier directs the work of the State Council. The Vice-Premiers and State Councillors assist in the work of the Premier.9 The Premier has overall responsibility for the State Council and the State Council is responsible, and reports on its work, to the National People's Congress or, when the Congress is not in session, to its Standing Committee.10

The Ministers in charge of Ministries or Commissions are responsible for the work of their respective departments and convene and preside over ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments. The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions and orders issued by the State Council.

The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of State financial and monetary organisations and enterprises and undertakings. Under the direction of the Premier, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or public organisation or individual. The State Council has a Secretariat under the direction of the Secretary-General of the Council. Steps are being taken to reduce the number of staff in the State Council

4. Article 85.

5. Article 62.

6. Article 87.

7. Article 63.

8. Article 67 (9).

9. Article 88.

10. Article 92.

and rationalise the portfolios of various ministries. About one-third of the State Council membership was axed in 1982.

In order to streamline the functioning of the State Council, the Constitution now stipulates that the executive meetings of the State Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council. The Premier convenes and presides over the executive meetings as well as plenary meetings of the State Council. It means that numerous Ministers, Vice-Ministers and chiefs of commissions and Bureaus will now be normally excluded from the executive meetings of the Council and, thus shall be manageable meetings facilitating speedy transaction of work which was hithero retarded by unmanageable composition of the State Council. The Constitution definitely distinguishes between the executive meetings and plenary meetings of the council,11 both convened and presided over by the Premier. The 1954 Constitution also made this distinction.

Functions and Powers

The State Council adopts administrative measures, enacts administrative rules and regulations and issues decisions and orders in accordance with the Constitution and the Statutes. It submits its proposals to the National People's Congress or its Standing Committee, when the Congress is not in session, for necessary approval and implementation. The Council lays down the tasks and responsibilities of the ministries and the commissions to exercise unified leadership over the work of the ministries, and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions. It exercises unified leadership over the work of local organs of State administration at different levels throughout the country and also lays down the detailed division of functions and powers between the Central Government and organs of State administration of provinces, autonomous regions and municipalities directly under the Central Government.

The Council draws up and implements the plan for national economic development and social development and the State budget. It directs and administers economic affairs and urban and rural development, affairs of education, science, culture, public health, physical culture and family planning. It also directs and administers civil affairs, public security, judicial administration, supervision and other related matters. Conduct of foreign affairs and conclusion of treaties and agreements with foreign States, direction and administration of the national defences, affairs concerning the nationalities and safeguarding the rights of minority nationalities and the right of autonomy of the national autonomous areas constitute another important bunch of the functions and powers of the State Council.

The Council protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned oversea Chinese and of the family members of Chinese nationals residing abroad.

It alters or annuls inappropriate orders, directives and regulations issued by the ministries and commissions and of local organs of State administration at different levels. The Council

approves the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and approves the prefectures, counties, autonomous counties, and cities.

The Council of State shares with the Standing Committee the power to decide on the enforcement of martial law in parts of provinces, autonomous regions and municipalities directly under the Central Government. But it has no power to decide on enforcement of martial law throughout the country. It is within the exclusive jurisdiction of the Standing Committee.

The Council examines and decides on the size of administrative organs and, in accordance with the law, appoints, removes and trains administrative officers, appraises their work and rewards and punishes them. The National People's Congress or its Standing Committee may assign to the Council of State with such other functions or powers as may be deemed necessary and expedient. A similar provision has been made in Article 67 (21) relating to the powers and functions of the Standing Committee. But it is in sharp contrast to the general and all embracing power that Article 62 (5) confers on the National People's Congress. The Congress can exercise such other functions and powers as the highest organ of State power may decide. The Standing Committee and the State Council can exercise only such functions and powers as the National

11. Article

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Peo-pie's Congress may "assign" to them.

THE CENTRAL MILITARY COMMISSION

The Central Military Commission, directly under the National People's Congress, is an innovation of the 1982 Constitution and it sharply departs from the earlier Constitutions. It does not quite compare with the National Council of Defence presided over by the Chairman of the Republic as it existed under the 1954 Constitution. The Constitution of 1975 abolished the National Council of Defence and the 1982 Constitution gives the 1954 Defence Council absolutely a new orientation. The National Military Commission is a numerous body composed of a Chairman and other members. The Chairman is elected by the National People's Congress and the choice of other members of the Commission is decided, upon nomination by the Chairman, by the Congress.12 The National People's Congress may also recall or remove them from office.13 The Commission is responsible to the Congress and its Standing Committee.14 The Standing Committee also supervises the work of the Commission.15 The Central Military Commission is, therefore, not a part of the State Council though it forms apart of Chapter Two of the Constitution which, inter alia, deals with the State Council.

The Constitution of 1978 vested the command of the armed forces of China in the Chairman of the Central Committee of the Communist Party. It also stipulated that the Chinese People's Liberation Army "is the workers' and peasants' own armed force led by the Communist Party of China; it is also the pillar of the dictatorship of the proletariat."16 In order to avoid concentration of power of commanding the armed forces into the hands of a single person, the 1982

Constitution places its command under a collective organisation—the Central Military Commission— whose work is under the constant supervision of the Standing Committee. The Chairman of the Commission has overall responsibility for the Commission and he is responsible to the National People's Congress and its Standing Committee. The term of office of the Central Military Commission is five years. It is a single five-year tenure for the Chairman of the Commission as well as for its other members. The Constitution specifically fixes two-tenure consecutive election of the President of the Republic, Vice-President of the Republic, the Chairman of the Standing Committee, the Premier, Vice-Premiers and State Councillors, the President of the Supreme Court and the Procurator-General, but it is only one-term tenure in the case of the Chairman as well as other members of the Central Military Commission. Xu Bing, a researcher with the Law Institute of the Chinese Academy of Social Sciences, says: "Most countries place their heads of States in command of their armed forces. But our armed forces are under an organization so as to guarantee that the command of the armed forces does not fall in the hands of one person, but remains in the hands of the people."17 Article 29 of the Constitution declares that the armed forces of the People's Republic of China belong to the people."

Appraisal of the State Council

The powers and functions of the State Council are very wide and impressive. There is no sphere of administration which it does not direct and control. The Constitution ordains the State Council as "the highest executive body of the highest organ of State power." It is the creature of the National People's Congress and reports and is responsible to it for the exercise of its functions and powers or when the Congress is not in session to its Standing Committee. The Standing Committee enforces the responsibility of the State Council by its supervisory power over its work. It may also annul those administrative rules and regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes. The responsibility of the State Council, or the Ministers in charge of ministries and commissions is further invoked through the medium of questions, which the deputies have the right to address during the sessions of the National People's Congress and by members at meetings of the Standing Committee. The Constitution categorically stipulates that the State Council or the ministries and commissions "must answer the questions in a responsible

12. Article 62 (6).

13. Article 63 (3).

14. Article 94.

15. Article 67 (6).

16. The Constitution of the Republic of China, 1978, Article 19.

17. "New Constitution is uniquely Chinese," Special to China Daily and circulated by the embassy of the People's Republic of China, New Delhi.

way".

The 1982 Constitution also strengthens the position of the Premier which had been eroded during the Cultural Revolution. The 1978 Constitution did not assign any function or position of eminence to the Premier vis-a-vis other members of the State Council except that the National People's Congress decided on the choice of other members of the State Council upon recommendation of the Premier. The choice of the Premier rested with the Central Committee of the Communist Party18 and this choice the National People's Congress accepted invariably.

The 1982 Constitution retrieves the position of the Premier. The nomination of the Premier now rests with the President of the Republic and the National People's Congress makes the choice. The Congress decides on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries and commissions, the Auditor-General and the Secretary-General of the State Council upon recommendations by the Premier. The position of the Premier is further strengthened by the Constitution by stipulating that the Premier has overall responsibility for the State Council, that the Premier directs the work of the Council and that the Vice-Premiers, and State Councillors "assist" the Premier in the work of the Council. The Constitution also provides that the Premier convenes the executive as well as plenary meetings of the State Council and presides over both. The executive meetings of the Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council and it means exclusion from executive meetings of the Council of other categories of ministers. It is a sort of "inner council" and was created in order to rationalise administration which was almost in shambles.

Despite all these efforts to restore the preeminence of the Premier, his position cannot be compared with his counterpart under a cabinet system of government. In a country where democratic centralism is the key-note of the administrative and political set-up, the position of the Premier and, in fact, all other functionaries of the State is dwarfed by the top-level Party men who determine the Party line, no matter whether they are young or old. The basic system of the State may be "democratic", in reality it is minus democratic principles and practices. In a socialist State democratic centralism cannot and does not permit otherwise.

Even the Constitution itself does not allow freewheeling to the State Council within the sphere of functions assigned to it. The Standing Committee of the National People's Congress supervises its work and annuls those rules, and regulations, decisions or orders of the Council that may, in the judgment of the Committee, contravene the Constitution and the statutes. The Standing Committee interprets the Constitution and the statutes also and the meaning it gives is final and unchallengeable. It has been aptly said that the supervision system that the 1982 Constitution provides "has the same functions as Constitutional Committees or Courts of other countries" and the Chinese system "conforms to the conditions and legal system" of that country.

SUGGESTED READINGS

Bannerjee Shibrath, The Chinese Government and Politics.

Endicoft, John E. rd Heaton, W.R., The Politics of East Asia : China, Japan, Korea

Kahin, George McT, Major Governments of Asia.

Waller, Derek J. The Government and Politics of the People's Republic of China

Ward and Macridis, Modern Political Systems : Asia.

18. The Constitution of the People's Republic of China, 1978, Article 22 (4).

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CHAPTER VI The Judicial System

Role of the Judiciary

The judiciary plays an insignificant role in a socialist system and is even scantily described in the Constitutions of their respective countries. Under the 1954 Constitution of China twelve brief Articles in all including the system of people's procuratorate, dealt with the judiciary. The 1975 Constitution devoted only six printed lines and the 1978 Constitution took three Articles to describe it, one exclusively dealing with the people's procuratorate. The 1982 Constitution is no exception to this pattern, though it has thirteen Articles in all, five are devoted to the procuratorate system.

Socialist countries reject the Anglo-Saxon jurisprudence and the theory of the Separation of Powers has no place in this system. The socialist jurisprudence regards Judiciary as an arm of administration and its role is to provide a machinery for easy and speedy decision of cases and, more importantly, to educate the citizens to uphold and strengthen the socialist system in a spirit of dedication to the socialist ideology. The Preamble to the 1954 Constitution and the Organic Law of the People's Courts stated that the People's Courts in all their activities would educate citizens in their loyalty to the country and voluntary observance of laws. The law of the country was and is construction of socialism guided by Marxism— Leninism and Mao Zedong Thought. The 1982 Constitution defines the basic system and basic task of the State in legal form. Since it is the fundamental law of the land and supreme legal authority, "the country", as the Preamble says, "must take the Constitution, basic system and basic tasks of the State in legal form. Since it is the fundamental law of the land and supreme legal authority, "the country must take the Constitution, as the basic norm of conduct," and they have the duty to uphold the dignity of the Constitution and ensure its implementation, that is, maintain, preserve and strengthen the socialist State under the people's democratic dictatorship. It is, accordingly, the duty of the courts to inculcate in citizens the spirit of devotion to the cause of socialism, to observe the basic norm of socialist conduct; to safeguard the unity of the country, to abide by the Constitution and law and to help the State in suppressing treasonable and other counter-revolutionary activities and penalise actions that endanger the public security and disrupt the socialist economy and other criminal activities and reform the criminals.

Organisation of Courts

The judicial authority of the People's Republic of China is exercised by the Supreme People's Courts, and the local people's courts at all levels. The Constitution also establishes military courts and special people's courts. But the people's courts are the only judicial organs of the State. The organisation of the people's courts is prescribed by law. All cases handled by the people's courts except for those involving special circumstances as specified by law, are heard in public and the accused has the right to defence. Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and procuratorate are required to provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality. The people's courts, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organisations or individuals.

The people's courts constitute the collegiate system in the administration of justice. The Constitution of 1978 provided that, in accordance with the law, the people's courts "apply the system whereby representatives of the masses participate as assessor in administering justice"

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(Article 41). It further provided: "with regard to major counter-revolutionary or criminal cases, the masses should be drawn in for discussion and suggestions." There is no identical provision in the 1982 Constitution, as in Article 41 of the 1978 Constitution. It simply says that the organisation of courts is prescribed by law. The prevailing law provides for the collegiate system in the administration of justice. In cases of first instance justice is administered by a collegiate bench consisting of a judge and people's assessors, with the exception of simple civil cases, minor criminal cases and other cases provided by law. In cases of appeal or protest, justice is administered by a collegiate bench of judges. People's courts at all levels set up judicial committees and justice is administered by a collegiate bench consisting of a judge and people's assessors, with the exception of simple civil cases, minor criminal cases and cases otherwise provided by law. In cases of appeal or protest, justice is administered by a collegiate bench of judges. Members of judicial committees of local court are appointed and removed by the people's congresses at the corresponding levels upon the recommendation of the presidents of the local people's courts. Members of the judicial committee of the Supreme People's Court are appointed and removed by the Standing Committee of the National People's Congress at the suggestion of the President of the Supreme People's Court. Meetings of the judicial committees of different sets of courts are presided over by the presidents of the concerned courts. The Procurator-General of the Supreme People's Procuratorate and local people's procuratorate at the corresponding levels have the right to attend such meetings and participate in the discussion. The task of the judicial committees at all levels is to sum up judicial experience and to discuss cases of great importance or difficult cases as well as other questions relating to judicial work.

An appeal may be brought by a party from a judgment or order by a local court as a court of first instance to the court of the higher level in accordance with the procedure prescribed by law. The people's procuratorate may lodge a protest against such a judgment or order before the court at the next higher level in accordance with the procedure prescribed by law.

If a person sentenced to capital punishment considers as erroneous the judgment or order of an intermediate court as a court of last instance, he may apply to the court at the next higher level for re-examination. A judgment of a basic court and a judgment or order of an intermediate court in case of capital punishment, is required to be submitted to the higher court for approval before execution. If the president of a court finds, in a legally effective judgment or order of his court, some definite error in the determination of facts or application of law, he must submit his judgment or order to the relevant judicial committee for disposal. If the Supreme Court finds some definite error in a legally effective judgment or order of any lower court, or if an upper court finds such error in such judgment or order of a lower court, they have the authority to review such cases themselves or to direct a lower court to conduct a retrial. If the Supreme People's Procuratorate finds some definite error in legally effective judgment or order of a court at any level, or if it finds such error in such a judgment or order of a lower court, they have the authority to lodge a protest against the judgment or order in accordance with the prescribed procedure of judicial supervision.

The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. The Standing Committee supervises the work of the Supreme People's Court. Local courts are responsible to the local people's congresses at corresponding levels and are subject to their supervision. The judicial work of the lower courts is subject to their supervision by the upper courts. The judicial administration at all levels is directed by the judicial administrative organs.

The term of the President of the Supreme People's Court is five years and he does not serve for more than two consecutive terms. The Standing Committee appoints and removes Vice-Presidents and judges of the Supreme People's Court and members of the Judicial Committee. Presidents of local courts are elected by the people's congresses at the corresponding levels and other judges are appointed and removed by the Standing Committees of the local people's congresses. The Standing Committee also supervises at its. corresponding level the work of people's court.

Citizens who have the right to vote and stand for election on attaining the age of 18 years are eligible to be elected as people's assessors. Their term of office and the method of their selection is decided by the Ministry of Justice. The assessors exercise their functions in the courts, are members of the division of the courts in which they participate, and have equal rights

with the judges.

Basic People's Courts

Basic People's Courts are County People's Courts and Municipal People's Courts; People's Courts of autonomous counties and People's Courts of municipal districts. A basic court is composed of a president, one or two Vice-Presidents and judges. The court may set up a criminal division and a civil division, each with a chief judge and when necessary, associate other judges. A basic court may, according to the condition of the locality, population and number of cases, set

up people's tribunals. A tribunal is a component part of the court and its judgments and orders are judgments and orders of the basic court.

Basic courts take cognisance of civil and criminal cases of first instance, except such cases as are otherwise provided by laws. Besides trying cases the courts settle civil disputes and minor criminal cases which do not need a trial, direct the work of conciliation committees and direct the judicial administrative work within their competence.

Intermediate People's Courts

Intermediate People's Courts are established in various areas of a province, autonomous regions, and municipalities directly under the Central Government, large municipalities and administrative counties. An intermediate court is composed of a President, one or two Vice-Presidents, chief judges of divisions and judges. It has a criminal division and a civil division, and such other divisions as may be deemed necessary.

Intermediate courts take cognisance of cases of first instance assigned to them by law to their jurisdiction; cases of first instance transferred from the Basic Courts, appeals and protests against judgments and orders of the Basic Courts, and protests lodged by the People's Procuratorate in accordance with the procedure of judicial revision.

Higher People's Courts

Higher courts are those of provinces, autonomous regions and municipalities directly under the Central Government. A higher court is composed of a President, Vice-Presidents, chief judges of divisions, and judges. The court has criminal division and a civil division and such other divisions as may be deemed necessary.

Higher People's Courts take cognisance of cases of first instance assigned to their jurisdiction, cases of first instance transferred from lower courts, appeals and protests against judgments and orders of lower courts, and protests lodged by the Procuratorate in accordance with procedure of judicial supervision.

The Supreme People's Court

The Supreme People's Court is at the apex and is the highest judicial organ. It supervises the administration of justice by the local people's courts at different levels and, by the special people's courts. It is composed of a President, Vice-Presidents, Chief Judges of divisions, associate chief judges of divisions, and judges. It has a criminal division and a civil division, and such other divisions as may be deemed necessary.

The Supreme People's Court takes cognisance of cases of first instance assigned by law and statutes to its jurisdiction or that case which the court considers that it should try; appeals and protests against judgments and orders of High Courts and special courts; protests lodged by the Supreme People's Procuratorate in accordance with the procedure of judicial revision.

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PEOPLE'S PROCURATORATE

People's Procuratorate

The people's procuratorates are State organs of supervision. For the whole Republic of China there is the Supreme People's Procuratorate headed by the Procurator-General who is elected for a term of five years by the National People's Congress and is subject to recall or removal by the Congress. The Procurator-General cannot serve for more than two consecutive terms,

The Supreme People's Procuratorate directs the work of the local people's procuratorates at different levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work at lower levels. People's procuratorates, in accordance with the law, exercise procuratorial power independently and are not subject to interference by administrative organs, public organisations or individuals. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. The Standing Committee supervises the work of the Supreme People's Procuratorate. The Standing Committee also appoints and removes Deputy Procurator-General and procurators of the Supreme People's Procuratorate, members of the Procuratorial Committee and the Chief Procurator of the Military Procuratorate at

the suggestion of the Procurator-General of the Supreme People's Procuratorate. The Standing Committee approves the appointment and removal of the chief procurators of the people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government. Local people's procuratorates at different levels are responsible to the organs of State power at the corresponding level which created them and to the people's procuratorates at higher levels.

Local organs of the people's procuratorate and special people's and military procuratorates exercise procuratorial authority within the limits prescribed by law. The people's procuratorates are State organs of legal supervision and it is their duty to see that resolutions, orders and measures of the local organs of state power conform to the Constitution and law, and that the Constitution and law are observed by persons working in these organs and by all citizens. The procuratorates investigate, prosecute and sustain the prosecution of criminal cases. They also see that the investigation departments, in performing their duties, conform to the Constitution and law, to see that the judicial activities of the people's courts, the execution of sentences in criminal cases, and the activities of departments in charge of reform conform to the law, and to institute or intervene in legal actions with regard to important civil cases which affect the interests of the State and citizens.

The work of the Procuratorate is closely associated with the judicial courts. Being the official guardian of the Constitution and law and, consequently, that of the judicial and social legality, it is the duty of the Procuratorate to investigate all cases of sabotage of the socialist system, to investigate all cases of treasonable and revolutionary activities and actions that endanger public security and disrupt the socialist economy and see that the criminals are adequately punished. The Procuratorates being organs of legal supervision also protect the fundamental personal rights

of citizens and safeguard the inviolability of their persons. No one may be arrested except with the approval and decision of a people's procuratorate or by decision of people's court.

The institution of the people's procuratorate is unique in the judicial system of China, as it was in the USSR. The powers of the Procurator-General are so extensive and his authority is so pervasive that it embraces all organs of administration, the army, public organisations, and all enterprises or organisations and citizens. In the discharge of supervisory functions, the Procurator-General has to ensure that there is the correct application and strict execution of the Constitution and laws by all ministries, commissions and other organs of State power at all levels as well as by officials and citizens of China. The Constitution invests the procuratorates with authority to exercise procuratorial power independently and none of them at any level are subject to interference by administrative organs, public organisations or individuals.

SUGGESTED READINGS

Bannerjee Stribnath, The Chinese Government and Politics.

Kahin, George McT, Major Governments of Asia

Waller, Derek J., The Government of the People's Republic of China..

CHAPTER VII The Communist Party of China

Party the Leader and Core of the Country

The general programme of the Chinese Communist Party declares that as the "highest form of class organisation, the party must strive to play a correct role as the leader and core in every aspect of the country's life." Liu Shao-chi, in his report on the Draft Constitution of the People's Republic of China (1954) presented to the First National People's Congress, said that the leadership of the Communist Party of China was essential not only to the Chinese people's democratic revolution, but also to the realization of socialism. "It must also combat any tendency to departmentalism, which reduces the party's role and weakens its unity." Though there was no mention of the Party in the Constitution of 1954 and the Party existed outside the administrative machinery of the State, yet as a teacher and leader of the people, it functioned as the prime force inside the structure of the State. In the politics of China there was only one party which operated and as it was the revolutionary party which had ousted the previous regime and established the People's Republic of China, it was certainly the decision-making centre and implementing organistation to the realisation of socialism. The members, therefore staffed all the key positions in the government. Explicit injunctions welded them into a disciplined body under central direction from Party organisation and officials at parallel or higher levels. Its leaders decided government policy regardless of their titles or constitutionally vested responsibilities. The Party's ideology was the only officially propagated doctrine mandatory for members and non-members alike. Party members were not to limit their loyalties just to Government and, thus, become the tools of 'departmentalism.' They were enjoined to respectfully and rigidly accept the higher

directions of the Party. The Party constitution prescribed that: "Party decisions must be carried out unconditionally. Individual Party members will obey the Party organisation, the minority should obey the majority, the lower Party organs, and all constituent Party organs throughout the country shall obey the National Party Congress and the Central Committee."

This is democratic centralism. Article 2 of the 1954 Constitution also emphasised the practice of centralism within the structure of the State. It read: "The National People's Congress, the local people's congresses and other organs of the State practise democratic centralism." In his Report on the Draft Constitution, Liu Shao-chi explained this provision in the Constitution and said: "Our system of democratic centralism is explained by the fact that the exercise of state power is unified and concentrated in the system of people's congress....we Marxist-Leninists have long since publicly declared that we stand for centralism...In the Draft Constitution, we have combined a high degree of centralism with a high degree of democracy. Our political system has a high degree of centralism but it is based on a high degree of democracy." Mao Zedong, in his book, On Coalition Government, stated that the political system of China was "at once democratic and centralised, that is, centralised on the basis of democracy and democratic under centralized guidance." Democratic centralism is, therefore, a keynote of Communist doctrine and it is applied meticulously at all levels, governmental and social.

The democratic aspects of "democratic centralism" are manifested in free discussions before decisions are taken and in election of higher, bodies by lower groups. Elections are unanimous otherwise it creates factionalism and decisions once arrived at must be obeyed rigorously and regularly. Deviation therefore is indiscipline which is a heinous crime in Communist ideology. The General Programme of the Communist Party of China repeats at every step that

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"the party is a united militant organization, welded together by a discipline which is obligatory on all its members."

Party under the 1975 Constitution

The 1975 Constitution not only constitutionalised the Communist Party of China, but in unmistakable terms established the rule of Party, which had been virtually displaced by the revolutionary committees set up during the Cultural Revolution in the body politic of the country. It declared that the Communist Party of China "is the core of the leadership of the whole Chinese People" and "the working class exercises leadership over the State through the vanguard of the Communist Party of China." The National People's Congress was the highest organ of State "under the leadership of the Communist Party of China." The National People's Congress appointed and removed the Premier and the members of the State Council "on the proposal of the Central Committee of the Communist Party of China." The Chairman of the Central Committee of China commanded the armed forces and the Chinese People's Liberation Army and the People's militia were led by the Communist Party.

The Constitution, thus, explicitly affirmed the principle of centralised and direct Party rule over the Government and the Armed forces. The Preamble summed up the achievements of the Party

during the last 20 years and recounted that the people of all nationalities continuing their triumphant advances under the leadership of the Communist Party achieved great victories in socialist revolution and socialist construction and the great Proletarian Cultural Revolution and consolidated and strengthened the dictatorship of the proletariat. The Preamble also committed China to "continued revolution" under the guidance of the Party and emphasised that the country must adhere to its basic line and policies for the entire historical period of socialism and persist in continued revolution. Continued revolution, it was asserted aimed to resolve the contradictions which the danger of capitalist restoration and the threat of subversion and aggression by imperialism and social imperialism had created. The Constitution expressed the confidence of the Chinese people that led by the Communist party "they will vanquish enemies at home and abroad and surmount all difficulties to build China into powerful socialist State of the dictatorship of the proletariat so as to make a great contribution to humanity."

Party under the 1978 Constitution

The 1978 constitution of the People's Republic of China was the replica of its predecessor Constitution so far as the role of the Communist Party was concerned. The Preamble to the Constitution recounted the heroic struggle of the Chinese people, led by the Communist Party of China and "headed by our great leader and teacher Chairman Mao Zedong" finally overthrew the reactionary rule of imperialism, feudalism and bureaucratic capitalism, winning complete victory in 1949 and founded the People's Republic of China. The Constitution also set form the general task for all the Chinese people under the leadership of the Communist party to usher in an era of prosperity and socialist enthusiasm. It was the fundamental duty of citizens mat they should support the leadership of the Communist Party and support the socialist system, the Preamble added.

Article 1 of the 1978 Constitution declared that the People's Republic of China was a Socialist State of the dictatorship of the proletariat led by the working class and based on the alliance of the workers and peasants. This was followed by Article 2 stipulating mat the Communist Party of China was the core of the leadership of the whole Chinese people and the working class exercised leadership over the State through its vanguard, the Communist Party of China. The Chairman of the Central Committee of the Communist Party commanded the armed forces of China and Article 19 further stated that the Chinese Liberation Army was the workers, and peasants' own armed force led by the Communist Party of China and it was the pillar of the dictatorship of the proletariat. The Constitution assigned to the armed forces the task of safeguarding the socialist revolution and socialist reconstruction. The National People's Congress decided on the choice of the Premier of the State Council upon the recommendation of the Central Committee of the Party.

Party under the 1982 Constitution

The Cultural Revohiation had marked a stage in the implementation of the policies of Mao Zedong. The higher organs of the Party and the State were replaced by me proletarian headquarters of Mao Tse-tung, which consisted of a small group of functionaries loyal personally to Mao. This "headquarter" was proclaimed "the sole leading organ of the entire party, the entire

army and the entire country." A mechanism of power was built in which a definite place was given to

the Communist Party on a new basis and the central link of the system consisted of revolutionary Committees, which replaced the former Party and State organs. The Constitution of the Party was accordingly, changed and the central and local commissions were, inter alia, abolished. The Eleventh Party Congress, the first without Mao Zedong and Chou Enlai, which met in September 1977, changed for the fourth time the Party Constitution in order to overhaul the Party set-up to prevent future usurpation of power by a small coterie. An attempt was made to return to the positive traditions of the Party which included strengthening of discipline, democratic relations, free expression of opinions and greater respect for the interests of the masses. The Party organisation was overhauled from top to bottom and one of the safeguards introduced was the revival of central and local Commissions.

Despite denunciation of Mao's policies and the disaster he wrought on the Party and the State, his shadow still loomed large in the Party. This factonalism in the Party was evident from the fact that he still remained "our great leader and teacher" and "all our victories in revolution and construction" as the Preamble to the 1978 Constitution declared, "have been won under the guidance of Marxism-Leninism-Mao Zedong Thought. The fundamental guarantee that the people of all our nationalities will struggle in unity and carry the proletarian revolution through to the end is always to hold high and staunchly to defend the great banner of Chairman Mao." In all there were five such references to Mao in the Preamble to the 1978 Constitution, two years after his death, and was even described as the founder of the People's Republic of China. In the Preamble to the Constitution of 1982 there are two references to Mao-Zedong Thought "which integrates the concrete practice in China." The 1982 Constitution, thus, follows the trend of downgrading the stress on Mao, but of not pushing de-Modification too far.

The Chinese Constitutions do show in their Preambles an increasing tendency to mention the leadership of the Communist Party in making and sustaining the revolution. There were two such references in the 1954 Constitution, three in the 1978 Constitution and no less than four in the 1982 Constitution. The Preamble to the 1982 Constitution declares that both the victory "of China's new democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships." The Preamble exhorts the people that the basic task of the nation in the years to come "is to concentrate its efforts on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese People of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self- reliantly to modernize industry, agriculture, national defence and science and technology step by step to turn China into a socialist country with a high level of culture and democracy."

There is no provision in any Article of the Constitution which may describe the role of the Communist Party. The People's Republic of China is now a socialist State under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants (Article 1). Article 2 of the 1978 Constitution was dropped altogether. The command of the army no longer vests in the Chairman of the Central Committee of the Party. The Central Military Commission directs the armed forces of the country (Article 93). The armed forces of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction and work hard to serve the people (Article 29). The Premier is no longer the choice of the Central Committee. He is now chosen by the National People's Congress on nomination by the President of the Republic (Article 62 (S)).

The Communist Party of China having, led the people in formulating the 1982 Constitution, is determined to lead the people in upholding the dignity of the Constitution and enforcing it firmly. The new Party Constitution adopted by the 12th National Conference of the Communist Party of China held in September 1982 stated, "All the activities of the Party should be in accordance with the Constitution and the law" and the Constitution defines the basic system and the basic tasks of the State in legal form. The

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Communist Party is still the vanguard of the people but the role it plays is subject to the Constitution which is the fundamental law of the land.

Membership and Organisation

In 1921, thirteen anarchists, radicals and Marxists met in Shanghai and established the first Congress of the Chinese Communist Party. In 1951, the membership of the Party had gone to 5.8 million and in another decade it went up to 17 million. In August 1977 the membership exceeded 35 million, in 1980 it was over 50 million and in 1986, it exceeded 62 million. The membership is strictly limited. Anyone who has attained the age of eighteen and who does work and does not exploit the labour of others is eligible to become a member. But a candidate must be recommended by two full members of the Party. If the Party branch as well as the next Party committee approve, he is given a probationary status. After a satisfactory completion of one year of "elementary education", during which "political qualities" are carefully observed, he is admitted as a full member of that group which approved him first for the probationary status.

At the bottom of the organisation is the local cell and the local branch chooses delegates to county or municipal Party Congress, which in turn elects the Provincial Party Congress. The Provincial Congress sends delegates to the National Party Congress which then chooses a 201-man Central Committee. The Central Committee is the highest leading body of the Party when the National Party Congress is not in session. The elections at all levels of the Party are to be periodically held, but in practice they have proved to be less than periodic and at the higher levels the Party positions were held beyond their constitutional tenure. This life-long tenure trend has now been ended. The Provincial Party Congresses are to elect the National Party Congress every five years, but actually only two such Congresses were elected during eighteen years, the

seventh in 1945 and the eighth in 1956. Again, after thirteen years the ninth Congress was called in 1969 to legitimise the results of the Cultural Revolution and the tenth was convened in 1974 which was necessitated to "consolidate and multiply the achievements of the great proletarian cultural revolution." The eleventh Congress was held from August 12 to 18, 1977. Now it is held regularly.

The National Party Congress, consisting of

more than one thousand and five hundred members, is elected for five years and it must meet every year unless the Central Committee decided that "extraordinary conditions" do not permit such a meeting. There has been only one meeting till 1956 and subsequently at irregular intervals. It means that the Central Committee has exercised its extraordinary power of not convening annual meetings of the National Party Congress at regular intervals. Since the Congress elects the Central Committee "and therefore is legally superior to it, failure to convene the parent body removes the problems of co-responsibility to the membership at large. In this manner, reality mirrors theory, reversing the image in the process." In fact, the Congress does not elect the Central Committee. It is the outgoing Politburo and to be more precise its Standing Committee of seven men, which actually selects the Central Committee. The Standing Committee of the Politburo includes the top-ranking leaders, and the choice actually rests with them.

The Central Committee does not even formulate policy. It is a numerous body which meets once or twice yearly and that, too, for only a brief period. It is on record that at times of particular or prolonged crisis, the Central Committee does not meet at all. No Central Committee plenum was held in 1960, despite the marked deterioration of Sino-Soviet relations and the decline of agricultural productivity that had begun in 1958, when the tenth plenum of the Central Committee met in 1962, only four days were allotted for discussion of Party as well as national affairs. Taking into account the infrequency and short duration of its meetings, the Central Committee functions mainly as a sounding board for previously determined policy.

The Politburo with membership of twenty-three is the core of the important decision-makers and "probably acts as a controlling nucleus for the larger body." The Central Committee is important to the Politburo because it transmits and implements Politburo decisions. Central Committee's endorsement of Politburo actions gives the policies a legitimacy "far beyond that which is possible through Press announcement." Consistent with the principle of democratic centralism it is obligatory on all to accept and implement all such decisions without demur. Here is a matter of fact summing up of the position and functions of the Central Committee.....The Central Committee is too large and meets too infrequently and

too briefly to be the real decision-making centre of the CCP (Chinese Communist Party). Yet it is much more than a rubber stamp for Politburo. It gives legitimacy to Politburo decisions in accordance with the party constitution. It transmits decisions to lower levels linking the peak of the political pyramid with its mass base (more than other million basic level organisations). It

provides status to worthy party members and, finally, offers a proving ground for potential leaders."

The Politburo, like other Party organs, is a numerous body and has, accordingly, its Standing Committee which constitutes the brain trust of the Politburo. It has always included top party leaders, as it once had Mao Zedong, Chou En-lai, Chow Ch'en Yun and Teng-Hsais-ping. With the Party Chairman, the Premier and other galaxy of Party leaders it is but natural that the Standing Committee should constitute the apex of the policy formulation.

Among other organs of the Central committee the most important are the Secretariat and Departments, such as, the Rural work, Industrial work, Social Affairs, and the Control Commission. The Secretariat monitors the execution of policy on a daily basis through the Party Central organs, bureaus and Committees. The Control Commission, according to Party rules, examines and deals with cases of violation of the Party Constitution, Party discipline, Communist ethics, and state laws and decrees on the part of Party members and deals with appeals and complaints from party members. It originally consisted of seventeen regular and four alternative members. In September 1962, the tenth plenary session of the Eighth Central Committee decided to enlarge the membership in order "to strengthen the work of the Party Control Commission." Enlargement of the membership of the Control Commission emphasised the importance of this organ which was entrusted with the duty to combat "improper" attitudes and "sectarian" tendencies of the Party members. The Party rules explained that every member "has the duty to report to the party Control Committees whatever he knows about infractions against party rules, party discipline, communist morality, national laws and decrees on the part of other party members. Moreover, it is his duty to help the Party Control committee struggle against such phenomena."

SUGGESTED READINGS

China's Constitution of 1982

Bannerjee, Shibnath, The Chinese Government and Politics.

Endicott, John E., and Heaton, W.A., The Politics of East Asia : China, Japan, Korea.

Johnson, Chalmers (ed) Ideology and Politics of Communist China

Lenis, John, (ed) Party Leadership and Revolutionary Power in China.

Miera, Kalpama, From Post Maoism to Post Marxism

Schurmann Franz, Ideology and Organisation in Communist China.

Townsend, James, Political Participation in Communist China.

Waller, Derek J., The Government and Politics of The People's Republic of China.

CHAPTER VIII Democratic Ferment

Demand for More Reforms

Student agitation is not a new phenomenon in China. Since 1919 students have been a vocal political force fighting authoritarianism and corruption. This political role of the students was sanctified by the 1982 Constitution when Article 35 conferred on citizens the right to freedom of speech, of press, of assembly, of association, of procession and demonstration. This troublesome right, which even Sun-Yat-Sen, the father of New Chinese Nationalism, would never have conceded, ignited the spurt of student unrest first in 1986 and again in April-May 1989 eventually culminating on June 3-4, 1989 at Tiananmen square in Beijing, in the massacre of hundreds of unarmed youngmen and women at the hands of the People's Liberation Army (PLA). How- ever, it has since become known that many in the People's Liberation Army feel shame at having fired at the young students spearheading the demand for more democratic reforms.

In December 1986 student unrest, which swept through nearly a dozen cities, was in favour of democracy and freedom. Deng Xiaoping's regime was certainly more democratic than its predecessor and there was an awareness on the part of the Chinese leadership of the need for democratization. But the leadership was in no mood to accept and launch another revolutionary movement at that juncture when Deng's economic reforms had met with severe criticism from the Conservative elements in the Communist Party of China. The pace of change that the students wanted alerted Deng Xiaoping and Hyaobang, the General Secretary of the Chinese Communist Party, and even had initially sympathised with the students' demand in their quest for a more "open" China. The Government in a bid to arrest the movement promul gated stringent regulations banning unannounced demonstrations and the putting up of unsigned posters in public places. The penalty for violating the ban was five years hard labour in prison.

In mid-January 1987, a meeting of the Party's Politburo was held and the Secretary-General Hu Yobang was forced to resign, and some of China's intellectuals were attacked, demoted, and expelled from the Party. The Chinese citizens were, thus, once again, forcefully reminded of the sanctity of the four principles of China's policy. These principles were: to uphold he socialist road; to uphold the democratic dictatorship; to uphold the primacy of the Communist Party of China; and, to support the primacy of Marxist-Leninist-Mao-Zedong Thought. Both the Government and the Communist Party made it unequivocally clear that nobody would be permitted to challenge these four cardinal principles which embodied the rules of prolonged struggle for the integration of Marxist-Leninist theory with the practice of Chinese Revolution.

The democratic turmoil subsided, but not the democratic fervour that culminated into the June 3-4, 1989 nightmare of the Tiananmen Square. In his June 9, 1989 speech, so far the ultimate official pronouncement of what bad happened in China, Deng Xiaoping said, "It started as student unrest, then it developed into a turmoil. And finally, it turned out to be a counter-revolutionary rebellion." That was the official version. But how is one to describe the military operation in Beijing on the night of June 3-4, against unarmed mass of students mostly in their

teens? "The brutal suppression" of a "peaceful student movement" was the invariable description given by countries adhering to the Western type of democratic government. The leaders of China's Republic and the Communist Party on the other hand, called it the liquidation of a "gang of counter-revolutionaries" who were determined to overthrow the socialist system. No matter how you describe it, it needs no great perspicacity to

see that what happened first in December 1986 and, then, in April-May ending on June 3-4, 1989, had its seeds in the changes Deng Xiaoping himself had ushered in. If it was a "counter-revolution," Deng was its architect. That he did not want his policies to have the effects they had is of no consequence.

Analysis of the Factors Responsible

At the beginning of 1989, a leading Chinese economist noted three phases in a "sweet and sour decade" from the end of 1978. The first and sweet period, period of six years saw the "heady" result of agriculture reforms in rapid and phenomenal increase in food output and labour productivity. In the second period from late 1984 to late 1987, rural growth lost its momentum, and reforms in the industrial sector, despite an astounding rise in investment and production, began to show the distorting effects of unrestricted industrial growth. With mounting inflation close to 30 per cent in 1989, increasing income disparities and alarming spread of corruption, the decade was turning sour. A thriving black market had become important area of corruption which was also rampant at almost every level of State and party administration.

Corruption is, undoubtedly, related to the price system, but a mere general explanation for the widespread prevalence of this vice is a new culture attached to easy and rapid money-making without any qualm of conscience. And when the market is flooded with consumer goods, it becomes a direct incentive for larger income disregardful of its source.

Regional income disparities were inherent in Deng's plan of liberalisation-action which created the eastern "gold coast." But personal and sectional disparities were the most important. A private person in construction, for example, earned twenty times more as much as the average urban income. Rural prosperity under the new dispensation was not evenly distributed. According to the estimate there were 100 million unemployed or under-employed peasants. Then, there was a floating estimated population of 50 million peasants who moved to urban areas from time to time causing a big strain on urban economy. The imbalance so created generated crime. There were also some 20 million migrant workers who added to the woes of the urban population. These bare facts evidently well establish how defective Deng's reforms scheme was.

The general economic improvement was unquestionably impressive, but in the wild pursuit of prosperity, there had hardly been any pretence of egalitarian and moral concern and the people at large paid scant respect to China's "fine tradition" of plain living and hard struggle. It really became anachronistic in the context of the prevailing philosophy when the paramount leader declared: "to get rich is glorious." Money became an end and not a means. It did not matter how

it was to be amassed as the measuring rod of glory was the amount of wealth the individual possessed. It meant that even corrupt practices were permissible in the pursuit of achieving glory.

Among those denied this glory were people engaged in what an American economist described as "knowledge-extensive" work, more "elegantly but loosely" described as intellectuals. Deng Xiaoping did make efforts to rehabilitate the intellectuals after the Cultural Revolution, but their economic condition only worsened in relative terms. In 1978, "brain workers in State employment earned just 2 percent more than manual workers; in 1986, on the eve of the first democratic upsurge, the latter earned 10 percent more than the brain workers."

This was an immediate cause of discontent in the academic community. Only a fourth of some Chinese students who went to the United States of America in the past 10 years were said to have returned home. Many more who had gone to various European countries and Japan did likewise. This process had two implications. Those who had lived in the foreign countries favoured the blessings of economic prosperity and political freedom. They could visibly see and feel that these people with whom they were living in the pursuit of acquisition of knowledge were enjoying a much higher standard of living without sacrificing individual liberty. China cut a poor figure by comparison. Those who could not go abroad for obvious reasons felt frustrated and deeply hurt as their cynicism had grown because of the way Party links at home influenced the prospects of employment.

The frustration of rural unemployed youth tended to be most socially disruptive. The prosperity of the rural new-rich did not assure them that opportunities were unlimited, and there was no longer Party compulsion or ideological motivation for collective work. Often drawn to the cities, they remained a source of potential trouble, as some of them did show during the student

unrest in Beijing both in 1986 and 1989. Neither the rural nor the urban youth found much inspiration for a better life in the ways of self-seeking Party cadres.

The Cultural Revolution was the great disservice that Mao did to the Party and the people. In it, most loyal Party members had been hounded out and many done to death. All intellectuals were cruelly punished. All this had virtually destroyed their faith in the goodness of Mao and the greatness of the Party, thus, choking all channels of ideological faith and pursuit of the desired goal.

In 1986-87 the Communist Party of China felt concerned about the attitude of Chinese students and launched a fact-finding exercise. The Party had always attached great importance to ideological orientation, and each army unit, every school and university had a Party cell which monitored and guided mental attitudes. In 1987, along questionnaire was circulated to students at all levels to elicit information: (1) why they (students) take to the streets and demonstrate, (2) why the Chinese youth, who is brought up entirely on the Marxist thought since his childhood, evinces such a keen interest in western philosophy; and (3) why students show such suicidal tendencies at the slightest setback.

The survey found that the students had become blase and entered the Party not through conviction and ideological urge but for self-advancement. The Vice-Chairman of National Education Council, Liu Chung-teh, concluded in 1987 that the two main factors responsible for this were the "negative" effect of the Cultural Revolution, and the growing outside contact as a result of the Party's economic liberalisation programme.

Not only was ideological education, as the Party leadership admitted, neglected during the past decade, visitors to China in recent years also spoke of moral vacuum, evident in sharp increase in crime, prostitution and general permissiveness. Apart from the high living by the new-rich, there had grown a consumerist and imitative culture, inevitably inspired by ideas and models imported from the West. From time to time Chinese leadership had bemoaned the existence of this "spiritual pollution", but it could hardly be checked so long as the door remained open for modernization and thousands of foreigners daily intermingled with the Chinese in China. Alien political ideas were bound to find their way into an ideological vacuum. Added to these was the dawn of Gorbachev era in the Soviet Union. If the USSR could woo democracy and liberalise its institutional framework within the socialist society, why not China? They loudly questioned.

Party leaders, like Deng Xiaoping had themselves suffered harsh and humiliating treatment from Mao for their "dissent" which was nothing more than a plea for liberalisation, the same plea which the students and intellectuals had made in 1986 and in Tiananmen Square in Beijing beginning in April 1989 and culminating into the tragic events of June 3-4. In early May Party leaders like Chao Tse- Yang and Li Ping had shown an understanding attitude. The Party itself realised that in dealing with students, one has to think not only of logic (what is right and what is wrong) but of human emotions. Chao and Li Ping visited the fasting students in the hospital, and Li even gave a good chit to them by saying that they were "patriotic" and "enthusiastic." There was nothing then to suggest the "savage crackdown" which was to come only a fortnight later.

Almost two months after the" crackdown" of students, senior Chinese leaders and media officials claimed that the situation was "back to normal." In an informal talk with a visiting Indian Press delegation on August 2, 1989 Li Tie Ying, Politburo member and Education Minister, indicated that with the return to normalcy China would pursue "with greater vigour" the earlier policies of socialist reforms and the opening up of the economy. "We have achieved positive results by following these policies in the last decade. We will make a few adjustments when we make an assessment later," he said.

The Parry's Politburo announced, sometime later "seven tasks of great concern to the people." All these tasks, interestingly related to one of the basic demands of the student demonstrators—the elimination of corruption amongst the Chinese Communist Party and Government officials. Other demands relating to this important aspect included the closing down of commercial firms by the children of high Party officials, including Deng Xiaoping's son, cancelling the special supply of food- stuffs of leading officials and banning the use and import of foreign cars by high party and government officials.

Li Tie Ying said that the student demonstrations were "manipulated" by "a handful of conspirators" who wanted to overthrow China's socialist system and the Communist Party. Under

the garb of slogans about "democracy, human rights and freedom," they actually "wanted to restore capitalism." He accused "hostile international forces," especially the United States' Congress of interfering in China's internal affairs. He asserted that China would continue to strive to bring about socialism under the leadership of the Chinese Communist Party, and any action in opposition to the party would end up in turmoil. The message Li conveyed to the West was that Beijing was ready to deal with it on the terms of a China under the Communist Party.

According to Shao Huaze, the Editor-in-chief of the People's Daily, those journalists who took part in the pro-democracy demonstrations would not be punished. "None of them have been removed from the posts, but they would have to undergo political re-education." Only those who committed criminal acts were to be dealt with severely.

The Government launched a massive campaign to educate the public on the "real facts" of the student movement and in order to show the People's Liberation Army (PLA) in a different light, television serials on their heroic war exploits were shown daily.

The events of June 3-4, 1989 showed up some of the major deficiencies of the Chinese political system. The foremost among them was the weakness, even irrelevance, of institutions. The Communist Party of China was hardly called to action in dealing with the "counter-revolutionary rebellion." The Central Committee of the Party did not meet during the two months of the crisis, from mid-April to mid-June. Nor was a session of the Standing Committee of the National People's Congress convened. The arteries of command and control were seized by an exceedingly small number of leaders, the majority of whom did not even sit in the Politburo, but had been retired from active political roles.

Deng Xiaoping's failure to build institutional scaffoldings of a regime of liberalisation and modernization allowed a "turmoil" to swell into a "rebellion" in a matter of six weeks. The system did not know how to deal with it. In the great institutional vacuum, restoration of order-the old order—had to be left first to the People's Liberation Army (PLA) and then largely to the internal security apparatus. Socialist legalism another laudable objective of Deng's programme of reforms, took a back seat as leaders of the unofficial students' and workers' unions were hauled out of their homes or hiding places and thrown into prison.

Those who helped Deng to suppress the "rebellion" asserted their opposition to his strategy of economic reforms. They had long held the view that the often hasty and impatient search for financial business, trade and technological linkage with the capitalist countries had not only gravely distorted China's socialist economy by allowing the creation of large and strategically important capitalist conclaves, but nearly devastated its socialist ideology and values. They blamed the liberal openings to the capitalist world for the high incidence of "official profiteering;" the Chinese name for corruption in high places.

The capitalist countries had invested $11.5 million in modernizing China's industrial base. All this suffered major setback, because all those countries withheld any further aid to China. Even the World Bank stalled a $ 60 million agriculture loan, and suspended indefinitely $ 700 million

in other credits. The Asian Development Bank shelved a loan of $ 25 million to China's Siponese Petro- chemical Company. The Japanese Government echoed American concerns about developments in China and withheld certain major transfer of money and technologies.

The real loss for China was the confidence of the vast segment of democratic opinion all over the world. Throughout the upheavals even in the dark days of the Cultural Revolution, a solid body of democratic opinion all over the world stood by China. It was the steadfast good will of this segment that the Chinese leadership had forfeited by the barbarities committed on the Tiananmen Square on June 3-4, 1989, and the wave of suppression that continued for a pretty long time afterwards. It was estimated that more man 4,000 protesters languished in jail and scores had mounted the gallows. Two months after one member of the Chinese Communist Party had fled abroad, China announced the dismissal and expulsion of two prominent dissidents from the Party. The People's Daily said on August 10, 1989 that Yan Jiaqi former adviser to ousted Party chief Zhao Ziyang and head of a key Political Science Institute, and historian Bau Zunx had "clung to a bourgeois liberal stand and undertaken evil activities to overthrow the leadership of the Communist Party."

Yan fled to France after the Beijing bloodshed and from there called for a non-violent overthrow of the Beijing Government. After the

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1986 student demonstration, the Provincial Governments showed little enthusiasm in arresting the young leaders of the democracy movement. In 1989, too, many of the leaders of the movement spread out to the Provinces in the hope that the Party's provincial leaders did not share the hardliners' perception of the "rebellion." Consequently, they would be in a position to make another bid for the massive demand for democracy. If the events in Western European Countries and the USSR itself, where Communism is a stale talk now and the Communist Party has been liquidated, is any guide it may happen any time or at the latest on the demise of Deng Xiaoping who is in his declining years at the age of 87. Deng is now off the stage of active politics of power.

China's Prime Minister, Li Ping, however, is not repentant on the use of military force in June 1989 to crush anti-government protests and he publicly refused to rule out doing it again. Addressing the customary Press Conference after the fortnight-long plenary session of the People's Congress, he said, on 10 April 1991, that history was vindicating his Government's action. "Had we not been forced to take resolute measures, China would be bogged down in economic crisis and political instability, at least as serious as in countries that used to be socialist." His obvious reference was to the East European countries. There was a hint of mellowing of Li's tone in talking about the 1989 protests. He said it was "entirely understandable that people should have different perceptions of unrest because of their different values and ideologies."

Impact of Political Developments in Soviet Russia

Notwithstanding proclamations by top Chinese leaders that the political developments in the Soviet Union will have no effect on the pursuit of socialism in China, indications are to the contrary. The Premier, Li Peng, has assertively said that conditions in China differ widely from those in the erstwhile Soviet Union and hence Beijing's steadfastness in sticking to hardline Marxist-Leninist policy would not be influenced by the developments in the homeland of Marxism-Leninism. However, reports leaking out of China have spoken of fears expressed by hard line leaders about the effects of the Soviet situation being felt in the country.

The latest such indications come in a report published by Hong King's South China Morning Post which quoted a Chinese Communist leader, Chen Yun, as having called on the Party to do its best to prevent the emergence of a "Yeltsin-like figure" in China. Quoting unnamed sources, the newspaper reported that the "conservative patriot," in a briefing to "intimates" soon after the failure of the coup in Moscow, said that the Party must draw the "right lesson" from the crumbling of Communism in the Soviet Union and the ascending of bourgeois liberal politicians.

The Chinese fears about their Communism facing a fate similar to the Soviet Communist Party is not hard to understand. As the Soviet Union disintegrates, with thirteen Republics having declared their independence, the Beijing's leaders are deeply concerned that ethnic nationalism in the vast Central Asian steppe will spill over into China's sensitive border regions. To China's west lie the three Republics of Kazakhstan, Kirghizia and Tajikistan. The mostly Muslim Kazakhs, Kirghis and Tajik who live in these Republics speak a Turkie language similar to that spoken by their predominently Muslim brethren in China; the Uighurs, Kazakhs, Kirghis and Tajiks of Xijiang Province.

To China's North is Mongolia, the former Soviet satellite that abandoned Communism in 1990. The two million Mongolians there share a common heritage with China's estimated 4 million Mongolians most of whom live in Inner Mongolia.

China's 55 different minorities make up about 7 per cent of the total population. It will not be, therefore, wide of the mark to say that ethnic nationalism, already a source of serious tension in some regions, could fuel nascent separatist sentiment in China.

SUGGESTED READINGS

Goldman, Merle; Sowing the Seeds of Democracy in China : Political Reform in the Deng Xiaoping Era.

Harding, Harry, China's Second Revolution : Reform After Mao.

Misra, Kalpana, From Post-Maoism to Post-Marxism. The Erosion of Official Ideology in Devy 's China.

Imperial System and Feudalism

The character of traditional Chinese political system has become subject to a terminological debate. Terms such as 'gentry', 'feudalism' and 'bureaucracy' have been used to describe that system. The issue here is to determine how the upper classes were connected with landed property who also enjoyed near monopoly of bureaucratic posts in the state. Some Western scholars emphasize that the Imperial state in China was a form of Oriental despotism governed by a bureaucratic literati which was a group of Confucian scholars. The Marxists criticise this view arguing that the ruling class gentry in China was essentially feudal in character which exploited the peasantry, extracting an economic surplus from the tillers of the soil by virtue of their ownership of land.

The Chinese Communists treat the Imperial era and even the Kuomintang period as a form of Feudalism. But there was no system of vassalage in Imperial China and only very limited grants of land in return for military services. "Nevertheless," the Marxist stress on landlordism is thoroughly justified."1. He adds, "Even the Emperor was a super-landlord who collected grain from his subjects. If the Imperial system relied to such a great extent on collection in kind, we may be sure that it prevailed quite widely elsewhere."2.

As already indicated, the landlord relied on the Imperial bureaucracy to safeguard his property rights. As Owen Lattimore has remarked, behind each Imperial project was a powerful minister, and behind each minister a powerful body of landlords. These facts bring the Oriental agrarian bureaucracy and the idea of water control into proper perspective. Thus the bureaucracy constituted an alternative way of squeezing economic surplus from the peasants. For the landlord, Confucian doctrines and the system of examinations gave legitimacy to his superior social status.

Imperial Chinese society never created an urban trading and manufacturing class comparable to that which grew out of the later stages of Feudalism in Western Europe. With the decay of the Imperial apparatus, visible during the eighteenth century, its capacity to control commercial elements declined. By the second half of the nineteenth century, the traditional rule of the feudal, scholar-official had disintegrated in the coastal cities. After the conclusion of the Opium War in 1842, the comprodores spread through all the treaty ports of China. When Chinese industry began on its own in a modest way in 1860s, it did so under the shadow of provincial gentry, who hoped to use modern technology for their separatist ends. Military aims were in the forefront and so production of arms was stressed. As this early push toward industrialisation came from provincial foci of power, with very little support from the Imperial government, it was more of a disruptive than a unifying factor.

Thus China, like Russia, entered the modern era with a numerically small and politically dependent middle class. This class did not develop an independent ideology of its own as it did in Western Europe. Even then it played a significant role in undermining the Manchu state. The growth of this class in coastal China led to the break up of the Empire and creation of "regional satrapies in a way that foreshadowed the combination of 'bourgeois' and militarist roles in the hey-day of the warlords (roughly 1911 to 1927) and on into the Kuomintang era."3. A substantial

amalgamation gradually took place between sections of the landlord class and leaders in trade, finance and industry.

This amalgamation provided "the chief

1. Barrington Moore Jr, Social Origins of Dictatorship and Democracy, p. 163

2. Ibid., p. 168

3. Ibid., p. 177

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social underpinning of the Kuomintang, and attempt to revive the essence of the Imperial system, that is, political support of the landlordism with a combination of gangsterism indigenous to China and veneer of pseudo-Confucianism that displays interesting resemblances to Western fascism."4 This combination arose in a large measure out of the failure of the landowning gentry to achieve the transition from preindustrial to commercial forms of farming. Under conditions of an abundant labour and simple technology, there was no need for a Chinese landowner to rationalise production for the limited, urban market. When and where the market did grow, it turned the gentry into rentiers with bureaucratic connections rather than into agrarian entrepreneurs.

Hence, the Chinese landed upper classes failed to develop any significant principled opposition to the Imperial system. Western notion of parliamentary democracy did not appeal to the Chinese scholar-gentry. In Europe under feudalism aristocrats obtained immunities, privileges and a corporate identity that created a demand for representative institutions culminating in parliamentary democracy. Landed property in Chinese society could not serve as a basis for political power separate from the political mechanism of the Imperial state. The fact that circumstances precluded the emergence of a liberal aristocratic opposition decreased the capacity of the Chinese polity to respond successfully to a totally new historical challenge that came from Western imperialism.

A serious dilemma faced the Manchu regime during the final five decades of its rule. "On the one hand, it needed greater revenue to put down the internal rebellion and face foreign enemies. On the other hand, it could not obtain this revenue without destroying the whole system of gentry privileges. To raise adequate revenue would have required the encouragement of commerce and industry. The fact that foreigners managed the customs made such a policy even more difficult. "5.

Theda Skocpol points out, "Yet the Chinese Empire did decline, opening the way to the revolutionary destruction of the gentry... Essentially, China came under extra-ordinary pressures from imperialist industrial nations abroad. This happened even as long-gestating internal developments were unbalancing the system from within precisely in ways that made it unlikely that Imperial authorities would, or could, respond effectively to the foreign threat. "6.

Barrington Moore points out, "a regime, many of whose key features had lasted for centuries, simply fell apart in less than a hundred years under the impact of western blows.... In China... the final period of anarchy lasted much longer. As a minimum, one might date it from the proclamation of the Republic in 1911 to the formal victory of the Koumintang in 1927. the latter initiated a weak reactionary phase".

There was a symbiotic relationship between the landlord and the Chinese warlord. The system of requisitions, taxes in labour and kind, compelled the peasants to support the cities in the rural areas. Merchants too joined hands with the landlords foreshadowing the class coalition of the Kuomintang. In the new situation, the successors to the old ruling class sought without success an alliance with the new forces. These "successors were to be landlords pure and simple, gangsters, or a combination of the two, a tendency that lay just below the surface in Imperial times."7.

The Kuomintang Interlude

With significant Communist and Soviet assistance, the Kuomintang had won control of a large part of China in 1927 working out from its base in the south. This success was mainly due to the support which its armies had so far received from the peasants and the workers. The Kuomintang's social program gave it an advantage over the warlords. It was hoped that its 'revolutionary' ideology might enable it to unify China by defeating the warlords.

When the nationalist forces reached Shanghai, the Kuomintang leader betrayed the revolutionary cause. "On April 12, 1927, his agents, together with others on the spot, including French, British, and Japanese police and military forces, carried out a mass slaughter of workers, intellectuals, and others accused of sympathizing with the Communists. "8. Chiang's victory

4. Ibid., p. 178

5. Ibid, p. 182

6. Theda Skocpol, States and Social Revolutions., p.73

7. Ibid, p.186

8. Harold Isaacs, Tragedy of the Chinese Revolution., pp. 180-181

initiated a new phase in Chinese politics. He unified China with imperialist support and promised suppression of Communism and agrarian discontent by using military force.

Commercial elements were weakening the peasantry and concentrating wealth in the hands of a new social formation—a fusion between sections of the old ruling class and new social strata rising in the towns. This fusion formed the social basis of the Kuomintang. Its agrarian policy was aimed at maintaining or restoring the status quo. The presence of the Communist rival

polarised the situation making Kuomintang policy even more oppressive. "The Communists act as the inheritors to temporarily fanatical peasant rebellions; the National Government and the Kuomintang to ascendant mandarinates."9

Industry failed to register significant advance- under the Kuomintang. It cannot be attributed to Japanese blockade and occupation alone. An important factor was the continuing opposition from the landlords to China's trans-formation into an industrial power. China preferred to import military equipment instead of building up its own industrial base. China remained industrially backward because the landowning class retained through the Kuomintang the substance of political control and leadership.

The two decades of Kuomintang rule show some features of the reactionary phase of the European response to industrialisation, including some totalitarian, characteristics. The social basis of the Kuomintang was an opportunistic but contradictory coalition between the rural landlords and the urban capitalists. "The Kuomintang, through its control of the means of violence, served as the link that held the coalition together. At the same time its control of violence enabled it to blackmail the urban capitalist sector and to operate the machinery of government both directly and indirectly. In both these respects the Kuomintang resembled Hitler's NSDAP."10

However, there are important differences between the social bases and historical circumstances of the Kuomintang fascism and Germany's National Socialism. These differences account for the relatively weak character of the Chinese reactionary phase. One of the causes was the lack of a strong base in industry in the case of China. Japan's invasion of China further weakened the native capitalist element and prevented the Kuomintang fascism from assuming an expansionist character. For these reasons. "The Chinese reactionary and protofascist phase resembles that of Franco's Spain, where an agrarian elite also managed to stay on top but could not execute an aggressive foreign policy, more than it does corresponding phases in Germany and Italy."11.

During its revolutionary phase, prior to attaining power, the Kuomintang had identified itself with the Taiping Rebellion of China's peasantry. After the conquest of state power, the Party under Chiang Kai-shek's leadership did an about-turn, identifying itself with the Imperial system and its superficial Restoration of 1862-1874.12. It was a "a switch that recalls the early behaviour of Italian fascism. After victory, the doctrine became a curious amalgam of Confucian elements and scraps taken from western liberal thinking. The latter...had entered through the influence of Sun Yat-sen... The analogies to European fascism arise mainly from the pattern and shadings of emphasis that Chiang Kai-shek...placed upon these disparate elements."13.

In Chiang Kai-shek's China's Destiny, there is practically no discussion of the social and economic factors that had brought China to her current state of degradation. Any serious analysis of these issues could have alienated upper class support to the Kuomintang. In this lack of a realistic analysis of socio-economic issues, its ideology reminds us of European fascism. In the Confucian theory of a benevolent elite that also assumes a heroic and martial character, the Kuomintang doctrine resembled western fascism. Chiang says, "Excessive personal liberty... cannot be allowed to exist either during wartime or in the postwar period." He quoted Sun Yat-sen to justify this, "In order to resist foreign oppression, we must free ourselves

9. Paul M. Linebarger, The China of Chiang Kai-shek., p. 233

10. Barrington Moore, Social Origins of Dictatorship and Democracy, pp. 196-197

11. Ibid.. p.197

12. Maty C.Wright, The Last Stand of Chinese Conservatism., p. 300. For an analysis of the Kuomintang ideology, see pp. 301-313

13. Barringtori Moore Jr., Social Origins of Dictatorship and Democracy., pp. 197-198

from the idea of 'individual liberty' and unite ourselves into strong cohesive body."14.

Chiang's talk about 'political tutelage' and preparation for democracy was mainly rhetoric. Actual policy was not to disturb the status quo and even to distort facts in order to idealize the past. Mary C. Wright has argued this point cogently in her book, The Last Stand of Chinese Conservatism, reminding that this distorted patriotic idealization of the past is one of main stigmata of European fascism. Another feature is the Kuomintang's effort to suppress native Communism by the use of force, which is again a major characteristic of Western fascism. This shows that fascism as an ideology dominated Japan and Kuomintang China in Asia as well as Germany and Italy in Europe, at the same time, as a single complex unit, affecting their social, political, and intellectual climate and movements, though in different ways.

Failure of the Bourgeois Republic

Like most revolutions, the bourgeois revolution of 1911 gave rise to great hope and euphoria in China and the people looked to it as a panacea for the country's ills and miseries. But the demise of the old dynasty did not lead to the creation of a bourgeois-democratic state. As soon as Sun Yat-sen was proclaimed Provisional President of the Republic, Yuan ShihKai, a reactionary General, forced the abdication of the nationalist leader and assumed the position himself. The Republican ideals were soon given up as the new dictator Yuan was proclaiming his ambition to found a new dynasty.

It was recognised that the transformation of China into a modern democratic nation could not be achieved by one simple revolution. From 1911 to 1925 China faced one of the most chaotic, confusing and disunited periods of her history. As C.P. Fitzgerald traces the collapse of the revolution through the tragi-comedy of General Yuan's rule to the dissolution of all central government into regional warlordism, he points out that the bourgeois revolution discredited not only the old monarchical system but also the credentials and ideals of the new republican regime.

According to Fitzgerald, the Chinese became "completely disillusioned with the false gods of the west. They turned restlessly to some other solution." Soon the news of the Russian Revolution reached China., "Here was a new model, and what is mote important, a model bearing none of the stigma of western colonialism. To young Chinese intellectuals trapped in the dark ages of

modern Chinese history between warring factions of venal warlords and encroaching foreign powers eager to 'cut up the Chinese melon'; this new doctrine had a strong appeal."15

As the events proved, the bourgeois Republic was destined to end neither in democracy nor in a new dynasty, but in chaos. The foreign powers, including Japan, were hostile to the Republican cause. Strong republican China would banish Japan's dream of her continental empire and put an end to semi-colonial domination of China by other imperialist powers. But the emerging Republic did not exactly cover itself with glory by its mal-functioning. "The Parliament, elected in 1912, was a travesty of democracy. Votes were openly sold and openly quoted on the market. The members, when they met, devoted all their time to appropriate large salaries to themselves. Without roots in Chinese history, without tradition and without honesty, the organs of democracy presented a shameful picture of irresponsibility and corruption. Truly 'a monkey had dressed up in the roles of Duke Chou'."16.

To the President, Yuan Shih-Kai, the spectacle of the Republic's degeneration was quite welcome as it gave him an opportunity to intrigue to found his own personal dynasty. He secured a large loan from the European powers, without the Consent of China's Parliament, and thus flouting the constitution he made himself independent of it. Then began the process of assassinating or exiling prominent Republican leaders. "The dynasty was proclaimed, the President, Emperor-elect, performed, for the last time in history, the rite of ploughing and sacrifice at the Temple of Agriculture and the Altar of Heaven, and the date of his enthronement was announced."17.

By a historic irony, the Republic was saved by Japan's presentation of the notorious Twenty-

14. Chiang Kai-shek, China's Destiny., p. 208

15. Franz Schurmann and Ordville Schell (eds) Republican China, p.22

16. C. P. Fitzgerald, The Birth of Communist China, p. 47

17. Ibid., p. 48

one Demands, which if accepted would have made China a virtual Japanese protectorate extinguishing her independence. Yuan accepted these demands in part but this destroyed his prestige. A military revolt in Yunnan and a wide-spread threat of a civil war forced Yuan to abandon his dynastic plans. The Republic was technically saved. But the Republican party had played no role in crushing the monarchical movement. Only the jealous generals had any hand in Yuan's overthrow. In Peking a succession of weak cabinets occupied office but the Republic failed to recover its former position. In the South, Sun Yat-sen established a rival regime of the Republican party, which was itself dependent on the good will of the local military satraps. l8.

With the disintegration of the bourgeois Republic, the generals, nicknamed the warlords, became the real rulers of China in different regions. "They supported or betrayed the government for

money; they warred upon each other to secure richer revenues, they organised the opium trade, sold the official posts, taxed the people for years in advance, squeezed the merchants, and finally, immensely rich, allowed for a last payment, their troops to be defeated, and retired to the safety and ease of the foreign concessions in Shanghai or the British colony of Hong-Kong."19.

The Chinese Revolution had become an incomprehensible chaos. The military rulers had alienated both the literati and the peasantry. No contest was visible between democracy and tyranny on the basis of principles. Throughout the period of warlord rule, from 1916 to 1925, conditions steadily deteriorated in the cities as well as the villages. In this period of disastrous floods and famines, democracy and the West's image had been discredited and cast aside. It is true that democracy was never given a fair trial in the early period of Republican China. Bourgeois democracy "had never taken root in this alien soil, and... the pitiful travesty of the early Republic was neither an example of democracy nor a proof of its failure."20.

Yet this was the image that the Chinese people witnessed of democracy in their country. "In the name of Parliament they had seen gross and shameless corruption; in the name of democracy they had seen nothing but weak and bad government, military usurpation, violation of law, every kind of oppression and national decline....the Chinese people were completely disillusioned with the false gods imported from the West."21 Another effect of this tragicomedy was to discredit still further the fallen Empire. "The Chinese are not romantic, particularly in politics. No lost cause appeals to the Chinese, no fallen house receives sympathy or support. What has fallen is down and can never be raised up. There have been no restorations in China, no Jacobites, no ghosts from the political past....No one really thought that new dynasty, encumbered by the memories of the past, would prove able to steer China on to a new course. By 1920 it was clear that western democracy was not the solution and tacitly it was abandoned even by the revolutionary element."22

Towards People's Democracy

Nationalists and Communists alike consider the May Fourth Movement of 1919 as the culmination of China's cultural revolution. It also marks the beginning of modern nationalist struggle against foreign domination. The student-led demonstrations and the great general strike in Shanghai and other cities convinced many Chinese intellectuals that alliance with the masses was the only road to revolution and regeneration. The Russian Revolution of 1917 inspired many Chinese to study Marxism and Li-Ta-chao, the future Communist leader, "wrote prophetically of Russia and China's common revolutionary destiny.... Within a decade Marxism had become the dominant mode of thinking in both Communist and non-Communist intellectual circles."23.

The Chinese Communist Party was formed in Shanghai in July 1921. Soon it entered into an alliance with the Kuomintang under Sun Yat-sen's leadership. But Sun died in 1925 and Chiang broke the United Front by resorting to White Terror against the Communists. When Chiang's brutality forced the Communists

18. Ibid., pp. 50-51

19. Quoted in Schumann and Schell (eds), Republican China., p. 31

20. Quoted in Ibid., p. 33

21. C.P. Fitzgerald, the Birth of Communist China,, p.53

22. Ibid., p. 54

23. F. Schumann and O. Schell(eds), Republican China, p. 87

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underground, he cut them off from the workers of the city, but he could not break their contact with the agitated peasantry. The Communists started forming Soviets in the areas liberated by them. Thus an 'armed revolution' came into existence confronting an 'armed counter-revolution' in China. After the famous Long March, the Communists established their own government in the Northwest. The Japanese invasion of China persuaded the Kuomintang and the Communists to form the Second United Front. In 1945 the Japanese surrendered. China was now free from foreign invaders. But as soon as the Japanese laid down their arms, the old rivalry began between the Kuomintang and the Communists. The United Front, which was always vulnerable, collapsed. America helped Chiang to occupy Northern Chinese and Manchurian cities. The Communists moved into the countryside surrounding the urban centres. Despite American support, Chiang's army was routed in the Civil War. People's Republic of China came into existence in 1949. The Nationalists were driven out of the mainland and took refuge in the island of Taiwan where they are still ruling under American protection.

Mao has explained the nature of the people's democratic revolution in China in the following words, "The first imperialist world war and the first victorious social revolution, the October Revolution, have changed the whole course of world history and ushered in a new era....In this era, any revolution in a colony or semi-colony that is directed against imperialism i.e. against the international bourgeoisie or international capitalism, no longer comes within the old category of the bourgeois democratic world revolution, but within the new category. It is no longer part of the old bourgeois, or capitalist, world revolution, but is part of the new world revolution, the proletarian-socialist world revolution."24.

The social basis of the People's Democratic State was a four class coalition of the workers, the peasants, the petty-bourgeoisie and the national bourgeoisie under the leadership of the Chinese Communist Party. It was directed against the feudal landowners, the bureaucratic capitalists and the imperialists. According to Mao, the proclamation of the Chinese People's Republic in 1949 was the consummation of the new-democratic revolution which would create conditions for a continued revolution in the direction of socialism. The socialist transformation of China's economy was completed under Mao's leadership within a decade. Yet Mao was convinced that antagonistic contradictions still vitiated the Chinese society.

Mao Zedong pointed out, "In China although the main socialist transformation has been completed with respect to the system of ownership, and although the large-scale and turbulent class struggles of the masses characteristic of the previous military periods have in the main come to an end, there are still remnants of the overthrown landlord and comprador classes, there

is still a bourgeoisie and the remoulding of petty bourgeoisie has only just started. The class struggle is by no means over. The class struggle between the proletariat and the bourgeoisie, the class struggle between the different political forces, and the class struggle in the ideological field between the proletariat and the bourgeoisie will continue to be long and tortuous and at times will become very acute. The proletariat seeks to transform the world according to its own world outlook, and so does the bourgeoisie In this respect, the question of which will win out, socialism or capitalism, is still not really settled."25

In the cultural revolution, the radical wing of the Communist Party led by Chairman Mao fought against the 'capitalist-roaders' through a nation-wide campaign in which the workers and the youth were encouraged to participate in large number. Mao declared that representatives of the bourgeoisie have sneaked into the Party, the government and the army, occupying the highest posts in certain cases. They have also infiltrated into literary, educational and cultural institutions. All these bourgeois elements, he said, are counter-revolutionary revisionists who are conspiring to seize state power and establish a dictatorship of the bourgeoisie. Mao, therefore, asked the people to smash their plots for restoring capitalism in China.

After Mao Zedong's demise, the same revisionists and 'capitalist-roaders', ied by Deng Xiaoping, who were denounced and persecuted during the cultural revolution, seized state power. The new ruling elite condemned the

24. Mao Zedong, "On New Democracy" in Selected Works., Vol. 2., pp. 343-344

25. Mao Zedong, Four Essays on Philosophy., p. 115

so-called 'cultural revolution' as a naked power struggle waged by a clique of the so-called 'radicals'. It disrupted production and inhibited economic development and demoralized the honest and hard-working Party and State cadres and leaders, Deng Xiaoping accused the 'gang of four', which also included Mao's wife, that it was trying to establish a 'fascist-type' dictatorship on the pretext of implementing the 'great proletarian cultural revolution'. The moderate ruling group gradually reversed the 'socialist' policies initiated by Maoist radicals in the sphere of agriculture and re-introduced privatization in industry, commerce and banking. Even foreign capital has been invited to contribute to China's industrialization in selected zones set up in the coastal provinces.

The Cultural Revolution

The Great Proletarian Cultural Revolution, as Mao called it, was in the direct tradition of Mao's conception of revolution as a continuing process. "Central to this conception is the idea that the existing situation must be constantly reviewed and called into question to prevent the re-emergence of the former exploiting classes in positions of influence, in the form of repeated 'class struggle' movements, and a whole series of policies of 'thought reform' and 'rectification' movements."26. The basic concept behind these campaigns has been that the human values and cultural norms are the crucial factor in the functioning of society; and that even a political

revolution and seizure of state power leading to collective ownership of the major means of production cannot guarantee the success of a socialist revolution unless there is also a revolution in men's mode of thought.

The old morality was derived from the old bourgeois society of capitalism, private property and self-interest. The new morality must be related to socialism, collective property and public interest. Mao believes that bourgeois culture and ideas will not disappear on their own, they will have to be driven out and then replaced by socialist values and culture. The Cultural Revolution aimed at changing men's minds and, in addition, replacing the personnel wielding power that still retained older modes of thinking, burgeois or feudal. One distinguishing feature of the Cultural Revolution was the role played by a new extra-Parry organisation of the youth, the Red Guards, that came into existence to spearhead it.

According to Mao's theory, classes continue to exist under socialism; these are not classes in the traditional Marxist sense which are related to the ownership of property like landlords, peasants, capitalists and workers. They are rather functional classes such as managers, party leaders, state officials intellectuals, peasants and workers. Contradictions still exist between them which may develop into sharp hostilities. Unless they are properly resolved, they can lead to a fundamental conflict between rulers and ruled. This happened in Russia after the death of Stalin. Through the Cultural Revolution, Mao wanted to escape from Russia's fate of backsliding into ideological revisionism.

Liberation Army Daily in its editorial on the 3rd November 1966 explained the nature and purpose of the Cultural Revolution in the following words, "Conducted mainly in the ideological field, fundamentally it is a great revolution to destroy the thousands-of-years old concept of private ownership and establish the socialist concept of public ownership.... Ideas, culture, customs, habits, political views, legal concepts, views on art and so on are all ideological forms in society, which generally go under the name of culture. Why must we carry out a cultural revolution in the period of socialism ? The reason is that the economic base of society has undergone fundamental change.... Since the economic base has changed, the ideological super-structure must change accordingly to keep step with it. Otherwise it will obstruct the forces from developing, lead to the loss of the already-won fruits of the revolution, and give rise to revisionist rule and the restoration of capitalism."27.

In 1964, Mao claimed that literary and artistic circles had behaved for the last fifteen years as arrogant bureaucrats, had not identified with the workers and peasants and had not reflected socialist revolution and socialist construction. In 1965 he criticized the reactionary bourgeois authorities in the universities. In 1966 certain party leaders of Peking and their journals were attacked for their pro-capitalist views. Peking Review declared, "The overthrown bourgeoisie, in their plots for restoration and sub-

26. Stuart Schram, Mao Tse-tung, quoted in The Chinese Road to Socialism,, p. 99

27. Quoted in E.L. Wheelwright and Bruce McFarlane, The Chinese Road To Socialism., pp. 106-107

version, give first place to ideology, take hold of ideology and the superstructure. The representatives of the bourgeoisie...did all they could to spread bourgeois and revisionist poison through the media of literature, the theatre, films, music, the arts, the press, periodicals, the radio, publications and academic research and in schools etc., in an attempt to corrupt people's minds... as ideological preparation... for capitalist restoration. "28.

After some time, the Eleventh Plenary Session of the Eighth Central Committee of the Chinese Communist Party adopted the sixteen points on August 8, 1966, as guidelines for the Cultural Revolution. The decision specified that "at present our objective is to struggle against and over-throw those persons in authority who are taking the capitalist road...so as to facilitate the consolidation and development of the socialist system."29.

Mao and his allies were using the Red Guards as the spearhead of the new revolution. They were offered free rail transport anywhere in China, free food, and free lodging in schools and colleges. Millions of these young men and women came to Peking to be addressed by their leader, who exhorted them to fan out to other cities and the countryside. There was some violence. The 'capitalist-roaders' were beaten up, the temples were desecrated and houses of the 'bourgeoisie' were ransacked and their goods confiscated. Mao emphasized the people's right to rebel as the great truth of Marxism. He talked of "bombarding the Party headquarter". It is easy to see why. The Maoists were at that time the minority group in the Party Central Committee. Of seven members of the former Standing Committee, Liu Shaoqi, Deng Xiaoping, Zhu Deh and Chen Yun were "rightists", only three stood with the "proletarian line", Mao Zedong, Lin Biao, and Zhou Enlai. The task was to overthrow those in authority, smash the Party and State apparatus and assert the supremacy of "revolutionary committees" set up by the "proletarian headquarters" of the cultural revolution.

By April 1968, the Cultural Revolution in China had entered a new stage. The proletarian headquarters around Mao had seized power in twenty-three out of twenty-seven provinces; Mao's ally, Zhou Enlai had also established full control over the Central Government; and an attempt was being made to run a modern economy on "moral incentives" and "mobilization of the masses" with profound effects on production and efficiency. The latest phase was featured by the overthrow of an elite group of party bureaucrats, managers, technocrats and state functionaries. "Maoists did not see the Cultural Revolution as a zigzag stage in the policy and tactics between Left and Right, or as an opportunity for the Left to push ahead to a new advance, The issue between them and the Liu Shaoqi group was seen as being Over the whole nature and raison d. 'etre of the socialist revolution."30. The cultural revolution signified that the struggle between "two lines" in the Communist Party had been transformed into the struggle between "two roads" — capitalism and socialism-in the national arena. Socialism with Chinese Characteristics The last phase of Mao Zedong's life saw a high degree of polarisation between the ultra-leftist radicals of Shanghai led by Jiang Qing and the supporters of Zhou Enlai and Deng Xiaoping. A basic conflict between them centred on their experiences during the Cultural Revolution and their responses towards its legacy. Jiang's group believed that the class struggle between the proletariat and the bourgeoisie was an important feature of an early socialist society and during that phase the danger as well as the possibility of capitalist restoration was very real.

They emphasized high levels of collectivisation, normative incentives, indigenous technological development and an open education system. The moderates stressed pragmatic policies in agriculture, industry and education which were more result-oriented and less ideological. As Kalpana Misra put it, 'Evaluating socio-economic policies in terms of developmental imperatives and efficiency they perceived ultra-leftist pre-occupation with class and class-conflict as antithetical to their goals.31.

Mao's approach at this time was dualistic. He tacitly supported the leadership of the moderates in the economic sphere but at the same time encouraged the ultraleftist criticism of their

28. Peking Review., June 10,1966

29. Eastern Horizon, January 1967

30. E.L. Wheel Wright and Bruee McFarlance, The Chinese Road to Socialism., p. 122

31. Kalpana Misra, From Post-Maoism to Post-Marxism., p. 117

economic policies. "The twin campaigns to Restrict Bourgeois Right and Strengthen the Dictatorship of the Proletariat that dominated the Chinese media in 1975-76 aimed specifically at undermining the legitimacy of moderate economic initiatives and labelling them ideologically suspect tactical expedients."32.

In 1981-82, the moderate reformers were in a stronger position. The controversy over stages was finally settled in their favour. The definition of socialism as public ownership of the means of production and distribution according to work was now recognized as the correct description of socialist society. An economic reform was expedited during the 1980s. However, the reality of economic liberalisation became inconsistent with such a statist conception of the socialist economy. Deng's intervention on behalf of the reformers propelled the Chinese economy further in the direction of liberalisation. Zhao Ziangs followers used the inherent contradictions of the half-way reform to press for further acceleration and deepening of the reform process.

Zhao Ziang pointed out that China's "per capita GNP still ranks among the lowest in the world... the backwardness of the productive forces determines the following aspects of the relations of production: socialisation of production.... is still at a very low level; the commodity economy and domestic market are only beginning to develop; the natural economy and semi-natural economy still constitute a considerable proportion of the whole; and the socialist economic system is not yet mature and well-developed."33. Given this under-development of its productive forces, China's primary stage of socialist development "was destined to span almost a century and a half. During this stage China would accomplish industrializing and modernization of production, which many other countries had achieved under capitalist conditions."34.

The thesis that China was then in the primary stage of socialism aimed at clarifying the nature of both 'right' and 'left' mistakes. On the one hand it criticised the view that China could not take the

socialist road without going through the stage of fully developed capitalism. On the other hand, it argued against skipping over stages and attempting policies appropriate to a much higher level of development as this was sheer utopianism. On the basis of a proper understanding of the current stage of growth, it was possible for Dengist leadership to devise suitable policies for the building of "Socialism with Chinese Characteristics."

In fact, this thesis about the primary stage of development could not provide a proper ideological justification sought by the Dengist leadership. The developments related to structural reform as well the inconsistencies inherent in the theory of the 'primary stage of socialism' rendered the definition of socialism in the early 1990s quite ambiguous. They undermined the credibility of their claim that China was still engaged in building 'socialism' of any stage, primary or otherwise. "A premature declaration of socialism simply highlighted the fact that China's socialist transformation' was in essence an administrative decree and not in any way a reflection of objective reality."35

In late 1980s and early 1990s, when economic crisis and rampart bureaucratic corruption prevailed, some radical reformists advocated elimination of price controls, establishment of full-fledged market economy, even the abolition of public ownership and the institution of private property rights. "As a fulfilment of Maoist prophecy that such a state of affairs would eventually lead to 'capitalist restoration' some of the most vocal of Chinese reformers now insistently pressed for the substitution of public ownership with private-property relations."36.

The theory of the primary stage of socialism failed to counter Zhao Ziang's critics both on the left and the right. From the moderate perspective it could not provide legitimation either to the system or generate support for the goals of the leadership. The rightists felt that Zhao's approach did not go far enough because they had by then completed the transition from revision to renunciation of the socialist protect. For Mao, 'payment according to work' was 'the

32. Ibid., p. 118

33. Zhao Ziang, :"Advance Along the Road of Socialism with Chinese Characteristics," report delivered at the 13th Conference of the Communist Party of China on 5 October, 1987

34. Kalpana Misra,"Fram Post-Maoism to Post-Marxism., p. 111

35. Ibid, p. 113

36. Ibid., p. 114

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exchange of equal values' that prevailed in capitalist economy. The dangers of extolling this principle as a positive socialist method of distribution, as Deng Xiaoping and his supporters were doing, were correctly pointed out by Yao Wenyuan.

This Chinese critic of Dengist policies predicted that "a small number of people will in the course of distribution acquire increasing amounts of commodities and money through certain legal channels and numerous illegal ones; capitalist ideas of amassing fortunes and craving for personal fame and gain, stimulated by such 'material incentives' will spread unchecked; phenomena such as the turning of public property into private property, speculation, graft and corruption, the theft, and bribery will increase; the capitalist principle of the exchange of commodities will make its way into political and even into Party life, undermining the socialist planned economy ; acts of capitalist exploitation such as the conversion of commodities and money into capital, and labour power will occur.... as a result, a small number of new bourgeois elements and upstarts.... will emerge from among Party members, workers, well-to-do peasants, and personnel in state organs. When the economic strength of the bourgeoisie has grown to a certain extent, its agents will demand political rule, demand the overthrow of the dictatorship of the proletariat and the socialist system, demand a complete changeover from socialist ownership, and openly restore and develop the capitalist system."37.

The early post-Mao debate on 'the bourgeois right' developed out of the need to invalidate the leftist 'egalitarianism' and argue that China's socialist development was not be sabotaged by the new Dengist socio-economic policies. The controversy over whether class should be defined primarily on economic basis or in terms of ideological and political criteria also was likewise concerned with the denial of the hostile emergence of new exploitative social classes in 'socialist' China. For the moderate leaders and intellectuals, who were criticised as the 'capitalist roaders' in the past, the emphasis on economic criteria was quite necessary at this stage but this assertion brought them into conflict with the growing reformist trend towards privatization. The radical reformers found political criteria more useful for understanding the new role of capital in the increasingly market-oriented economy. "For very different reasons, Mao's most vociferous critics found themselves in agreement with his position on class status."38.

In addition to superstructural elements inherited from the old social order, a second source of class polarization and capitalist restoration, according to Mao, was bureaucratic degeneration and an alliance between party-state bureaucracy and the liberal and technocratic intelligentsia. The revolts of intellectuals, students and other strata in Eastern Europe, the 'cult of the expert' advocated by Liu Shaoqi, Deng Xiaoping and others and their opposition to the Socialist Education Movement had convinced Mao that a 'bureaucratic-political' nexus was emerging in China also which would obstruct further advance towards socialism. The post-Mao Dengist leadership reversed Mao's preference for continuous revolution in favour of an elite-guided process of steady economic development based on pragmatic planning and professional expertise.

After his rehabilitation, Deng restored the legitimacy of the 'revisionist' cadres and denounced the 'falsehoods' which were 'peddled by the Gang of Four (his term for the overthrown radical leaders). Deng's argument for dismissing the existence of a bureaucratic class was that the Communist cadres did not own the means of production and, therefore, it was not possible for them to exploit the workers or the peasants. Dengist educational reforms focused primarily on the tasks of economic modernization. The significance of differential access to education in systems in which the power and privileges enjoyed by the elite cannot be inherited has been highlighted by many writers. Paul Sweezy singled out privileged access to education as

"probably the most important way in which the bureaucracy reproduces itself as a class."39. The emergence of a powerful and wealthy group of industrial and commercial entrepreneurs reinforced the 'bureaucratic bourgeoisie within the Party' because it could assist them through bureaucratic manipulation of the partially

37. Yao Wenyuan, "On the Social Basis of the Lin Biao Clique", Hongi., no. 4(1975) pp. 20-29

38. Kalpana Misra, From Post-Maoism to Post-Marxism., p. 149

39. Paul Sweezy, "Towards a Programme of Studies on the Transition to Socialism," in Paul Sweezy and Charles Bettelheim, On the Transition to Socialism., New York: Monthly Review Press, 1972, pp. 123-135

privatized economy.

As a shrewd observer explains it, "Party-state functionaries' privileged and monopolist access to and control over material resources, capital base, licensing etc., along with connections and networks put them in a unique position to exploit the opportunities offered them from economic liberalization. The beneficiaries of half-way economic reform were the bureaucrat capitalists whose new-found channels for amassing wealth would be undermined by a return to the structures, norms, and values of the planned socialist economy, whereas a transition to a complete market, i.e., a full-fledged capitalist restoration would deny them their special inside tracks."40.

According to Charles Bettelheim, all Soviet-type societies eventually degenerated into bureaucratic or state capitalism and after the collapse of Communist Party rule in these countries, they are trying to create market-oriented economies, although the remnants of state capitalism still co-exist with the new features of market capitalism in all these societies. In China, the Dengist leadership introduced strong elements of market capitalism and capitalist social relations without completely demolishing the earlier structures of state capitalism and the command economy. Here we had a curious spectacle of the Communist Party itself presiding over the liquidation of its own revolutionary legacy.